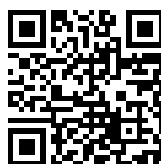


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UNITED STATES. CONGRESS. SENATE.  
COMMITTEE ON INTERIOR AND  
INSULAR AFFAIRS

Hearings 1955  
Volume 3



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# **MULTIPLE SURFACE USES OF THE PUBLIC DOMAIN**

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**UNIVERSITY  
OF MICHIGAN**

**JUL 5**

**MAIN  
READING ROOM**

## **HEARINGS BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE EIGHTY-FOURTH CONGRESS FIRST SESSION ON S. 1713**

**A BILL TO AMEND THE ACT OF JULY 31, 1947 (61 STAT. 681),  
AND THE MINING LAWS TO PROVIDE FOR MULTIPLE USE  
OF THE SURFACE OF THE SAME TRACTS OF THE PUBLIC  
LANDS, AND FOR OTHER PURPOSES**

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**MAY 18 AND 19, 1955**

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**Printed for the use of the Committee on Interior and Insular Affairs**



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# MULTIPLE SURFACE USES OF THE PUBLIC DOMAIN

WEDNESDAY, MAY 18, 1955

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The committee met at 10 a. m., pursuant to call, in room 224, Senate Office Building, Hon. Clinton P. Anderson presiding.

Present: Senators Anderson, Bible, Neuberger, Millikin, Malone, Watkins, Dworshak, Kuchel, and Barrett.

Present also: Stewart French, chief counsel, and N. D. McSherry, assistant chief clerk.

Senator ANDERSON. The distinguished chairman of the committee, Senator James E. Murray, of Montana, has asked me to preside at these hearings. We are considering S. 1713, a bill I had the honor of sponsoring along with Senators Aiken, Bennett, Watkins, and Barrett, to prevent abuses of the mining laws and to provide for increased development of the surface resources of the public lands.

At the executive session of the full committee yesterday it was agreed that we would also consider three bills to provide for mining location on public lands withdrawn for power site purposes. These bills are Congressman Engle's H. R. 100, Senator Watkins' S. 1149 and Senator Barrett's S. 1502.

May I say there that inadvertently the impression was left that we would have a hearing on all of those bills at the same time this morning. That was not the intention. The intention was to call the bills back for the consideration of the subcommittee, so that if any of the testimony on S. 1713 had a bearing on any of the other bills, we could take such testimony into consideration. Also we could then decide whether H. R. 100 should be reported, or one of the Senate bills should be reported, or a combination of them.

Senator BARRETT. Mr. Chairman, I talked to a number of the members of the subcommittee, and I am sure they are all agreeable to the statement you just made. They would like to have an opportunity to make a study of these three bills in the subcommittee before the full committee again takes up the matter.

Senator ANDERSON. Yes. Well, frankly, Senator Barrett, I would like a chance to examine those two bills, even though I think they are very much like H. R. 100, and find out whether there are some changes that perhaps should be made in H. R. 100.

Since the power site measures do have some general bearing in this field, I think it would be a good thing if in the hearing at this point we put not only the text of S. 1713, but the text of these other three bills. Particularly, there should be set forth the text of H. R. 100, as it was reported by the subcommittee to the full committee, and the comments of the executive agencies on them.

## (The bills and reports referred to are as follows:)

[S. 1713, 84th Cong., 1st sess.]

**A BILL** To amend the Act of July 31, 1947 (61 Stat. 681), and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 1 of the Act of July 31, 1947 (61 Stat. 681), is amended to read as follows:

"SECTION 1. The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to, sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this Act and upon the payment of adequate compensation therefor, to be determined by the Secretary: *Provided, however*, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any person, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this Act, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district, or other local governmental subdivision or agency, the Secretary may make disposals under this Act only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this Act shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this Act, the word 'Secretary' means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture."

SEC. 2. That section 3 of the Act of July 31, 1947 (61 Stat. 681), as amended by the Act of August 31, 1950 (64 Stat. 571), is amended to read as follows:

"All moneys received from the disposal of materials under this Act shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214), shall be set apart as separate and permanent funds in the Territorial Treasury, as provided for income derived from said school section lands pursuant to said Act."

SEC. 3. A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however*, That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

SEC. 4. (a) Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.



(b) Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

(c) Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

SEC. 5. (a) The Secretary of the Federal Department which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's, or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

Thereupon the Secretary of the Interior, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situate.

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or

asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) the date of location;

(2) the book and page of recordation of the notice or certificate of location;

(3) the section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) whether such claimant is a locator or purchaser under such location; and

(5) the name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims.

If such notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks, or, if in a weekly paper, in nine consecutive issues, or if in a semiweekly or triweekly paper, in the issue of the same day of each week for nine consecutive weeks.

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

(b) If any claimant under any unpatented mining claim heretofore located which embraces any of the lands described in any notice published in accordance with the provisions of subsection (a) of this section 5, shall fail to file a verified statement, as above provided, within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in subsection (e) of this section 5, (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims.

(c) If any verified statement shall be filed by a mining claimant as provided in subsection (a) of this section 5, then the Secretary of the Interior shall fix

a time and place for a hearing to determine the validity and effectiveness of any right or title to, or interest in or under such mining claim, which the mining claimant may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, which place of hearing shall be in the county where the lands in question or parts thereof are located, unless the mining claimant agrees otherwise. Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with this provision. The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals shall follow the then established general procedures and rules of practice of the Department of the Interior in respect to contests or protests affecting public lands of the United States. If, pursuant to such a hearing the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's so asserted right or interest under the mining claim, then no subsequent proceedings under this section 5 of this Act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by that particular published notice.

(d) Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

- (1) the date of location;
- (2) the book and page of the recordation of the notice or certificate of location; and
- (3) the section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

(e) If any department or agency requesting publication shall fail to comply with the requirements of subsection (a) of this section 5 as to the personal delivery or mailing of a copy of notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice, shall in no manner affect, diminish, prejudice or bar any rights of that person.

SEC. 6. The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this

Act in all respects as if said mining claim had been located after enactment of this Act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

SEC. 7. Nothing in this Act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this Act, or as a result of a waiver and relinquishment pursuant to section 6 of this Act; and nothing in this Act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any limitation or restriction not otherwise authorized by law.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., May 17, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington 25, D. C.*

MY DEAR SENATOR MURRAY: This is in reply to your request for the views of this Department on S. 1713, a bill to amend the act of July 31, 1947 (61 Stat. 681), and the mining laws to provide for the multiple use of the surface of the same tracts of the public lands and for other purposes.

We recommend that S. 1713 be enacted, and suggest that it be amended as indicated hereinafter.

S. 1713, if enacted, would make a number of significant changes in existing laws governing mining and the disposal of materials on the public lands particularly insofar as surface uses and rights are concerned. Briefly summarized, the bill may be said to provide as follows: (1) The first three sections would exclude certain minerals from among those on which claims under the mining laws may be based, and would provide a means for the disposal of the materials so excluded; (2) section 4 would limit the rights of a holder of an unpatented mining claim hereafter located to the use of the surface and surface resources; and (3) sections 5 and 6 would provide a procedure for the clarification of surface rights appurtenant to mining claims existing at the time of the bill's enactment. Existing rights would be protected by section 7.

Section 1 of the bill would amend section 1 of the act of July 31, 1947 (61 Stat. 681; 43 U. S. C., sec. 1185), to add certain common minerals to the materials subject to disposition under that act. Also, the Secretary of Agriculture would be given the same authority with respect to mineral materials, including, but not limited to, sand, stone, gravel, pumice, pumicite, cinders, and clay, and vegetative materials, including, but not limited to, yucca, manzanita, mesquite, cactus, and timber or other forest products, located on lands under his jurisdiction as that which the Secretary of the Interior has with respect to lands under his jurisdiction. The provisions of that section would remain inapplicable to national parks and monuments and to Indian lands, but would in future be applicable to national forests.

Section 2 would amend section 3 of that act, as amended (43 U. S. C., sec. 1187), to provide that moneys received from the disposal of materials thereunder would be subject to disposition under the same provisions as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture would be disposed of in the same manner as are other receipts from the lands from which the materials are removed. Moneys received from the disposal of materials from school section lands in Alaska would be treated as income from such school section lands is ordinarily treated.

Section 3 specifically states that a deposit of common varieties of sand, stone, gravel, pumice (except block pumice), pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws so as to give effective validity to any claim located thereunder.

Section 4 provides that, prior to the issuance of patent, no mining claim located subsequent to the enactment of S. 1713 could be used for any purpose other than prospecting, mining, or processing operations, and uses reasonably incident thereto, and all rights under the claim would be subject to the right of the United States to manage and use the surface; moreover, prior to the issuance of patent, no claimant could sever, remove, or use vegetative or other surface resources, except to the extent required by mining operations or uses reasonably incident thereto.

At the present time, agencies administering federally owned lands encounter many difficulties in administering the lands under their jurisdiction because of the presence of unpatented mining claims of the existence of which they may not even be aware. This undesirable situation would be alleviated by the procedure which section 5 of S. 1713 would provide for determining expeditiously title uncertainties resulting from the existence of abandoned, invalid, dormant, or unidentifiable mining claims, located prior to the enactment of the bill. Not only is it necessary that some means be established for the expeditious determination of these uncertainties resulting from the existence of such claims, but, if section 4 of this bill is to have the desired effect upon the management and use of surface resources of unpatented mining claims, a procedure to identify which unpatented claims will be subject to its provisions is necessary. In our opinion, the procedure to be established by section 5 would answer this need for it would permit a determination of those valid claims existing prior to the enactment of the bill with respect to which claimants are asserting surface rights adverse to the United States. We do not interpret the provisions of section 5 as impairing authority under existing law to declare mining claims null and void for failure to comply with provisions of law governing such claims. We have also assumed that nothing in the bill would prevent the taking by the United States of any mining claims under the right of eminent domain.

The procedure which section 5 would establish would commence with the Secretary of any Federal department, responsible for administering the surface resources of any lands belonging to the United States, filing with the Secretary of the Interior a request for publication of notice to mining claimants for the determination of surface rights. The filing of a request of that nature would be accompanied by affidavits of persons who had examined the lands involved in an effort to ascertain whether or not any persons were in possession of or engaged in working the lands; the affidavits would state the names and addresses of all persons so found or, if none were found, would state that fact.

The request would also be accompanied by the certificate of an attorney, a title abstractor, or a title or abstract company, based upon an examination of tract indexes in the county office of record, setting forth the name of any person appearing in those records as having an interest in the lands involved under an unpatented mining claim. The Secretary of the Interior would, upon the receipt of such a request, publish notice to mining claimants in a newspaper having general circulation in the county wherein the lands involved are situated. Any person asserting an unpatented mining claim in those lands would be required to submit, within 150 days, a statement setting forth pertinent information as to his claim, and any claimant failing to submit such a statement would be conclusively deemed to have waived any rights to his claim which would be contrary to the limitations set forth in section 4 of the bill with respect to the use of the surface and to have consented to the subjection of his claim to the provisions of that section. Upon publication of notice in a newspaper, a copy of that notice would be delivered, either in person or by registered mail, to each person whose name and address appear in the affidavits and certificates submitted with the request for publication.

The bill also would provide a method by which any person desirous of receiving notice with respect to any particular lands might file a request for such notice in the appropriate county office of record. If any statement should be filed by a claimant in response to the publication or delivery of notice, the Secretary of the Interior would hold hearings to determine the validity and effectiveness of any right or title to that mining claim, or interest in or under that claim, which is contrary to or in conflict with the provisions relating to the use and management of surface resources, set forth in section 4 of the bill. Such hearings would follow the established general procedures and rules of practice of the Department of the Interior with respect to contests or protests affecting public lands. If, with respect to any person, the requirements as to personal delivery or mailing of notice should not be complied with, that person's rights would be affected in no way by the publication of notice.

Section 6 provides that, while any owner of an unpatented mining claim may waive or relinquish all rights thereunder contrary to or in conflict with the restrictions of section 4, such a waiver or relinquishment will not constitute any concession as to the validity of his claim or as to the date of priority of rights under that claim.

Section 7 provides that the bill will in no way limit or restrict existing rights under any valid mining claim except insofar as those rights are limited or restricted in actions taken pursuant to sections 5 and 6, nor will the bill authorize



the inclusion in patents thereafter issued for mining claims of any limitations or restrictions not otherwise authorized by law.

S. 1713 is designed to meet a situation which has arisen because of more intensive Federal use of the public lands in recent years. Under the existing mining laws various abuses have been possible. For example, it has been possible for persons who have unpatented claims under the mining laws to prevent orderly management and disposition of valuable timber and other surface resources, and also to block access to such resources on unlocated Federal land while paying little or no attention to mining. Moreover, many claims have been based on deposits of the mineral material listed in section 1 which, although technically of sufficient value to justify a location, are actually of minor worth as compared to other natural resources of the land. Another example of these abuses may be seen in the fact that it has been possible to acquire a color of right, through a mining location, for nonmining purposes, such as summer homesites.

This bill is designed to strike at these abuses, which violate the spirit of the mining laws. The bill provides that deposits of common minerals such as ordinary varieties of sand, stone, gravel, pumice, pumkite, and cinders shall not be deemed valuable mineral deposits within the meaning of the mining laws. Secondly, it prohibits the use of a claim for any nonmining purpose prior to the issuance of patent.

The type of practice against which this bill is directed has drawn the disapproval of the mining industry generally, conservation groups, and other public land users. The national interest in encouraging the discovery of minerals dictates that the mining industry should have a continued opportunity to locate mining claims, to mine minerals found there, to discover and develop commercial deposits, and, if fortunate, to make a profit, but the national interest is not served by preventing the use of the surface of unpatented claims for other desirable uses which do not substantially interfere with mining operations and related activities. This legislation is based upon this sound premise, in our view.

At the same time as the proposed legislation would meet the wishes of the mining industry, it would also give full recognition to the vital importance of the forest and range resources of the public lands and the national forests, for the bill provides for the multiple use of the surface of mining claims and thus permits the conservation and wise use of all surface resources in the public interest.

We have discussed above the need for a procedure for establishing the existence of unpatented mining claims and for determining the respective rights of the United States and holders of unpatented mining claims. Certainly, the procedure which section 5 would establish would eliminate many of the problems relating to ownership and management of surface resources which arise in the case of Government timber sales, grazing permits, and watershed and recreational development. Under the procedure which would be provided by this bill, it is hoped that an area in which a timber sale, for example, was contemplated could be subjected to a conclusive determination of surface rights within a reasonably short time.

We believe that the bill should be amended so that the provisions of sections 1 and 2 would be specifically applicable to the revested Oregon & California Railroad grant lands and the reconveyed Coos Bay Wagon Road grant lands. The other sections of S. 1713 are already applicable to these lands, and there is no reason why these lands should not be subject to the same provisions of law as other public lands in these respects. We suggest, therefore, that there be inserted immediately after "United States," at page 2, line 2, the following: "including for the purposes of this act land described in the acts of August 28, 1937 (50 Stat. 874), and of June 24, 1954 (68 Stat. 270).". For the same reason, we also suggest that there be inserted, immediately after "except" at page 3, line 22, the following: "that revenues from the lands described in the act of August 28, 1937 (50 Stat. 874), and the act of June 24, 1954 (68 Stat. 270), shall be disposed of in accordance with said acts and except."

It is also suggested that the language used at the beginning of section 5 requires clarification. Though the later language of section 5 clearly indicates that its provisions apply to all departments and agencies, the phraseology in the first sentence of the section could well be interpreted as limiting the section's scope to the executive departments only. We suggest, therefore, that all of line 3, page 6, be deleted and the following substituted in its place "The head of a Federal department or agency."

Certain existing statutes limit or restrict mining activities upon lands owned by the United States, as, for example, the act of April 8, 1948 (62 Stat. 162),

which opened the revested Oregon & California Railroad grant lands and the reconveyed Coos Bay Wagon Road grant lands to exploration, location, entry, and disposition under the general mining laws, but which limited, with respect to the timber on those lands, the rights of persons making entry on those lands. We believe it essential that nothing in S. 1713 be interpreted as repealing or amending any of those laws imposing such special limitations or restrictions. Though the existing language of the bill may afford such a guarantee, we suggest that the period at the end of section 7 be replaced by a comma and the following added: "or to limit or repeal any existing authority to include any limitation or restriction in any such patent."

The Bureau of the Budget has advised that there is no objection to the presentation of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*

DEPARTMENT OF AGRICULTURE,  
*Washington 25, D. C., May 17, 1955.*

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate.*

DEAR SENATOR MURRAY: Reference is made to your request of April 20 for a report on S. 1713, a bill to amend the act of July 31, 1947 (61 Stat. 681), and the mining laws to provide for multiple use of the surface of the same tracts of the public lands and for other purposes.

We strongly recommend early enactment of S. 1713 with one clarifying amendment as subsequently described.

S. 1713 is identical to H. R. 5561, 5563, 5572, 5595, 5742, and almost identical to H. R. 5577.

This bill would apply to all lands of the United States subject to the general mining laws. Its major provisions are:

(1) Common varieties of sand, stone, gravel, pumice, pumicite, and cinders would be removed from the purview of the United States mining laws and made subject to disposal only under the provisions of the Materials Act of July 31, 1947 (61 Stat. 681), by the Secretary of Agriculture for lands under his jurisdiction and by the Secretary of the Interior for other public lands of the United States.

(2) Mining claims located after enactment of the bill could not, prior to patent, be used for other than mining purposes without authorization from the United States, and such locations would be subject to the right of the United States to manage and dispose of the vegetative surface resources, to manage other surface resources thereof (except minerals subject to the mining laws) and to use so much of the surface as necessary for such purposes or for access to adjacent land; provided that any use of the surface by the United States, its permittees or licensees, could not endanger or materially interfere with mining uses. Mining claimants could not use surface resources subject to management and disposal by the United States except to the extent required for mining purposes, and any timber cut for such purposes, except for clearance, must be in accordance with sound principles of forest management.

(3) Under a procedure similar to that provided in Public Law 585 of the 83d Congress, the Secretary of the Interior shall, at the request of the Federal department having the responsibility for administering the surface of lands of the United States, initiate action for a determination of surface rights as to a given area. Under this procedure, a holder of a claim located prior to enactment of this bill could assert and establish his rights in the lands covered by his claim, and such claim would be unaffected by the proceedings. If such a claimant fails to establish his rights, or fails to assert his rights, or if he voluntarily waives his rights to the surface, he will be in the same position as a holder of a claim located after enactment of this bill. The procedure does not affect the right of a claimant to apply for patent, and if patent is granted he would acquire the same title as he would under the existing law.

We believe S. 1713, if enacted, would go far toward correcting some of the very difficult problems confronting this department in its administration of those national forests and Title III Bankhead-Jones lands subject to the general mining laws of the United States. We also believe that for the first time an area of agreement has been reached on this problem between the administrators of pub-

lic lands under the jurisdiction of both the Departments of Interior and Agriculture, representatives of the mining industry, and conservation groups.

The Department of Agriculture desires to encourage legitimate prospecting and effective utilization and development of mineral resources of the national forests and Title III lands. We would not favor legislation which would interfere with such development of minerals nor work hardship on the bona fide prospector or miner. We also recognize that the mining industry does not condone the use of mining claims on the public lands for other than mining purposes.

However, on the national forests the mining laws are sometimes used to obtain claim or title to valuable timber, summer home sites, or lands blocking access to Government timber and to water needed in the grazing use of the national forests.

As of January 1, 1952, there were 36,000 mining patents on the national forests, covering 918,500 acres. Only about 15 percent of these mining patents have been or are commercially successful mines. As of the same date, there were approximately 84,000 claims, covering 2.2 million acres. Only 2 percent of these claims were producing minerals in commercial quantities and probably not more than 40 percent could be considered valid under the requirements of the mining laws. Yet, on these national-forest claims, there was tied up over 8 billion feet of commercial sawtimber, valued at about \$100 million which the Government could not sell without consent of the claimant. In other words, national-forest timber exceeding in quantity and value that cut from all national forests in any one year is tied up on mining claims and cannot be sold by the Government. The two tables attached to this report supply these basic statistics by States.

The effect of this situation is increased costs of administration, obstruction of orderly management and competitive sale of timber, and obtaining high-value, publicly owned surface resources by a few individuals at nominal cost.

In the last 3 years there has been a tremendous increase in the number of mining claims on the national forests, principally as the result of prospecting for uranium and other fissionable materials. For example, as of January 1, 1955, it is estimated that there were 166,000 claims on the national forests, covering nearly 4 million acres or about a 100-percent increase in the past 3 years. At the rate claims are currently being filed, we estimate that by the end of this calendar year there will be about 225,000 mining claims on the national forests. It is also estimated conservatively that there are now over 10 billion board feet of timber tied up on national-forest mining claims, having a current stumpage value of \$112 million.

Following is an estimate of the number of claims and included acreage by States in the national forests as of January 1, 1955 :

State	Thousand claims	1955 claims as multiple of 1952 claims	Thousand acres	1955 acreage as multiple of 1952 acreage
Arizona.....	34.3	6.9	684	6.2
California.....	21.0	1.1	602	1.0
Colorado.....	16.7	1.8	375	1.5
Idaho.....	18.4	1.2	408	1.2
Montana.....	14.6	2.1	282	2.1
Nevada.....	5.2	1.8	108	2.3
New Mexico.....	8.7	3.7	223	2.8
Oregon.....	6.7	.9	215	.8
South Dakota.....	4.8	1.9	103	2.0
Utah.....	28.4	3.6	583	3.2
Washington.....	5.3	1.8	94	1.3
Wyoming.....	2.1	2.5	78	2.4
Totals.....	166.2	2.0	3,755	1.7

The number of claims is "snowballing" so fast that the situation on the national forests is rapidly getting out of hand. The above summary, for example, shows that there are nearly 7 times as many mining claims in Arizona as 3 years ago, and nearly 4 times as many in New Mexico and Utah. The increase has been large in other States, too. Equitable corrective action as would be provided by S. 1713 is urgently needed. It is needed quickly because new claims are being filed at the rate of about 5,000 per month.

We suggest the following be added after the word "except" in line 22, page 3: "that revenues from the lands described in the act of August 28, 1937 (50 Stat. 874), and the act of June 24, 1954 (68 Stat. 270), shall be disposed of in accordance with the provisions of such acts, and except."

The purpose of this amendment is to make it clear that revenues from O. & C. lands under the administration of the Department of the Interior and lands administered by the Department of Agriculture under the 1954 act will be placed in the O. & C. fund.

To effectively implement the provisions of S. 1713, particularly those of section 5, it is estimated that about \$750,000 to \$1 million would be needed annually by this Department for roughly a 10-year period, after which costs would drop to a relatively small amount. After claims located prior to enactment of the bill had been processed in accord with section 5, costs relating to this bill would be limited primarily to costs of issuing permits for disposal of materials under the Materials Act. Such costs would be offset in whole or in part by revenues from such permits.

In summary, this Department recommends enactment of S. 1713 since it will do much to solve the serious problems presented by mining claims in the management of public lands and resources. It will correct deficiencies in the mining laws and prevent many of the abuses by other than bona fide miners, but it will not obstruct or interfere with bona fide mineral prospecting, mining, and development. The Department is anxious to see these measures taken and strongly endorses the bill. However, S. 1713 does not include all of the changes in the mining laws which would be desirable from a good public land management standpoint and some problems would remain with respect to mining on the national forests and title III lands that this bill would not correct.

The Bureau of the Budget advises that, from the standpoint of the program of the President, there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Undersecretary.*

*Estimated number of unpatented mining claims on the national forests (as of Jan. 1, 1952)*

State	Number of claims	Acres	Estimated percent which are producing minerals in commercial quantities	Estimated percent considered valid under the mining laws	Timber on claims	
					Volume (thousand feet, board measure)	1951 value
Arizona.....	5,000	95,400	9.0	22	70,000	\$700,000
California.....	19,640	582,700	.8	30	3,460,000	50,177,000
Colorado.....	9,450	254,000	1.0	37	80,000	368,000
Idaho.....	15,840	355,100	4.3	42	1,170,000	8,425,000
Montana.....	6,860	132,600	1.7	46	85,000	440,000
Nevada.....	2,940	50,700	2.0	60	.....	.....
New Mexico.....	2,350	81,700	3.0	24	225,000	2,000,000
Oregon.....	7,780	267,300	1.8	55	2,301,000	36,307,000
South Dakota.....	2,600	52,500	4.5	30	81,000	542,000
Utah.....	7,810	185,300	2.0	50	7,000	40,000
Washington.....	2,920	71,700	2.2	52	751,000	4,111,000
Wyoming.....	860	32,900	.6	55	36,000	417,000
<b>Total.....</b>	<b>84,050</b>	<b>2,163,900</b>	<b>2.0</b>	<b>40</b>	<b>8,266,000</b>	<b>103,527,000</b>

*Patented mining claims on the national forests (as of Jan. 1, 1952)*

State	Number of claims	Acreage	Estimated percent which are or have ever been commercial mining operations	State	Number of claims	Acreage	Estimated percent which are or have ever been commercial mining operations
Arizona.....	1,110	53,370	5	Oregon.....	1,370	26,634	22
California.....	3,068	134,807	14½	South Dakota.....	1,000	74,000	7
Colorado.....	17,000	300,000	12	Utah.....	1,359	57,210	10
Idaho.....	3,203	80,802	28	Washington.....	1,184	20,738	8
Montana.....	5,124	116,575	17½	Wyoming.....	761	17,687	1½
Nevada.....	675	12,206	50				
New Mexico.....	706	24,498	16	<b>Total.....</b>	<b>36,560</b>	<b>918,526</b>	<b>14¾</b>

[H. R. 100, 84th Cong., 1st sess.]

AN ACT To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mining Claims Rights Restoration Act of 1955."*

SEC. 2. All public lands belonging to the United States now or hereafter withdrawn or reserved for power development or power sites by statutory rights shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: *Provided, That all power rights to such lands shall be retained by the United States: Provided further, That locations made under this Act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948, Public Law 477 (Eightieth Congress, second session): And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.*

SEC. 3. Prospecting and exploration for and the development and utilization of mineral resources authorized in this Act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work: *Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.*

SEC. 4. The owner of any unpatented mining claim located on land described in section 2 of this Act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this Act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year.

SEC. 5. Nothing in this Act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation.

SEC. 6. Notwithstanding any other provisions of this Act, all mining claims and mill sites or mineral rights located under the terms of this Act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

SEC. 7. No mining claim located pursuant to this Act upon surveyed or unsurveyed lands, title to which, except for such location, would following the termination of the withdrawal or reservation, vest in a State for the support of the common or public schools shall create any rights as against the State, and the existence of the claim shall not prevent the vesting of the title in the State.

[S. 1149, 84th Cong., 1st sess.]

A BILL To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mining Claims Rights Restoration Act of 1955".*

SEC. 2. All public lands belonging to the United States now or hereafter withdrawn or reserved for power development or power sites by statutory rights shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: *Provided*, That all power rights to such lands shall be retained by the United States: *Provided further*, That locations made under this Act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948, Public Law 477 (Eightieth Congress, second session.)

SEC. 3. Prospecting and exploration for and the development and utilization of mineral resources authorized in this Act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work: *Provided*, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

SEC. 4. The owner of any unpatented mining claim located on land described in section 2 of this Act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this Act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim: (2) within sixty days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year.

SEC. 5. Nothing in this Act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation.

SEC. 6. Notwithstanding any other provisions of this Act, all mining claims and mill sites or mineral rights located under the terms of this Act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

[S. 1502, 84th Cong., 1st sess.]

A BILL To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, to require public hearings prior to withdrawals of all public lands, to limit temporary withdrawals to five years, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all public lands belonging to the United States heretofore, now, or hereafter withdrawn or reserved for power development or power sites by statutory rights shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: *Provided*, That all power rights to such lands shall be retained by the United States.

SEC. 2. Prospecting and exploration for and the development and utilization of mineral resources authorized in this Act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work: *Provided*, That the United States, its permittees, and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees, and licensees.

SEC. 3. The owner of any unpatented mining claim located on land described in section 1 of this Act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this Act, as to any or all locations heretofore made, or within

sixty days of location as to locations hereafter made, a copy of the notice of location of the claim, or (2) within sixty days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year.

SEC. 4. (a) Nothing in this Act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation.

(b) Nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development: *Provided*, That any withdrawal or reservation for purposes other than power development made after the original location of a mining claim affecting land covered by such mining claim is hereby modified and amended so that the effect thereof upon such mining claim shall be the same as if such mining claim had been located upon lands of the United States which, prior to the date of such withdrawal, were subject to location under the mining laws of the United States: *Provided further*, That the owner of such claim shall duly comply with the filing provisions of section 3 of this Act.

SEC. 5. Notwithstanding any other provisions of this Act, all mining claims and mill sites or mineral rights located under the terms of this Act or otherwise contained on the public lands as described in section 1 shall be used only for the purposes specified in section 1 and no facility or activity shall be erected or conducted thereon for other purposes.

SEC. 6. (a) No public lands of the United States, including Alaska, shall hereafter be withdrawn from settlement, entry, location, or sale, except after full public hearings, held within the State or States in which the lands proposed to be withdrawn are situated, upon adequate notice and opportunity for hearing by all interested parties. The publication of notice of any such hearings shall have the effect of segregating for a period of one hundred and eighty days the lands proposed to be withdrawn from settlement, entry, location, sale, or other forms of disposal under the public land laws, including the mining and mineral leasing laws, to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal.

(b) Any lands which are hereafter temporarily withdrawn shall, unless sooner released, be released from withdrawal five years from the effective date of the withdrawal, except that nothing contained herein shall be construed to prohibit further withdrawals of such lands upon compliance with the provisions of this section relating to notice and hearings.

SEC. 7. (a) The Secretary of the Interior shall periodically review the need for the continued withdrawal of any public lands of the United States which upon the date of enactment of this Act are withdrawn from settlement, entry, location, or sale and which he is authorized by law to release from withdrawal, and shall hold public hearings within any State in which any of such lands are situated upon the request of such State for the purpose of determining whether or not such lands should be released from withdrawal. The Secretary shall promptly cause any of such lands to be released from withdrawal whenever he shall determine, upon the basis of his own review or as a result of any such hearing, that the interests of the United States will not thereby be prejudiced.

(b) Any hearings authorized under subsection (a) of this section shall be held upon adequate notice. An opportunity to be heard in such hearings shall be accorded to all interested parties. A request for any such hearings may be made in writing by the Governor of any State in which the withdrawn lands are situated, or by resolution of the legislature of any such State.

SEC. 8. The provisions of sections 6 and 7 of this Act shall not be applicable with respect to any lands the withdrawal of which has been specifically authorized by Act of Congress.

Senator ANDERSON. Every member of this committee is keenly interested in bringing about the broadest possible use of the resources of our public domain, national forests, and mineral deposits for the general benefit of the people of this country. The rapidly expanding economies of our Western States have been accompanied by a growing need for more intensive use of our public domain.

The high tempo of our housing industry has brought about heavy demands for timber; stock growers need more grazing area to meet

the increasing consumption of meat; our mining industry is constantly hunting for new sources of mineral supplies to replace those consumed during the last war and to meet the ever-increasing requirements of our industrial economy; and the public generally is seeking out new recreational areas. These demands for more general use of the public domain have resulted in the development of conflicts over the use of the surface of mining claims located on the public lands and in the national forests.

As a Member of the House of Representatives, as Secretary of Agriculture, and as a Senator, I have always been a staunch supporter of mineral development on our public domain as well as the broader use of the surface resources thereon. Over the past several years the need for legislation to solve the problems that have arisen as a result of the abuses of the mining laws by individuals seeking surface resources under the guise of locating mining claims has become more and more apparent. The Federal agencies have been impeded in their administration of the public lands and the national forests by the actions of these individuals, relatively few in number, happily, and our great domestic mining industry has suffered much unfortunate adverse publicity because of these persons who are not real miners.

Proposed legislation has been introduced at a number of previous sessions of Congress with the intent of preventing these abuses while still not interfering with our legitimate mining industry, or changing the basic theories of the mining law of 1872. Such proposed legislation has not been enacted because of the conflicting and opposing views of users of the public lands and the executive agencies concerned.

At this session we hope to enact a law which will both overcome the problem of mining law abuse without disturbing the basic principles of the mining laws, and provide for multiple development of surface resources in the broad public interest. The purpose of my bill, S. 1713, is to accomplish that goal.

At this time I should like to pay sincere tribute to the Departments of Agriculture and Interior, to the members of our great mining industry, and to those interested in the conservation of our natural resources for their cooperation and assistance in helping me and my colleagues work out what we believe to be a sound and constructive solution of this problem which has been before us for such a long time.

I and the other sponsors of this measure believe that it will go a long way toward eliminating many of the abuses of the mining laws. It will provide for multiple use of the surface of mining claims located in the future. It will enable the Government departments to clear up title uncertainties, both in the National Forest and on other public lands, resulting from the existence of abandoned, invalid, dormant or unidentifiable mining claims. It will guarantee the miner a full title to his claim when it goes to patent and will likewise guarantee his full rights for prospecting, mining and related activities before it goes to patent.

It is our plan to hear all witnesses, for we desire to obtain the views of everyone who wishes to express them on this problem. But in order not to prolong these hearings and to permit as many as possible to be heard, we request that witnesses eliminate as much repetitive testimony as possible. Full statements may be filed with the committee



and they will be printed in the record of these hearings. The committee will give careful consideration to all testimony submitted, but it does ask that you keep your remarks brief.

It is my hope that as a result of these hearings we shall be able to sit down and write a bill which will prevent future abuse of the mining laws and bring about broad use of the public domain in the national interest.

The committee already has received a number of letters and telegrams in support of this proposed legislation, and I will direct that they appear in the record at the conclusion of the oral testimony. I might add, parenthetically, that so far the committee has not received any word of opposition.

We have a number of witnesses from the executive agencies, from the mining, lumbering, and stock-raising industries, and from persons interested in conservation. Since this bill amends the mining laws and affects the mining industry perhaps more directly than any other group, it seems logical that we should hear from a spokesman from the American Mining Congress first. Therefore, I will ask Mr. Ray Holbrook, of Salt Lake City, Utah, to take the stand. Mr. Holbrook, we are glad to have you with us here today.

**STATEMENT OF RAYMOND B. HOLBROOK, ATTORNEY, UNITED STATES SMELTING, REFINING & MINING CO., AND CHAIRMAN OF THE PUBLIC LANDS COMMITTEE OF THE AMERICAN MINING CONGRESS**

Mr. HOLBROOK. Thank you, Mr. Chairman. I would like to say, Senator Anderson, that I think your preliminary statement is a very fine presentation of the problem we have and a comprehensive résumé of your measure. I shall comment on the bill in somewhat more detail.

My name is Raymond B. Holbrook and I reside in Salt Lake City, Utah. I am an attorney and am employed by United States Smelting Refining & Mining Co. as counsel of western operations. My work during the past 17 years has required detailed study of mining laws. I am chairman of the Public Lands Committee of the American Mining Congress and appear before you as its representative. The American Mining Congress is the national organization of the mining industry and is composed of both large and small producers of all metals and minerals mined in the United States.

That organization and its membership have been very much concerned about the problem of mining locations which have been attempted for a purpose other than the recovery of minerals. The purpose may be an attempt to control the timber on the land, or a choice site for a summer cabin, or an area which may have nuisance value. Such locations fall into two categories:

(1) Clearly invalid mining locations, unsupported by any semblance of discovery, and

(2) Mining locations having mineral disclosures which might satisfy the basic requirement of discovery, but which were in fact made for a purpose other than mining.

I think it is generally known that the mining industry has never condoned the making of such locations and, on the contrary, has urged the use of available procedure to defeat them.

The following statement appears in the declaration of public land policy adopted by the American Mining Congress at its annual meeting in San Francisco in September 1954:

We believe \* \* \* that suitable amendments can be made in the general mining laws which, with proper use of available procedures, will simplify enforcement and minimize bad faith attempts through pretended mining locations to serve objectives other than the discovery and development of minerals. We believe that this can be accomplished in a manner which will protect the incentive and reward now inherent in the mining laws.

We have had the pleasure of working with the Forest Service and the Bureau of Land Management and understand their position is that these problems could not be entirely met by effective administration of existing laws for the following reasons:

1. The available remedies are slow, expensive and not conclusive, and
2. There is great difficulty in establishing the invalidity of a location, supported by discovery, on the basis that the location was made for a purpose other than mining.

Both the Agriculture and the Interior Departments have strongly emphasized that there should be no roadblocks placed in the way of mineral discovery and development and that they wish to encourage bona fide prospecting and utilization of mineral resources in the national forests and on other public lands.

The mining industry has been disturbed by proposals which would establish one set of rules for mining locations in national forests and another set for those outside; or which would result in forfeiture of a mining claim for failure to perform certain acts; or which would require application for patent within a certain time; or which would restrict the rights granted by a patent for a mining claim. We believe that the unprecedented development of the mineral resources of this Nation and its ability to produce the basic raw materials so essential to our economy and so vital to our national defense is largely due to the basic concepts and principles of our mining laws. They are based on the premises that minerals in public lands should be developed by private enterprise and that, as an incentive and reward for discovery and development of them, title to the lands may be acquired in private ownership.

It is becoming increasingly more important that all of the resources of the public domain be discovered and utilized. The dawn of the atomic age started the greatest mining rush in American history and alerted us to the importance of continuing to develop and discover our mineral resources. The demand for timber, forage and recreational facilities also requires maximum utilization of these resources of the public domain.

Last year Congress enacted Public Law 585 "to amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of the public lands, \* \* \*." The bill before this committee proposes to provide for multiple use of the surface "of the same tracts of the public lands \* \* \*." Its particular objectives are:

- (a) To eliminate attempts to make mining locations for purposes other than mining;

(b) To provide for conservation and proper use of timber, forage and other surface resources on mining claims and on adjacent lands; and

(c) To accomplish these ends without materially altering the basic concepts and principles of the general mining laws.

The method of accomplishing these objectives would, under the bill, be:

1. To prohibit the use of any hereafter located unpatented mining claim for any purpose other than prospecting, mining, processing and related activities.

2. To ban future locations under the mining laws for common varieties of sand, stone, gravel, pumice, pumicite and cinders, and provide for the disposition of these materials under the Materials Disposal Act.

3. To authorize the United States to manage and dispose of the timber and forage, to manage the other surface sources, and to use the surface of hereafter located mining claims for these purposes and for access to adjacent land, so long as these activities do not endanger or materially interfere with established mining operations or related activities.

4. To provide an in rem procedure similar to a "quiet title" action, under which the United States could expeditiously resolve title uncertainties, resulting from the existence (frequently unknown and otherwise not determinable) of invalid, abandoned or dormant mining claims, located prior to enactment of the bill, in any given area; and in connection with such a proceeding, to provide safeguards for the proper protection of established rights under heretofore located mining claims.

I would like to comment briefly on each section of the bill.

Sections 1, 2, 3, and 4 apply only to mining locations made after enactment of the bill. They do not affect rights under existing valid mining locations.

I should like to discuss section 3 first. It would close the door to mining locations based on discovery of a deposit of common varieties of sand, stone, gravel, pumice, pumicite or cinders. It would not preclude mining locations based on discovery of some other mineral occurring in or in association with such a deposit: for example, a mining location based on a discovery of gold in sand or gravel could be made. By definition of the term "common varieties," deposits of such materials which are valuable because the deposit has some property giving it distinct and special value could continue to be located under the mining laws, as could also "block pumice" which occurs in nature in pieces having one dimension of 2 inches or more. The provisions of this section are similar to those of the Regan bill, which the House passed at the last session of Congress and to the Young bill which is before this committee this year. Probably the greatest area of conflict has been mining locations where the discoveries asserted were common varieties of sand, stone, gravel, pumice, pumicite or cinders, which occur in so many places and over such wide areas. We believe that enactment of this bill would eliminate this broad area of conflict without creating any problem of consequence in the mining industry.

Sections 1 and 2 of the bill would amend sections 1 and 3 of the Materials Disposal Act to extend its applicability to the deposits

which, as mentioned previously, could no longer be located under the mining law.

Section 1 of the bill would effect two major changes in section 1 of the Materials Disposal Act.

(a) By the express terms of section 1 of the present Materials Disposal Act, it does not apply to lands in national forests. Section 1 of the bill would remove that restriction in addition to broadening the act, as above mentioned, to include the widely occurring surface minerals as noted. There should be provision whereby mineral or vegetative materials may be disposed of under circumstances when such disposal (1) is not otherwise expressly authorized by law, (2) is not expressly prohibited by law, and (3) would not be detrimental to the public interest. The proposed amendment so provides.

(b) The present Materials Disposal Act provides that dispositions under it shall be made by the Secretary of the Interior. The proposed amendment provides for dispositions by the Secretary of Agriculture where the materials are on lands administered by him. This would avoid interference with national forest administration as a result of the removal of the present national forest restriction.

In these changes you will recognize the broad objective of full utilization of national resources in the public interest.

Section 2 would amend section 3 of the Materials Disposal Act by adding a provision for disposition of moneys received from the disposal of materials by the Secretary of Agriculture. The purpose of and need for this change has clear relation to the proposed changes in section 1 of the present Materials Disposal Act.

Section 4 of the bill specifies the rights, limitations, and restrictions under an unpatented mining claim hereafter located.

It recognizes essential rights—mining claims could be used for prospecting, mining, processing and related activities, though not for unrelated activities. Timber thereon could be cut by the mining claimant to provide clearance. Timber and other surface resources thereof required for mining and related activities could be used by the mining claimant.

It imposes limitations and restrictions upon other uses—mining claims could not be used for any purpose other than prospecting, mining, processing and related activities. The United States would be authorized to manage and dispose of the timber and forage thereon, and to manage the other surface resources thereof, and to use so much of the surface of the mining claim as may be necessary for such purposes, or for access to adjacent land, so long as and to the extent that these activities do not endanger or materially interfere with mining operations or related activities on the mining claim. The mining claimant could not remove or use timber or other surface resources thus subject to management and disposition by the United States, except to the extent required in his mining operations or related activities. Any timber cutting by the mining claimant, other than that to provide clearance, would have to be done in accordance with sound principles of forest management.

After patent, the patentee, as in the past, would acquire full title to the mining claim and its resources. Acquisition of patent, as the members of this committee know, requires compliance with the mining laws as to location, mining expenditures and payment of the Government purchase price, and a determination by the Department of

Interior as to the validity of the claim and full compliance with law.

Section 5 involves only mining locations made before enactment of the bill. It provides an in rem procedure similar to that contained in Public Law 585 which resolved the conflict between the mining laws and the Mineral Leasing Act. The in rem proceeding under Public Law 585 was one available to those holding application, permit or lease under the Mineral Leasing Act. The in rem proceeding under section 5 of the proposed bill is available to the secretary of any Federal department having responsibility for administering surface resources of land belonging to the United States. This should simplify administration and facilitate understanding by those concerned. This procedure would enable a Government department to resolve title uncertainties resulting from the possible existence of invalid, abandoned, dormant or unidentifiable mining claims located on the public domain, including lands in the national forests. The procedure follows generally the long established procedure applicable to securing mineral patents, whereby those who claim rights adverse to those of the patent applicant, are required to come forward and assert them.

Careful provision is made for notice of the pendency of such a proceeding.

Subsection (a) of section 5 requires a preexamination of the lands, to ascertain, if possible, any parties in possession. A notice of the proceeding must be published in a newspaper having general circulation in the county in which the lands involved are situated. A copy of the notice must be personally delivered or be sent by registered mail:

1. To each person found to be in possession or engaged in working the lands involved in the proceeding, and

2. To each person who has filed in the county office of record a request for such notice as contemplated under subsection (d); and a copy of the notice must be mailed by registered mail to each person who is shown by a title search to have an interest in the lands.

Senator WATKINS. Just a moment, there. Would you say "have an interest" or "claims an interest" in the lands?

Mr. HOLBROOK. It would be shown as an interest of record, Senator.

Senator WATKINS. The person could be someone claiming an interest. The interest might not be an actual interest.

Mr. HOLBROOK. If they claimed an interest, such a claim would entitle them, I think, personal notice, or mailing to each person found in possession. They would be the ones that would claim it, I think, Senator. If they claim an interest, as they are entitled to notice, and I think it so provides. But it also provides for searching the record to see if there is any record interest. And that is what is intended by the last line. Does that answer the question, Senator?

Senator WATKINS. What I had in mind was this. There might be only a claimed interest, under any of these sections. You see what I have in mind?

Mr. HOLBROOK. Oh, yes. I quite agree with you.

Subsection (b) specifies the consequence of failure of a mining claimant (within the allowed 150 days after first publication of the notice) to make an appearance in the proceeding and assert his rights. If he does not do so, he cannot thereafter assert any rights under his mining claim which are contrary to, or in conflict with, the limitations or restrictions specified in section 4, but he would not lose any other

rights under his claim. In other words, the claim would thereafter have the same status as a claim located in the future.

Subsection (c) provides that when a mining claimant asserts rights which conflict with the limitations and restrictions specified in section 4—in other words, rights to the surface resources generally—there shall be a local hearing to determine the validity of such rights. Any single hearing is limited to a maximum of 20 mining claims, unless the parties otherwise stipulate. This would limit the length of the hearing and the cost of a transcript so that they would not be an unreasonable burden. The procedure with respect to notice of and conduct of the hearing and appeals would follow the then-established Interior Department procedures and rules of practice.

Subsection (d) permits a mining claimant to avoid the danger of oversight of a published notice and to be assured of notice of an in rem proceeding affecting his claim by recording in the county office of record a request for a copy of any such notice, giving his name, address, and certain data as to each unpatented mining claim under which he asserts rights.

I think that provision will be generally used to avoid the necessity of constantly watching newspapers for published notice.

Subsection (e) provides that the publication of notice shall be wholly ineffectual as to any person entitled to be served with or to be mailed a copy of the published notice, if the notice is not so served upon or mailed to him. That, in brief, is a prerequisite for jurisdiction.

Section 6 permits the owner of an unpatented mining claim, located before the effective date of the act, if he so desires, to waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations and restrictions specified in section 4; in other words, to agree to the surface rights status applicable to a mining claim located after enactment of the bill. Such a waiver or relinquishment would not constitute any concession as to the date of priority of his rights under the mining claim or as to the claim's validity. This section should permit and encourage cooperation and avoidance of much controversy.

Section 7 is a general construction provision designed to make it clear that the act does not purport to destroy existing rights or to restrict the postpatent title of a patentee.

Senator WATKINS. May I ask you a question at that point? Would that be in conflict with section 4, which imposes the restrictions, and the proceeding in rem, to take away from any locator rights which he thinks he now has under the law to use timber and to use the land surface for any other purpose?

Mr. HOLBROOK. Senator, that is a very good question, but from your wide experience as a judge, I know you are familiar with the consequence of a "quiet-title" proceeding.

Senator WATKINS. Yes, I understand that. But you say section 7 is a general construction provision designed to make it clear that the act does not purport to destroy existing rights or to restrict the postpatent title of a patentee.

Mr. HOLBROOK. Yes.

Senator WATKINS. Well, whether he does or does not have any rights under his location now, before this law is passed, there may be a question of fact and of law.

Mr. HOLBROOK. The act itself, as I would construe it, would not destroy his rights, but he may lose them if he does not come in and assert them, as any defendant would have to in a "quiet-title" proceeding, or in a proceeding for an application for patent.

Senator WATKINS. In other words, what you are saying here is that the law does not take away any rights that he actually has.

Mr. HOLBROOK. That is right. That is our intent.

Senator WATKINS. And if he claims those rights, he would have to come in and defend them, but it would permit the court to find in his favor if he established that he had those rights under existing law.

Mr. HOLBROOK. That is very well stated.

Senator WATKINS. Prior to the enactment of this bill.

Mr. HOLBROOK. That is right. That is correct.

In conclusion, I would like to state that it is the considered opinion of the American Mining Congress, and of myself, that enactment of the legislation before you would be in the public interest. In our opinion, it will not impede mineral discovery or development on the public domain. We believe that it will protect mining claimants in their use of unpatented mining claims for prospecting, mining and processing operations, and uses reasonably incident thereto. The bill will impose upon the holders of future unpatented mining claims limitations and restrictions which have not applied in the past; but we recognize that the improper actions of a minority of those who have located mining claims have created problems; and we feel that the legislation will serve to remove the bases of those problems without destroying the vital principles under which the mineral resources of this Nation have been developed. We also believe that it will contribute to the best utilization of our Nation's natural resources.

We appreciate the opportunity to present our views to this committee and we wish to commend the sponsors of the bill for their fine efforts to arrive at a constructive solution of this problem of mining law abuses which has been before Congress for so many years.

Thank you, Mr. Chairman.

Senator ANDERSON. Thank you, Mr. Holbrook, for a very careful and clear statement. It will be very useful to the Senate in considering S.1713 to have a statement of the facts, such as you have just made.

While you are here, I would like to ask your opinion on three proposed amendments, which have been presented to the committee as desirable.

One of these is proposed by Senator Watkins, and it has been proposed in exactly the same language by Senator Kuchel. I hope you are familiar with that. It is a suggested amendment in the form of a new section to be added to the bill as a section 8:

Notwithstanding any other provision of law, any mining claim located upon unsurveyed public lands, which, when surveyed, is on a section granted to any State for the support of its common schools by the enabling act of such State, shall not create any right, title or interest as against such State, but such State shall acquire title to such section or sections of land the same as though no mining claim had been located thereon: *Provided*, The locator, his heirs or assigns, of any mining claim on public lands which, upon survey, are granted to a State by its enabling act for support of the common schools shall have priority to lease such land from the State upon such terms as the State may determine to be fair and equitable.

(COMMITTEE NOTE.—The same proposed amendment subsequently was submitted to the committee by Senator Carl Hayden, of Arizona.)

Now, would you tell us whether, first of all, the American Mining Congress, if you are in a position to speak for it, would be opposed to the addition of this amendment, and whether you personally, being familiar with mining practice and law, think it would help or hurt the bill.

Mr. HOLBROOK. Mr. Chairman, I shall be very glad to discuss this in a rather impromptu fashion.

Senator ANDERSON. I apologize. I have no other way of giving you notice of the amendments that have been proposed. As a matter of fact, the amendments from the Interior Department and Agriculture Department did not reach the committee until a half hour ago, so we had no chance to submit them to you in advance.

If, upon later study, you desire to file some additional statement, we will be glad to receive it. You are not foreclosed by the action this morning. You may study it and say, "I do not like what I said in an impromptu fashion, and on closer study I think it is bad," or "I think it is good," or something else. With such an understanding, then, we will be glad to have an informal expression of opinion from you.

Mr. HOLBROOK. I should say that I am not entirely unaware of the proposal, Senator, and I will be glad to try and discuss it. Now, in brief, as I understand this proposal, it would in effect provide that if a mining claim were located on any so-called school section, as designated in the Enabling Act of the State, that mining claimant would have no rights as against the State, except that there would be a preference right to a lease.

I can speak best, Senator Anderson, with respect to my own State, because I am somewhat familiar with the law there.

Senator WATKINS. As a matter of fact, Mr. Holbrook, Utah is a State in which very little work has been done on the surveying of public lands. I mean the lands that would go to the schools under the Enabling Act.

Mr. HOLBROOK. That is quite right. And I think it would be germane to ask:

Could you tell me, Mr. Hoffman, or could you tell me, Mr. Woozley, approximately what percent of the State of Utah is unsurveyed?

Mr. WOOLEY. I know in acres, Mr. Holbrook, there are approximately 10 million acres in the whole State still unsurveyed, of which about 5 million acres is in the unsurveyed public domain. We have surveyed 50 townships, approximately, in the last year, which would give the State about 200 more sections. But there still remains  $4\frac{1}{2}$  to 5 million acres in the unreserved public domain.

Senator WATKINS. Where have those 200,000 acres been surveyed? In what section of the State?

Mr. WOOLEY. It has been where the State Land Board has requested. I couldn't tell you.

Senator WATKINS. Is it down in the uranium area, where they are prospecting for uranium?

Mr. WOOLEY. It is where the interest is highest. So the State would get the sections first where the most interest would be shown.

Mr. HOLBROOK. In the State of Utah, the Enabling Act provides that four sections in each township may be school sections. These are sections 2, 16, 32, and 36, which gives a spread over the township.



Now, if we get the picture, that until survey we do not know where those sections are, it is impossible to locate them. Under the law as it now exists, they do not become school sections until the surveys are completed.

Senator WATKINS. Still, the State has an equitable interest in them, does it not, under the Enabling Act? There remains something yet to be done. They had to be surveyed, and all that sort of thing, to get them over, so that the State would have those sections? They must have some sort of an equitable interest in them.

Mr. HOLBROOK. I think that is a proper statement, Senator.

However, under the law, as the Enabling Act has been construed, there is no interest to any lands that have been entered before the survey has been completed; and the State has the right to select lieu lands in place of those that have been located or entered.

Now, the great problem that I see with respect to such a proposal is that a locator on any one of those areas would have no rights against the State of Utah except a preference right to a lease. In the State of Utah as of now the typical hard-minerals lease carries a flat royalty of  $12\frac{1}{2}$  percent. So when a man located his claim, his problem would be: "Have I got a location which may be perfected into a valid fee title or have I merely a so-called preference right to a lease, without any knowledge as to what that preference may be?"

As of this moment, the royalty may be  $12\frac{1}{2}$  percent. It may be more. It could be less. But I ask you to consider the consequence of such a situation if a man is contemplating making a substantial investment in a mineral operation.

Now, if this were just limited to the particular school sections, there would be some confining of the problem. But it isn't. Since you cannot locate these areas definitely, if you would shift in any one direction the lines of survey, you would involve additional tracts in the uncertainty.

I have just had sketched out here, Mr. Chairman, what would be involved in four townships, coloring in red the school sections and in yellow the area affected by a shift one one-half mile. I think such an amendment would very effectively withdrawn from entry under the mining laws a very important part of our public domain, with very serious complications.

Senator WATKINS. Well, if the equitable title happens to be in the people of the State, should not the State get all the benefits from those lands? It is not the State's fault that these surveys have not been made. It has been going on for years, ever since Utah was admitted to statehood. Now, from the standpoint of the equity, just dealing with the people of the State, it would seem to me that the Federal Government has been rather lax in getting these surveys undertaken.

Years ago, when I first came here, I introduced a bill to bring about the survey of these school lands in Utah. But after the departments had reported, they each one recommended an amendment, loaded the bill up with them, and made it about \$150 million, and of course, I did not have the slightest chance of getting it through the Congress loaded with all those amendments, and I could not get it through without them.

But the State is now in a position where immense values are found in some of these areas. The lieu-land provision does not help the State if they are given a piece of desert ground that is not worth any-

thing. For instance, if they have to give up the equitable title to a piece of land that is worth many millions of dollars for uranium, or whatever they find on it. We have those problems in these public land States. And I know you know, Mr. Holbrook, that our schools in Utah are our pride and our joy, and we are constantly arguing out there with different people who have ideas as to how we are to finance them, as to how that is to be done. And here is a resource that has been lying there idle for many, many years. I think the State probably should have been a little more active in urging the Department of the Interior of the United States to get busy with these surveys.

Recently we have undertaken some more activities than have been carried on in the past, and we probably should have more. But I can see that the State could lose some very valuable rights there, some very valuable lands.

I can understand that the mining locator could go out and make his mining location, and he could get the land for practically nothing, and if he had to lease from the State of Utah, he would have to pay a pretty good rental for it.

Senator ANDERSON. But he also has to pay a property tax when he gets it outright, where he does not have to pay it when he gets it under a State lease. There is some offsetting advantage.

Senator WATKINS. A State lease? I think we have a way of getting at that, too, for taxes. At least, if we have not, we had better find one. We have a difficult time to maintain our schools. That is one thing that is of primary interest to every one of us, including the mining people there, too. We have to maintain those schools somehow. And it cannot all be placed just on the ordinary business and agricultural interests of the State to develop. The mines have carried a fair share of the load, we know. And they are carrying more of it since we have the equalization program adopted.

Senator ANDERSON. Did I hear you say they had surveyed 200 townships, Mr. Woosley?

Mr. WOOSLEY. Two hundred sections, 50 townships, and the State gets 4 sections in each township.

Senator WATKINS. Four sections. But that is just a small start.

Mr. WOOSLEY. Yes, I have not figured it up, but it would be somewhere near a half million acres.

Senator ANDERSON. I had a somewhat similar experience to yours. I tried, when I was in the House of Representatives, to put through an appropriation setting up a certain sum of money each year to complete the surveys in our Western States. My bills ran into all kinds of opposition, because it was not felt that the amount of money was justified. The sums required did run into a lot of money. A hundred million dollars, or more, would have been required to finish the surveys at that time. But I do not see how the Federal Government can fail to undertake a program to finish these surveys.

Senator WATKINS. The program is now under way. But in the meantime, this land was intended to go to the State with whatever it had in it.

Senator ANDERSON. Was it the intent of the enabling act to deed to Utah just nonmineral sections?

Mr. HOLBROOK. May I make an observation on that, Senator Anderson? It was definitely determined by the Supreme Court that

no minerals were to pass under these enabling act grants. They did not carry any minerals at all, Senator.

By an act in 1927 and an amendment in 1932, Congress provided that there be an additional grant to the States of minerals in the school sections.

I think the primary purpose of that amendment was to clear up title problems that had resulted because of uncertainty as to whether lands were mineral or nonmineral at the time of the completion of the survey. It was called an additional grant. But those amendments expressly provided that it would not affect any entries or any mining locations which had been made up to that time.

Senator WATKINS. Up to the time the amendment was adopted. But it had the effect, also, of putting the State in the position where it should get the mineral rights as well as the surface rights.

Mr. HOLBROOK. Not until the surveys had been completed, as you, I think, well appreciate, Senator.

Now, to develop that just a little more, if I may, on the merits of it, last year Congress provided that upon survey, if there were an oil and gas lease on lands in which the State acquired title, the State would succeed to the lessor's interest. In other words, the State would then be entitled to the royalties. Now, do you see the difference in the problem that we have to that situation? Here is a case where the only rights that could be acquired by the person developing the resources were lease rights. You can only develop oil and gas under the Mineral Leasing Act. So the party developing those rights had no problems. It was merely a question: "Do I have to pay royalties to the United States, or do I have to pay royalties to the State of Utah?" He is still operating under a lease and under the same terms.

Now, the situation here is wholly different. Here is a case where a mining claimant is faced with the problem of: Have I got a tract of land which, upon showing of an adequate discovery, the performance of work requisite for patent, and completion of patent, will entitle me to a fee-simple title? Or have I got merely some kind of a preference to a lease, the terms of which are unknown?

Senator WATKINS. I can understand the difference, all right, but I can also understand the interest of the State in protecting whatever rights it has, or should have, as a matter of equity, in these lands that are unsurveyed.

Mr. HOLBROOK. Well, may I make one other observation, Senator?

Senator WATKINS. Of course, they at least know where the township is or whether the survey has been finished or not. It may be inconvenient. I don't know. This amendment was a suggestion that was sent in for study. I had not made up my mind whether it was a good amendment or a bad one.

Senator ANDERSON. Senator Watkins, Senator Kuchel had a similar suggestion. And that is why I thought we ought to get expressions on this now.

Senator WATKINS. I am glad you are asking these questions. I intended to bring up the proposed amendment this afternoon after a little further study of it, but I am glad it was brought up now.

Senator ANDERSON. If we do not ask questions about it in the hearing, when we go into committee to take executive action on the bill we will not know how the industry representatives felt on these proposals.

Could I get you to comment on a second one, also?

Mr. HOLBROOK. Could I make one more observation on that, Senator?

Senator ANDERSON. Surely.

Mr. HOLBROOK. I think the really germane problem that we must consider here is the effect and consequence of such an amendment on the development of the mineral resources of the State. After all, if it is going to impede the development of the mineral resources, I think the overall result will be a loss to the State, not a gain, Senator. Actually, the amounts that have been paid into the Treasury of the State of Utah in these royalties are very small as of now.

Senator WATKINS. You mean on the one we are getting from the development through the leasing of oil-coal lands?

Mr. HOLBROOK. No, there has been a substantial sum payable on oil and gas, I think.

Senator WATKINS. Of course, the State gets the benefit of that 52½ percent that is paid in to the reclamation fund. That is, if we get any reclamation projects out of the authorizing bill.

Mr. HOLBROOK. No, I am talking about royalties on hard minerals. It is very small as compared with the revenues that come from the mining operations in the State; tax revenues.

Senator ANDERSON. Do you think that situation is going to continue? I am unable to comment on this fully, because I do not remember whether it had a classified tag on it or not, but I saw just the other day an estimate made by the Atomic Energy Commission of the amount of uranium there might be in Colorado, Utah, and New Mexico. I do not know how much of those estimated uranium reserves are on public lands, but a very sizable amount is, I know.

Mr. HOLBROOK. What I am thinking of, Senator, is this: Will not the overall be a loss to the State if we are creating clouds and uncertainties in the titles, that throttle investment, as compared to what the take of the State will be if industry knows what its titles are and makes its investments, and great industries result?

You see, you have to bear in mind that we have a corporate tax in the State of Utah, and we have a proceeds tax and an occupation tax. There are very substantial sources of income, as the Senator has pointed out, from mines in Utah.

Senator WATKINS. You could probably get a separation tax.

Mr. HOLBROOK. We have one now, Senator. Yes, the occupation tax is a severance tax in the State of Utah.

And my personal feeling is that actually the State would suffer as a result of the uncertainty that would result from the proposed amendment.

Senator WATKINS. Well, I am glad to get your opinion on it.

Mr. HOLBROOK. I think it poses some particular problems in relation to an amendment such as a bill like this, which was not designed to meet this situation. I am in complete agreement with you as to the importance of completing the surveys as quickly as possible. That would not result in any uncertainty.

Senator WATKINS. I may say now, if I may be permitted, that if we do not get an amendment, something of that kind, to protect the State, I intend to offer an amendment to an appropriation bill coming along to step that survey program up. And I hope that it will be adopted, either in this committee, by an amendment such as we have here,

or something like it, or in the Appropriations Committee, to take care of the State. We have some valuable interests there. And while you may be right on what we actually will get out of it, under the development, and the taxing of any developments, any industry that comes in under those circumstances, at any rate not only Utah, but Arizona and California have large problems in that same field, and I think probably New Mexico and other States have in the public land States.

Senator ANDERSON. You think it would be detrimental to this bill if we attempted to attach that amendment to it?

Mr. HOLBROOK. I definitely do, Senator.

Senator ANDERSON. Senator Kuchel.

Senator KUCHEL. First of all, I want to say that I have received a letter including the same amendment from my State Lands Commission. I have not yet formed an opinion as to the merit of the proposal. I asked the committee to consider it today so that we might have a little guidance in determining whether it ought to be adopted.

But let me ask you from a strictly legal point of view: It is correct to say that public lands which are unsurveyed, nevertheless, to the extent that they may be school lands or sections, are owned by the State subject to the Federal survey?

Mr. HOLBROOK. Well, I think that has been construed, and I think probably Mr. Hoffman could answer that better than I could, that the State does not own them until the surveys have been completed, Senator.

Senator KUCHEL. So that it lies within the Congress to determine whether in the future, for example, it might not desire to give school lands to the States. Is that correct?

Mr. HOLBROOK. Are you directing that to me?

Senator KUCHEL. Yes.

Mr. HOLBROOK. Oh, I think it would be within the purview of Congress to enact such a law. But I think there has been much wisdom in the way it has been handled in the past, because of the great uncertainty in land titles that would result. I think that has been fully anticipated.

Senator ANDERSON. You think the Congress can go back now and change the Enabling Act?

Senator WATKINS. Not to the detriment of the State, but you could amend it in favor of the State.

Senator KUCHEL. That is very important in connection with this proposed amendment, I think.

Mr. HOLBROOK. I do not know whether Mr. Hoffman has an observation, Senator, that he would care to make, or whether you would care to hear it at this time, or later.

Senator WATKINS. Where is Mr. Hoffman?

Mr. HOLBROOK. Mr. Hoffman, from the Bureau of Land Management, is over there [indicating].

Mr. HOFFMAN (Lewis E. Hoffman, Chief, Mineral Division, Bureau of Land Management, Department of Interior). I just want to call attention to the fact that where a school section, such as the 4 sections in Utah and the 2 sections in California, is unsurveyed, and consequently the State cannot obtain title to it, they have a right to take lieu lands anywhere, unappropriated vacant lands, in lieu of what they would lose by not maintaining title to the school sections. Such an amendment as the Senator has proposed, in my opinion, would

properly be an amendment of another law, of a new law, rather than this act.

Senator ANDERSON. But if the problem is what Mr. Holbrook has outlined on this chart, and the shifting of the survey a half mile one way or the other is going to change the pattern, you cannot take the lieu land either, can you? You can get lands someplace else in the State—if you can find them—but suppose the only land open for selection is the unsurveyed areas?

Mr. HOFFMAN. That is a problem, Senator.

Senator ANDERSON. It is not only a problem, it is an impossibility.

Senator KUCHEL. If the State were to exercise such a right and determine that it wanted lieu lands, would the patent, or the fee, or the grant, from the Federal Government to the State, include minerals?

Mr. HOFFMAN. No, I'd suggested that an amendment of that kind would partially solve the problem; except for the remark of Senator Anderson.

Senator ANDERSON. You get the difficult point that all the land is in this one place and it waits for the survey, and until the survey is completed, the State cannot do much.

Mr. HOLBROOK. I think the amendment is like locking the barn after the horse is out. I am very reliably informed that in the county of San Juan in Utah, which is one of the major areas of uranium activity on unsurveyed lands, that there have been enough mining locations filed already to cover more than twice the unappropriated area in that county. And in my opinion Congress could not pass a law that would affect a vested right under a valid mining location.

Senator ANDERSON. I only want to suggest here that we have nine more witnesses coming along. I hoped we might get just a fairly quick statement from you, and we will be glad to have you amplify for inclusion in the record a further opinion on this amendment. Now I will ask about a second amendment, and then a third, so that other witnesses may have a chance.

The Department of Agriculture has suggested some language on line 22, page 3, of the bill. As an exception therein, it says, after the word "except":

that revenues from the lands described in the act of August 28, 1937 (50 Stat. 874) and the act of June 24, 1954 (68 Stat. 270) shall be disposed of in accordance with the provisions of such acts, and except—

and so forth. This refers to the O. & C. lands, does it not?

Mr. HOLBROOK. Senator, I am not familiar with the details in respect to that, but I do not see how the mining industry would be affected adversely by any particular provision relating to the disposition of moneys.

Senator ANDERSON. Well, our former chairman, ex-Senator Guy Cordon, discussed this amendment with me. He is always very interested in the O. & C. lands.

Senator MALONE. What is the amendment?

Senator ANDERSON. Well, it would except from this provision the O. & C. lands, exactly as it excepts other areas:

The purpose of this amendment is to make it clear that revenues from O. & C. lands under the administration of the Department of the Interior and lands administered by the Department of Agriculture under the 1954 act will be placed in the O. & C. fund.

Senator MALONE. What is that O. & C.?

Senator ANDERSON. It is a fund from revenues from the former Oregon and California railroad grant lands. Those revested in the Federal Government. There has been a long running fight between the Department of Agriculture and the Department of the Interior as to which agency should administer them. The amendment says that its purpose is to make clear that the revenues from the O. & C. lands under the administration of the Department of the Interior and lands administered by the Department of Agriculture under the 1954 act will be placed in the O. & C. fund.

Mr. HOLBROOK. I think that is all right.

Senator ANDERSON. There is not an objection to that?

Mr. HOLBROOK. We have no objection.

Senator ANDERSON. And the last amendment is one suggested by the Western Oil & Gas Association, setting forth that nothing in the bill will change Public Law 585, the Multiple Purpose Act, passed by the last Congress.

Here it is:

And nothing in this Act shall be construed in any manner to modify, amend, supersede, or repeal any of the provisions of the Act of August 12, 1953 (67 Stat. 539), or the Act of August 13, 1954 (68 Stat. 708).

The first act was a stopgap measure and we subsequently took final action under the Multiple Purpose Act, Public Law 585, 83d Congress. Do you think the Multiple Purpose Acts are involved in S. 1713 in any way?

Mr. HOLBROOK. Senator, I am familiar with both of those acts, and I don't see any way that this proposed legislation could possibly affect the multiple-purpose acts.

Senator ANDERSON. Do you feel that adding this language would confuse S. 1713?

Mr. HOLBROOK. No, I can't say that I think the language would be particularly harmful.

Senator ANDERSON. Would you mind studying it and giving us the advice of the American Mining Congress on it?

Mr. HOLBROOK. Yes, I will.

Senator ANDERSON. Now, I do not want to shut off other questions. I want to get those things started for the record.

Senator Malone?

Senator MALONE. You are Mr. Holbrook, and you represent the American Mining Congress?

Mr. HOLBROOK. Yes, sir.

Senator MALONE. What position do you hold with the American Mining Congress?

Mr. HOLBROOK. I am chairman of the Public Lands Committee of the Congress.

Senator MALONE. You have studied this bill and you are in favor of it?

Mr. HOLBROOK. Yes, I am.

Senator MALONE. I notice a very interesting table here of the Department of Agriculture, noting the number of mining claims that are filed on unpatented lands on national forests, together with their acreage, and the estimated percent which produce minerals in commercial quantities is 2 percent of this whole area. This is Nevada.

The estimated percent considered valid under the mining laws is 60 percent. Now, what do you do when they are not valid under the mining laws? What is done.

Mr. HOLBROOK. Well, I think there may be two possible remedies. I think the department could initiate a contest, Senator, or it may initiate a preceeding in court. But I know there has been a feeling on the part of both Agriculture and Interior that those remedies are not as effective as they would like them to be.

Senator MALONE. Well, why do they want them more effective? If they have a remedy in the court, is that not a customary remedy for a property right?

Mr. HOLBROOK. That is a remedy that is often pursued, yes, sir.

Senator MALONE. Is there any other remedy when land is owned by anybody?

Mr. HOLBROOK. Well, in this case you would have available departmental contest proceedings.

Senator MALONE. Could that not be initiated, or can it be? That is what I am asking you.

Mr. HOLBROOK. Yes, it can be. It would not be as expeditious as the proceeding proposed here.

Senator MALONE. No, but that is what some of us are afraid of, that it would be a little too expeditious.

What is your background? Have you had experience in mining?

Mr. HOLBROOK. I spent about 17 years devoting most of my time to mining law, Senator.

Senator MALONE. Private mining law?

Mr. HOLBROOK. Most of the time during that time I was spending full time with the United States Smelting & Refining Co. Prior to that I was engaged for 7 years in general law practice.

Senator MALONE. Now, we have been very jealous of this mining act for a long time, because it was about the only thing left where a man without money or background or anything else except a little endurance and the will to do it could get out there and locate something that he thought might either contain mineral or lead to it; so that he could put a stick down and go to work. The law says he has to do a certain amount of work per year, called assessment work, does it not?

Mr. HOLBROOK. That is right.

Senator MALONE. Do you think that assessment work is sufficient, or that it should be more, or less, or how would you consider the setup there?

Mr. HOLBROOK. I think the assessment requirement is a fair requirement.

Senator MALONE. A hundred dollars a year, is it not?

Mr. HOLBROOK. Yes, sir.

Senator MALONE. Of course, that is not as much work as it used to be, either.

Mr. HOLBROOK. No; it is not.

Senator MALONE. Now they do it with bulldozers and other equipment.

Mr. HOLBROOK. Yes. Of course, I think assessment work has generally been an evidence of the good faith of the locator more than requiring any specific amount of work.



Senator MALONE. Well, now, if that work is not done, naturally, if he does not file the work with the county clerk, he does not own the claim any more, does he?

Mr. HOLBROOK. That is not my understanding of the law, Senator.

Senator MALONE. What is it?

Mr. HOLBROOK. In the case that I do not do the assessment work on my claim, I have a perfectly valid claim as against all the world, including Government departments, except an adverse locator. Failure to do assessment work does not affect the status of my title, except that it opens the land to relocation. In other words, you could come and relocate my land if you do it before I have resumed work on the claim.

Senator MALONE. And before you have filed it?

Mr. HOLBROOK. If I have not done the work, or have not started to do it, before you make the location. I may be in default, but if I get started, even though I have not done a hundred dollars' worth of work, I can keep you off.

Senator MALONE. All right. Now, if that is sufficient work, and you feel that it is, and the man is entirely protected, who is doing his work and filing with the county clerk—that is what it requires, is it not?

Mr. HOLBROOK. Well, it isn't required that he file his proof. That is just proof of the work. The thing is that he must do the work. That is the test.

Senator MALONE. Now, if he has not filed with the county recorder, and another locator comes in, does he have an opportunity to prove that he did do the work and just neglected to file, and can make it a legal setup and keep the new locator off?

Mr. HOLBROOK. That is right.

Senator MALONE. In other words, he is pretty well protected, if he does any work.

Mr. HOLBROOK. That is right.

Senator MALONE. Now, he can patent this claim after he has done \$500 worth of work toward the development of his land, can he not?

Mr. HOLBROOK. Yes, sir. If he meets the other requirements.

Senator MALONE. What are the other requirements?

Mr. HOLBROOK. Well, the primary one is that he has to have a valid discovery, and he has to have the claim surveyed and meet all the requisite or procedure requirements for patent, which I am sure you are very familiar with, Senator.

Senator MALONE. Yes. I held a patent surveyor's license for 30 years, I guess.

Now, what is a valid discovery?

Mr. HOLBROOK. The definition, Senator, that usually appears in the cases, is that it is a showing which would induce a reasonably prudent man to invest his money in the further exploration of the property. There is no rigid, fast rule on that. It is what the ordinary prudent man would invest his money in, in further searching.

Senator MALONE. All right. Suppose he has a ledge that does not carry minerals, or minerals a very minor amount. What would not be called a commercial venture, but he has made a decision if he drops down and tunnels in lower down, he may open up a paying vein. What would that mean? Would that be a valid discovery? If he has his post up on the ledge and is tunneling into this vein or ledge at a lower level?

Mr. HOLBROOK. I assume, Senator, that he opened up the vein, or ledge, on the surface, did he?

Senator MALONE. And he might have a trace. Maybe it is not commercial.

Mr. HOLBROOK. Specifically, I think your question is answered by this: I don't think it has to be commercial to be a good discovery. Does that answer your question?

Senator MALONE. I think that is close to it. He has to be in a geologically correct area in his judgment, that he has decided to spend his money to go in and do this \$500 worth of work, and therefore he wants to patent the claim.

Mr. HOLBROOK. I think that is substantially correct. It cannot be just an odd judgment that he has individually, but if he is expressing the judgment of the ordinary prudent man, yes.

Senator MALONE. Well, the prudent men, unfortunately, are not the ones that make the discoveries.

Mr. HOLBROOK. That is quite true sometimes.

Senator MALONE. It is generally true.

Mr. HOLBROOK. But I think you appreciate that you cannot put this on an individual basis; that is, the requirement for discovery.

Senator MALONE. Well, how would you put it?

Mr. HOLBROOK. Well, I think it is the standard of what the ordinary man would do who was familiar with mining problems. Not what I would do individually. I may be very foolish in my effort.

Senator MALONE. And not what an engineer would do. Because engineers do not discover mines. They turn them down.

Mr. HOLBROOK. That is right.

Senator MALONE. And the men that discover them first are the men that have that optimism and that will go out there and live alone lots of times and do a little work until they can interest someone that will come in for greater exploration. Is that not about right?

Mr. HOLBROOK. I know that has been often the case.

Senator MALONE. Has it not been mostly the case?

Mr. HOLBROOK. I think most mines have been discovered by prospectors.

Senator MALONE. Your company does not discover mines. They are discovered by prospectors, and there are maybe a hundred or two hundred prospects before they are showing enough to bring your company in at all.

Mr. HOLBROOK. I can't take exception to that statement.

Senator MALONE. I know what I am talking about, from 30 years of hanging around this business.

Mr. HOLBROOK. That is probably true.

Senator MALONE. Now, the reason that I am very much interested in the conclusion of the Forest Service—and I have never seen anybody in the Forest Service who knew anything about mining—is that only about 2 percent of the amount located in my State of Nevada is producing minerals in commercial quantities. They seem to think that has a bearing on this bill. And only 60 percent have a valid entry.

Then, what are the other 40 percent doing there? Why do they not initiate proceedings, if they want the land?

Mr. HOLBROOK. I have not seen this report, Senator, and I scarcely feel that I am in a position to comment on it.

Senator MALONE. In Oregon there is 55 percent that they claim are not valid; an average of, say, 40 percent.

Now, there is a remedy. That is what I want you to tell me. They have a remedy now. If there is an invalid mining location, and they are doing any damage, or there is any reason to do anything about it, they have the remedy to do it. They can initiate proceedings in the Department.

Senator BIBLE. You are referring to the national forests, Senator Malone?

Senator MALONE. Yes.

Senator BIBLE. Or all public domain.

Mr. HOLBROOK. Yes; I think there is a remedy.

Senator MALONE. What is it? How do you do it? You are a lawyer.

Mr. HOLBROOK. I think the more common one is the initiation of a contest, and an administrative proceeding in the Department of the Interior.

Senator MALONE. How would that be done? You say there is a mining claim located. It is described, tied to a section corner, or filed in a county clerk's office, and you want to initiate proceedings. What do you do?

Mr. HOLBROOK. Actually, Senator, I have never handled one of those administrative proceedings, and I am not too familiar with it.

Senator MALONE. But they could initiate proceedings in the Department, itself, the Department of the Interior.

Mr. HOLBROOK. I think that is true. I have been informed that it is a slow proceeding and involved considerable expense and delay.

Senator MALONE. Well, is that not a good thing? If a man has had the initiative to go out there and locate a mining claim, and he is doing all this work yearly, and he has his plans, would you want somebody to just go out and cut him off?

Mr. HOLBROOK. I think the great bulk of cases, Senator, are those where they are not doing a hundred dollars' worth of work a year, and the Department cannot initiate any proceeding, because he is not doing a hundred dollars' worth of work. In other words, that is not a ground to contest the claim.

Senator MALONE. What is the ground?

Mr. HOLBROOK. The ground would be because there had either been abandonment or there had not been a sufficient discovery.

Senator MALONE. Well, now, you would not want to throw a man off who had a sufficient discovery, and still wanted to hold his claim, because he had been late with his work, would you, or for some other reason that you might imagine?

Mr. HOLBROOK. No; I don't believe in forfeiting a claim for any such failure. I think that would create a lot of problems, Senator. I agree with you.

Senator MALONE. All right, then. Now, you say that any American 21 years old, a citizen of the United States, can go out there and stick his stick up in the absence of work and claim the claim?

Mr. HOLBROOK. Yes, sir. You mean, he can relocate? Yes.

Senator MALONE. And the original locator is out?

Mr. HOLBROOK. Yes.

Senator MALONE. Then he has to do the work within 30 days and put up his corners; is that not right?

Mr. HOLBROOK. That is right; yes.

Senator MALONE. Now, what are you trying to get at in this bill, so that you can handle this man in a different way? What are you going to do with him?

Mr. HOLBROOK. Well, this is an in rem proceeding, Senator. It is not designed to affect the validity of the claim, but only the surface rights, other than those which may be involved in mining.

Senator MALONE. Now, are you familiar with how a miner handles his claim, when it is the only property that he has? How do you think he goes about this thing? Are you familiar with it?

Mr. HOLBROOK. I think so.

Senator MALONE. Well, what is it? How does he do it? Will he go out and live on the claim if there is water or firewood, or something?

Mr. HOLBROOK. He does many times. I think that is more the exception than the rule.

Senator MALONE. Do you think it is the exception where he has the firewood and the water?

Mr. HOLBROOK. Well, certainly there are lots of miners who reside on their claims, but I think many more do not. Often it just is not desirable living.

Senator MALONE. Is it not more the larger locator, the man who has a little money, who maybe has 30 or 40 claims, who does not do that?

Mr. HOLBROOK. Well, I think that is true. I don't think there are many problems incident to the prospector that is actually interested enough and is living right out there, if mining is his vocation.

Senator MALONE. Well, now, you have been in Nevada, have you not?

Mr. HOLBROOK. Yes, sir.

Senator MALONE. Have you ever been at Yerington, Nev.?

Mr. HOLBROOK. That is where Anaconda has this new operation.

Senator MALONE. Well, there were a lot of people there before Anaconda. I was familiar with that copper area almost 50 years before they came in, and I made a survey on three of those claims in 1920. You only hear of an area when your company or Anaconda goes in. But there are little people all over this country working this out before you come in.

It was owned by three different people. They had a Thompson smelter out there, built before the First World War. Sam Bofford, one of the best attorneys in the area, dead now, handled the suit. They had a freight rate figured out, so that it was cheaper to send the Feather River copper ore to Salt Lake City to smelt it, maybe in your smelter, than it was to send it half the distance to the Thompson smelter. That is one of the tricks of the trade. You are probably familiar with that way of doing business, are you not?

Mr. HOLBROOK. No.

Senator MALONE. Well, I am. And we were employed as engineers to work out the case. And we finally worked it out and had charts all over the office building, but in one case the outfit was broke and gone, and your outfit got the smelting after all. That broke them for a while. They went into bankruptcy.

Governor Boyle, who was governor along about the time of the First World War, took it over and tried to handle it and could not.

He was prevented by these very methods. There are a lot of ways of killing a minor off besides shooting him.

Now, finally, Judge Gill, who was a district judge for many years out there, and his crowd, took it over, and turned it over to Anaconda, and the Anaconda spent the money. They guaranteed a price for copper out there, and they are doing pretty well, I think. I hope they are.

But that is only one deposit in Lyon County around Yerington, when there are probably 400 showings, and maybe a thousand of different claims of minerals throughout Lyon County. And they are the same kind of prospectors. One fellow I knew was "Three-Finger Jack." I never knew him by any other name. He had a lot of prospects throughout the county. Now, it is the "Three-Finger Jacks" that I am interested in protecting, people that you rarely meet.

Mr. HOLBROOK. Well, Senator, I am the last person—and I am sure that is true of the American Mining Congress—to urge anything that would interfere with the development of our mineral resources. I do not think this will interfere with the development of our mineral resources.

Senator MALONE. Have you ever favored a leasing system instead of a location system? Have you ever supported the Department here in its recommendation for a leasing system?

Mr. HOLBROOK. I most vigorously opposed the leasing system. And that is one thing that bothers me about this amendment that we are talking about, that lifts certain lands out from under the mining laws.

Senator MALONE. You are talking about the thing that Senator Watkins figures would protect the State?

Mr. HOLBROOK. Well, I do not think the Senator has committed himself on it in any way.

Senator WATKINS. The record will show that I sent in the matter for study. It was an amendment that had been suggested, and I sent it in for study. And that is why Senator Anderson, the chairman, called attention to it to Mr. Holbrook. I had intended to examine Mr. Holbrook on it later in the day.

Senator MALONE. I have just looked at it, Senator, and as I get it, it would protect the State where there is no survey, and naturally, when you stick up a stake you are not familiar with how the subdivision will later work out. If it were later allocated to the State under the school land system, or any other method, the State could take it over, but the man who had done the work there on the claim would have the first option to lease it.

Senator WATKINS. That would operate to give him a preference.

Senator MALONE. Now, that is a little new as an approach to a leasing system, and if the States are for it, I do not know why they oppose it for the Government. I do not think my State is for it.

Senator WATKINS. Does your State have the same problem we have? We have many millions of acres of unsurveyed lands in Utah, and the State has not been able to get it started as to the sections given it under the enabling act.

Senator MALONE. We have a lot of unsurveyed lands. But I was going to outline the situation on unsurveyed lands. I have patented lands on unsurveyed areas. You know that can be done. A mineral surveyor is entitled to set up a mineral monument if it is too far to tie

to a section corner. If it is within reason, he ties it to a section corner. If not, he can tie it to a mineral monument and find the mineral monument located as near as he can to natural objects, and it is just as effective and just as legal as buying a ranch in Ohio with legal subdivisions in it. You understand?

Mr. HOLBROOK. Yes.

Senator MALONE. Now, to go into it a little deeper, just why a State would want to cloud that title by being able to claim it if it happened to fall in a section, I would not know, because the taxes are paid to the State, if any. And they can value it and tax it, just the same as any other property. And if it makes any money, and the State does not get it, the Government will anyway, it looks like. They get the income, do they not? The income tax? If it makes any money?

Mr. HOLBROOK. It would be subject to State income tax; yes, sir.

Senator MALONE. Now, you would not want to displace a man on unsurveyed ground that had located a mining claim and was doing his work out there and was working towards a patent, would you?

Senator WATKINS. Mr. Holbrook is arguing against the proposal, Senator. He is arguing with you.

Senator MALONE. No, no. I am clear beyond that. I have dismissed that, now. I have expressed my opinion about it. But I want to get him back on this idea of what he wants more Federal legislation for.

Do you want to get this man off for some reason, or what?

Mr. HOLBROOK. Senator, I think you have heard my observations for some years in the past with respect to the differences between particularly the Forest Service and other agencies and the rights asserted by a mining claimant. I think if we can get these issues that have been so controversial in the past resolved, without interfering materially with mining locations and development of mines, it will actually be of benefit to the mining industry, the little as well as the large.

Senator MALONE. Now, who is raising all this trouble? I have not heard of very much trouble except when I am in Washington. We get to sitting around in these soft cushions in air-conditioned rooms with our rents paid, and everything, and we cook up a lot of troubles for ourselves. But I do not hear any out in Nevada.

Mr. HOLBROOK. Well, we hear some in Utah.

Senator MALONE. What do they do in Utah? What are they trying to do over there that they cannot do?

Mr. HOLBROOK. And I have talked to a number of members of Congress who have given me the impression that this area of conflict should be resolved.

Senator MALONE. What is the area of conflict? Could you define it for the record? Is it between two departments, or is it between the prospector and the department?

Mr. HOLBROOK. No; the real area of conflict, Senator, has resulted from people locating mining claims for nonmining purposes.

Senator MALONE. Who are these people? And what remedy do you have now? What remedy do you have now as to that?

Mr. HOLBROOK. I am informed that that is done to acquire timber values in certain cases.

Senator MALONE. You mean to tell me that a prospector can go out there and locate a timber claim with no mineral in sight, and you cannot do anything about it?

Mr. HOLBROOK. No; I don't think he can make a valid claim without any mineral in sight. If there is some mineral, as long as he has an opportunity to develop his mineral and carry on his mining operations, I don't think he should lock up the other natural resources.

Senator MALONE. This is a claim 1,600 long and 1,500 feet wide, and he has locked up the resources?

Mr. HOLBROOK. You have referred to a lode claim. Of course, as you know, an association placer can embrace 160 acres, and there is no limit as to the number of claims that any one individual can locate.

Senator MALONE. Well, now, are you complaining about people who are mining and who have mineral claims, or are you complaining about people that do not have any showing of mineral?

Mr. HOLBROOK. I am complaining primarily with respect to the latter class. But I am informed, and I do not speak from first knowledge—that in some cases there are locations where there is an adequate discovery to support the location, but it is very obvious that it was not made for mining purposes. It was for some other purpose.

Senator MALONE. You have no remedy against a man like that. Does he have to do his work every year?

Mr. HOLBROOK. Yes. Or the ground would be open to relocation. He would not, as against any Government department.

Senator MALONE. Now, what are you complaining about? That he sells the timber, or rents it to grazing, or something?

Mr. HOLBROOK. Well, Senator, personally, I am not complaining, as I am sure you understand.

Senator MALONE. Yes; you must be. You are for this bill. Now, tell us why. I am trying to find out why. You are representing a great organization. I do not think you are representing any other one right at the moment.

Mr. HOLBROOK. That is right. I represent the American Mining Congress. I think it is a very important organization.

Senator MALONE. We have a right here to know why this mining congress comes up for this bill.

Mr. HOLBROOK. The reason it comes up is that we feel this bill will resolve the difficulties we have had, without materially interfering with mining operations. Any number of bills, Senator, that have been introduced to resolve this problem we think would create insurmountable problems.

Senator MALONE. They were not enacted, were they?

Mr. HOLBROOK. No.

Senator MALONE. You see, this committee has to pass on it.

Mr. HOLBROOK. Yes.

Senator MALONE. And I have a sort of old fashioned idea that if we do not vote for a bill it does not become public law. I may be a little old fashioned, now, with all the propaganda that you have, when it comes to the point that you are going to do this or do that. I hear that when I am out in Nevada. But I always try to listen to the evidence after I get back, and I go home mostly to try to get my own feet on the ground. You lose perspective here in Washington.

How long since you have been home?

Mr. HOLBROOK. Well, I left home Monday night.

Senator MALONE. Where do you live?

Mr. HOLBROOK. Salt Lake City.

Senator MALONE. Well, 3 months is the limit here without going back to talk to some folks who make it the hard way. So maybe you are oriented again. Did you see some of the folks out on the claims while you were there?

Senator BIBLE. You are a resident of Salt Lake City, are you not?

Mr. HOLBROOK. Yes.

Senator WATKINS. You have never lived in Washington, have you, Mr. Holbrook?

Mr. HOLBROOK. No; I get here very seldom.

Senator MALONE. Theoretically, a lot of people do not live in Washington, but they are here too long for their own good.

Now, I want to get back again to why you think these people ought to be put off of these claims and why you cannot do it as to purposes other than mining. Are you talking about Utah, as to these timber claims?

Mr. HOLBROOK. We do not have a great deal of timber in Utah, Senator.

Senator MALONE. We have 5 million acres of forest reserves out there in Nevada. And there is not over 200,000 acres that has trees on it that I can't stand flatfooted and jump over, as old as I am. Are they complaining about that kind of ground?

Mr. HOLBROOK. Well, there is a principle involved in it, I think, no matter where you are. I do not think anybody should enter land under the mining laws for nonmining purposes.

Senator MALONE. Well, I do not either. But I just asked you what the remedy was awhile ago, and you told me they could initiate proceedings, which I know they can, if the Department is on its toes and wants to do it. Now, you do not want to keep another man from locating it if he finds mineral, do you?

Mr. HOLBROOK. No; and this bill would not stop a man from locating it.

Senator MALONE. What the bill does, very frankly, is to give another step forward to the departments, here, none of whom know a mining claim from a farm barn, and they go in, and their objective is to get the man off. Our objective is to keep him there, if he is doing his assessment work. If your opinion is that the present law does not require enough assessment work—and I asked you that—then we should increase the requirement. We should discuss that.

Mr. HOLBROOK. I do not think there is anything in this bill, Senator, that permits any department to interfere with any mining operation.

Senator MALONE. Just what is there in the bill, then, that you want? I am talking about a prospector that is doing his assessment work and has a valid showing, has made a valid location. What is there here that will get him off, that will not now? How could you handle him?

Mr. HOLBROOK. I don't think there is anything designed particularly toward that situation, and I don't think this proceeding will be directed particularly toward that person.

Senator MALONE. It can be, can it not? They can judge.

Mr. HOLBROOK. No; I don't think there is anything in this proceeding that would remove him from the surface.

Senator MALONE. Well, there is something in the proceeding to let you dispose of the surface, is there not?

Mr. HOLBROOK. There is something in the proceeding that will let the Federal Government dispose of the timber and the forage.



Senator MALONE. And if it does interfere with him, he has his recourse; it that it?

Mr. HOLBROOK. It cannot interfere with his operation.

Senator MALONE. Suppose it does, and they say it does not, and he says it does, and then what?

Mr. HOLBROOK. He has his recourse.

Senator MALONE. Like you do now?

Mr. HOLBROOK. Sure.

Senator MALONE. Well, it would be easier, would it not, for the Government to take the recourse than an individual out there, that does not have any money to go to court?

Mr. HOLBROOK. This is directed, Senator, to a different situation than even contests. Now, contests would evict a man entirely from his claim.

Senator MALONE. Does this not do away entirely with the sandstone, gravel, pumice, pumicite, cinders, clay, and pumice stone?

Mr. HOLBROOK. Yes; it does.

Senator MALONE. It cuts all that out.

Mr. HOLBROOK. Yes; it does, Senator. I was speaking of the overall principle that you had been discussing with me, as to the minerals that can still be located under the mining law.

Senator MALONE. Pumicite is building material, is it not?

Mr. HOLBROOK. Well, I thought it was primarily an abrasive.

Senator MALONE. Yes; but do they not use it, and cinders and clay and pumice, for blocks of some kinds of buildings?

Mr. HOLBROOK. I think they do, yes. I think so. That is right.

Senator MALONE. But you would cut all that out. You would not have anything to do with that.

Mr. HOLBROOK. You could not locate for those minerals under the mining law.

Senator MALONE. Under the amendment?

Mr. HOLBROOK. That is right.

Senator MALONE. But you can now?

Mr. HOLBROOK. Yes, sir.

Senator MALONE. Well, now, why do you want to cut them out?

Mr. HOLBROOK. They are not totally cut out, Senator. Pumice, more than two inches in diameter, in one dimension, would not be excluded. Clays which have peculiar properties would not be excluded.

Senator MALONE. Well, now, pumice that is in place—you are talking about a gravel, or an aggregate?

Mr. HOLBROOK. Well, I understand that pumice occurs very generally. I am not a geologist. You probably know much more about that than I do. But over great areas—it is a volcanic ejector, so I am told, and it may be small, and some of it occurs in larger blocks. And that is not excluded from location under the mining laws.

Senator MALONE. But you would be excluded from taking this aggregate of pumice?

Mr. HOLBROOK. If it is less than 2 inches in 1 dimension, you would.

Senator MALONE. Well, now, wherever you find this, is it not a good deal like any other rock, that if you dig a little bit you are likely to find it in place? You know, sometimes there is a flow of this. There is a lava flow. Some of it is in place, and some of it over a few million years has disintegrated. It is like your placer. If you follow

it far enough, you will find a ledge sometimes. You do not always find it. It is generally there someplace.

Mr. HOLBROOK. Wherever you find pumice of those dimensions, it would still be locatable under the mining laws.

Senator MALONE. Then you would have to dig down through it or go back to where you find the pumice in place, or in chunks larger than 2 inches in diameter, in order to locate it. Then you could locate it.

Mr. HOLBROOK. That is right. Senator, it has been very carefully reviewed, with the thought that it would not materially interfere with mining operations.

Senator MALONE. It would interfere with that kind of a mining operation, would it not, right on the face of it?

Mr. HOLBROOK. A very fine aggregate, yes. But I do not think that is used extensively.

Senator MALONE. Well, I think it is. I think if you were to go down around Las Vegas and places where there is lots of building going on, you would find out about it. The gravel and the stone, and so on.

Now, how would you get this gravel and stone? Would you write a letter to the Secretary of Interior and lease it from him?

Mr. HOLBROOK. This act expressly provides for an amendment to the Materials Disposal Act to bring it under the provisions of that act that make it subject to sale.

Senator MALONE. What do you mean, sale? How would they sell it? At so much a cubic yard?

Mr. HOLBROOK. I do not know what the terms of sale are.

Senator MALONE. It may be that something could be worked out. But what you are doing in this act is upsetting the whole situation insofar as aggregate is concerned out on the public lands. And if you have a provision here, so that you can lease a pit, or lease a piece of ground that has this material in it, that is one step toward the leasing system that the Department of Interior has advised that they want for 22 years. They want it under a leasing system. I guess you know that.

Mr. HOLBROOK. Well, you know that I am opposed to a leasing system.

Senator MALONE. I did not know that. This is a step, in my opinion, toward the leasing act that they have always wanted. And you are for this?

Mr. HOLBROOK. Well, that was not my thought, Senator.

Senator MALONE. Another thing is that you have not convinced me by a good long ways—I will take a look at the record—that you do not have an adequate remedy now. The only thing you have convinced me of is that now the Department has to file the charges, whereas the Department can go out there and order him off, he has to file a case in court. And there are not many prospectors that locate first. Some of these prospects turn into small producers, and a hundred small producers may find their way to a mine that you people would be interested in.

Mr. HOLBROOK. My belief is that there is nothing in this bill, or any other bill, that would materially interfere with our mining laws. And I think the Interior Department would be in a better position to discuss the problems of available remedies than I am.

Senator MALONE. Well, I think that is all right, Mr. Chairman.

Senator BIBLE. We can rely on them, Senator Malone, to bring up that point.

Senator MALONE. You cannot rely on them but you can question them.

Mr. HOLBROOK. All right, sir. We will be very happy to have you question them.

Senator MALONE. You have taken this up with every mining association in the United States. Why are you so interested in it? What do you want to do to these prospectors? What kind of a remedy do you want against them?

Senator BIBLE. Senator Watkins?

Senator WATKINS. As a matter of fact, the American Mining Congress did not propose this bill at all, in the first place, did it?

Mr. HOLBROOK. No.

Senator MALONE. If you want to gather some correspondence with the mining associations of the country, I will do that for you.

Senator WATKINS. Well, I am asking the questions, Senator.

Mr. HOLBROOK. It is true that this bill has been discussed, I think, with representatives of all the State mining associations.

Senator MALONE. By your association?

Mr. HOLBROOK. By the State mining associations and by the American Mining Congress.

Senator MALONE. Now, maybe it is a good thing. Maybe it is a good thing for you to do that. But I just want to establish in the record that you have done that.

Mr. HOLBROOK. I think it is imperative that we do that, Senator. I do not want to be a party to any proposed changes in the mining law without having the views of the industry and the people who are working on these problems.

Senator MALONE. You have even got the women working on it, and they are not very good miners.

Mr. HOLBROOK. Well, I did not know that.

Senator WATKINS. For the record, I started to question the witness, and for the record, I want to say that I am one of the sponsors of the bill. This problem was discussed by me with various people prior to any discussion whatsoever with the mining people. Now, there have been abuses of this mining law on the national forests of the country. That has been called to my attention at numerous times, long before this bill was ever brought in. And we have had too many people that used the mining law to get a grazing location, or to get a summer home, or something else, or to get timber off the national forest. If they could find sand and gravel, and find some of these other materials mentioned there, or find another mineral that would give them enough of a trace, it would give them an opportunity to go on and file as many claims as they wanted to file. And there they were out in the middle of a national forest. It created all kinds of difficulty.

That is the reason I became interested in this problem. The mining people did not bring it to me, I will say very frankly.

Mr. HOLBROOK. We think that practice has been inimical to the mining industry.

Senator WATKINS. And the mining people, naturally, were consulted before we proceeded with a bill that would restrict to some extent the operations on national forests or on other public lands.

Now, you state that you have discussed this with the various State mining associations.

Mr. HOLBROOK. Yes, sir.

Senator WATKINS. And you have discussed it also with the representatives of the departments; have you not?

Mr. HOLBROOK. Yes, sir.

Senator WATKINS. I do not know as to that, but I know it has been discussed generally ever since I have been in Congress here. They have had discussions, more or less, on this problem. Every time they have had a mining bill discussed, it has come up to some extent. And it has been an effort to get together with the departments, the mining people, and all the people concerned, to see if we could not work out some kind of a bill that would furnish a remedy against these people who misuse the mining law and make these locations.

Mr. HOLBROOK. Yes, sir. I do not purport to speak, Senator, for the representatives of the State mining associations, I speak for the Mining Congress. But the congress was very interested in getting just as accurate as possible a cross section of the problem and the reaction among the various sections of the mining industry as it could.

Senator WATKINS. Well, this practice has been going on, and it has given the mining industry a lot of difficulty, has it not?

Mr. HOLBROOK. We think it has created problems.

Senator WATKINS. That is a very diplomatic way of answering my question.

I do not have anything further.

Senator MALONE. Well, I ask you, then: What is the remedy in a mining location difficulty at the present time.

Mr. HOLBROOK. Did you direct that to me, Senator?

Senator MALONE. The same as I did before, just to clear the record.

Mr. HOLBROOK. As I stated before, it is an administrative proceeding, and I think maybe the Bureau of Land Management, or the department can speak better. But I understand it would be a contest, or I am quite sure a proceeding could be initiated in a court of law.

I recall that the Department of Agriculture instituted such a proceeding in California about a year ago. I did not have an opportunity to follow the procedure, but I saw a comment on it. That was in a court of law. I think that was in a Federal Court.

Senator MALONE. And they have to file against this locator in a court of law?

Mr. HOLBROOK. That is one remedy. Another and totally different remedy is an administrative proceeding called a contest in the Department of the Interior.

Senator MALONE. Who decides that; the Secretary?

Mr. HOLBROOK. It would ultimately be decided by the Secretary if it were carried up.

Senator MALONE. Is it appealable to a court after his decision?

Mr. HOLBROOK. Well, it would be on any points of law. I am not too familiar, as I say, Senator, with that.

Senator MALONE. Now, what is the remedy if this bill passes. Then the shoe is on the other foot. They allege that he has no location, and he has to take action; is that right?

Mr. HOLBROOK. I would like to make that clear. This is a different procedure.

Senator MALONE. What is the procedure?

**Mr. HOLBROOK.** Here is a copy, Senator. The procedure in section 5 is called an in rem proceeding.

**Senator MALONE.** How do you spell that?

**Mr. HOLBROOK.** I-n r-e-m; which in effect means a proceeding against the land; and the effect of the proceeding is that if the mining locator does not come in and set up his rights, or if he loses, then his claim would be subject to the limitations and restrictions provided in the act. He would be in precisely the same status as a locator of a claim after this act is passed, as far as new locations are concerned.

**Senator MALONE.** Then he is subject to the Secretary of the Interior requesting publication of notice to mining claimants. And then they must come in. The claimants are already there. They must come in and file with the Secretary.

**Mr. HOLBROOK.** They file in the office where the notice was published a verified statement setting up their rights. Now, if there is no dispute as to their rights, they have all the rights they have had before.

**Senator MALONE.** If there is a dispute?

**Mr. HOLBROOK.** Then it will be set down for hearing.

**Senator MALONE.** And who decides it?

**Mr. HOLBROOK.** It is an administrative proceeding, again, in the Department of Interior.

**Senator MALONE.** And the Department of Interior would make the decisions?

**Mr. HOLBROOK.** That is right.

**Senator MALONE.** That means that the Bureau of Land Management, the local office in the State, would make the decision for the Secretary. And the man is out.

**Mr. HOLBROOK.** Then there would be a right of appeal to the Director of the Bureau and to the Secretary of Interior, too.

Now, if he did not come in, it is not a question of losing his mining claim. He can still carry on his mining operations. And nothing can be done that interferes with his mining operations under that procedure.

**Senator MALONE.** Even if he does not come in and file?

**Mr. HOLBROOK.** If he does not come in, he still has all the surface rights that he needs to carry on his mining operation. But the Government would have the right to manage and dispose of the timber, to manage and dispose of the forage, and to regulate other surface resources. And that is the status that claims which were located after this act becomes effective would have.

**Senator MALONE.** That are located after the act?

**Mr. HOLBROOK.** Yes. In other words, it does impose some limitations. But I do not think they are such as to affect the mining. They are aimed at the fellow who makes the location for nonmining purposes.

**Senator MALONE.** Now, your chief claim is that it interferes with the Forest Service, and I understand the Senator from Utah has that same idea. Is that it?

**Senator WATKINS.** Not only the forests, Senator, but it is other public lands as well.

**Senator MALONE.** Well, most of the forests are in the Forest Service, or in State control, somewhere.

**Senator WATKINS.** Not national forests. They are not under the control of the States.

Senator MALONE. National forests are under the control of the Forest Service.

Senator WATKINS. That is right. That is the only kind this law affects.

Senator MALONE. Now, would you have objection in case this bill was found to have some merit in the forests—of course, there is no timber on the Forest Service areas in Nevada, so I would not know about that. But if you find that that is a valid thing, and it looked like a movement along that line would not disturb the prospector too much—you know, you can harass a man to death. If you have 5 or 6 people working for the Government who come in, it is not a very congenial companionship. Would you have any objection to amending this bill to confine it to Forest Service lands?

Mr. HOLBROOK. Senator, if it is bad in principle to make a location under the mining law in the national forests, for nonmining purposes, it is equally bad outside of the national forests.

Senator MALONE. I have asked you about that. What it does, from your own testimony, is that it puts the shoe on the other foot. You can run him off and make him sue you if this passes, and the way it is now you have to sue him.

Mr. HOLBROOK. As a matter of fact, I think it is very undesirable, and as I stated in my preliminary comments, to have two sets of rules. I think the miner is much better off if he knows what his rights are under his mining location, no matter where he is.

Senator MALONE. Well, I would like to preserve for him some of these rights. And I am not talking about your company. You get along all right. I am talking about the fellow who does not have a fund of money back of him.

Mr. HOLBROOK. I do not want to take one single right away from the most humble prospector which would interfere in any way with his mining operation. And if I have, then I have done it without knowledge, Senator.

Senator MALONE. I think this is a start, a foot in the door, for the very thing that the Secretary of Interior has recommended for 20 years. And that is that it all eventually will go under a leasing system.

Mr. HOLBROOK. Well, it would be a means of avoiding the basis of friction, and it would help to eliminate any further urge for such a policy.

Senator MALONE. This committee has so far taken care of that.

Mr. HOLBROOK. Yes, sir.

Senator MALONE. And we can do it. And I have seen these bills come before. If you can do it piecemeal, I have seen these Government departments operate. In 2 or 3 years, they come with something else. It is just one thing after another. Finally, they get what they go after, because they have got money to operate on, and they are persistent, and they want to do everything from Washington, D. C., nothing from Carson City, Nev., or Salt Lake City, Utah.

Mr. HOLBROOK. I appreciate that some years back there was considerable pressure by advocates of a leasing system. I don't think that is true now.

Senator MALONE. It is still there, by the same people.

**Mr. HOLBROOK.** That is not my understanding, and I have felt that this may be a means of stabilizing this situation.

**Senator MALONE.** That is exactly what has been sent out to these mining associations, that to keep from getting something worse, you have to do this. I have letters from most of them. What I want to say is this: There is some advantage in being a little older than others. There are few advantages, but there are some. That is, you have seen all these jokers come and go. In 1934, there was a Taylor Grazing Act. I did everything I could to avoid it in Nevada. I was State engineer. I could not do it. Now it is there, and everybody out in our State are crying their eyes out because they have got it. Therefore, they have continued to pinch down the grazing, on the theory that they are developing grass. Now there is a shortage of rain out there this year, and if they ever developed any grass, it is not evident.

The people that were grazing that land for 75 years have nothing they can do about it. They have to get these leases for a 3-year period, or whatever period they have a mind to give it to them for. And they always can cut them down. And when you cut a man beyond his carrying capacity on the ranches, his income is cut without cutting his investment. And they are all going right out the little end of the horn.

Now, the same argument was made for that—I was right here, not on this committee, of course, not in Congress—in 1934. I was right here in the Senate Office Building talking about this thing. I talked exactly like you are talking. “This is going to be for the benefit of the cattlemen and sheepmen.”

Well, get some of them in here now and see what happened to them. You can get the miners in here about 5 years from now and see what you are doing to them.

That is all, Mr. Chairman.

**Senator BIBLE.** Mr. Holbrook, I am interested in some language here on page 3, that is taken from the bill, where you say, referring to (c) 1, on page 3:

to prohibit the use of any hereafter located unpatented mining claim for any purpose other than prospecting, mining, processing and related activities.

**Mr. HOLBROOK.** Yes.

**Senator BIBLE.** Now, is it your understanding under that language that if this were to be adopted one could locate a millsite in accordance with the regular mining laws of the Western States?

**Mr. HOLBROOK.** Oh, yes, sir.

**Senator BIBLE.** And a tunnel site?

**Mr. HOLBROOK.** Yes, sir.

**Senator BIBLE.** You could locate those without any difficulty?

**Mr. HOLBROOK.** Oh, yes.

**Senator BIBLE.** Now, as I understand it, section 5 goes only to claims that have been heretofore located. Is that a correct statement?

**Mr. HOLBROOK.** That is correct. You see, the two fit together. The other provisions of the act relate to claims located after enactment of the bill, and that particular section relates to those located before, and to meet problems incident to such locations.

**Senator BIBLE.** One thing that bothers me that Senator Malone has touched on is the fact that the forum in which the cause is heard and the determination made is the very same department that institutes

the adverse proceedings. As a practicing lawyer in Reno, I have had enough experience with the Bureau of Land Management to know that you hear an examining officer and then you appeal to the director, who is still under the same department as is the examiner who made the original decision. If you are not satisfied with that, you appeal to the Secretary of Interior and all administrative officers still within the same department. Now, is that a good thing for the prospector out in your State of Utah, if he is attempted to be "adversed out"? Would it be better if they were required to go to court?

Mr. HOLBROOK. Well, you see, Senator, we are talking now under section 5.

Senator BIBLE. Limiting my questions only to section 5.

Mr. HOLBROOK. Yes. We are just talking about the surface rights. In other words, if he does not appear in that proceeding, he would not be in any different position than the mining claimant who made a new location then next day after this act was passed.

Senator BIBLE. I have only heard the examination of section 5, and I am wondering if that is clearly spelled out.

Mr. HOLBROOK. Yes, I think so.

Senator BIBLE. You think that is all they can do in this adverse proceeding, take the prospector's surface rights—only his surface rights—from him, even though he does not have a valid discovery?

Mr. HOLBROOK. I think it would be very unwise, Senator, if a man did not have any discovery, to contest. I would certainly advise my client not to. I would be disposed to recommend that he file a waiver of any rights. Because I would not want to place in issue the question of discovery. If I lost solely on the grounds that I did not have an adequate discovery, I have made a record that would be available to others.

Senator BIBLE. Of course, I think you and I are both familiar enough with the mining law to know that there is a great divergence of opinion as to what is a valid discovery.

Mr. HOLBROOK. That is correct. And if there was any question of doubt, I would recommend that he not place that matter in issue. Because I do not think he would be hurt in any way; as I do not think people who locate claims in the future will be hurt. He has the right to use the surface for every use he needs to carry on his mining operation. And when he gets patent, he gets an unlimited title.

Senator BIBLE. I understand that. But I am talking about the man who is holding an open location, as so many thousands of prospectors do throughout the West. And of course, I am somewhat intrigued with the burden that it puts upon the small prospector to attempt to defend himself before the administrative officer in the adverse proceeding under section 5. It is certainly going to cost him money, is it not?

Mr. HOLBROOK. If he comes in and defends it. Of course, the only purpose of him defending it would be to claim some resource in addition to those he claims for mining.

Senator BIBLE. I understand that. That all costs him money, though, does it not? Because he will certainly seek the advice of some lawyer in Utah, or Nevada, or California.

Mr. HOLBROOK. Oh, yes. Of course, he has that same problem now under Public Law 585. In other words, this proceeding is identical



to that one; only in that proceeding it was a matter of conflict between Leasing Act minerals and minerals locatable under the Mining Law. This proceeding is identical with the one that was passed last year by Congress in that respect, except where the changes have been necessary to make it applicable to the situation.

Senator BIBLE. And it is your opinion that section 5 is clearly enough spelled out that the only adverse rights that are affected are surface rights, insofar as an open location is concerned?

Mr. HOLBROOK. Yes. Except as to the very point you raised, that the question of discovery may be placed in issue, and its indirect consequences. And there is no way to avoid that, Senator.

Senator BIBLE. It seems to me it is in that very field that you might be getting into considerable difficulty. I mean as to whether the prospector thinks he has a valid discovery and the hearing officer thinks he does not.

Mr. HOLBROOK. O. K. If that is the issue, I would recommend to my client that he not contest it.

Senator BIBLE. Well, sir, if he does not contest it, he would lose the claim.

Mr. HOLBROOK. No; he loses nothing.

Senator BIBLE. Except the surface rights.

Mr. HOLBROOK. Except the rights which will not affect his mining operation. He has all of the rights he needs to carry on his mining operation.

Senator BIBLE. I understand what you mean.

Senator MALONE. Mr. Chairman, as I understand it, under this mining bill they must file with the secretary any claims that they have now, or at least, if they want to have the protection the bill affords, they should, and in future they would, file with the Government, as well as the county recorder.

Mr. HOLBROOK. No, Senator. That is one of the very things that we tried our best to stay away from, and I hope will be accomplished by this bill. I think that is an undesirable practice, that you mentioned.

Senator MALONE. What does that section 5 do? Does that not ask them to come in and protect themselves?

Mr. HOLBROOK. Section 5 provides that if a proceeding is initiated by a department, then they have to come in and set up the basis of their claim. Now, what I thought you directed your comments to was the necessity of filing a certificate of location or a notice of location in the Bureau of Land Management Office.

Senator MALONE. I did.

Mr. HOLBROOK. And this stays entirely away from that. I have always been opposed to it, Senator.

Senator MALONE. I am glad that you are.

Now, you say that if you had a client and he did not have a valid discovery, meaning a mineral that had some showing, that had some indication of following a vein or some other valid discovery, that would turn out to be profitable, you would advise him just not to make a case out of it?

Mr. HOLBROOK. You see, Senator, the fundamental difference here: If the department initiates a contest, all they can do is determine whether my claim is valid or not. And if I lose, I am completely out.

I haven't anything. I have lost everything. And I have got to come in and appear. I cannot do anything else. But in this kind of a remedy, all I need to do is sit back and not spend a dime. I do not have to appear. Or, I can file a waiver. I can do either one. And my mineral rights will not be affected.

Now, you see, that is greatly to the interest of the mining industry, as compared to the old contest proceeding.

Senator MALONE. My question goes directly to the point of what is a valid discovery. If he is brought in and he refuses to file any waiver, and he says he has a valid discovery, how would you prove that he does not have a valid discovery?

Mr. HOLBROOK. I think in the ordinary process of any proceeding, no one is required to prove a negative. The burden would be the mining claimant to prove that he had a valid location, and one of the requisites would be discovery.

Senator MALONE. Do you have any idea that there is always a mineral showing on any discovery that is ever located and later turns into a good prospect?

Mr. HOLBROOK. No.

Senator MALONE. Then, if you go right out there on a ledge and the geological setup is right, according to what this fellow thinks—maybe he is a practical geologist, or maybe not at all, but he thinks if he digs on this thing he will find something. If he has not yet found anything, he can be ousted, can he not, under this law?

Mr. HOLBROOK. Under this law?

Senator MALONE. Yes.

Mr. HOLBROOK. If he has not found anything?

Senator MALONE. If he does not have a showing, yes.

Mr. HOLBROOK. No, sir. There isn't a think in this law that will permit them to oust him. But if they initiate a contest, and he loses, he is through.

Senator WATKINS. You mean under the regular mining law?

Mr. HOLBROOK. That is right. Now, that is why, Senator, it is greatly to the interest of the humblest mining locator—

Senator MALONE. Why don't you use the present mining act, then? I have never known anybody to lose out on a location, and I do not think he would lose. I think you are going to have to take him to court.

Mr. HOLBROOK. Oh, I think there are lots of cases where a man has lost on contests. I think there were great areas cleared up in the region of the Hoover Dam and in the region of the Shasta Dam. I think that remedy has been used rather extensively.

Senator MALONE. That is right, and we all recognize that. And under the mining law you have all the leeway that you need. Now, if he is in there locating after we build Boulder Dam—which was obvious to some of them; I did not pay any attention to it, because I knew it would come to court—but if he had a location before the appropriation was made, and he had any showing, he was paid for it.

Mr. HOLBROOK. Oh, yes. But I am talking about the cases where he could not make a showing.

Senator MALONE. Then he is out, and should be.

Now, I want to ask you: By the time a man goes to patent, which may take 5 or 10 years, or more, if he does not have the facilities to

work it as fast as he wants to, and does not see fit to turn it over to some company that has the money, but wants to make money himself—I know prospectors that will go broke because they will not give up control if they think they have a good prospect. Now, under this system, before he could patent it, they would have it denuded of everything by then, if they wanted to sell the timber, and he would not get anything anyway, would he, by that time? If they could come in and do anything on it they wanted to do, they could do it while he is doing his mining and accumulating enough to work to patent.

MR. HOLBROOK. Well, I have always thought, Senator, the mining laws were designed to permit the discovery and the development of minerals, and there is nothing in this law, as I see it, that would interfere with that. He could still go ahead with that. They cannot take his minerals off, and they cannot interfere with it.

Senator MALONE. They could do plenty of interference, but you said unlimited title, and made a point of that; so that they could have it all denuded of everything by the time he got to that point.

MR. HOLBROOK. They could take off all the merchantable timber.

Senator MALONE. Of course they could. That is the point I wanted to make.

Now, you are kind enough to say it he got title to it under a patent, then he could have whatever is on it. Is that true?

MR. HOLBROOK. Yes.

Senator MALONE. Now, then, let me ask you another question.

Senator WATKINS. Would it be after this bill is passed?

MR. HOLBROOK. Yes.

Senator MALONE. We have always figured—and it is the only thing a man without money can do in this country now on public lands—that when he located a claim and kept up his assessment work, he has the same right, as long as he does his assessment work and is in good standing. Is that true?

MR. HOLBROOK. I think that is true, Senator. That would not be true under this bill. I am assuming that he had a valid mining location, as I think you are.

Senator MALONE. I am talking about a fellow who goes out there and sticks a stick down, puts a little tobacco can there with a note in it. He does not have much with him, and he does not have his attorney with him, or his engineer, and if he did have, he could not pay them. What he has is a little piece of note paper he tears out of a little notebook or a tobacco can, and he builds a monument and puts it under the top rock, or puts down a stake and puts it in the fork of a stake. That is the kind of a guy I am talking about. He has 30 days to set the corner of this claim after he does that; does he not? And then he has a certain length of time to do his work. At the present time, if he does not have discovery, it is up to you to prove he has not. Is that not it?

MR. HOLBROOK. No, sir.

Senator MALONE. Well, let us go through that again.

MR. HOLBROOK. The burden is on the locator in every case when an issue is raised to prove that he has complied with the mining law prerequisites for a claim, and the first prerequisite is that he has a valid discovery.

Senator MALONE. What is a valid discovery? You are a lawyer. It would be interesting to a lot of us to know just what you think a valid discovery is.

Senator BIBLE. Did he not testify to that once?

Senator MALONE. I would like to hear it again.

Mr. HOLBROOK. Well, it is such a showing as would induce a reasonable prudent man to expend his money and his effort in the hopes of developing a mine.

Senator MALONE. Whose definition is it?

Mr. HOLBROOK. That is a definition, Senator, that is written into court decision. It is not a matter of statutory law.

Senator MALONE. Very good. Could it then be interpreted as a location that he would have a reasonable chance of hitting ore in if he drives his tunnel, or drives his shaft?

Mr. HOLBROOK. There is another rule, Senator, superimposed on that, that as long as I am in possession of a claim, diligently working it—and I mean physical possession, I would say at least 5 days a week and 8 hours a day—I may hold it without a discovery. But if I haven't got a discovery, and I quit for even a short interval, I think you can go in and relocate my claim.

Senator MALONE. What is a discovery? Is it defined?—now you are a lawyer, and I want to get this in the record—that he has to have a mineral showing in his little hole where he has done this work: assessment work?

Mr. HOLBROOK. It need not be commercial ore.

Senator MALONE. But does he have to have an assay?

Mr. HOLBROOK. I wouldn't say that is absolutely necessary, under the most recent interpretations, if he has a formation that has been productive in the area. Although you are now in a field of great controversy, Senator.

Senator MALONE. Well, there is just where I want to stay. And I want you to stay there, too. And I do not want some joker from the Federal Government that can go out there, that does not know anything about mining at all, to say, "You have no showing. Where are your assays?" And he is out unless he goes to court.

Mr. HOLBROOK. This bill makes no change in that.

Senator MALONE. You just cited one we passed last year, and I was for it. The year before, I think, when it was first passed, I was chairman of the committee. Something had to be done to coordinate the placer locations with the lode locations on account of various developments. Now, that was done very reluctantly, because we thought it was necessary. And I think the record will show we did not do this so that you will get a foot in the door. You have done it to get a further foot in the door. You say it is similar to that. I say it is not similar to it, simply because it was necessary in this uranium mining, and in oil and gas locations, which covered a good part of it; and so that the uranium miners could go in, we modified the Leasing Act to that extent and dovetailed those locations so that the prior locator, whether he was oil and gas or uranium, could have the right-of-way, and both of them could work the claim. But we did not say any Government department could go in there and do anything about it.

Mr. HOLBROOK. I believe, Senator, I said the proceeding was similar.

Senator MALONE. That is right. And that is exactly what you are going to say in about a year, in coming in with another step. The proceeding is similar.

Now, they have been doing that for 22 years, and I have appeared before committees before becoming a member of the committee. And that is exactly what we want to protect against, the taking up like a log hook, just taking up the slack each time, and just wearing them down.

Senator BIBLE. Is there anything further, Senator Malone?

Senator MALONE. Yes. I had another question to ask.

Now, is it not customary, when you have a discovery, and you actually think that you are going in to spend some money, on something that may develop into a real mine, that you make protective locations around this discovery? Some of them may be where you use the ground to tunnel in, to crosscut, to sink additional shafts to determine the course of the vein, and some of them may just be protection, where you would want to build a mill. The matter of a mill site was mentioned. But maybe you do not know where you want the mill site. So you locate several claims. But is it not customary for your company, or the bigger companies, to go in and locate a block of claims, where the showing is on one claim and no showing on any of the rest? And they are perfectly valid, because they are used to develop the main discovery.

Mr. HOLBROOK. Senator, that is the practice. But I don't think any mining claim is valid unless there is a discovery, or unless you are actually in possession, working the claim, looking toward a discovery. That is my understanding of the mining law.

Senator MALONE. All right. But it is up to you to show that, now, through interdepartment action, which you are not doing. And you admit that by needing this new act.

But what I am saying to you: The Anaconda Copper Co.—how many claims do you think they have out in the Yerington area now? How much of that country do you think they have located?

Mr. HOLBROOK. I presume a great part of it.

Senator MALONE. Do you think there is copper under all of it?

Mr. HOLBROOK. No, Senator. You pose a problem under the mining laws which should be the subject of further study. I think there is a definite problem there, and it is a matter that the mining congress has under consideration, namely, how can mining claims be held without a discovery? Frankly, I think this bill is absolutely vital to work out any such arrangement.

Now, if we want to hold claims where there is no discovery, and there are valuable surface resources, you can see the problems we enter into.

Senator MALONE. I am not talking about valuable surface resources, except that they protect you in your discovery. And you also need the ground to operate from. You may start tunnel on a thing where you know you are not going to hit anything. You may run it for 2,000 feet. You do not expect to hit anything until you get in here under the lode.

Mr. HOLBROOK. What you say is quite necessary. I do not think there is adequate protection under the mining laws. I think it should be changed. And I think the possibilities of getting such a change

will be greatly enhanced if we can pass legislation comparable to this.

Senator MALONE. Well, now, let me ask you this. You are a lawyer. The distinguished junior Senator from Nevada is a lawyer. And I have been an expert witness in some of these cases. Have you ever known any of these claims to be taken away from one of them, that they are using to develop a lode, or that they have reasonable expectation that they may use in a court?

Mr. HOLBROOK. I can't put my hand on it right now.

Senator MALONE. I wish you would get some cases of that for this committee.

Mr. HOLBROOK. But I can tell you this, that at the moment Mr. Odum, the distinguished financier——

Senator MALONE. I know him.

Mr. HOLBROOK. Is carrying on a uranium operation in the State of Utah. And there are certain claims which it was believed were key claims. And I am informed, to give security to those locations, since there was uncertainty as to the sufficiency of the discovery, the productive horizon being at depth, that men had been placed on each of these key claims, and operations are being continued, so that they will be in the position of being in possession, diligently looking toward the discovery.

Senator MALONE. Then he is protected under the present law.

Mr. HOLBROOK. He is protected under the law. Now, that is a situation that I think needs some clarification in the law.

Senator MALONE. Do you think he is protected here?

Mr. HOLBROOK. This would not affect it in any way.

Senator MALONE. Well, of course. So you are not protecting Odum. You are not protecting anybody. What you are doing is getting a foot in the door to get a few more Government officials out there to tell this fellow, "Now, you do not have a discovery here, and we are going to do something about it."

Mr. HOLBROOK. No, Senator. That is not the intent of this bill, as I understand it.

Senator MALONE. But you can take everything there. You are taking out of the bill the right to locate certain things bodily. You are changing the whole mining setup where for 50 years, 80 years, you have had decision after decision. Every miner knows exactly where he stands. If he goes to the junior Senator from Nevada, who has had experience as an attorney, he can say, "Now, what can I do? What are the decisions on this?" And he can be told. Everyone knows he can get into a lawsuit. But is it not very well established, the 1872 mining law? Are there not many court decisions, decision after decision, so that a man knows what he can do under it?

Mr. HOLBROOK. I do not think we are upsetting any decision by this case, except that we are taking those very common minerals out from under the mining law.

Senator MALONE. So you are arranging it so that he has no control until he finally patents it.

Mr. HOLBROOK. He has all the rights he needs to carry on his mining operations, Senator.

Senator MALONE. I am glad to have your idea. But you are changing the setup entirely from the fact that a man can now locate a mining claim, 1,500 by 600 feet, and he can go in and dig a hole any place he

finds through his experiment, and he can follow that through, and nobody can say, "You do not belong here, because this is where this resource is," and no one can harass him or talk to him.

**Mr. HOLBROOK.** No; that is not my understanding.

**Senator MALONE.** Is that not your understanding, that he owns the whole business?

**Mr. HOLBROOK.** You are assuming it is a valid location? No, I think there are great differences of opinion, and there are now cases in the courts as to whether he has any right to the timber.

**Senator MALONE.** I do not know. By going to the court, let the court decide whether he owns anything else or not. I have no objection to that. It would not make any difference if I did have. What I am objecting to is some smart people coming in here and at one fell swoop, changing the setup and the prospector's location. And I think it would have a very vital effect on it. I am afraid it will have. And I think you have an entering wedge. Right now you have referred to that other legislation 2 or 3 different times; that this is a similar step. The next one will be another similar step, only a little bit further. And it will be just one thing after another. And we have had spectacles here in Congress, we had one just a few weeks ago, and every little while you have your departments sitting in with the committees telling them what to do, with public sentiment coming in for it. Now, luckily for me, I did not come to the Senate until after I had been all through that. And I know how you get wires and letters. And I know when I go out there and explain what it is. Most of them are coming in with these letters now, saying, "To prevent injurious legislation, we have to take action." That is what we are getting.

**Senator BIBLE** (presiding). Thank you very much, Mr. Holbrook. We appreciate very much your patience and your kindness in being here.

We stand in recess until 2 o'clock.

(Whereupon, at 12:45 p. m., the committee recessed until 2 p. m.)

#### AFTERNOON SESSION

**Senator ANDERSON.** The committee will be in order.

The first witness this afternoon will be Mr. Woozley.

Will you state your name for the record, and your position, and proceed, please?

#### **STATEMENTS OF EDWARD WOOZLEY, DIRECTOR OF THE BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR; ELMER F. BENNETT, LEGISLATIVE COUNSEL, DEPARTMENT OF THE INTERIOR; AND LEWIS E. HOFFMAN, CHIEF, MINERAL DIVISION, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

**Mr. WOOZLEY.** My name is Edward Woozley. I am Director of the Bureau of Land Management in the Department of the Interior.

It is a pleasure to be here today, and we certainly appreciate the opportunity of appearing before your committee, Mr. Chairman.

S. 1713 is a bill which is designed to meet a problem with which the Department of the Interior has long been troubled. We believe

that the provisions of S. 1713 are well conceived and essential to the effective carrying out of the responsibilities assigned to our department with respect to mining activities on the public lands. Therefore, we endorse the provisions of S. 1713 and we strongly urge that it be enacted.

This bill, as we understand it, would serve two needs. First, it would facilitate the use of the surface of a given tract of public lands for multiple purposes. Second, it would enable us to prevent abuses which are possible under the letter of the existing mining laws, but which violate their spirits. We may summarize the provisions of S. 1713 briefly by saying that the first three sections would forbid the location of mining claims based upon deposits of common varieties of sand, stone, gravel, pumice, pumicite, and cinders, and would provide a means for the disposal of such materials, while the fourth section would limit the surface rights of the holder of an unpatented mining claim, and the fifth and sixth sections would provide a procedure for the clarification of surface rights appurtenant to mining claims existing at the time of the bill's enactment. Section 7 would protect existing rights.

It should be understood at the outset that the enactment of S. 1713 would not deprive the Secretary of the Interior of any authority which he now has with respect to unpatented mining claims. His existing authority to declare mining claims null and void would be unimpaired. S. 1713 would not substitute new authority for old, but would, instead, give the Department additional authority with respect to the management, disposition, and the use of the surface resources of unpatented claims.

The situation which this bill is intended to meet has existed for many years, but, because of more intensive Federal use of the public lands in recent years, it has drawn ever-increasing criticism.

Loopholes in the existing mining laws permit many abuses. Persons holding unpatented mining claims may prevent the orderly management and disposition of valuable surface resources such as timber and may block access to such resources, and yet pay little or no attention to mining themselves. Moreover, persons may base their claims upon deposits of common varieties of such minerals as those with which section 1 of S. 1713 deals, and while such deposits are technically of sufficient value to justify a mining location, they are often in reality of little worth when compared with the other natural resources on the unpatented claims, the proper utilization of which is hindered or prevented by the superior rights of the mining claimant. Moreover, by obtaining a mining location, persons have been able to acquire a color of right to the use of tracts even though they actually use those lands for nonmining purposes, perhaps even for a use so foreign to the spirit of the mining laws as a summer homesite.

These abuses could all be prevented, we believe, if this bill were enacted. As I have stated, after enactment of S. 1713, mining claims could not be based upon deposits of common varieties of sand, stone, gravel, pumice, pumicite, and cinders, all of which would in future be subject to disposition under the Materials Act of 1947.

Section 4 of the bill provides that any mining claim located after the enactment of the bill could not be used prior to the issuance of patent for any purposes other than prospecting, mining, or processing operations and uses reasonably incident thereto.



Section 5 of the bill provides a procedure for determining existing mining claims and the rights of the locators of those claims to the use of the surface. This procedure seems to us amply buttressed with requirements for notice and hearings to protect the rights of mining claimants.

If S. 1713 were enacted, taken together with Public Law 585 passed by Congress last year, we believe that a far more beneficial use and conservation of the surface and subsurface resources of lands belonging to the United States could be provided. And yet in no way do we believe that this bill would conflict with the desires of the mining industry. This bill seems to us to have the particular merit of satisfying the needs of the mining industry, the other users of the federally owned lands, and the Federal Government.

Although we endorse this bill, we suggest that it be amended in certain respects. These amendments are explained in detail in the Department's report which has been submitted to you. I shall content myself with stressing only the desirability of making certain that the provisions of S. 1713 apply to the Oregon and California Railroad grant lands and the Coos Bay Wagon Road grant lands in the same manner as to other federally owned lands, with the exception that all timber rights after patent would continue to be reserved to the United States. To assure this result our report suggests appropriate language.

We recognize that, if this bill is enacted, there will be imposed on the Department of the Interior a heavy burden of additional duties. We shall undoubtedly be compelled to undertake a great expansion of our existing staff.

We cannot give you an estimate of the number of unpatented mining claims, but it must run into the hundreds of thousands. Other departments and agencies will ask us to adjudicate, under the provisions of section 5, immense areas covered by unpatented claims.

For example, at the present time we have, in the Bureau of Land Management, 15 mineral examiners, and we believe that, with our present workload, we could well use 25. However, if S. 1713 should be enacted, 35 would probably be needed within the first fiscal year after the enactment of the bill, and within 10 years 75 more would be required.

Because the provisions of section 5 would authorize the heads of Federal departments and agencies to seek a determination of surface rights, and would not compel them to seek such a determination, it is particularly difficult for us to predict with any hope of accuracy the actual magnitude of the task which the enactment of this bill would impose on the Department of the Interior. However, we have no hesitation in saying that the additional workload would be more than compensated for by the benefits which would accrue from the enactment of S. 1713.

Thank you, gentlemen.

Senator ANDERSON. Thank you very much, Mr. Woosley.

Senator Watkins, do you have any questions?

Senator WATKINS. No. I have no questions.

Senator MILLIKIN. Mr. Chairman.

Senator ANDERSON. Excuse me.

Senator Millikin.

Senator MILLIKIN. What does this do to the present rights of the miner?

Mr. WOOLEY. Actually if the miner actually has or will have a valid right it does very little.

Senator MILLIKIN. Who determines whether they have a valid right?

Mr. WOOLEY. I presume, Senator, that if he came in, at the time he was served concerning the surface rights, a determination would be made whether or not at that time he had a valid right, by the manager in charge of the Land Office.

Senator MILLIKIN. As distinguished from the law at the present time, who determines that at the present time?

Mr. WOOLEY. The same person.

Senator MILLIKIN. Then what is the difference?

Mr. WOOLEY. One difference would be that under the existing law we must make a minimal determination with a field examiner before we ask for a contest on his claim.

Senator MILLIKIN. What kind of a contest do you ask now?

Mr. WOOLEY. Well, we would file a protest. Or another agency may file a protest. If it is determined that the lands do not have sufficient mineral value or discovery has not been made, we can then, as we call it, advise the claimant to determine whether or not he does have sufficient mineral values.

Senator MILLIKIN. How is that determined at the present time?

Mr. WOOLEY. By hearings.

Senator MILLIKIN. Who holds the hearings?

Mr. WOOLEY. Well, either the Land Office manager or a person delegated with that authority.

Senator MILLIKIN. Is there any court action at the present time?

Mr. WOOLEY. Yes, sir.

Senator MILLIKIN. What is that?

Mr. WOOLEY. The court action may apply after the proper procedure has been entered into on appeals.

Senator MILLIKIN. And all the questions you have been discussing can be determined in court?

Mr. WOOLEY. Yes, sir; I assume they could.

Senator MILLIKIN. Then what abridgement of court rights is there in the present act to support legislation?

Mr. WOOLEY. In my opinion, there would be no abridgment of court rights.

Senator MILLIKIN. Then in what respects are the rights of the possessor of the mining claim changed in any way?

Mr. WOOLEY. Well, the only way would be that if he were called to come in and determine whether or not he had sufficient rights to hold his surface during the period that it is under location, that he would be required to do that if he wished to use the surface rights, except for mining purposes.

Senator MILLIKIN. I am talking exclusively now about mining purposes.

What does this bill do to the mining purpose?

Mr. WOOLEY. Actually I don't see that it would at all be inhibitive to the person holding the mining claim for mining purposes. He could still use the surface for purposes incident to mining.

Senator MILLIKIN. None of the provisions in here in any way limit his present rights for mining purposes?

Mr. WOOLEY. No, sir; I do not believe they do.

Senator MILLIKIN. What do they do then that is different?

Mr. WOOLEY. It would alleviate the necessity of making a mineral determination before we could use the surface rights or manage the surface rights.

Senator MILLIKIN. At the present time I make a mining location and follow the State procedure to do so. How does it interfere with that in any way?

Mr. WOOLEY. It would not interfere with that.

Senator MILLIKIN. I come back then to my question.

Senator ANDERSON. May I ask a question?

Providing that he was not doing it to get sand or gravel or something of that nature.

Mr. WOOLEY. Oh, yes.

Senator ANDERSON. For hard minerals it would be exactly the same.

Mr. WOOLEY. Yes, sir; that is correct.

Senator MILLIKIN. Well, I make a location and make a discovery and put out my stakes and so forth and so on. In what respect does this bill interfere with that and with the rights that flow from it?

Mr. WOOLEY. I do not think it interferes at all.

Senator MILLIKIN. In what respect does it inhibit the rights that I normally would have or think I have?

Mr. WOOLEY. Well, it might inhibit the rights, if you want to defend your claim or if you wanted to deny ingress or egress for livestock or for timber access roads or something of that kind across the claim while it was actually under location.

A mining claimant now, as I understand it, has the right to do that.

Senator MILLIKIN. What about timber rights?

First, let me ask you what are the present timber rights of a mining location in a perfected location but which has not gone to patent?

Mr. WOOLEY. I think that he is not permitted to cut and sell the timber. He is only permitted to use such timber as is needed in his mining operations from the surface during the time it is under location.

Senator MILLIKIN. He has that right?

Mr. WOOLEY. Yes, sir.

Senator MILLIKIN. Does this interfere with in in any way?

Mr. WOOLEY. No, sir.

Senator MILLIKIN. What does this do?

Mr. WOOLEY. It gives the agency managing the land the right to manage the timber resources pending patent.

Senator MILLIKIN. That is quite a change in the man's situation, is it not?

Mr. WOOLEY. Not as far as mining operations, Senator. It would in no way interfere with his mining operations.

Senator MILLIKIN. Explain to me what my present rights are as to timber as a locator. Not as a patentee, but as a locator, and as they will be inhibited or diminished or enlarged or otherwise changed under this act.

Mr. WOOLEY. Well, as I understand this act, it would not be changed because you would still use whatever timber was on the surface of the land that you needed in your mining operations.

Under the present law that is all the timber that you were permitted to use.

Senator MILLIKIN. Under the new law would those timber rights in any way be changed while I am in the course of perfecting my location and intend to obtain a patent? What can the Department do that it cannot do now?

Mr. WOOLEY. It could manage those timber resources. It could cut out the overmatured trees. I presume they could have a timber sale on there for the timber that is not needed in the mining operation.

Senator MILLIKIN. Who decides that?

Mr. WOOLEY. The person managing the surface rights.

Senator MILLIKIN. Who is the person managing the surface rights?

Mr. WOOLEY. It may be the Forest Service. It might be the Bureau of Land Management.

Senator MILLIKIN. Assuming their judgment is wrong, assuming that they clean off all the timber on a mining claim to which I have a valid right, how do I get timber to pursue my mining operation?

Mr. WOOLEY. I cannot answer that, I am afraid.

Senator MILLIKIN. Somebody ought to be prepared to answer that.

Mr. WOOLEY. Yes, sir. I would like to call on Mr. Bennett from the Department of the Interior to answer that.

Mr. BENNETT. The provisions dealing with the use, management, and disposition of the vegetative resources including the timber will be found on page 5 of the bill.

Now, if we assume that the mining claimant currently needs the timber in his mining operation, then this bill protects him with a legal right. If the Government should sell the timber under those conditions he would have a right to recover for the amount of the loss to him, in my opinion.

Senator MILLIKIN. Would the Government be required to supply him with the timber necessary to conduct his mining operations?

Mr. BENNETT. No; but he would be entitled to damages.

Senator MILLIKIN. That could be a rather naked right, could it not? Supposing I am proceeding with a mining operation and I need timber and I haven't got it because they have taken it off my claim. Is all that I have a lawsuit?

Mr. BENNETT. No, Senator. I believe that there is also authority today in the Government agencies—but not as a matter of legal right—to provide him with timber under those circumstances.

Now the Forest Service people have been or would be in a much better position to indicate whether, under the present regulations, they might have that kind of authority. However, there is no such authority conferred in this bill.

Senator MILLIKIN. All I am getting at is this, Mr. Bennett: I am a valid mining locator; I am entitled to the timber at the present time that I need to run my mining operation, no matter what that mining operation is, assuming it is a legitimate mining operation. The timber is gone because some agency has sold it.

Who makes the timber good?

I don't care for a lawsuit. I am not making a location on a lawsuit. I want timber. Who supplies it?

Mr. BENNETT. In my personal opinion the locator has nothing but a lawsuit under those circumstances.

Senator ANDERSON. Would it be fair to say, however, that if he is a valid claimant, if he is going in to file a valid claim for mining, his position with respect to his rights is not changed in the slightest by this bill?

Mr. BENNETT. Well, as of today, Senator, I could not agree with that for this reason: Under the mining laws the better authority seems to indicate that the Government would have no right to sell the timber off the area although the miner's right to the timber is limited to that quantity he might need for his mining operations. But under the present law the timber would have to be left on that claim so long as the claim was in a valid status, thus it would be available when the need arises. I believe I am right in that.

I think this problem, of course, comes up much more frequently in the Forest Service than it does with us in Interior.

Senator ANDERSON. Neither the Forest Service nor the Department of the Interior, which administers the O. & C. lands, makes it a practice to go in and strip the country of all its timber. They are interested in preserving the forests.

A mining claim locator has a right only to the timber that he needs in his mining operations.

Now, under S. 1713, he still has a right to that much timber?

Mr. BENNETT. Yes, he has a legal right to it under the language of S. 1713 if it is needed in his current mining operation.

Senator ANDERSON. Providing he is not mining sand and gravel or pumice.

Mr. BENNETT. That is right.

Senator ANDERSON. They have been claiming rights to timber while they were taking out sand and gravel and pumice at the present time.

Senator MILLIKIN. I repeat the question:

If they come in and remove the timber while I am pursuing a legitimate mining location, how do I get the timber for my mine?

Mr. Bennet suggested I have a lawsuit, and I did not make a location to get a lawsuit.

Senator ANDERSON. What do you have now but a lawsuit?

Senator MILLIKIN. They don't bother you at the present time.

Mr. BENNETT. At the present time Government agencies are faced with somewhat of a dilemma. They are put in a position where, if they are making a timber sale and they have reason to doubt the validity of the claims in the area, they have only one recourse if they are to be sure of their title. They must make a physical examination of each individual claim, and they must request the Department of the Interior to adverse those claims which they believe to be invalid.

Whether all of them are invalid or some of them are valid is not exactly the point here because what the Forest Service is interested in is an assurance of clear title when they make a timber sale.

Senator MILLIKIN. Must they do these things before they proceed to remove the timber?

Mr. BENNETT. If they don't, they are in a position where, Senator, they may have unlawfully destroyed a miner's property right to timber. However, in the end, the miner may have nothing but a lawsuit under the present law, in my view.

Senator MILLIKIN. Under the present law do they do any of those things while he is pursuing his mining location?

Mr. BENNETT. Well, if they believe that it is an invalid claim, the Forest Service or the Bureau of Land Management may commence adverse proceedings to test the claim's validity.

Senator MILLIKIN. Assuming that in the end it will be determined that he has a proper, valid location, in the meantime can they go in and take all the timber away and leave him nothing but a lawsuit?

Mr. BENNETT. Not without violating his legal rights, Senator.

Senator MILLIKIN. They would not do that at the present time, would they?

Mr. BENNETT. Not intentionally, I am sure.

Senator MILLIKIN. But could they do it intentionally under this act and leave him a lawsuit?

Mr. BENNETT. No. To the extent timber was cut to which he is entitled it would be a violation of legal right in exactly the same sense that it is under the present law.

Senator MILLIKIN. What is the difference between this law and the present law?

Mr. BENNETT. I could state quite a number of them, sir.

Senator MILLIKIN. I wish you would state them. I would like to have them stated.

Mr. BENNETT. To begin with, it takes certain common varieties of mineral materials, sand, stone, gravel, pumice, pumicite, cinders—but only the common varieties thereof—out of the mining laws completely. Mining claims could no longer be located with respect to those materials.

The second major effect of this legislation is to provide, as to future claims, that the Federal Government, while the claim is in an unpatented status, reserves the right to manage all of the surface resources to the extent that that management does not materially interfere with or endanger mining operations of the locator.

Further, it gives the authority to dispose of vegetative materials—that would include the forage and the timber on the claim—subject to the right of the mining operator to use such timber as is needed in his mining operations.

The third major effect of the legislation is to provide a proceeding under which the surface rights of existing claimants may be determined in what is expected to be a more expeditious manner than the present proceedings would provide, and it does that by the same quasi in rem proceeding which was provided in Public Law 585 of a year ago with respect to the competing rights of such persons as Mineral Leasing Act lessees and mining claimants.

Senator MILLIKIN. What about the location of townsites? I think there is lots of law on that. I think we have had cases involving the timber rights in connection with location of townsites.

Mr. BENNETT. I think that is so, sir, but I am not familiar with that.

I would say that you might have some conflicts involved here in which the homesite or townsite laws could be applicable to the surface rights reserved by the United States. But at all times any nonmining use of the surface of a mining claim would be subject to the requirement that it must not endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

Senator WATKINS. You are quoting now from the law?

Mr. BENNETT. Yes; from the bill, on page 5.

Senator MILLIKIN. I am reading now from the case annotations of section 26 of title 30 of the United States Code Annotated. It says:

Extending into townsite lots the extralateral right of a locator to follow a mineral vein which apexes on his location beyond his own surface sidelines beneath other lands does not exist in townsite lots which are held under non-mineral townsite patents even though original location of vein is outside townsite.

That is one case.

The use of phrase "parts of veins" in contract between mine owners by which first mine owner granted to second mineowner all veins and parts of veins having their apexes within certain boundaries under townsite lot did not disclose intent to alter statutory scheme which parties were attempting to follow ordinarily applicable to property outside townsite lots.

I don't know that that is necessarily applicable to what I am talking about. I am getting at the point how does the present system injure anyone, and what does this bill do to correct it.

Mr. BENNETT. I think Mr. Woosley's statement and Mr. Holbrook's statement this morning pointed out the objectives of the legislation. There are hundreds of thousands of mining claims on public lands. They are initiated—and properly so, in our judgment—on a unilateral basis. But there is no requirement whatsoever under present law to require a man who is through with a mining claim and gives it up to take any action to eliminate his mining location as a cloud on the use of that surface by other parties in future years.

This bill is not designed in any way—

Senator MALONE. At that point, any human being 21 years old can locate it and file on it, can he not?

Mr. BENNETT. That is quite right, sir. And it could be jumped. The claim could be jumped if the—

Senator MALONE. You said there was no way out.

Mr. BENNETT. If the assessment work is not performed.

Senator MALONE. Then your statement is not correct.

Mr. BENNETT. No: I am talking about other uses. In other words, I am not talking about mining uses; I am talking about uses for grazing purposes or perhaps timber management by the Forest Service, or some other type of use.

Senator MALONE. You already explained you have your way of doing that if you instituted the proceeding.

Mr. BENNETT. That is right. And I am coming to a description of the difference between the proceeding that is involved in this bill and the proceeding which must be followed at the present time.

Now the land managing agencies, the Bureau of Land Management and the Forest Service, find that there are claims on the record which may be 50, 60, or 70 years old. Under those circumstances the areas embodied within those mining claims are in a status where the land managing agency or any other user of that area is taking a risk if he attempts to make any use of the surface of those areas. There is no way to determine whether those claims are active or whether they have been abandoned. And this procedure, which is set up on S. 1713, is designed to expedite the determination of those claims which are valid and those which are not for the purpose of surface rights only.

This procedure does not affect any mining claimant's rights to use the mining claim for mining purposes.

Even if this procedure is completed from the first step to the end the locator does not lose his mineral rights in any sense, or his right to use such of the surface as he may need for mining purposes. There is no effort in this legislation to reach that conclusion. This is merely designed to supplement the existing laws with respect to surface resources.

Now the purpose here is to deal with this kind of a situation: The better line of authorities in connection with mining law indicates that the mining claimant has a right of exclusive possession, but that his rights to use the surface are limited to those rights needed to carry on his mining operations.

So he, in effect, has a negative right other than his mining rights, a right to keep the United States or any other person from making any other use of the surface of the mining claim.

That is the problem that we are attempting to reach here. We are not proposing the establishment of any arbitrary statute of limitations. We are not requiring the recordation of mining claims or any of the other features which the mining industry has found so objectionable in legislative proposals that have come before this committee in previous years. And I can say without hesitation that our Department last year vigorously opposed proposals that were made for such recordation.

We are trying here, though, to solve the surface rights problem without disturbing in any way the mineral rights of a mining claimant.

Now what is wrong with the present procedure? The procedure, in the first place, has as its only statutory authority several very general statutes which merely say that the Secretary of the Interior may issue such regulations as he sees fit for the proper management of the public lands. There is no statutory procedure today defining exactly what kind of notice and hearing a mining claimant needs before the Secretary of the Interior can declare that his mining claim is invalid.

The regulations which are in effect today have been sustained by the Supreme Court in the Cameron case, which appears on 252 U. S. reports. But there is no assurance, I would like to point out in the beginning, under present law that some future Secretary of the Interior won't take away some of those notice-and-hearing requirements. Here the committee has before it proposed legislation which, in order to reach the surface rights problem, spells out a statutory procedure designed to give the mining claimant a full and adequate protection.

Senator MILLIKIN. Let us assume that I have made a claimed location, that I have a bona fide mining purpose. What can happen to me that might set up interferences as a result of this legislation?

Mr. BENNETT. You might have controversy. You would have it today, too, over the extent to which he is using the surface for a summer homesite, or perhaps you may have questions, which I know are involved in litigation today, between grazing permittees and the mining locator as to the kind of use he is making of the surface of the land. You have a number of controversies of that kind today.

Now this legislation is designed to make it clear that the surface is subject to other uses besides mining uses. In that respect those



mining claimants who locate claims in the future would understand from the beginning that the surface of the claim is still subject to their use so long as they are using it for mining purposes. But, to the extent they do not need it for mining purposes, it may be used for other purposes.

Senator MILLIKIN. What other purposes? I am trying to measure the number of conflicts or possible conflicts that could occur between a valid mining locator and grazing and fishing and other things that might be set up. What are the different uses that the mining locator might interfere with?

Mr. BENNETT. I think Mr. Woosley, as Land Manager, would be in a better position to give you a broad picture of the number of uses that would conflict than I am.

Of course, the grazing use, as you mentioned, is definitely one. Another is timber.

Senator ANDERSON. Mr. McArdle, Chief of the Forest Service, is going to testify next.

Mr. BENNETT. Thirdly, you have recreational uses, fishing, for example. At the present time it would appear that the law would permit a mining locator to prevent a fisherman from coming on the surface of the mining claim for the purpose of fishing.

Senator MILLIKIN. What restrictions on the new rights would there be to assure the orderly development of the mining claim.

Mr. BENNETT. The bill itself has provisions which were designed specifically for that purpose.

The proviso which appears in Subsection 4 (b) reads as follows:

*Provided, however,* That any use of the surface of such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations, or uses reasonably incident thereto.

Senator MILLIKIN. Why is this not limited to forestry lands?

Mr. BENNETT. Because the conflicts with which this bill deals are conflicts which go beyond the timber field alone.

Mr. Woosley here could describe the very active conflicts that are occurring today in certain States of the West between grazing uses and mining uses.

The grazing lands, as you know, are largely under the jurisdiction of the Bureau of Land Management, and have nothing at all to do with the Forest Service. The Forest Service has grazing lands also, but the Bureau of Land Management is really the agency that is chiefly concerned with grazing conflicts.

Senator MILLIKIN. It has been suggested to me that under the Tort Claims Act administrative settlement is confined to those claims not exceeding \$1,000.

Mr. BENNETT. That would mean a court action would be necessary if it were over that.

Senator MILLIKIN. If it is over \$1,000 you have to have a court action?

Mr. BENNETT. Yes, that is correct. That is part of the provisions of the Tort Claims Act.

Senator MILLIKIN. And suit in a Federal court would be the only recourse then?

Mr. BENNETT. I would say so.

Senator MILLIKIN. Under this present bill.

Mr. BENNETT. That is correct.

Mr. WOOLEY. Two uses that have not been mentioned are watershed protection and erosion control.

Senator MALONE. What were those two?

Mr. WOOLEY. Erosion control in the Southwest and watershed protection.

Senator MILLIKIN. How could those interfere with the rights of the locator?

Mr. WOOLEY. Under present uses, I feel very definitely that some people are taking advantage of using the surface rights for purposes not incident actually to mining.

Senator MILLIKIN. Give me examples.

Mr. WOOLEY. I think your bulldozer examples out in New Mexico and probably in Arizona and Colorado and Wyoming, in the exploration for uranium, is one very good example.

Senator MILLIKIN. What are they doing?

Mr. WOOLEY. They are stripping the land in certain areas much more than is necessary for their actual mining operations, destroying the topsoil and allowing the wind to blow the land around.

Senator ANDERSON. Is it not true, Mr. Woolley, that they get a claim without regard to whether they know what is in there now? Of course, they couldn't know. But even without a good Geiger counter showing they will take a bulldozer and keep running it down to see whether the Geiger counter can reveal something.

Mr. WOOLEY. That is right.

Senator ANDERSON. You can go out today and get money for any kind of uranium mining by the sale of stock. We are having an epidemic of bad erosion practices by taking the bulldozers and just promiscuously running them across the landscape.

Senator MALONE. Do you mean, Mr. Woolley, that there is a great percentage of the area of these lands that is being bulldozed in that connection?

Mr. WOOLEY. There is sufficient, Senator, when you dig a hole on each claim or use a bulldozer on each claim, that it is setting up a terrific erosion problem. The Federal Government and the people using the range are spending money to build and vegetate these ranges, and, on the other hand, they are being abused.

Senator MALONE. Would you stop all this?

Mr. WOOLEY. We would have a much better chance of stopping that under this act than under the existing laws.

Senator MALONE. I ask you, Would you attempt to stop it? Do you want to stop it?

Mr. WOOLEY. We would stop the uses which are not necessary to exploration.

Senator MALONE. Who would judge what is necessary? You, as range supervisor?

Mr. WOOLEY. I think most of the States set up the guide lines under the State laws as to what is necessary for a discovery or exploration for discovery.

Senator MALONE. That would be a good deal like putting an engineer in charge of a hospital, would it not?

Mr. WOOLEY. I don't know what police powers the States are using in that regard.

Senator MALONE. I am talking about you.

Mr. WOOLEY. No. I think that if we could actually, Senator, under the terms of this bill, require those people who might have filed to come in and prove that they need the surface rights in operation of their mining, that plenty of these abuses could be stopped.

Senator MALONE. Do you want to put them through the trouble of coming into Washington and making application in the local government land office and proving to this man that they are likely to find mineral there before they start doing any location?

Mr. WOOLEY. No, sir. I don't think the minerals part of it comes in in the first instance. We are only interested in the protection of the surface rights. And the mineral rights do not come into a town unless the person comes in and wants to hold the full surface rights. Then they hold a contest.

Senator MALONE. What is he using the bulldozer for? Is it not to find out what is underneath?

Mr. WOOLEY. That is very questionable. It is just to do his assessment work, his necessary work. I do not think it is doing anything to determine what minerals are there, Senator.

Senator MALONE. Are you not then amending the wrong law?

Mr. WOOLEY. No. I think this law would do that.

Senator MALONE. Maybe you had better get at it and figure out what kind of assessment work he ought to do, if you know.

Mr. WOOLEY. I think the assessment work requirement is pretty well spelled out. It has to do with mining operations.

But we, as a management agency, have very little to do with the surface of the mining claim while it is under location under present law.

Senator MALONE. I do not want to divert from this.

Had you finished, Senator?

Senator MILLIKIN. You go right ahead.

Senator MALONE. You go ahead. I was very much interested in your questions.

Senator BARRETT. Would the Senator yield to me at that point?

I would like to get a little clarification of the statement that Mr. Wooley just made.

I do not interpret the bill that if it is enacted the Secretary of the Interior can call upon these mining claimants to come in and show what need they have for the surface. As I understand this bill—correct me if I am wrong—the only thing you can do is to serve a notice on them and make them come in and show cause and show that they are entitled to not only the mining claim but to the surface as well. And if they are not entitled to the surface, then they can keep the mining claim, they can go on with their mining, but they lose the right to the exclusive use of the surface.

Am I correct?

Mr. BENNETT. That is correct, sir.

Senator BARRETT. He doesn't make a showing about how much of the surface they need.

Mr. BENNETT. If the locator wishes to claim exclusive surface control all he needs to do is show that he has an existing valid claim under the laws as they were prior to the enactment of this bill. If he does that, he then has every right preserved to him which he has under the law today.

Senator BARRETT. And if he does not do anything he does not lose the right to minerals under that claim. He can still go ahead and do that, but he doesn't have the exclusive right to the surface.

Mr. BENNETT. That is correct. That is all he would lose by failure to come in.

Senator BARRETT. He does not have to make any showing about the use that he is making or intends to make of the surface?

Mr. BENNETT. That would be immaterial to the proceeding. The mining locator would not be required to make any such showing. All he would have to do is to show that prior to the date of enactment of this bill he had located a valid claim and that it was valid at the time.

Senator BARRETT. And that it is valid at the present time?

Mr. BENNETT. Yes.

Senator BARRETT. In that way he would have to show that he had made a legal discovery and that he had done the assessment work required.

Mr. BENNETT. He would not have to make a showing on the assessment work unless some third party had come into it as a protesting party and claiming adverse interest.

Senator BARRETT. There is no question raised in these proceedings as to the mining claim itself.

Mr. BENNETT. If by that you mean the right to the minerals and the right to use the surface as needed for the recovery of minerals, that is correct.

Senator BARRETT. There is nothing as against the minerals being undertaken; it is only against the surface.

Mr. BENNETT. That is correct.

Senator MILLIKIN. I still do not understand the purpose of the bulldozers. Why do they do this bulldozing?

Senator BARRETT. Let me explain it. I think I know something about it from a practical standpoint.

It is a very dangerous situation. It is happening out in Wyoming at the present time. They hire people to prove up or to do the amount of work necessary in order to make a showing for a discovery, and they get these bulldozers and start out on maybe a 20-mile hike across the country. They will skip the fee lands, deeded lands. But when they come onto a piece of land where the Government owns the minerals they will drop down and dig a hole. They will go along a short ways and drop down again and dig another hole. And they go on through the whole country. They are digging them all over creation.

Senator ANDERSON. Is it not true that the ranchers out there are pretty anxious about this?

Senator BARRETT. Very much so, because these open pits are very dangerous for livestock. They are dangerous for humans. A man driving along there after a snowfall with a horse could drop down in one of those holes, and it would throw him over.

Senator MALONE. If you dug it with a No. 2 shovel it would still be there, would it not?

Senator BARRETT. That is right. But I am trying to explain to Senator Millikin how they are doing it on a wholesale basis out there at the present time.

I do not want to get into any argument with these mining people because I am in favor of maintaining the mining law. And this bill maintains the mining law. I think I know something about this mining law because I have had some experience before the Leasing Act up in our country on this thing. I do not think there is a valid discovery in the whole State of Wyoming. If there is, there are so few of them you can count them on the fingers of your hands.

They are making these holes every 500 feet or 1,000 feet, whatever it is.

Senator MILLIKIN. Do they did those holes to find mineral or to exploit a discovery that has already been made?

Senator BARRETT. They dig those holes to establish a discovery. When they get through they come in and file a statement that they have discovered uranium on every one of them. Not 1 out of 10,000 of them will have a discovery of uranium.

Senator MALONE. Is it not also the assessment work?

Senator BARRETT. Not at the present time. But they could do it later on.

Senator MALONE. I think they do a lot of assessment work.

Senator BARRETT. Our country is new as far as this uranium business is concerned, and at the present time it is all based on discovery. The assessment work comes a year later. Isn't that right?

Mr. BENNETT. Well, Mr. Woozley, I think, is better qualified to answer that factual question. But I have understood that many of the complaints from the grazing people in particular have been in cases where the bulldozing work was done as a simple way of getting the assessment work accomplished. There was no particular reason to believe that they had not discovered it because they had done that, but it was to make a showing of discovery work, as Senator Malone indicated.

Senator MALONE. Let's take this discovery work. You have to do \$100 worth of work.

If you use a bulldozer that costs you \$100 a day, for 1 day, or use a man with a No. 2 shovel, who costs you \$10 a day, and he works 10 days, what is the difference? There may be a little difference in the way the dirt is moved. But it is not the amount of dirt you move; it is the amount it costs to move it, is it not?

Mr. BENNETT. Mr. Woozley would be able to answer that.

Senator MALONE. You are in the Department of the Interior.

Mr. BENNETT. I suppose you could dig a hole with a No. shovel, and it might look the same as it would with a bulldozer.

Senator MALONE. You could not.

Let's get down to bedrock. Where were you raised? Where are you from?

Mr. BENNETT. I am from Colorado.

Senator MALONE. Have you ever been in the mining business?

Mr. BENNETT. No.

Senator MALONE. Let me tell you something about it then.

It is a hundred dollars worth of work.

Mr. BENNETT. That is right.

Senator MALONE. In the logical way of doing mining work, if you put a couple of men out there to move a hundred dollars worth of dirt, if you have paid them a hundred dollars and they have worked steadily,

you can prove up that you have done your assessment work. If you take a bulldozer in there and it costs you a hundred dollars for 2 hours' work or a day, or whatever it is, and you prove you paid a hundred dollars and they actually worked, you can go in and file on your assessment work. Is that not about true?

Mr. BENNETT. That is right, sir.

It could be that there would be no more damage, from the point of view of the surface, from a bulldozer than there would be from a No. 2 shovel.

Senator MALONE. This is the first time that a miner has ever been attacked because someone wanted to use the range. In our State I have never heard a range man complain about assessment work.

Senator BARRETT. Let me tell you something here.

This is an entirely different situation than has ever prevailed before in the history of our country when, instead of having relatively few of these claims, we have got hundreds of thousands of them.

Senator MALONE. I can see your problem.

Then aren't we attacking it in the wrong way? If they think they are disturbing the range and they are doing too much of this work, it is not done in the right way, they have a way which was explained this morning by the witness of an interdepartmental setup to determine what they are doing, whether it is the legitimate way of doing it or not, and whether it is a legitimate location.

Now I certainly would never be in favor of trying to preserve the range as against a miner. That is to say, if it came to keeping them off the location of a mining claim because you need it for grazing. You might regulate how they are doing it.

Senator BARRETT. Don't misunderstand me. I was not raising any objection about doing this discovery work or assessment work, as far as this is concerned, or using the bulldozers.

I am merely trying to explain to Senator Millikin how it has worked out in practice. But I do think that the time has come when we have got to make some arrangements with reference to the multiple use of that surface. The people who have been there for the last 75 years have got some rights, too. They have got the right to use this land for harvesting the grass crop and so on.

Senator MALONE. I think there may be some way of getting at that.

I would like to know from one of you experts how you are going to know how much timber you are going to need for your mining operation until you know how extensive it is going to be. If you do know that there are hundreds of these locations made, in maybe 1 out of a hundred of them somebody will put in a couple of hundred thousand dollars to go ahead, or 10 thousand dollars to go ahead and dig a little while on it. They cannot tell whether they are going to need any timber or not until they find the character of the ground, how deep they are going to be, whether it will be a tunnel or whether it will be a shaft or whether it will be an open cut.

From your testimony, a man could work along there 2 or 3 years not knowing how much timber he is going to use. And maybe there's plenty of timber there for everybody. Maybe there are only 50 trees on it. But if he hits a mine finally—and one out of a hundred might turn into a mine—he might need a good deal of timber. But he cannot testify to that at the time until he has done his development work

and drilling and cost studies and whatever there is and determined the ores there in place.

And in the meantime, as Senator Millikin asked you, some smart bureau people have sold the timber, or they have made some arrangement so that he has no right to it. Then he could go and sue Uncle Sam and make him buy him timber for the mines.

Is that your idea?

MR. BENNETT. I did not say that was my idea. I was asked to interpret what the effect of the bill was. And that is the way I described it, Senator.

Senator MALONE. In other words, there is no human being on earth who can tell how much you are going to need until after you keep digging and borrowing money from your friends, and finally you will meet some engineer or somebody that will recommend to the man he is working for to put some money in it.

I think that is a thing that is established. I think you will admit that. Do you understand that? Do you, Mr. Woозley?

MR. WOOLLEY. Yes, sir, I understand that.

Senator MALONE. I wanted the record clear. Now as to grazing——

Senator BARRETT. Do you yield before you get to the grazing?

Senator MALONE. All right.

Senator BARRETT. Let me ask you this question, if you don't mind:

Supposing I got out here on the forest and file my claim and there is a fine stand of timber, and I build myself a little summer home out there and go into the business of harvesting the timber crop and do not bother my head about any mining operation.

Senator MALONE. It has been testified this morning that there is plenty of interdepartmental procedure to get rid of that fellow.

Senator BARRETT. There are some of them doing it.

Senator MALONE. If they are they are not doing their work. They may need more money to do it.

Senator BARRETT. I don't know about that. I have had some experience at that 30 years ago, and it is a pretty cumbersome job to get rid of them under the existing law.

Senator MALONE. It is. But the department will have to get off its sofa chair.

Senator BARRETT. There will have to be more appropriated for the Interior Department than we appropriate today.

Senator MALONE. I will give it to them. They are not enforcing the law as it is now.

I want to go on to this range thing.

We still have people out in our country up there in the timber with a couple of horses or a couple of burrows who go in there and turn them loose on the mining claims, and they probably graze on other people's claims, too. If you rent this range, and it is that important, what arrangements do you make for the fellow to put his own stuff on it while he is working on it?

MR. WOOLLEY. That is not the problem, Senator.

Senator MALONE. It would be a problem when you started to work under this bill. It could be easily.

Senator ANDERSON. Did this bill change anything?

Senator MALONE. He can go in and rent all that grass, and the fellow he rents it to can make this fellow keep his stuff off of it.

**Mr. BENNETT.** I don't believe so, Senator, under subsection (c) of section 4.

**Senator ANDERSON.** I wish you would find that in the bill.

**Senator MALONE.** Read it.

**Mr. BENNETT.** Subsection (c) of section 4 reads as follows:

Except to the extent required for the mining claimant's prospecting, mining, or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claims hereafter located under the mining laws of the United States shall, prior to the issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b).

If he had livestock, in other words, that he was using as a reasonable incident to his mining operations, he would be entitled to use the grass, and he would not have to go to the Bureau to get a permit either. It would be a legal right given to him by this bill.

**Senator MALONE.** Have you had any complaints that these fellows have either grazed too much country that they have located, or rented it to somebody else?

**Mr. WOOLEY.** Yes; we have. But that has been tried in the courts.

**Senator MALONE.** What happened to it?

**Mr. WOOLEY.** We had one case in Idaho, and I think there was recently one in Colorado.

**Senator MALONE.** What happened?

**Senator ANDERSON.** May I read what happened in the Rizzinelli case?

The circuit court ruled that lands in a forest reserve embraced in the mining claim continued to constitute a part of the reserve, notwithstanding the mineral location subject to all the legal rights and privileges of the locator.

In this case, the so-called mining claimant put a saloon on his claim. That sort of thing is going on all the time under the mining law. Mining claimants put hot dog stands in the national forests. That sort of thing has been going on under the mining laws for years, and is getting worse.

**Senator MALONE.** Can they do that?

**Senator ANDERSON.** This bill will go a long way toward preventing such abuses.

How do provisions for such a purpose change the right of a man who is coming in to run a bona fide mining operation? He has a right to the timber, under the bill, for his mining needs. He has a right to that much timber under present law. You are proceeding on the theory that the Federal Government is going to go ahead and strip this land. That is not the way the Forest Service operates.

**Senator MALONE.** They can take care of all these cases under the present law just as they do this. That is all I was trying to say.

But they have to get out there. They can't wear out so many cushions. They don't see these fellows out there on these mining claims at all.

**Mr. WOOLEY.** In this statement we stated that we have a certain number of mining evaluation engineers. They are busy men. They are not sitting on plush seats. But under the present system it would require many more times the people than it would under this because you would have to examine every claim.



Senator MALONE. We established this morning that what it does is it puts the shoe on the other foot.

Now you have to go out and do the work, and if you pass this bill the mining boy is in the soup, and he has to get the engineer to go over it. That is what we are trying to prevent.

Mr. WOOLEY. We are thinking in partnerships. Should the responsibility be entirely on the Government?

Senator MALONE. No, sir. We have tried, and I think successfully during this 20 years—and I am sorry that now it is 22—to fight off legislation that makes it increasingly tougher for a man to do anything on a mining claim.

Now, 2 years ago, when I was chairman of the committee considering Senator Millikin's and the present Governor of Colorado, Senator Johnson's bill, we had no difficulty in coordinating anything that was necessary to coordinate, and we passed that bill because it was necessary. Now it is being used as a precedent to pass this one. And if they get this one it will be used as a precedent to pass something else.

There's nothing new in this at all. It is a question of enforcing what you have.

Senator ANDERSON. No; I would not agree with that at all.

Senator BARRETT. Would you yield to me, Senator?

Senator MALONE. Yes.

Senator BARRETT. Let me get this clear.

If you concede what Senator Malone is indicating here and bring these actions under existing law you attack the rights to the mines, to the minerals as well as to the surface. There is the distinction.

This will not affect the minerals in the land. The fellow has a right to extract those minerals.

Senator MALONE. I have watched this thing for 22 years. You don't repeal their right to do the other. So you are just giving them an additional shove so they get on there and cut the timber, and then they say to you "I don't see any valid location here," and they still have the right to shut them off.

Senator BARRETT. You can still use the surface for all the rights incidental to the prosecution of the mining claim.

Senator MALONE. What I am saying is—and I think we can argue this out in committee—nobody knows how much timber you are going to use on a mining claim. You might have had it 20 years, and you don't know if you are still working it. If you hit it you have got it and you want it.

Senator BARRETT. They will contend you are defeating your own purpose by insisting upon recourse to a proceeding here that will rule out your rights to mine.

Senator MALONE. They still have that.

Senator BARRETT. Yes; but they are not proposing to use it.

Senator MALONE. Not right now.

Senator BARRETT. They are proposing to use only the one concerning the surface alone.

Senator ANDERSON. I am hoping we might suggest this: we have got 10 witnesses here. I wonder if the Senators—

Senator MALONE. I would like to ask one or two of them a question.

Senator ANDERSON. Mr. McArdle is here from the Forestry Service.

Senator MALONE. Mr. Woozley and Mr. Bennett are here, and they are two experts. Their testimony looks good until you ask them some questions. And if I could just pursue it I won't take long.

Mr. Woozley, either one of you can answer to expedite it.

Right at the moment, if there is a location and you think it is doing damage, what is your recourse?

Mr. WOOLEY. We could file adverse proceedings and proceed to hearings and the usual appeals through the department.

Senator MALONE. Where do you file it? And who files it?

Mr. WOOLEY. It is filed by the Land Office manager.

Senator MALONE. It has to be filed by the Land Office manager? Or could it be filed by any Government department that has some responsibility to the land in question?

Mr. WOOLEY. I will have to ask the attorney that. I think it is filed by the manager.

Mr. BENNETT. Actually those proceedings may be requested by other departments, but the Interior Department is really the one that is responsible.

Senator MALONE. The local land office in the State in which it is to be filed has to initiate the proceedings?

Mr. BENNETT. That is right.

Senator MALONE. Where does he file it?

Mr. BENNETT. It is really in his own office. It is a matter of serving notice.

Senator MALONE. Serving notice on himself?

Mr. BENNETT. No. On the holder of the claim.

Senator MALONE. Then it can be done right there without any fanfare. We know where the office is located. If they think someone is doing a little damage he can just himself initiate the proceedings and not bother anybody. Is that right?

Mr. BENNETT. No. He has to give notice, serve notice.

Senator MALONE. Serve notice on the man that is doing the damage and doing it illegally in his opinion.

Mr. BENNETT. That is right.

Senator MALONE. What happens then?

Mr. BENNETT. This is all under regulation and not under statute, Senator. I would like to have Mr. Hoffman up here because he is familiar with the regulations from the first word to the last word.

Senator MALONE. Let him come up.

Mr. HOFFMAN. Senator, I was hoping I could avoid this shower.

Senator MALONE. You heard my question. We don't want to avoid anything.

How long have you been there?

Mr. HOFFMAN. I have been connected with mining work—

Senator MALONE. I am talking about the Bureau.

Mr. HOFFMAN. I started on August 1, 1913. That would be 42 years.

Senator MALONE. Continuously?

Mr. HOFFMAN. No, sir. I was out 12 or 13 years practicing law.

Senator MALONE. What class of work was that?

Mr. HOFFMAN. It was from 1920 to 1933.

Senator MALONE. Then you went back in?

Mr. HOFFMAN. Then I went back in.

Senator MALONE. I think you are fully capable.

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Mr. HOFFMAN. Then I went back in.

Senator MALONE. I think you are fully capable.

Let me ask you this question :

Let us just talk about my own State of Nevada. Under the present law, if there is someone down in a mineral county that is violating a law and a complaint comes in—and you have got 5 or 6 of these bureaus out there. As a matter of fact, how any range grows is a little beyond me because there are so many of them tramping over it.

But you get this complaint: you decide it is a correct complaint. Where do you file it, and who files it?

MR. HOFFMAN. I will have to lay aside the question for just a minute to present the background necessary for an understanding of my answer.

Senator MALONE. You will have to come back to it.

MR. HOFFMAN. Yes, I have to come back to the question.

There are two kinds of what we call adverse proceedings against a mining company, that is, the initiated step to test the validity or invalidity of a mining claim.

One is by private contest. Any individual can come in and contest the validity of a mining claim. And the second is by a Government agent. The Government agent usually contests a claim only when another agency wants to bring up the claim because it needs the surface, such as for establishing a bombing area.

Senator MALONE. It doesn't make any difference.

MR. HOFFMAN. It doesn't make any difference what the purpose is.

Senator MALONE. They get it anyway.

MR. HOFFMAN. To answer your specific question, our procedure is to send the mining engineer out on a claim before anything is done.

Senator MALONE. This is when some other department wants it for another purpose.

MR. HOFFMAN. Yes. Or when he applies for a patent, or if we start adverse proceedings, the first step is to send an expert, what we consider a qualified man——

Senator MALONE. I don't think you have got the question at all. Let's back up and start again. I know all about the condemnation proceedings. I know about the patent proceedings, having patented more land than a lot of you fellows have ever seen.

MR. HOFFMAN. Eighteen years as a mineral surveyor.

Senator MALONE. I want to ask you what if a man has what you consider a nonvalid location and is doing some damage that you do not think should be done. Or maybe he isn't, but his location is not valid in your opinion. What happens? How do you attack it? How do you go about it?

I know about the rest of it.

MR. HOFFMAN. We send him notice. We send the notice to the record owners of the mining claim as reflected in the county comptroller's office, preferring charges against the claimant. The usual charges are that the land is not mineral in character, or he hasn't pursued mining under the mining laws to a point of discovery, and possibly abandonment. Abandonment is rarely used because this is a hard one to prove.

We allow the mining claimant 30 days in which to answer such charge.

Senator MALONE. And he must answer.

Mr. HOFFMAN. He needn't, but his failure to answer is considered administratively an admission of the truth of the charges, whereupon we declare the claim null and void.

Senator MALONE. Then what do you do if he just stays there?

Mr. HOFFMAN. If he stays there?

After declaring the claim null and void he is a trespasser on public lands.

Senator MALONE. And you can remove him?

Mr. HOFFMAN. By proceedings.

Senator MALONE. Using the sheriff. That seems like a very direct procedure.

Mr. HOFFMAN. It is.

Senator MALONE. Do you follow that procedure?

Mr. HOFFMAN. We follow that as much as the congressional appropriation will permit us to do—and they are very meager.

Senator MALONE. Have you asked for additional appropriations to do that, for that specific purpose?

Mr. HOFFMAN. Yes, we have asked for additional appropriations. Congress has been very liberal with us at times, but not to the extent or in proportion to the number of miner claims that exist on the public domain.

Senator MALONE. All right, then. You have a definite remedy. The remedy is for your Land Office to file charges either that it is not mineral in character or he has not fulfilled his assessment work.

Mr. HOFFMAN. No, we can't file on that. The courts have held that it is none of our business about assessment work. It merely gives the right to an outsider, another individual, to jump his claim if he fails to do assessment work.

Senator MALONE. What can you do then? Can you only file on the reason that it is not mineral in character?

Mr. HOFFMAN. Not mineral in character, or he has failed to make a discovery or has abandoned the claim, he has not pursued it to discovery, charges along those lines.

As I say, the usual two common ones are that the land itself is not mineral in character, and that he has failed to make a discovery or to perform work leading to a discovery.

Senator MALONE. What is wrong with that procedure?

Mr. HOFFMAN. I find nothing wrong with it. I find not a thing wrong with it. And this law does not attempt to intimate that there is anything wrong with this procedure, this proposed act.

Senator MALONE. What does this law do then? What can you do on this mining claim the way it is? If you find he has proceeded in a proper manner and, in your judgment—and, of course, I would not trust the judgment of the Department as far as I could throw one of those baldfaced horses out there by the harness because I don't think they have ever discovered a mine, and they never will. The people that discover mines are people that keep digging where there isn't any ore. They are the kind of people that find the mines.

Mr. HOFFMAN. There is no question about that.

Senator MALONE. Those are the kind of people you want to throw off?

Mr. HOFFMAN. No, sir.

Senator MALONE. What can you do with a fellow that is out there digging away or who has done his assessment work and complied with

everything except, in the judgment of some bureau official, he has not discovered minerals?

Mr. HOFFMAN. You mean under the existing law?

Senator MALONE. Yes.

Mr. HOFFMAN. Let me say as a matter of policy—and let's talk about the present: Whatever complaints we may have had in the past, I like to speak about the people in charge now running the administration.

It has not been and it is not the practice, our policy, to go promiscuously throughout the public domain and charge mining locators with violations of the law. First of all, we don't have enough help to do it, and, secondly, we are not inclined to do it.

It is only when a certain use and an important use has a need of that particular land by another governmental agency that we are requested before they pay money out in buying up claims to determine their validity. And we often declare claims valid.

Senator MALONE. There is no question about the Government securing the claims. Every man at this table must have been through that. I have been through it 20 or 30 times.

Supposing we start building another reservoir on the Truckee River or the Carson River, which we hope to do, and there are claims for damages. You are called in, and you make an examination, and you evaluate that mine, that prospect.

Mr. HOFFMAN. Yes.

Senator MALONE. Then it goes to court, does it not, if it is a valid location?

Mr. HOFFMAN. Not necessarily.

Senator MALONE. Well, I know about that.

Mr. HOFFMAN. If you declare it valid—

Senator MALONE. I was trying to save time.

If you can get together with the fellow on the amount of money you pay him then and don't go to court.

Mr. HOFFMAN. That is right.

Senator MALONE. I am saying if he opposes you, however, you can go ahead and build the reservoir and take it into court, don't you?

Mr. HOFFMAN. Yes.

Senator MALONE. And he gets in damages what the court awards.

Mr. HOFFMAN. That is right.

Senator MALONE. Then there is no problem there, is there?

Mr. HOFFMAN. No, sir.

Senator MALONE. What I am trying to determine is where your problem is and what, in reality, you are trying to do.

I think some of you are very honest in this, but I think you are opening a gate that can be very dangerous to the mining people.

Mr. HOFFMAN. I appreciate that.

Perhaps you heard this morning, Senator Malone, what I think was a very explicit and able explanation of the purposes of the law and what it provides, by Mr. Holbrook. I don't want to be repetitious, to save time, but let me take a different angle.

We have had in the Congress in the 83d session certain legislation proposed both in the House and in the Senate which, from our point of view, would practically destroy the operation of the mines.

Senator MALONE. Do you think it has a chance to get by this committee?

Mr. HOFFMAN. I am trying to lead up to the reason for this bill.

Senator MALONE. We have got to take this or we are going to get something that will destroy them. Is that it?

Mr. HOFFMAN. You are anticipating, Senator. That is what I am leading up to.

Senator MALONE. I don't think you know anything about it.

It has got to get by this committee and I don't think it ever will.

Mr. HOFFMAN. Yes, but there are other problems.

Senator MALONE. Do you want me to tell these people up in my State that in order not to get something worse they take this?

Mr. HOFFMAN. It isn't exactly that. I wasn't trying to anticipate your—

Senator MALONE. As far as I am concerned, that is no argument.

Mr. HOFFMAN. All right, then, I will save my breath and won't make it.

Senator MILLIKIN. I think we should hear what the witness has to say.

Mr. HOFFMAN. We are faced with the problem of certain surface rights—

Senator MALONE. Now you are right back on the beam again.

Mr. HOFFMAN. I think Senator Malone would rather that I did not testify.

Senator ANDERSON. Senator Millikin and I would like to hear your statement on this. You say you are faced with certain surface rights—

Mr. HOFFMAN. Which are important both to governmental agencies and others. It was a problem that was almost unsolvable until we got together around the table with all interests.

You must give and you must take to reach a solution of the problem. So we came up—and when I say “we,” I mean the timber people, the American Forestry Association, representatives of the American Mining Congress, representatives of the Agriculture Department, and representatives of the Interior Department. We felt that there was almost no solution unless you actually abolished the mining law, on the one hand, or destroyed the right of the Government to its timber and forests, on the other.

So we took an example from what we had considered before of a conflict between two industries, the oil and gas industry and other leasable minerals industry and the mining industry, and after many, many discussions with Members of Congress we came up last year, after a 2-year study, with Public Law 585.

Senator MALONE. You say you came up with that?

Mr. HOFFMAN. I say the Government.

Senator MALONE. I don't think the Government did.

We had hearings with people all over the area out there. And, incidentally, we told some of you fellows.

Mr. HOFFMAN. Senator Malone, I just mentioned it was a cooperative effort by industry, the oil and gas industry and the American mining industry in cooperation with the Interior Department and with Members of the Congress who came up with some solution to resolve the conflict between oil and gas prospecting, on the one hand, and mining, on the other, on the same piece of land. And then when we were faced with the surface problem we looked for solutions. And



I might say that solution was suggested by the American Mining Congress representatives.

Senator MALONE. Suggested by the American Mining Congress?

Mr. HOFFMAN. Yes, sir; at the American Forestry Association meeting last year.

Senator MALONE. The American Forestry Association. What is that association?

Senator ANDERSON. The witness was going to testify.

Mr. HOFFMAN. My own poor vision of it from the little I know of it is that it represents the timber industry and the other products of forestry throughout the Nation. I may be wrong.

Senator MALONE. The American Mining Congress represents mining the same way?

Mr. HOFFMAN. The American Mining Congress represents the mining industry.

Senator MALONE. You think that is true?

Mr. HOFFMAN. I do. I have great respect for the American Mining Congress.

Senator MALONE. So do I.

Mr. HOFFMAN. I have attended many meetings where you were present.

Senator MALONE. So do I. But I don't think they represent all the mining industry, and I don't think the American Forestry Association represents all of forestry.

Mr. HOFFMAN. That is true of almost any industry. Take the petroleum industry.

Senator MALONE. I am very interested in your statement that the American Mining Congress came up with this bill.

Mr. HOFFMAN. No. I said the representatives of the American Mining Congress.

Senator MALONE. That is what I am talking about.

Mr. HOFFMAN. At this meeting at the American Forestry Association they proposed a similar solution which resolved the difference between the oil and gas and mining people as to the surface rights.

Senator MALONE. They proposed this bill. Is that what you are telling me?

Mr. HOFFMAN. No, sir.

That was the result of study by representatives of the American Mining Congress and—

Senator MALONE. That is what I am talking about. But they came up with this bill?

Mr. HOFFMAN. And other representatives; not themselves.

Senator MALONE. They proposed this solution?

Mr. HOFFMAN. Yes, sir.

Senator MALONE. Thank you.

Senator ANDERSON. I think that last is a very interesting statement because I know that our committee staff and several office assistants of the Senators sponsoring S. 1713 worked with these organizations to do the preliminary work of drafting this bill. Now I hear for the first time that it was proposed by the American Mining Congress. I wish you would check your recollection because I know that you are 100 percent wrong.

Senator MILLIKIN. Who sponsored this legislation?

Mr. HOFFMAN. I want to correct my statement, if I may.

When I was asked a specific question as to who suggested it I tried to answer with emphasis that it was a cooperative effort on the part of every segment of industry and every segment of Government concerned with both mining and surface rights to come to some solution. And when I say it was proposed I meant to—

Senator ANDERSON. I don't know how many hours you yourself spent on it, but I do know how many hours my office and Stewart French of the committee staff spent on it. I don't know how many hours Mr. Bennett spent on it. I have a great deal of respect for him and I seem to say so openly all the time. Also people in the Forest Service, with whom I have associated when I was the Secretary of Agriculture, and people all through the Government worked on it.

Naturally, you consult experts on activities affected, because if you are going to get a compromise solution of something that is causing a great deal of trouble you have to look to all points of view. If people do not think the problem is a very serious one, I hope they go with Senator Barrett and Senator O'Mahoney, who are going to hold some hearings in Wyoming soon to try to decide about the situation in Pumpkin-Buttes. There the range is being torn up by thousands of uranium prospectors who have neither knowledge of prospecting nor uranium, but who are primarily interested in selling mining stock.

Senator MALONE. I think we made a mistake to let them go in on gas leases.

Senator ANDERSON. I don't think you did. I think it was good legislation. I think it proved that it was good legislation. It proved that multiple purposes would work. Here we come with another bill to provide for multiple purposes on the use of these areas and—

Senator BARRETT. As a matter of fact, Mr. Chairman, it has just worked the opposite in our State. They opened up all the lands that were under oil and gas leases to the mining people. That is where the trouble has arisen today. Upward of a couple of hundred thousand acres that were under oil and gas leases were opened to mining claims by reason of 585.

Senator MALONE. This is something that we could discuss in committee, but it seems to me that we could tighten the work and the information that is necessary for these fellows to file on these claims. We could make it a little easier for these people to check. That is, when you go on a mining claim in Nevada or Colorado or New Mexico, I would not take away his rights and let some bureau official who doesn't know a mine from a bale of hay anyway go in there and say "Well, this isn't necessary for this mine." He is only using two men. Maybe in 6 months he will have 500.

But tighten the work and the assessment work. Maybe increase the assessment work; I don't know.

Senator ANDERSON. I think anybody who has opened up a mine—and it has been my unfortunate experience to try a little bit of it—knows that you have to have timber for it. You know what you are going to have to do when you start out. I would a whole lot rather that the timber was being managed by the Forest Service than being logged off by an individual who had a claim for sand and gravel and proceeded to sell all the timber off the land.

Senator MALONE. We could discuss that.

Senator ANDERSON. I would like to say that there are 2 or 3 witnesses here from out of town to whom I am very anxious to give a chance to testify.

Senator MALONE. The witness this morning, Mr. Holbrook, made it very clear to me, and I think the record should be clear that what you are doing is changing it around. Now the department has to initiate the proceedings to get him off that claim whereas if you pass a bill like this it puts the shoe on the other foot. The people can go in and do anything they want to do if he does not come in and make his showing. The kind of people that I see who discover mines do not have the money to go in and make a showing on anything.

Senator ANDERSON. Then I don't understand why so many people who are real mine operators have written in in support of S. 1713. They say it is a wonderful thing for them.

Senator MALONE. I haven't gotten any letters from them. I have some letters that would be very interesting when the time comes. But there is a little bit of this pressure on.

Senator ANDERSON. I don't know anything about pressure.

Would it be agreeable, Senator Malone, to let Mr. Hagenstein testify and 1 or 2 others from out of town so that they can get on their way? Then we can call Mr. Hoffman at any time, and also Mr. Wozzley.

Mr. Hagenstein, would you come up, please.

I apologize to you.

Senator MALONE. I would like to say at this point, Mr. Chairman, that I think this is a bill that should have hearings set in at least 3 or 4 different locations in the real mining areas to let the boys have their say.

Senator ANDERSON. It may be that such field hearings will be necessary. You will find when the time comes I am not going to be opposed to the fullest possible hearing.

You may proceed, Mr. Hagenstein.

#### **STATEMENT OF W. D. HAGENSTEIN, MANAGING DIRECTOR, INDUSTRIAL FORESTRY ASSOCIATION, PORTLAND, OREG.**

Mr. HAGENSTEIN. I am W. D. Hagenstein, managing director, Industrial Forestry Association, Portland, Oreg.

The Industrial Forestry Association represents the owners of more than 7 million acres of forests in the Douglas fir region of western Washington and western Oregon. Our members are in the business of producing logs and manufacturing lumber, pulp and paper, plywood, shingles, and other important wood products. In addition to managing their own forests for permanent operation of their industries, our members buy some timber from national forests and other Government lands. Therefore, we are interested in seeing Government forests managed under the best possible forestry. This means, first of all, the offering for sale each year of their allowable harvest under the principles of sustained yield.

At the same time we recognize that the Government forests are capable of supplying our economy with other resources besides timber. In accordance with the act of June 4, 1897, reference the national forests, we agree heartily with the Congress when it said then that the purpose of the national forests, among other things, was "to furnish a

continuous supply of timber for the use and necessities of the citizens of the United States."

Actually, the national forests have contributed all too little of their share of America's wood products as yet. This has been due principally to the lack of adequate timber access roads. Congress has reduced this problem substantially, however, in the last 2 years by appropriating for the first time funds for timber access roads somewhat commensurate with the needs.

I would like to present a tabulation which compares the estimated allowable annual harvest under sustained yield forestry with the actual annual harvest for the period 1945-54 in the Douglas fir region of western Oregon and western Washington.

With your permission, I would like to make that table a part of my statement.

Senator ANDERSON. It will be inserted in the record.

(The table referred to follows:)

*Annual log harvest and annual allowable harvest for national forests in Douglas fir region of western Washington and Oregon<sup>1</sup>*

[M board feet, log scale]

Calendar year	Annual log harvest	Annual allowable harvest	Percent harvested of allowable harvest
1945.....	744, 500	1, 635, 500	46
1946.....	721, 300	1, 634, 400	44
1947.....	1, 111, 900	1, 706, 700	65
1948.....	1, 157, 500	1, 756, 200	66
1949.....	949, 600	1, 753, 200	54
1950.....	1, 229, 900	1, 757, 300	70
1951.....	1, 345, 800	1, 784, 300	75
1952.....	1, 487, 600	1, 980, 700	75
1953.....	1, 857, 800	2, 063, 300	90
1954.....	1, 965, 800	2, 231, 800	88
Total.....	12, 571, 700	18, 303, 400	
Annual average, 1945-54.....	1, 257, 200	1, 830, 300	69

<sup>1</sup> Source: Regional Office, U. S. Forest Service, Portland, Oreg., May 10, 1955.

Mr. HAGENSTEIN. This tabulation shows that the national forests in our area have harvested only 69 percent of what they should have in the last 10 years. Besides, inadequate timber access roads, one other thing has also acted increasingly in the last several years as a road-block to attaining the allowable harvest. That is the location of mining claims for other than their intended purposes. By that I mean that mining claims have been located in many areas of the national forests on discoveries of sand, gravel, rock, pumice, and similar materials. Some claimants have denied the Government access across their claims. This has prevented the Government from building roads to its timber. Other claimants have denied the Government the right to sell timber. This makes it difficult, if not impossible, in many areas for the Government to practice forestry.

To the extent the Government cannot practice forestry because of mining claims, or any other reason, the economy of the public-land States is adversely affected. When Government timber is not harvested to the maximum allowable each year everybody loses. Workers who depend on the forest industries for jobs lose employment. County governments lose their share of timber receipts to which they are en-

titled by law. Local merchants who depend on basic forest industry payrolls lose business. Transcontinental railroads and water carriers lose freight. Consumers of forest products everywhere lose by paying higher prices because of diminished current supplies. Lastly, and by no means the least important, the Treasury of the United States loses its timber receipts.

Our purpose in appearing before you today is to support enactment of S. 1713 which would provide multiple use of the surface of the Federal lands except national parks, national monuments, and lands set aside for or managed by the Government in behalf of the Indians.

The proposed bill is designed to protect the intent of the mining laws. It would eliminate the filing of claims for common structurals like sand, gravel, and pumice, and make them subject to disposal under the Materials Disposal Act. It would prohibit the use of mining claims for other than the usual mining activities. It would safeguard the right of the Government to discharge its obligation to manage its timber and other surface resources without interfering with mineral development and operation. It would guarantee access to Federal lands.

In short, the principles embodied in the bill would safeguard all elements of our economy which can utilize under good business management the resources of the Government lands. The bill would neither discourage the quest for minerals by denying the fruits of discovery to the prospector, nor allow spurious claims to deny the Government the right to have access across and management of the surface resources. Certainly this is an equitable arrangement for all interested parties including the consumer for whom the Government properties should be managed.

Because the similar problem of separation of the surface from the subsurface was solved by the enactment of the Ellsworth law, Public Law 477, 80th Congress, which covered the Oregon & California Railroad and reconveyed Coos Bay Wagon Road grant lands in western Oregon, we respectfully suggest to the committee that following the words "United States" in line 2, page 2, of S. 1713, the words "including for the purposes of this act, lands described in the act of August 28, 1937 (50 Stat. 874) and the act of June 24, 1954 (68 Stat. 270)," be added to the bill.

Senator MALONE. What would that do?

Mr. HAGENSTEIN. Senator Malone, the act of August 28, 1937, is the act under which the O. & C. lands are managed, and the act of June 24, 1954, is the one which solved the controverted land problem of which this committee has heard so much.

Senator MALONE. How are they managed, these O. & C. lands?

Mr. HAGENSTEIN. The O. & C. lands are managed by the Bureau of Land Management of the Department of the Interior.

Senator MALONE. Would you want those excepted?

Senator ANDERSON. You have recommended what the Department of the Interior also recommended; have you not?

Mr. HAGENSTEIN. Yes; I have.

Senator MALONE. Do we except those lands from this act?

Mr. HAGENSTEIN. No.

My suggestion is that, for the purpose of this act lands described in the O. & C. Act should be made subject to the provisions of this bill.

Senator MALONE. Go ahead.

Mr. HAGENSTEIN. Thank you.

Also we suggest that following the word "made" in line 22, page 3, of S. 1713 the words, "and except that revenues from the lands described in the act of August 28, 1937 (50 Stat. 874) and the act of June 24, 1954 (68 Stat. 270) shall be disposed of in accordance with the provisions of said acts," be added to the bill.

That is with reference to the same two acts that I referred to before.

These suggestions would have the practical effect of covering all Federal lands subject to mining location in accordance with the basic statutes covering their administration.

To demonstrate the necessity for enactment of the proposed bill, I would like to cite several instances where unpatented mining claims have prevented the Government from practicing forestry on the national forests in our region. The basic details are cited briefly. The full story is available from the United States Forest Service which furnished these cases on my request.

Case No. 1: The Tolt working circle of the Snoqualmie National Forest in western Washington contains more than a half billion feet of currently merchantable timber. The estimated annual allowable harvest is 6.1 million board feet. Because the working circle is literally plastered by unpatented mining claims, no Government timber whatsoever is being harvested at the present time. This means that 6 million board feet is being lost forever each year, because allowable harvest cannot be hoarded. If the Government is to practice forestry it must remove its allowable harvest each year.

Six million feet does not sound like a lot of timber, but at present prices it is worth \$120,000 where it stands on the stump in the woods.

Senator MALONE. Are these lands in the forest reserve?

Mr. HAGENSTEIN. Yes, sir; they are national forest lands of the Snoqualmie National Forest.

It means a logging and manufacturing payroll of \$200,000. It means a half million dollars worth of lumber at mill prices. It means 690 new homes. It means \$30,000 per year to King County, Wash., for roads and schools. It means \$90,000 to the United States Treasury. All this is lost to our economy when the Government is prevented from practicing forestry in this small area of one national forest.

The Forest Service has repeatedly sought permission from the mining claimants in this area to build roads and to sell timber standing on the claims. For the most part, permission has been refused. So the forest stands unharvested and unmanaged.

Senator ANDERSON. Does timber get overripe and spoil?

Mr. HAGENSTEIN. Indeed it does. And the area I am talking about is occupied by that kind of timber.

Senator ANDERSON. I have flown over a great deal of that timber way down low in a small plane and have seen evidences how at the very top you can tell it is going to waste by not being harvested. It reaches maturity and needs to be harvested then, does it not?

Mr. HAGENSTEIN. That is right.

Senator MALONE. Did I understand you to say the Government cannot build any roads through this area?

Mr. HAGENSTEIN. No, because the mining claimants would deny them access across the claims.

Senator MALONE. Did you ever hear of condemnation proceedings if you want to build a road?

Mr. HAGENSTEIN. Yes. Of course, the Government could, if it wanted to, do that. You understand, of course, that many of the roads built in connection with national forest timber sales were built by the successful bidder for the timber as a part of the contract. He would have the same right, I presume, of condemnation.

But when you are selling timber in relatively small quantities—in our part of the country at the present time the average for these forest timber sales is 4 or 5 million board feet—don't you make it difficult if you require the timber sale purchaser to go to the trouble of condemnation in order to get rights-of-way across mining land?

Senator MALONE. I am not making a point of it. I wanted to establish that that could be done.

Couldn't the Government do it or establish it right before they sell it? You know when you condemn a thing you do not wait until the thing is settled. You go ahead and build your road. And then on examination or court evidence, if it has not a value, you don't pay for it, or very little.

Mr. HAGENSTEIN. You are getting into a field of law, Senator Malone, and I, like you, am an engineer and forester. I am not competent to discuss that.

Senator MALONE. You do not have to go very far in the law to know that the Government condemns anything and goes into court and pays the court value afterwards.

Senator ANDERSON. Yes, but a logging trail through a national forest by condemnation proceeding would be a weird operation because they don't go in the same way.

Senator MALONE. We can discuss this in committee, but I wanted to ask this witness if he was familiar with the fact that that can be done. It might be a way of bringing it out that these fellows have no mineral if they haven't.

That could be done, could it not, to bring it out that they have no mineral, if what you say is true?

Mr. HAGENSTEIN. I presume we could, Senator.

I was going to agree with the chairman that it is a cumbersome procedure.

Senator MALONE. I want the facts brought out.

Mr. HAGENSTEIN. I want to give them to you.

Senator MALONE. I know you do and I want to bring this out. The fact that it can be done through an intergovernment operation; in other words, you must have a Bureau of Land Management office in Oregon?

Mr. HAGENSTEIN. Yes, we do have.

Senator MALONE. They can initiate these proceedings on your own complaint or their own complaint, anything they want to do, can they not?

You heard this testimony a while ago?

Mr. HAGENSTEIN. I presume they can.

Senator MALONE. Have they ever done that?

Mr. HAGENSTEIN. Not to my personal knowledge.

Senator MALONE. Go ahead.

Senator BARRETT. Mr. Chairman, that is precisely the question I have in mind. I want to know what proceedings could be instituted

under existing regulations to take care of case number one that the witness just testified to.

Are you prepared to answer?

Mr. HAGENSTEIN. No, sir.

Senator BARRETT. Is there anybody here that can answer?

There is not anything they can do, in my judgment.

Senator ANDERSON. Mr. Hoffman?

Mr. HOFFMAN. I do not think we can do anything under existing law unless we attack the validity of the mining claims.

Senator ANDERSON. We are trying to keep away from attacking the miners' claims.

Senator BARRETT. The complaint is that there is nothing being done, it is standing there rotting.

Mr. HOFFMAN. The only way we can do is to have the forest management people challenge the claim and if they are valid, there is nothing we can do.

Senator MALONE. There is a blanket statement made that they are not valid. If no one has examined them, how do you know?

Senator ANDERSON. I do not believe there is a statement made that they are not valid.

Mr. HAGENSTEIN. I did not say that, Senator Malone. I said in response to the Forest Service and, mind you, these are all patented claims for permission to build roads either with Federal money or as a part of the timber sale contract across these claims to the forest timber that, in most cases, they have been denied permission to do it.

Senator BARRETT. It is a clear situation; we have to have this bill we are discussing here today.

Senator ANDERSON. The Government cannot go in to condemn its own property. The Government owns the property. The man has not yet reduced the claim to a patent, and yet he is in a position under the mining law, the present mining law, able to keep the Government from binding an access road to its own timber.

Senator MALONE. That I would like to see demonstrated.

Senator ANDERSON. It has been demonstrated.

Senator MALONE. We cannot go in and condemn the land and pay his own price.

Senator ANDERSON. Precisely.

Mr. HAGENSTEIN. I have a folder full of cases like that.

Senator MALONE. Did you ever try to go to court with it?

Mr. HAGENSTEIN. I cannot say that they have, but I think the chairman has made a good point.

Senator MALONE. I wish you would unburden your briefcase and give us a case where they tried to build a road and were prevented.

Mr. HAGENSTEIN. In response to Senator Malone's request, I would be glad to do that if I can have permission to finish my statement, which is very short.

Senator LONG. Go ahead.

Mr. HAGENSTEIN. On October 8, 1953, the Willamette National Forest in western Oregon sent out a notice of proposed timber sale to prospective bidders covering a sale designated "Deer Creek Sale No. 2." The proposed sale had been laid out on the ground in the summer of 1953.

On December 21, 1953, seven mining claims were filed in the area, and their location notices were dated October 25, 1953.



These claims cover two existing rock pits which had been used for several years by Government timber-sale purchasers for road-surfacing material. Also, the claims overlapped part of the area laid out in the timber sale and covered another gravel pit along the main timber-access road of the proposed timber-sale area.

One of the claimants stated that he desired to sell rock to the successful bidder of the proposed sale. Naturally, the Forest Service did not consummate the timber sale because the mining claims covered the majority of the timber to be sold and tied up the needed road-building material. Another area of national forest, therefore, is unharvested and unmanaged.

Case No. 3—and I think this is one of the most flagrant that I have encountered. A Eugene, Oreg., logger had an experience in January of 1955 which shows the necessity for reenactment of S. 1713 if the Government is to manage the surface resources of its national forests.

A man telephoned the logger to say he was going to file a mining location on rock pits which the latter was using in connection with a national-forest timber sale. The logger did not feel he should pay anyone for the use of gravel from national-forest land which he was using for ballasting roads used in the harvest of Government timber.

To protect himself, he filed a mining claim on the rock pits himself. Now he gets his rock without having to pay tribute for it. This indicates serious abuse of the opportunity to locate mining claims.

Taking these cases and multiplying them by hundreds of examples which could be given from the Western States indicates the urgent need for enactment of S. 1713. The bill will protect the equities of legitimate prospectors and miners. At the same time it will allow management and use of other resources of Government lands vital to our economy.

We want to give our unqualified support for the multiple use management of all the resources our public lands can yield to the Nation's economy.

The authors of the various bills embracing the present proposal should be congratulated on their joint endeavor to rectify the ills caused in the past few years by abuse of the privilege of all Americans to seek, prospect, locate, and develop bona fide mineral discoveries on Government lands.

We hope that S. 1713 will be reported favorably by the committee and enacted promptly.

That is all of my prepared statement.

SENATOR ANDERSON. Would you at a subsequent date supply us with a few more of these cases?

MR. HAGENSTEIN. I can. I have one other thing which is not in my prepared statement which may indicate graphically the problem.

I am sorry I only have four copies of a map here which shows the situation. What this shows, if I may look on with Senator Millikin here, it shows an area of national forest land with a timber sale that has been laid out and the orange-colored squares running at other than cardinal directions are mining claims, all unpatented claims.

These claims lie across the natural topographic routes of roads into the timber sales areas bounded by green and prevent access unless the claimants are willing to allow the Forest Service or the successful bidder on timber sale to cross those claims with a road.

Further, the claimant can also preclude the Forest Service from selling that portion of the timber inside those cutting areas which are covered by the claims.

Look at the little tiny white pieces in the claims left, a few pieces of land, mind you, of very rough mountainous country. . Who is going to be able to manage it?

By law, the Forest Service is obligated to manage it but they cannot when you have a hodgepodge thing where the rights of the parties are not clear.

Senator MALONE. Is there any Federal law or any State law that would apply to all the timber where it must be cut on a crop basis?

Mr. HAGENSTEIN. The acts of June 4, 1897, which is the organic act of establishment of the national forest, indicate that and the O. and C. Act which covers it.

Senator MALONE. Does not Oregon have some kind of law; it seems to me in 1938 I had a section on forestry and you had a very good State law there on a crop basis. You could make the private owners come in but you could not the State owned land.

I understand that since that time the private owners have nearly all complied with that to a great extent.

Senator ANDERSON. Is it not true that the private owners are the first ones that come in? They are the best foresters that you can imagine.

Mr. HAGENSTEIN. Being the chief forester for the Douglar Fir Industry, Mr. Chairman, I would like to say we think we are doing a good job, not that we do not have further to go.

We want to see the United States Government do it, too.

Senator MALONE. Is there a Federal law now that does the same thing with those forest lands that is effective?

Mr. HAGENSTEIN. Well, the law, the act of June 4, 1897, and the act of August 28, 1937, the first covers the national forests and the second, the O. and C. lands, establishes the policy wherein the forest lands of the United States would be managed permanently.

Senator MALONE. Who owns the O. and C. lands?

Mr. HAGENSTEIN. They belong to the people of the United States.

Senator MALONE. All right.

How does it come that we passed a law that covered only the O. and C., and not the remainder of the lands?

Mr. HAGENSTEIN. That is due to the fact that the O. and C. lands were once privately owned. As a result of a land grant made to the Oregon-California Railroad Co. in 1866—

Senator MALONE. They sold them to the Government?

Mr. HAGENSTEIN. No, sir; what happened, and it is a long involved thing which I am sure you have heard discussed in this committee many times.

Senator MALONE. I have heard it discussed but it involved Oregon and we had an Oregon Senator here and we should still have him. I assumed he knew what he was talking about so I never paid much attention to it.

Mr. HAGENSTEIN. There is no one who knows more about it than Senator Cordon with regard to the O. and C. lands.

Senator MALONE. Tell us, since he is not here, just what jurisdiction the Government took there and how they handle the O. and C. lands.

**Mr. HAGENSTEIN.** What happened was the railroad company to which the grant was made in 1866 defaulted on some of the terms of the grant under the act of Congress which granted them the land.

Following a litigation which went to the Supreme Court of the United States some time around 1912, an act was passed in 1916 re-vesting the land, the title to the land, in the United States. Those lands then were subject to disposal under the land laws of the United States, such as the Homestead, Timber, and Stone Act, and others I presume until 1937, when the act of August 28, 1937, Public Law 405, I forget the Congress, was enacted, known as the O. and C. Act, which established management on a perpetual basis in the interests of the communities on those lands.

**Senator MALONE.** That was a Federal law?

**Mr. HAGENSTEIN.** That was a Federal law.

**Senator MALONE.** Is there anything to keep us from extending this law if necessary to protect the remaining Federal forests there?

**Mr. HAGENSTEIN.** Well, I think the other Federal forests, namely, the Federal forests, are covered by the organic act.

**Senator MALONE.** Crop basis?

**Mr. HAGENSTEIN.** Yes, sir. Insofar as I know, it is the policy of the United States, established by statute, that all of the forest lands belonging to the Federal Government must be managed in perpetuity.

**Senator MALONE.** Then when these people go into a forest reservation to locate a mining claim, for all intents and purposes they own the timber?

**Mr. HAGENSTEIN.** If the claim is taken to patent.

**Senator MALONE.** If the claim is taken to patent.

**Mr. HAGENSTEIN.** Then they acquire it.

**Senator MALONE.** But they do not have it until it is patented; they do not have the management of the timber or grass that is on the land?

**Mr. HAGENSTEIN.** Well, I do not think they have title to it. I do not think they can dispose of it except that miners can use part of the timber necessary in the development of a claim.

**Senator MALONE.** We have heard the complaints here that they sell the timber; it seems to me that I have heard complaints. They would sell the timber on the claim and then they located the claim.

You mean there is no such procedure?

**Mr. HAGENSTEIN.** I do not think, and here again, not being a lawyer I am not competent to interpret the law, but I do not think the holder of an unpatented mining claim has the right to sell anything on the surface.

**Senator MALONE.** You have had no trouble in that where he did sell it? I want to get my own thinking clear.

**Mr. HAGENSTEIN.** I do not think so because I do not think he can sell the surface resources until it is patented.

**Senator MALONE.** But he can take what timber he needs to work that claim or group of claims?

**Mr. HAGENSTEIN.** Right.

**Senator MALONE.** That is the only complaint you have had?

**Mr. HAGENSTEIN.** That is not the complaint.

**Senator MALONE.** I mean as far as the ownership and use of the timber is concerned.

**Mr. HAGENSTEIN.** The only complaint we have is that insofar as the surface is not needed for the legitimate development of the minerals.

Senator MALONE. He does not try to dispose of this timber; all he does is hold it?

Mr. HAGENSTEIN. And prevent the Forest Service from managing it.

Senator MALONE. Have you ever tried to deal with these people that all you want is to take a crop off from year to year?

Mr. HAGENSTEIN. No; because private parties cannot deal. It is a matter of the Government dealing with them, because the land is under the administration of the Government.

Senator MALONE. Has the Government tried to?

Mr. HAGENSTEIN. Oh, yes; many times.

Senator MALONE. They will not let you harvest?

Mr. HAGENSTEIN. The Forest Service has repeatedly in these areas where they want to develop the timber requested access across these unpatented claims and has sought to sell the timber, and in many instances, although not all, it has been denied the permission by the claimant.

Senator MALONE. If you merely told the claimant that all you wanted to do is harvest?

Mr. HAGENSTEIN. Of course, in our country that means clear cutting. In our country we clear cut.

Senator MALONE. You cut it all off?

Mr. HAGENSTEIN. That is right. We take relatively small clear-cut setting and leave seed sources around it. Only in the case of failure of natural reproduction do we resort to planting.

Senator MALONE. How long does it take the crop to grow? Is it 70 years, 50 years, or 40?

Mr. HAGENSTEIN. A good average for our region would be 80 years.

Senator MALONE. Thank you.

Senator ANDERSON. Because I am going to try to get this map reproduced for the hearings by crosshatching, if you do not mind, we would like to have it.

Mr. HAGENSTEIN. Any use the committee cares to make of it, Senator, I would be pleased to have them do it.

Senator ANDERSON. I understand these portions are mining claims.

Mr. HAGENSTEIN. The ones that are colored.

Senator ANDERSON. Perhaps it will show differently when we reproduce it.

(COMMITTEE NOTE.—The map appears at the conclusion of Mr. Hagenstein's testimony.)

Senator ANDERSON. These are tracts of timber that the Forest Service desired to sell in what year, 1953, for example?

Mr. HAGENSTEIN. 1954.

Senator ANDERSON. 1954.

Mr. HAGENSTEIN. Right.

Senator ANDERSON. Were they able to sell them?

Mr. HAGENSTEIN. No.

Senator ANDERSON. The sale of the timber was blocked.

Mr. HAGENSTEIN. The sale was canceled for two reasons: One was they could not get access across the claims to reach the settings and they could not sell that portion of the timber on the settings which was based in a mining claim.

Senator BIBLE. Mr. Chairman, might I ask what type of mining claims they were? Was it sand, gravel, gold and silver, lead, zinc?

Mr. HAGENSTEIN. I think these were mineral claims other than for the common structural materials. I do not know what type but for some ore.

Senator BIBLE. Was there active mining operation on these claims?

Mr. HAGENSTEIN. No.

Senator BIBLE. Inactive?

Mr. HAGENSTEIN. Right.

Senator MALONE. They did assess them?

Mr. HAGENSTEIN. I really have no knowledge of that, Senator Malone.

Senator MALONE. Do you have any difficulty in any of our lands in Oregon except in the forest reserves in this connection?

Mr. HAGENSTEIN. No. The matter on the O. and C. lands was a problem until 1948 but, as I discussed it, I referred to the Ellsworth law; that was taken care of by that law. Since that time the Bureau of Land Management has had neither difficulty in getting access nor in selling timber on the land.

Senator MALONE. Do you have any objection from what you know about this matter of having the law passed confined to the Forest Service lands or Government reservations?

Mr. HAGENSTEIN. It seems to me it should embrace all that portion of the public lands which are suitable for multiple use, excluding as it does national parks, monuments.

Senator MALONE. I am asking you; you are complaining about Forest Service lands.

Mr. HAGENSTEIN. Basically, because that is the problem in our part of the country.

Senator MALONE. And monuments and Government withdrawal. Confined to Forest Service and Government lands, you say you would have no objection?

Mr. HAGENSTEIN. I have no objection.

Senator MALONE. We have 5 million acres of this forest reserve down in our area and all we need is forests.

Mr. HAGENSTEIN. I have been in some of it and it is single-leaf piñon.

Senator MALONE. We have none.

Mr. HAGENSTEIN. Someday it will be valuable.

Senator MALONE. It will be 1,000 years before it grows 2 inches.

Mr. HAGENSTEIN. It grows slowly.

Senator MALONE. When we get this cycle, whatever it is, there are redwood forests up in Nevada where the rainfall is an inch and a half, so there is a cycle. Maybe we could do a little mining in the meantime if we do not have quite so much of this interference.

Mr. HAGENSTEIN. I want to make it very clear, Mr. Chairman and gentlemen, that our industry is certainly not seeking anything, recommending, the enactment of such legislation as you have before you to the detriment or legitimate location and prospecting of the minerals of this country.

We think that is an important part of our economy to keep our mineral supply well known by giving people the right and encouraging them to have the right to find the fruits of their discovery when they find one.

Senator ANDERSON. You do not want to take one legitimate claim from one legitimate miner?

Mr. HAGENSTEIN. Not one.

Senator MALONE. In the first instance, in the first paragraph of the bill you want to take the stuff that you name out of the mining category?

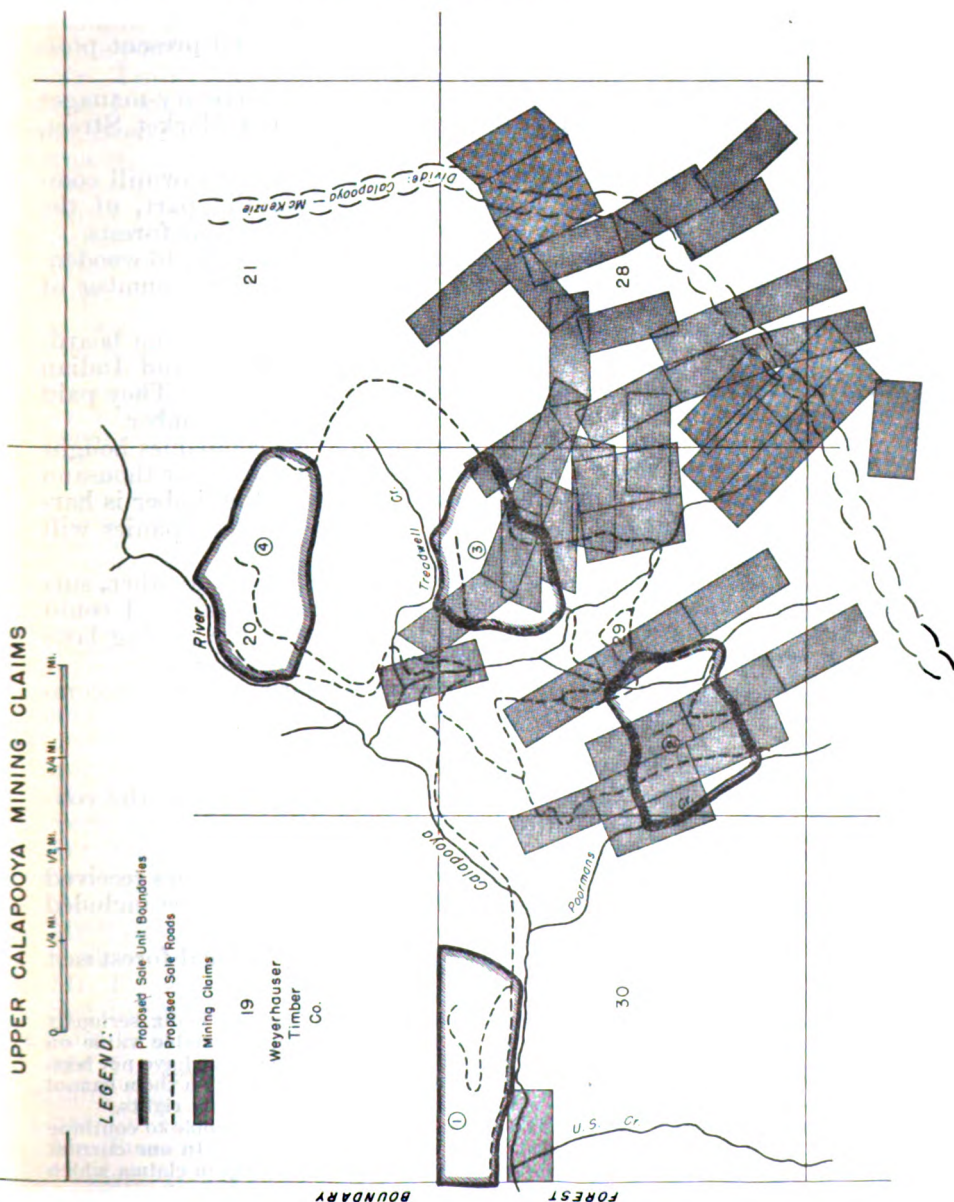
Mr. HAGENSTEIN. And put it under the Materials Disposal Act, which is in accordance with the way the bill is presently drafted.

Senator MALONE. I read it.

Mr. HAGENSTEIN. Yes, sir.

Senator ANDERSON. Thank you very much.

Mr. HAGENSTEIN. Thank you, gentlemen.



Senator ANDERSON. Next we have Perry A. Thompson.

**STATEMENT OF PERRY A. THOMPSON, SECRETARY-MANAGER,  
WESTERN LUMBER MANUFACTURERS, INC., SAN FRANCISCO,  
CALIF.**

Mr. THOMPSON. Thank you, Mr. Chairman and gentlemen.

I came from San Francisco for the purpose of talking to you for 4 or 5 minutes, possibly 10 at the most. I shall not read all of this report because I realize your time is limited.

Senator ANDERSON. Would you state your name and present position for the record?

Mr. THOMPSON. My name is Perry A. Thompson, secretary-manager of the Western Lumber Manufacturers, Inc., of 681 Market Street, San Francisco, Calif.

Western Lumber Manufacturers is an association of sawmill companies, each of whom purchases all, or a substantial part, of the timber it cuts from the State or Federal public lands and forests.

These companies own and operate more than 40 sawmills, 16 wooden-box factories, several moulding and door factories, and a number of miscellaneous wood-using plants.

In 1954 these companies purchased more than 350 million board-feet of timber from the national forests, public lands, and Indian lands in the State of California and in southern Oregon. They paid more than \$4 million into the Public Treasury for this timber.

During the first quarter of this year, 1955, these companies bought 108 million board-feet of timber at an average of \$15.25 per thousand feet. Total to be paid into the Public Treasury as the timber is harvested will be about \$1,650,000. It is expected these companies will buy around \$5 million worth of public timber in 1955.

Most of our member companies have, at some time or another, suffered at the hands of an unpatented mining claim holder. I could furnish you many case histories showing misuse of the mining laws for the purpose of collecting tribute from sawmill companies.

To save your time I shall include many case records in the more complete data which I shall ask you to insert in the record.

Senator ANDERSON. Do you have that with you?

Mr. THOMPSON. I have it with me.

Senator ANDERSON. The material referred to appears at the conclusion of Mr. Thompson's direct statement.

Mr. THOMPSON. Thank you.

I do want now to read short excerpts from just two letters received very recently, which are typical of the many which will be included in the data I shall submit.

This one is from a large company operating in a national forest east of Sacramento, Calif.:

1. At the present time our timber harvesting operations are being seriously hampered because of the presence of mining claims of questionable value on hundreds of acres of productive timberland. Many of these claims have not been worked for decades, yet millions of board-feet of timber growing on them cannot be cut because of claimants who will not waive the timber-cutting rights.

As you know, I don't think it's fair to the lumbermen or the people to continue allowing overripe timber to be tied up on such mining claims. In our current operating area there are about 26 million feet of timber tied up in claims which are not being worked at all.

Senator ANDERSON. You heard the question I addressed earlier, the question about timber becoming overripe and spoiling? Is that your experience?

Mr. THOMPSON. In any so-called mature forest, a certain amount of timber is ripe and overripe, and there is some constant deterioration; that sort of timber is more subject to bug damage and windrow and other types of damage than the younger timber and there is a constant loss.

Senator MALONE. Where is that timber located?

Mr. THOMPSON. In the Tahoe National Forest in California.

Senator MALONE. Has that been your experience that all of the trouble you have had is in the forest reserve?

Mr. THOMPSON. Principally, it happens that the companies for whom I work are operating in the forest reserve although they buy some from the Indian lands and some from the Bureau of Land Management.

Senator MALONE. But they are reservations?

Mr. THOMPSON. National forest, primarily.

Senator MALONE. Thank you.

Mr. THOMPSON. Two, this company operates in Northwestern California:

In 1952-53 we found that two different mining claims near our operation were on the same location as our planned access road over some public land. The Bureau of Land Management informed us that any right-of-way obtained from them was subject to existing valid entries, and that if we asserted that a mining claim was obviously invalid or fraudulent, that it was up to us to initiate the necessary court action to prove our assertion and remove the claimant. It appeared that both the claims were quite obviously invalid and/or fraudulent, and that one in particular was taken with the idea of blocking a necessary right-of-way in order to collect tolls.

We had to retain a mining engineer as well as our attorney to counsel us on the matter, for both claimants were adamant about their rights and privileges to collect damages. The mining engineer confirmed our opinion that the claims appeared invalid, and that the assessment work had never been done at all on one claim as stated in the proof of labor, and not done in the spirit of the law on the other claim.

Eventually, we called one of the claimant's bluff, the one who had perjured himself with a false proof of labor, and went ahead without his permission. The other claimant hired a prominent attorney, noted for his familiarization with mining and land laws, and stood pat. Eventually, this claimant "shook us down" for approximately \$700.

Senator MILLIKIN. What do you mean by "shake you down"?

Mr. THOMPSON. Sir, I am quoting from this letter.

Senator MALONE. Who wrote the letter?

Mr. THOMPSON. The letter was written by the forester for this private company.

Senator MALONE. Did he have experience in mining, this forester?

Mr. THOMPSON. No, sir; I do not suppose so.

Senator MALONE. Have you had some?

Mr. THOMPSON. I have had some.

Senator MALONE. Are you capable of determining whether there is a valid location?

Mr. THOMPSON. No. These people hired a mining engineer to determine that for them.

Senator MALONE. Go ahead.

Mr. THOMPSON (reading):



Other costs incurred brought our cost of this 1,000 feet of right-of-way on public land to approximately \$1,000. To have gone to court to invalidate these claims would have cost us more than that, and with the present mining laws as ambiguous as they are, it is questionable if we would have been successful.

Senator MALONE. Right at that point the testimony has been clear there that the Department of the Interior has the right to initiate such a claim and it is handled then by the Department of the Interior and it might be the Forest Service in this case which would be the Department of Agriculture, but there is a way of doing this.

Do they ever make any attempt to clear the way for you?

Mr. THOMPSON. Who, sir, the Bureau of Land Management?

Senator MALONE. Yes.

Mr. THOMPSON. I could not say about the Bureau of Land Management because so few of our companies buy timber from them. But the Forest Service has made many attempts, yes, to get from the claimants a right to or privilege to cut the timber.

Senator MALONE. What you say, you have made a very serious claim here about shaking you down. If there is any such maneuvering, the Government has a recourse.

I would like to know if there has been any attempt by the Government to protect these men that they sell this timber to, like your companies. You are making a very extravagant statement.

Mr. THOMPSON. I am just reading a letter from the company.

Senator MALONE. I am glad you made that clear.

Mr. THOMPSON. That is made clear at the beginning.

Senator MILLIKIN. They may regard as a shakedown anything that interferes with what they want to do?

Mr. THOMPSON. That is right.

Senator MILLIKIN. It may not have the meaning that you and I attribute to a shakedown.

Senator ANDERSON. I think if we wanted to, we can get ample testimony from the Forest Service that one person after another comes in and files these claims.

Mr. THOMPSON. We can produce the writer of this letter and the man took exactly that position.

Senator MILLIKIN. If the right is a right——

Senator ANDERSON. It is not a right.

Senator MILLIKIN. I say, Mr. Chairman, if they consider they have a right and they exert their right, they are not putting on a shakedown.

Senator MALONE. I would like to say that the Forest Service, we have had trouble with them for 30 years that I am familiar with in this arbitrary management of range. None of us like it but they are there and if we get into the matter of these bureaus' operations, that is going to be something.

Senator MILLIKIN. As I understand, you are just reading from a letter?

Mr. THOMPSON. May I proceed?

Senator MILLIKIN. Yes.

Mr. THOMPSON (reading):

We are facing a similar experience again this year in a different area, and I can see where it will happen again periodically as our logging operations move around. We shudder to think of the consequences as more unscrupulous people become familiar with this gimmick for extorting money from loggers. Without corrective legislation, it appears that our only salvation would be for us to be first to file questionable claims on the location of our future roads.

Senator MALONE. Who wrote the letter?

Mr. THOMPSON. A forester for one of our logging companies.

Senator MALONE. What is his name?

Mr. THOMPSON. Nicholson.

Senator MALONE. Is his name here?

Mr. THOMPSON. No; it is not. I will furnish a copy.

Senator MALONE. Yes.

Mr. THOMPSON. Now, I want to make it very clear that the lumbermen I am representing are businessmen. They have very large investments in plants, machinery, transportation of equipment, logging equipment, and timber. They pay large taxes into the county, State, and Federal treasuries. They employ thousands of people. They produce many millions of dollars' worth of woods products annually.

These men believe in the principles of private industry. Most of them began their careers without a dollar. Through their initiative, hard work, skill, and knowledge they have become proprietors and producers of jobs and materials.

These men represent a cross-section of the many lines of business on which our citizens depend for manufactured products. These men would be the last to put one stone in the way of another legitimate industry. They certainly recognize the great and growing importance of the mining industry.

They know full well that minerals are not renewable resources, like the timber they harvest, and that the continued prospecting and search for minerals must be encouraged. They have no quarrel with any legitimate prospector or miner; rather, they want to encourage and assist the individual whose plan is to discover, extract, and/or process into useful products the mineral wealth of our public lands.

But these lumbermen have been observing for years the practices of the many unscrupulous citizens who may call themselves miners or prospectors, but have been using the mining laws to get possession of parcels of public lands for purposes other than the extraction of minerals.

You will note I said "possession" of the lands. I did not say "get ownership" since, in most instances, title is not sought because of known doubt or certainty that the land would not qualify for patent under the mining laws.

However, since sand, gravel, pumice, and building stone, and so forth, have been held subject to appropriation under the mining laws, the nonminer landseeker has not had to worry very much about discovering valuable minerals on the land he covets. Sand, gravel, and building stone can be found on most any mountain creek or river and can be used as justification for a filing. A filing is all that is needed by the nonminer. I speak only of the nonminers.

Senator MALONE. Speaking of the nonminer or the miner?

Mr. THOMPSON. Speaking about the nonminer, not the legitimate one. With a filing he has been able to control use of all the land resources and land surface.

Up to this time the mining industry has contended that all remedies necessary to control the bogus miner were available in the existing laws; it has been said many times that Government agencies could control this situation if they wanted to. So the mining industry has resisted any change in the out-of-date mining laws.

I cannot believe they have fully realized the extent and character of the many abuses which have been, to my personal knowledge, practiced for more than 30 years. It has taken a lot of complaining, a lot of publicity, a lot of investigating, some by Congress, to fully open their eyes and understanding of the situation.

We are thankful the legitimate mining industry has at last decided something must be done to protect itself, to protect the rights of other industries and the public welfare.

This legislation is the outcome of joint effort by legitimate and broadminded mining men and their legal advisers, who represent the real mining industry, a segment of it at least, and public officials and foresters.

This legislation, if passed, may not prove to be the final and complete answer, but it is a long, and long delayed, step in the right direction. This legislation safeguards the rights of every bona fide prospector and miner.

Legislation must be enacted into law at this session of Congress. Time is of the essence of the problem.

The intensive search for uranium, which is taking thousands of inexperienced people into the fields and public forests and wild lands, cannot be properly directed and controlled under the old outmoded mining law. The situation is critical.

First, sand, stone, gravel, pumice, pumicite, cinders, and clay must be reclassified as "nonminerals." They can be disposed of in a practical manner under leases and special-use permits issued by the proper administrative agencies.

Second, the rights of the claimant of every mining claim must be limited to the right of occupancy solely for the purposes of prospecting for minerals and for extracting valuable minerals from the claim. Prior to patent, his use or control of the land surface of the claim and of the nonmineral resources of the land should be limited to those uses necessary to the process of extracting minerals.

We believe the legislation, as written, will accomplish these purposes and that it should be promptly passed.

We know the people engaged in mining and prospecting are divided in this matter. At least some legitimate miners, those with investments and experience, and the producers of minerals, favor this legislation.

On the other hand, many less responsible prospectors and pseudo-prospectors, those out for a quick "buck," those who are not too particular how they get it, and who are the ones who have for so long brought the legitimate miners into bad repute will, undoubtedly, make an effort to defeat this legislation.

We ask that you listen carefully to these people. We ask also that you study the documentary proof which will be presented to you by those in favor of the passage of S. 1713. When you do this, we are confident your committee will endorse this legislation and vigorously press for its early enactment by this Congress.

I could read the rest of my paper, sir, but I believe that covers the essential points we wanted to make.

I should like to offer these additional exhibits for your record if you would like to have them.

Senator ANDERSON. I think what we will do is accept them for the record and ask the staff to go through them and see how many of them need to be actually attached to the record.

Mr. THOMPSON. A great many of them I am sure will be duplicated by other people who are introducing evidence.

(The information referred to follows:)

(COMMITTEE NOTE.—The material submitted by Mr. Thompson consists of the following packets which are on file with the committee and are a part of its official records of this hearing.)

Exhibit No. 1. Title: "Packet of Material on Application of Mining Laws to National Forests," prepared by the United States Forest Service upon request of a special subcommittee of the House Committee on Agriculture, 82d Congress. It is dated August 1952.

Page 5, Summary of Mining Claims on the National Forests, national statistics are given as of January 1, 1950. For the State of California the up-to-date record is:

Number of mining surveys.....	21,000
Acres of national forest land claimed.....	602,000
Percent producing minerals.....	1
Percent considered valid.....	26
Volume timber on claims: 3½ billion board-feet.	
Current value of the timber, \$50,000,000.	

Exhibit No. 2: This is copy of a "Report on the Problems of Mining Claims on the National Forests by the National Forest Advisory Council," made for the Secretary of Agriculture by his citizen advisory group, and dated January 1953.

Beginning on page 55 and running to page 125 are more than 100 case histories illustrating the conditions which this legislation is designed to remedy. They are "must" reading. Only in this way can one get an understanding of the seriousness of this matter and of the great need for prompt remedial measures.

Exhibit No. 3: This is a collection of official records and papers having to do with the activities of prospectors and miners. This record is fully documented, and is convincing proof that this legislation is needed.

Exhibit No. 4: Excerpts from editorials concerning the mining law problems, clipped from newspapers in the county and mountain districts of the State of California.

Exhibit No. 5: Samples of mining claim conflicts in the national forests in California.

(Exhibits Nos. 1, 2, and 3, have also been entered in the record of the House hearing on H. R. 5891. Exhibits 4 and 5 are set forth below.)

#### EXHIBIT No. 4

##### SAMPLE EDITORIALS IN CALIFORNIA PAPERS

##### *Modoc County*

The legislation (S. 1713 and the companion House bill H. R. 5891) is actively supported by the American Mining Council. Last week the Plumas County chapter of the Western Mining Council voted to favor the bills.

Lumbermen and livestock men in the State and in Modoc County have been seriously concerned about the effect numerous claims might have on their public lands. The separation of surface rights from mineral rights is a step in the right direction—in keeping with the democratic principle of multiple use of public lands. This legislation reflects credit on the mining industry and all who assisted in writing it.

##### *Placerville*

A measure before Congress to correct widespread abuses of mining claim laws deserves wholehearted support of every citizen in Eldorado County.

These abuses by those seeking to acquire and control public lands for nonmining purposes pose a serious threat to our country's basic economy—our great recreational potential. If enough of these phony claims are established and our fishing streams, our camping and picnicking areas, our lake shores and beaches, our vast timber resources and our range and forage will be denied the public's use.

We vigorously support this legislation and urge voters in the county to give it the strongest support possible.

**Bakersfield, Calif.—Kern County**

For many years, an abuse of the terms of Federal mining laws has turned thousands of acres of choicest public lands into the possession and profit of individuals who have taken advantage of the loopholes to perpetrate this condition. Agencies administering these lands have been helpless to correct the wrongful possession and use.

Proposals, legislation introduced in Congress have been made to correct this. They have backing of Congressmen best acquainted with the situation, the USDA, the Forest Service, the American Forestry Association, and others.

In view of the commendable provisions of the measure and the benefits it will bring, support of its passage should be expressed from local organizations affected by management of the national forests, and there is scarcely a community in the West that is not in this category.

**FOOTHILL INDEPENDENT, GLENDALE, CALIF.: DREAM LAND CAN BE YOURS; FILE A CLAIM**

(By Jim Kenner)

Land today is a valuable proposition. In many cases more costly than the home or business erected upon it. Rates vary from a modest few dollars an acre for barren desert to \$10,000 a front foot for a number of glamorous city locations. And here's the dig. You can be a landowner for the price of filing a claim and keeping it up.

Beyond the foothills, land nestling in the verdant Angeles National Forest is yours to grab.

Land within echo distance of murmuring streams, land within earshot location of growing communities, and land that otherwise would sell for intoxicating prices.

File a claim, you ask? It can't be as simple as that. But it is!

Take for example the three San Fernando men who recently staked a claim adjacent to Little Tujunga Canyon Road, a few miles north of Foothill Boulevard.

Ben Kenney, Herman Mye, and Jack Carrigan all were amateurs with an eye out for that atomic "cash register" called uranium.

Unlike most citizens, they were armed with information that they could be landowners by meeting certain mining requirements.

Requirements that are easy on the pocketbook.

Some of them include—

First, a claim must be filed. To file, one must locate land which is open for mining. Angeles Forest officials determine whether or not it is open. Most of it is.

Secondly, one must establish the proximity of minerals on the land. Difficult! Not on your life! Minerals mean anything from uranium to a gravel deposit.

Okay, so now you've found minerals. What next, you ask?

Check to see if you can file. Unless someone else has beaten you to it, or unless the land is closed to claims, your claim probably will be valid.

How much land? Some 1,500 feet along the vein, and 399 feet on either side are now yours.

Primarily two types of claims are filed. Placer claims which mean surface deposits, and lode claims which mean minerals found in veins of hard rock.

After your claim is filed, certain improvements are required to keep it. Total sum is \$100 yearly. A report of yearly improvements must be filed in the county recorder's office.

That's it. For all practical purposes the land is yours. What's more you can hold it indefinitely, as long as you keep up the yearly improvements.

You can own it if you wish. But that means added expense. Proof of \$500 in improvements must be submitted along with an application asking for patent. A licensed mineral surveyor must examine the claim and verify the fact that it has commercial value. A dozen other details to undergo and then maybe you'll get a patent on the land.

But it's not worth it. Why own it? Build a cabin and be content with a vacationland where you can spend weekends and holidays, and say—for all practical purposes—"It's mine."

If you happen to find a little uranium on the side—well, no harm in that either, is there?

NEW LAW PROPOSED AS REMEDY FOR MINING CLAIM ABUSES

SONORA, May 2.—A proposed law which would correct many of the mining law abuses on public lands is being studied in Congress.

The American Forestry Association inaugurated the proposed bill February 10. It proposes to rectify abuses by persons seeking to acquire national forest or other public lands for nonmining purposes. The measure, the association states, if adopted, will "clear up 75 percent of the present mining law abuses." In a release, the United States Department of Agriculture agreed with the association. The mining industry, the Federal Department of the Interior, and the Agriculture Department are cooperating with the association in seeking passage of the measure.

Five Senators and an equal number of Congressmen have introduced the measure which Congressman Clair Engle, of Red Bluff, said yesterday probably would be acceptable to a large portion, "if not all," of the mining industry.

*No minerals, no claim*

The major bill, H. R. 5561, is designed to prevent anyone from filing a mining claim on public lands where valuable minerals are not apparent. The United States court, Sacramento, is considering two suits at present which are aimed at misuse of mining claims in the Stanislaus National Forest.

These "test" cases have been filed by the Federal Government against Avery C. Moore, Long Barn, and Roy Ritter, a part-time Nevada resident who holds mining claims in Iceberg Meadow, Tuolumne County.

The Government in these cases asks that the court oust Moore and Ritter from mining claims which they have filed in the forest in areas where the Government claims there are no great deposits of commercial minerals or metals. Moore and 28 others, mostly persons who purchased mining claims from Moore, are defendants in the first suit, filed last August, while Ritter is the single defendant listed in the suit filed in Sacramento this week.

*Proposals*

The proposed law would—

1. Ban the location of mining claims for common varieties of sand, stone, gravel, pumice, pumicite, and cinders, and make these subject to disposal by the United States under the Materials Disposal Act. Many of the abuses, as reported by the Government, have been mining claims filed on this type of location.

2. Prohibit the use of unpatented mining claims in the future for any purpose other than mining, prospecting, and related activities. At present, listed among the abuses, is the erection of cabins, corrals, pack stations, and even foodstands on mining claims in resort areas.

3. Authorize the Federal Government to manage and harvest timber on mining claims and to use them for access to adjacent land.

*Save timber*

4. Bar the filer from removing or using timber and other surface resources except to the extent required for mining and other related activities. Under the current mining laws, persons filing a mining claim can prevent the Government from harvesting the timber or having access to the claim—usually 20 acres—permanently.

5. Provide a procedure to permit the Government to reclaim by quiet-title action claims which have been abandoned or filed prior to the enactment of the bill as proposed.

Throughout the United States, the association said, there are more than 84,000 unpatented mining claims today, but only 2 percent are producing commercial ores.

*Oroville Mercury, Oroville, Butte County, Calif.: Miners favor Dawson bill by close vote*

The Butte County chapter of Western Mining Councils, vice-president Mark Parker presiding, adopted a resolution last night favoring the enactment of the Dawson bill. The vote was close. Last week the Plumas County miners voted to also favor the proposal.

Gene Kincaid, forester for the High Sierra Pine Mills, spoke to the gathering, explaining the purport of the bill and its advantages to both the forestry service and the miner over the existing laws.

The miners had been questioning the propriety of Government taking over the surface rights of claims. Kincaid explained that, under the Dawson bill

miners having a claim would have exclusive mineral rights and claim to any timber necessary to further development of their claims. Furthermore, that after patent rights had been granted, the miners would entertain the complete rights of an owner. Kincaid said that the Government anticipated that passage of this bill would enable the miner to secure patent rights within 6 to 12 months after application.

One of the purposes the bill would serve, Kincaid explained, would be to limit the amateur uranium miner, who has had no mining experience, from tying up vast areas of forest and mining land for no productive purpose. Under the Dawson bill a Government survey must be made of the mine to ascertain its productivity before rights are granted.

At the conclusion of the meeting, the Butte County council scheduled their next meeting for sometime in October.

*Feather River Bulletin, Quincy, Plumas County, Calif.: Mining council eyes proposed legislation at monthly meeting*

Members of the Plumas chapter of the Western Mining Council gathered at the Greenville Inn last night to dine on chicken and dumplings and to discuss and resolve on several vital issues.

The lengthiest debate of the evening centered around a report by Joe Goodwin on a bill now pending in Congress to modify the basic Federal mining law. The bill is House Resolution 5561, introduced on April 14 by Congressman Dawson, of Utah.

Goodwin said the bill was a compromise that sought to ease conflicts cutting in all directions among miners, conservationists, timbermen, and Government agencies. It was Goodwin's opinion that miners should support H. R. 5561 in an effort to ward off even more drastic legislation.

The meeting endorsed the bill.

The second proposed law endorsed by the meeting was H. R. 661, introduced by Congressman Clair Engle, which some speakers said would reopen the domestic gold market and curtail the Government's sale of Fort Knox gold to private industry.

A committee headed by Al Satova then made a report relevant to a recent editorial in the Feather River Bulletin suggesting a cooperative venture to promote a broader development of the mining industry in Plumas County. It was the committee's finding that the Bulletin proposal was not feasible at the present time.

But the committee did recommend formation of an exploration and development corporation. The amount of capital required was discussed lengthily, with final agreement settling on the sum of \$500,000. Satova was named chairman to continue the endeavor, in cooperation with the Plumas County Chamber of Commerce to launch the corporation.

Near the close of the meeting, Chapter Chairman Dwyer Skemp disclosed that unknown interests were preparing to invest \$10 million building mills and establishing ore stockpiles to process copper in the county. Skemp declines to divulge full details, but he said a quest for millsites was already underway.

The entire meeting was well sprinkled with unfavorable references to the invasion of "weekend prospectors" and "paperhangers" who are combing the hills for uranium. The consensus was that the tenderfeet and greenhorns are getting into the hair of the native miners.

It was announced that the first carload of uranium ore, mined in the Red Rock district, was shipped out of Doyle in Lassen County last week.

*Independent Journal, San Rafael: Keep mining claims for mining*

Scheduled for hearing soon before the House Committee on Insular Affairs is a proposal to alter mining law so that claims on Federal property will be for mining rights only, and not interfere with the Government's management of the forests and other surface resources on those claims.

Present law gives the mining claimants waiver rights on timber or other surface resources. They cannot touch the resources themselves, but neither can the Federal Government.

This may not sound serious, but look at the situation in California alone. Here there are approximately 21,000 claims, covering an area of 600,000 acres. Slightly more than a quarter of them are inside national forests.

Of this number of claims, only about 10 percent might develop into a mine of some sort. Only 1 percent will ever operate in such a way as to afford a livelihood for the claimants from minerals.

During 1953, mining claims tied up land carrying some 3½ billion feet of timber in California worth more than \$50 million. None of this can be touched without a waiver, and many of the claimants cannot even be located.

The proposed bill would limit a mining claim to mining and related activities; authorize the Federal Government to manage the timber and other resources on such land, and provide, among other things, a method of resolving uncertain titles on claims already granted through due process of law.

Conservationists, mining groups, lumbermen, and Federal officials seem satisfied with the proposal. Barring "cleepers," it looks like a good bill to us.

*Greenville: Miners favor enactment of Dawson bill*

Plumas County miners are ready for a change in the mining laws. At a meeting here last night, they adopted a resolution with only one dissenting vote, favoring enactment of the bill by Representative Dawson (Utah) that would make important changes in law that has been in effect for nearly 100 years.

The reason for the change of attitude by the miners lies in uranium. The uranium rush, like the gold rush of 100 years ago, is bringing into Plumas County thousands of people that the established miners refer to as "illegitimate miners," who, they say, are taking advantage of the 100-year law to such an extent that legitimate mining later on will be faced with drastic regulation unless moderate regulation is placed in effect now.

As the meeting progressed, many who at the start were against regulation of any kind in the time-honored fashion went over to the side favoring the Dawson bill. Among these was Dwyer Skemj, president of the Plumas chapter of the Western Mining Council.

Strict curbs seen:

Joseph Goodwin, past president of the chapter, had copies of the Dawson bill. He pointed out that in the present conflict between illegitimate miners and those favoring good management of natural resources, the transient miners are going to give mining a bad name and that unless a moderate measure is adopted now, more stringent regulation is sure to come later. After an hour of debate, the miners agreed that this position probably was the correct one.

(The Dawson bill was introduced this week of April 11 and has been referred to the committee of Representative Clair Engle. It has not been set for hearing.)

The Dawson bill, as explained at the meeting, results from a meeting of the American Forestry Association last February to rectify abuses by those seeking to acquire control of public lands for nonmining purposes. It is said the bill, if enacted, will clear up 75 percent of present mining-law abuses.

Bill outline:

The proposal would—

(1) Ban the location of mining claims for common varieties of sand, stone, gravel, pumice, pumicite, and cinders.

(2) As to mining claims hereafter located, it would, prior to patent—

(a) Prohibit use of the mining claims for any purpose other than prospecting, mining, and processing.

(b) Authorize the Federal Government to manage and dispose of the timber and forage, and to use the surface of the claim for these purposes or for access to adjacent land, without interfering with mining operations.

(c) Bar the mining claimant from removing or using the timber or other surface resources except to the extent required for mining or related activities.

3. Provide an in rem procedure, similar to a "quiet-title" action, under which the Federal Government could expeditiously resolve title uncertainties resulting from the existence of abandoned, invalid, dormant, or unidentifiable mining claims, located prior to enactment of this measure. This procedure calls for adequate notice to mining claimants in the area involved, and a local hearing to determine any right to surface resources that may be asserted by claim holders. If a mining claimant fails to prove rights to surface resources, the claim would thereafter have the same status as claims hereafter located, with the Government having the right to manage and dispose of the timber and forage.

In this manner an area in which a timber sale, for example, is contemplated could be subjected to a conclusive determination of surface rights within as short a period as 6 to 12 months.



## EXHIBIT No. 5

## SAMPLES OF MINING CLAIM CONFLICTS IN NATIONAL FORESTS OF THE CALIFORNIA REGION

## CASE NO. 1—TIMBER SALE

In 1946 and 1947 a family filed 8 placer mining claims and 1 lode claim in the Susan River drainage within the Lassen National Forest. After considerable negotiation the Forest Service was given verbal permission to cut and remove the high insect-risk timber from the claims.

The marking and cutting operations were initiated and partially completed on two claims when the claimants, through their attorney, notified the Forest Service that they wanted no further cutting to be done. Falling of timber was stopped the same day the message was received.

Some time later the claimants instituted proceedings to recover damages in the sum of \$75,000 from a lumber company as purchaser of the timber from their claims.

The Forest Service subsequently filed charges in the District Land Office against the validity of the two claims on which timber had been cut and removed. A hearing was held and a decision sustaining the charges was recently handed down. However, the time of appeal has not yet expired. The case is further complicated by the death of one of the principals.

(No appeal filed—case was closed and suit eventually dropped.)

## CASE NO. 2—CHRISTMAS TREE SALE

In 1946 a Christmas tree sale was made to a party on an advertisement-bid basis in the Lassen National Forest.

Before the successful bidder had completed the cutting, the district ranger was approached by two men who stated that they had mining claims in the area and that they had not given anyone permission to cut the trees since they intended to market the trees themselves. The ranger went immediately to the sale area and stopped further cutting. The two mining claimants turned their case over to an attorney. Eventually the case was dropped. The district ranger and his assistant had thoroughly searched the area for claim notices and had strung cord around the area to be cut. After the conflict developed, the county records were checked and it was found that the two men had filed their claim just 4 days before the advertisement of sale.

## CASE NO. 3—TIMBER SALE—RIGHT-OF-WAY

This group of placer mining claims totaling about 2,250 acres involves choice timberland which is a natural and integral part of a large timber sale unit. The claims have been controlled for a great number of years by one party who refuses to waive any cutting rights.

In 1938 the Forest Service met with such serious opposition to a much-needed right-of-way across these claims that the proposed logging road location was abandoned. The road has since been built across the claims on an old roadway. Evidence on the ground shows that very little effort has been made to develop these claims during the past 40 years.

## CASE NO. 4—GRAZING CONFLICT

A mining company having 71 unpatented lode claims totaling 1,420 acres on the Mount Warren allotment within the Inyo National Forest requests that no grazing be permitted on its property. The area includes springs and excellent forage for a carrying capacity of 956 a. u. m. s., 525 of which are on the 140 acres of meadow covered by these claims.

## CASE NO. 5—MUNICIPAL WATER CONFLICT

A mutual water company in the Bear Valley area of the San Bernardino National Forest with a water development for municipal use has run into difficulties due to an association placer mining claim filing on its reservoir side. The claimant has prevented the water company from making any further developments and is contesting the company's right to the water. At the very least, the situation causes costly litigation and may indefinitely delay the development of use of the water.

CASE NO. 6—REAL ESTATE ACTIVITY—OCCUPANCY

In the Stanislaus National Forest an individual and association have made more than 275 mineral filings on and/or adjacent to the Sonora Pass Highway during the past 5 years, generally for the recorded purpose of the mining and processing of precious and nonprecious minerals, building stone, lava, basalt, granite, sand, rock, gravel, and other commercial deposits. Through newspaper advertisements the principal party who lives on one of the claims and his son have in one 2-year period succeed in obtaining contacts with people to whom they were able to sell their title and interest in some of the claims for an aggregate sum of more than \$14,000. To the best information neither the locators nor purchasers have made an attempt to develop any of the claims for mining purposes. Several contests have been initiated against these claims by the Forest Service which were successfully concluded only to have the owners refile on the same land.

CASE NO. 7—FISH PROJECT

The Forest Service, in cooperating with the California Division of Fish and Game and local sportsmen's clubs toward the construction of a reservoir to provide a fishing lake and to regulate streamflow, ran into complications due to a mineral filing. During the preliminary engineering work a rather fresh cardboard sign was found at the proposed site which read as follows: "Notice—Private Property—To Whom It May Concern: The property along this Holcomb Creek as described below is valid mining claims owned by [two claimants] \* \* \* Trespassers will be prosecuted."

Prospecting in the area is historic and fine colors can be found although there has been no commercial mining in the district since the early days. From experience it is known that this conservation project can be effectively blocked by the claimants or delayed to the extent that the required funds from the State Wildlife Conservation Board will no longer be available.

CASE NO. 8—RESIDENCE OCCUPANCY AND GRAZING CONFLICT

Two claims and a millsite were filed on by a party in the head of Live Oak Canyon of the Cleveland National Forest in 1926. Previous to that time the ground had been prospected, and tested for clay, only to be abandoned because the clayey fractions were too impure. When the filings were made in 1926 the claimant dug two shallow holes, not over 3 feet deep and 6 to 8 feet in diameter. He then proceeded to build a rambling clapboard residence and develop a spring on the hillside above the claims over which he foled a millsite. After piping water from the spring to his house he settled down in his residence until 1946 or 1947 when he passed away. The claimant willed the claims to a nephew who refiled on them but did nothing toward developing them. It is understood that a third party is buying the claims from the nephew.

The Forest Service has experienced considerable administrative difficulties because of the claims. In 1931 the claimant leased the grazing rights permitting 20 head of cattle to feed off the grass. When the Forest Service protested he became defiant but later removed the cattle. The same year an application for patent was made. In 1932 the Forest Service protested the entry and finally succeeded in having the application rejected although the claimant was permitted to hold the claims for further development. These claims are on grassland of the Santiago grazing unit which could not be utilized because of the claimants refusal to let the grazing permittee's stock graze on any part of claims or to water his cattle at the spring on the millsite notwithstanding the permittee's offer to install a watering trough with a float valve so that the claimant's water supply would not be affected.

At another time the claimant permitted a friend to run saddle and pack stock on the claims. None of the uses of the surface of these claims by the claimant or others by his permission contributed in any way toward the development of mineral.

CASE NO. 9—CAMP GROUND AND SPECIAL USE CONFLICT

One individual in the Mono Lake District of the Inyo National Forest made more than 94 mining and millsite filings since 1944. The claims along the Rush Creek and those adjacent to Gull Lake covering 980 acres have been the source of perennial complaints, demands, appeals, and controversies over the generally fictitious conflict with user of the Rush Creek Campgrounds, and Silver Lake, Public Dump, with special use pasture permittee and over water right applications and proposed relocations.

## CASE NO. 10—ACCESS

In the Trinity National Forest a party has filed claims which control access to private timber holdings as well as to adjacent Government stumpage. The claimant has demanded payment either lump sum, or on a per thousand basis of timber moved, for a right-of-way across the claims.

## CASE NO. 11—SPECIAL-USE CONFLICT

In 1941 the Forest Service issued a free special-use permit to Siskiyou County for the removal of sand and gravel from national-forest land for use on local county roads. This arrangement continued without any trouble until 1948 when a party filed a sand-and-gravel placer-mining claim over the pit area, placed a gate across the access roadway, and posted the area warning trespassers against removal of sand and gravel. This action was considered as a trespass and the Forest Service corresponded with the claimant on such a premise. Notwithstanding, the party continued to deny the county access to the pit even to remove the gravel which had been sized and stockpiled. The county then proceeded to build a short piece of road bypassing the gate and continued to remove and size gravel. At the same time the county filed a suit against the claimant. The hearing of the case was postponed two times and it is understood that the claimant elected to withdraw from his attempt to sustain an interest in the area.

## CASE NO. 12—RECREATION

In the Sierra National Forest a party is maintaining mining-claim status to 40 acres as 1 placer claim and 1 lode claim. Although not interfering with any specific project, the property has not been worked for an estimated 20 years. The only use being made of the claims is of a summer-home nature. There presently exists on the claim three good-quality cabins of log and concrete design, with a concrete floor poured for an additional cabin. Use is limited to hunting, fishing, and recreational parties.

## CASE NO. 13—SKI DEVELOPMENT

On Independence Creek in the Inyo National Forest a party has some mineral locations which he maintains covers lands on which the Forest Service has a campground and permitted the construction of a ski hut and rope tow. Because of the contention of this claimant, future development of the area for both summer and winter recreation is at a standstill.

## CASE NO. 14—CAMPGROUND

On the Tahoe National Forest an elderly woman has a 60-acre placer-mining claim which dates back for a great number of years but on which no mining has been done since 1915. In about 1926 the Forest Service laid out a campground adjacent to the State highway on land which recently was found to be within the boundaries of the claim. No objection or protest was made to the development and maintenance of this public camp until the Forest Service entered a protest to the issuance of mineral patent to the claim some 20 years later. Although the charges made by the Forest Service were sustained in a hearing and the patent application rejected, it was necessary for the Forest Service to evacuate the campground. The campground was the only Government camp for a distance of 25 miles. Notwithstanding heavy use by the traveling-camping public, fishermen, and hunters for 20 years or more, the public is denied continued enjoyment of land on which no mining was ever undertaken and no use other than camping ever made thereof.

Senator ANDERSON. Any questions, Senator Millikin?

Senator MILLIKIN. No questions.

Senator BARRETT. I want to ask one question.

Assuming that any claim that might be filed would have considerable of this sand, stone or gravel or pumice, as you indicated a moment ago, and the contest was initiated under existing regulations against the miner holding that claim, he would have little or no difficulty in proving that he had made a discovery of some of those materials, would he not?

Mr. THOMPSON. He would have no trouble in proving that he had made a discovery of those materials but I do not know in exactly what way the law is interpreted. I believe there has been some interpretation although I have not seen it in writing that there should be a possible market for these things.

The people from the Bureau of Land Management could answer that question much more clearly than I.

Senator BARRETT. Well, if he discovers it in commercial quantities, certainly he has complied with the mining law?

Mr. THOMPSON. As far as location is concerned, he has without doubt, yes.

Senator BARRETT. So the sum and substance of that situation would be that he would not be subject to attack under existing regulations in that case, would he?

Mr. THOMPSON. It is my belief that is so, yes.

Senator MALONE. Mr. Chairman, I think the witness's testimony is very clear and straightforward and he deserves a lot of credit for his statement.

Mr. THOMPSON. Thank you.

Senator MALONE. We have a homestead law and I have had considerable experience with it, with its use to obstruct certain use of water holes on the range. Somebody might file a homestead where obviously there was not enough water to irrigate the land to hold it.

It is rather irritating to the people who wanted to use his water for stock purposes, but nobody ever suggested that they change the homestead law; they simply suggested that it be administered so that if there obviously was not the water there and he was not making an effort to drill to get more, it could be hastened to make him comply.

The same thing is true with the mining claims. Some of us have experienced here a two-decade endeavor to get move after move to bring into the leasing act to be administered from Washington the prospecting for minerals, and we certainly know what would happen if they were successful.

Then you have someone breathing down your neck and this fellow is probably a graduate from a college but he is over you and you are harassed continually.

One thing with the mining law, and that is a thing that we would like to preserve and we would also like to see administrative procedure that would not prevent men like you putting their money in the business.

As a matter of fact, I know something about these men because I used to run logging roads.

Mr. THOMPSON. One of our members had headquarters in Reno.

Senator MALONE. What is his name?

Mr. THOMPSON. He is a big rugged fellow.

Senator MALONE. He runs a sawmill?

Mr. THOMPSON. That is right.

Senator MALONE. The head of my regiment, when I had one of the batteries, died not long ago and he was a lumberman. I have known lots of lumbermen. We in this mining act are not trying to destroy your operation, we are trying not to destroy the man that goes out there with little capital, and they are the ones that find the mines.

The mining companies that have offices in Sutter Street do not find the mines.

Mr. THOMPSON. Sir, I am sure that our members to the man would agree with you thoroughly. They started as men without any resources of their own and they are entirely in sympathy with that.

Senator MALONE. We do find this: We find mining companies who get big enough who are for this bill because they have a man in Washington who can come here and spent \$5,000 to get here and live in a good hotel and they get about what they need, but the men we are talking about, and I am sure that is what the senior Senator from Colorado has in mind, are the men you will never see.

Now, the fact that some of these men have taken advantage of it does not justify us in destroying the basic structure that allows a man to go out and do this. Most of the mines that we find have been found by people that an engineer would not say had a very good showing and they would probably chase him off. But they stay there and are persistent and they get along.

Finally, one out of a thousand of them gets a mine.

Mr. THOMPSON. That is right.

Senator LONG. We do not want to disturb that relationship. We do not want it so that some fellow here in the Bureau who is a graduate of a nice college will go out and say, "Look, there is no mineral here; you should know better than that." Therefore, he can give him all the trouble in the world.

Mr. THOMPSON. Senator, we studied this bill, we had legal advice on it, and we are told it will not interfere with legitimate prospecting just as you have heard testified here today by other mining men with whom I am not acquainted at all.

Senator MALONE. I am acquainted with all of them.

Mr. THOMPSON. I am convinced in my mind that this will not interfere with mining.

Senator MALONE. There has not been a mining man before us.

Mr. THOMPSON. I understood the gentleman, Mr. Holbrook, has had wise experience.

Senator MALONE. He is a lawyer, he is now working for the mining organization.

What I would like to see is to have these people go out to where these mining people are that do not have the money to come in here.

Senator ANDERSON. I do think that a large number of mining people have discussed this in their State meetings and with the exception of one State, they have been for it.

Senator MALONE. I can show you some letters.

Mr. THOMPSON. Some of the councils of the California Mining Association have approved this legislation for us.

Senator MALONE. They have been told that they are going to get something worse if they do not take this practically without exception and it will be a terrible opportunity if they give them an opportunity to say that in the meeting.

Senator ANDERSON. I want to assure everybody that I have not made any such statement as that.

Senator MALONE. It is an undercurrent.

Senator ANDERSON. I am anxious to take care of people who are here and are prepared to testify, but it is now 4:30. I have made only one commitment and wired Mr. Hudoba and told him I would hear him today at 10 o'clock, not knowing how long this would last. I would like to hear him.

Mr. McArdle, you will have to be before the House tomorrow and I think they would excuse you and let you come here perhaps.

I am wondering if we could hear Mr. McArdle at 10 o'clock and whether that would suit you.

Mr. McARDLE. Yes.

Senator ANDERSON. Then after Mr. McArdle, we would have Mr. Besley, Mr. Gutermuth, Mr. Granger.

How long is your statement, Mr. Hudoba?

Mr. HUDOBA. Three or four minutes.

Senator ANDERSON. I feel obligated because I told you I would hear you and I would like to make good on my promise.

Mr. HUDOBA. I appreciate your courtesy but I am not from out of town and I will be here tomorrow.

Senator ANDERSON. I wired you in New York and that is where I received the impression you were. If you will be here tomorrow, I assume the committee would probably like to hear you.

Mr. McArdle?

Senator MALONE. Mr. Chairman, before he starts I would just like to say that we do have one man here that represents a great mining organization, the Colorado Mining Association, and I would like some time tomorrow to give him an opportunity for 10 or 15 minutes to testify before this committee.

Senator ANDERSON. Mr. Palmer?

Senator MALONE. Mr. Robert Palmer of Denver, Colo.

Senator ANDERSON. Surely. We all know Bob Palmer and will be glad to hear him.

# **STATEMENT OF RICHARD E. McARDLE, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE**

Mr. McARDLE. Mr. Chairman and committee members, I appreciate the opportunity of appearing before you in support of S. 1713, a bill to amend the mining laws to provide for multiple use of the surface of public lands.

Mr. Ervin L. Peterson, Assistant Secretary of Agriculture, had hoped to represent the Department here today but, unfortunately, he had other commitments which have taken him out of the city and which could not be rearranged.

My statement will be brief.

I know there are numerous other witnesses whom you wish to hear, and you already know from the formal report of the Department that we recommend early enactment of this bill, with only one minor clarifying amendment.

This bill and seven companion measures in the House were introduced only a few weeks ago and the Department appreciates the attention which both the Senate and House committees are giving to these bills by holding hearings so promptly.

I do want to say that the problem of preventing misuse of mining claims on the national forests and providing equitably for multiple development of both minerals and national forest surface resources on such claims is probably the most important single problem facing the Forest Service at the present time in its administration of the national forests.

Therefore, this bill and its companions in the House constitute the most significant legislation affecting the national forests which is pending in the present Congress.

In the Department's report we described the provisions of this bill in some detail, and I shall not repeat them here. Briefly, it would:

1. Apply to all Federal lands subject to the United States mining laws;

2. Remove common varieties of specified materials such as sand, stone, gravel, and pumice from the United States mining laws and make them subject to disposal under the provisions of the Materials Act of 1947;

3. Provide that mining claims located after enactment of the bill would be subject, prior to patent, to the right of the United States to manage and dispose of the vegetative surface resources, and to manage other surface resources;

4. Establish a procedure similar to that in Public Law 585 of the 83d Congress, whereby the Secretary of the Department administering the Federal land may initiate action for determination of the surface rights, prior to patent, of holders of mining claims located prior to enactment of the bill.

The purpose of the minor amendment recommended in the Department's report is to make it clear that revenues from O. and C. lands under the administration of the Department of the Interior and lands administered by the Department of Agriculture under Public Law 426. of the 83d Congress, will be placed in the O. and C. fund.

The two departments collaborated with each other and with Congressman Ellsworth, author of H. R. 5577, in developing this language.

In the 82d Congress, bills were introduced by Senator Anderson and Congressman Cooley aimed at protecting surface values of the national forests, as well as bills by Senator Chavez and Congressman Regan which would have amended certain provisions of the Materials Act. This early action was stimulated in part, at least, by the Society of American Foresters, and was supported by various other conservation groups.

In the 83d Congress there were bills by Senators Anderson, Dworshak, and Chavez, and Congressmen Hope, D'Ewart, and Regan, all aimed either at protection of surface values of the national forests and the public lands, or amendment of the Materials Act.

In both the 82d and 83d Congresses, bills to amend the Materials Act passed the House, and again this Congress, H. R. 230, by Congressman Young, has likewise passed the House and is pending in this committee, as is a similar bill, S. 1098, by Senator Neuberger.

We have discussed our problems earnestly not only with conservation groups but also with the American Mining Congress and other representatives of the mining industry which have never condoned the use of mining claims on public lands for other than mining purposes.

Several months ago the Departments of Interior and Agriculture, and representatives of the mining industry, were invited by the American Forestry Association to talk their problems out in an effort to find what area of agreement might be reached.

In supporting S. 1713 and related bills, I believe you will find that for the first time the Departments of Interior and Agriculture, the

mining industry and many conservation groups are together in favoring the same legislation.

From the standpoint of the administrator of public land this bill does not go as far toward complete correction of mining problems as do some of the other bills in this and preceding Congresses. Even though this bill does not cure all problems, it is a very significant and major step forward, and if funds are available for its implementation, will result in correcting a very substantial portion of our problem.

During the past several years, the mining claim situation on the national forests and other public lands has become much more acute.

Fifty years ago when the national forests were established, mining claims were not the problem they are today. There were far fewer claims; prospecting was done by a relatively few bona fide miners; the national forests were inaccessible to most people; there weren't the conflicting pressure for surface use, and the job of managing the national forests was largely custodial.

Today the situation is entirely different. Population of the West has greatly increased. The highway and the automobile have taken the national forests out of the hinterlands, and put them in the backyard of metropolitan areas.

We have about 100,000 contracts each year with national forest timber buyers, grazing permittees, and various special use permittees; not to mention 30 million who use the western forests for recreation, including hunting and fishing.

Many city people are prospecting for uranium in their spare time in hopes of striking it rich. Methods of prospecting have changed, too. Yet, to effectively manage the national forests, the Federal Government must have access to and control of the surface resources.

Claimants have the right to locate without regard to other values, and the United States may not harvest timber or manage other surface resources without consent of the claimant. All this adds up to conflicts of interests, delays, higher costs, obstruction of orderly management, and tying up valuable timber and other surface resources.

We estimate that at the beginning of this year there were about 166,000 national forest mining claims, covering nearly 4 million acres. This is a 100-percent increase in 3 years, largely due to prospecting for uranium and other fissionable materials.

New claims are being filed on the national forests at the rate of about 5,000 per month, which would mean 225,000 claims by the end of this year.

We have over 100 billion board-feet of timber tied up on national forest mining claims, and this timber has a stumpage value of \$112 million.

Since 1952 the number of national forest mining claims in Arizona has increased seven times. They have quadrupled in New Mexico and Utah. Wyoming, Montana, Colorado, Nevada, South Dakota, and Washington have seen claims double or more than double in that period. Only in California, Idaho, and Oregon has there been no great change.

Nearly 10 percent of all national forest claims are based upon a finding of sand, stone, gravel, cinders, or low-grade pumice, which occur over large areas.



In northern New Mexico and Oregon and Washington, especially, have claims based on low-grade pumice been used as a basis for obtaining control of timber or other important surface values.

On the Santa Fe National Forest in New Mexico, 172 million feet of timber worth \$1.7 million is tied up because 3 timber sale areas are 75 to 90 percent covered by claims.

In Arizona and New Mexico we have 40 grazing allotments with a capacity of about 10,000 cattle, which are more than 75 percent covered by mining claims.

On the San Juan National Forest in Colorado, we know of 680 claims in a solid block, covering 28,000 acres, which makes up over 90 percent of the Piedra River unit, and timber sales involving 90 million feet are dependent on access over 10 miles of these claims.

On 4 other forests in Colorado, the White River, Gunnison, Pike, and Grand Mesa-Uncompaghe, there are 25 grazing allotments substantially covered by claims, as well as 17,000 acres of improved recreation areas, and a timber working circle involving 6 million board-feet.

The Fall River Ranger District in the Black Hills National Forest of some 85,000 acres is 75 percent covered by claims and another 50,000-acre area in the Black Hills, in the Elk Mountain Ranger District, is nearly 100 percent covered.

On the Bighorn Forest in Wyoming, at least 1 sheep allotment is nearly solid claims, and 2 cattle allotments are about 50 percent covered.

Of all the timber on national forest mining claims, about one-third of the volume and one-half of the value is in California. On the Tahoe and Sequoia Forests, for example, six ranger districts are one-third covered by claims which support half a billion feet of timber.

On the Sioux Ranger District of the Custer Forest in Montana and South Dakota 74,000 acres, or one-half the district, has been staked with 3,500 claims in the past year, and uranium prospectors are currently staking more claims as the snow recedes.

One cattle permittee running 170 head has applied for refund of a third of his 1954 grazing fee on grounds that mining activity kept his cattle off the range.

On the West Fork Ranger District of the Bitterroot Forest in Montana, 50,000 acres, or one-third of the area, is tied up by 1,000 claims, involving 50 million feet of timber.

In Oregon and Washington, for the 9 national forests where claims are most numerous, there are 4,370 claims covering 101,000 acres in working circles where timber is being harvested in the orderly course of management. These claims make it impracticable to sell 3.4 million feet of timber worth \$68 million. One fourth of this timber is on the 550 pumice claims.

On the Manti-La Sal Forest in central Utah, where uranium prospecting is very active, the Mesa-La Sal Ranger District of 175,000 acres is 75 percent covered by claims. Fourteen grazing allotments and 75 million feet of timber are involved.

Also, the Monticello District of 368,000 acres on the same forest is 80 percent covered. Involved are the community watersheds for Blanding and Monticello, Utah, 10 grazing allotments furnishing summer feed to 4,800 cattle and 6,500 sheep, and 100 million feet of

timber. Some reseeded range is being impaired and further reseeding has been stopped.

I could go on and give many additional examples, but I only wished to mention a few to show the need for remedial legislation promptly before the situation becomes even more acute.

One of the key provisions of S. 1713 is section 5, which would provide a procedure for determination of surface rights of claims filed prior to enactment of the bill. To implement this procedure in a reasonable way would cost probably from \$750,000 to \$1 million annually for perhaps a decade, as far as the activities of the Department of Agriculture are concerned.

I would not want to give the committee the impression that there would be no Federal expenditures in connection with the administration of the bill's provisions.

On the other hand, after these rights are determined and for all future time, there would be very little cost associated with the bill. Even a cost of \$10 million is small, in my judgment, if it frees \$100 million worth of Government timber and other valuable publicly owned surface resources.

Twenty-five percent of national forest receipts from the sale of timber and other resources is distributed to counties. Thus there would be a substantial return to both Federal and local governments by freeing these surface resources.

It is my judgment that this bill would go a long way toward alleviating our national forest mining problems and encourage multiple development of all their resources.

The Department has always favored the development of the mineral resources underlying the national forests, and we would not favor any legislation which would work a hardship on the bona fide miner or prospector. The support of the mining industry for this bill is clear indication that it would work no undue hardship.

The bill does not include all the changes in the mining laws which would be desirable from a good public land management standpoint. Some problems would remain with respect to mining in the national forests which this bill would not correct. However, the support of the Federal departments and conservation groups is clear indication that the bill would result in substantial progress.

Because of the accelerated rate at which mining claims are every day and every hour being filed on the national forests, may I again impress on the committee the importance of prompt action.

The estimated rate of 5,000 new claims per month means that 167 new claims are filed every day, 7 days a week. On the average, 7 new claims are filed every hour, 24 hours a day.

In the month since this bill was introduced, another 100,000 acres of national forest have been staked to mining claims, with resulting problems of surface management.

In summary, I can state my views on this bill in three or four sentences.

First, it is a good bill; I strongly urge its enactment.

Second, it will go a long way toward solving mining problems on the national forests if funds are available to implement it.

Third, some problems will remain which this bill won't solve.

Fourth, prompt action is important because at the rate the new claims are being filed, an already acute situation is rapidly getting worse.

That is the end of my prepared statement, Mr. Chairman.

Senator ANDERSON. Senator Millikin?

Senator MILLIKIN. No questions.

Senator ANDERSON. Senator Malone?

Senator MALONE. I am very much interested in your statement, Mr. McARDLE, and I am also very surprised at the activity in mining that you have described since the treatment received in Washington.

Now, your complaint is altogether Forest Service, is it not?

Mr. McARDLE. My testimony concerns the Forest Service of the Department of Agriculture.

Senator MALONE. Would you object if an amendment to this bill confining its provisions to the Forest Service or to the monuments and parks, or wherever mining claims are allowed in Government withdrawn land?

Mr. McARDLE. Several bills have been introduced in previous congresses which would apply only to the national forests of the Department of Agriculture. Personally, I think it would be well to cover all public lands at the same time under the same laws.

Senator MALONE. Would you object to such an amendment?

Mr. McARDLE. I do not think I can speak for the Department on that, Senator Malone. Personally, I would not object but again I would repeat that I think it would be advisable to have them apply to all land administered by the Federal Government.

Senator MALONE. Well, of course, for a couple of decades we have been subject to suggestions such as yours. I do not know whether you have been one of them or not but they have all pointed toward a leasing system for all mining claims, mining as well as all other uses of public lands.

What position do you take in that regard?

Mr. McARDLE. During the years that I have been here, which is about 11 now, I cannot recall that the Department of Agriculture has proposed a leasing system.

Senator MALONE. Are you familiar with the fact that the Department of Interior has?

Mr. McARDLE. No, sir; I am not. That does not mean they have not done it; it is just that I did not know.

Senator MALONE. They have, for your information. Now, every one of you have been here today, Government people, and you have all pointed to the law we passed, 585 or whatever it is, coordinating the oil, gas leasing act with the mining law as a step in the direction of more Federal bureau authority on these lands.

Some of us have the idea that this is just a step to that; this is not exactly what you want but a step toward it, another step.

Would you have any advice on that phase of it?

Mr. McARDLE. I was not aware that the bill was being proposed for that purpose. I thought that the bill was being proposed by Agriculture, Interior, mining industry and the conservation groups having joined in, suggesting this measure as a means of clearing up the situation that now exists.

I do not think it has too much to do with attempting to get more control for any Federal agency. It is a means of assuring to the

Federal Government the right to manage the surface resources of these claims while they are in claim status.

Senator MALONE. Is that not what it is all for; in other words, what the Taylor Grazing Act is for? It is what all these acts are for, is to get greater control of the public lands?

Mr. McARDLE. Certainly it would restore to the Federal Government control of these surface resources.

Senator MALONE. What do you mean restore?

Mr. McARDLE. I mean in this sense, Senator Malone: At the present time the Federal Government does not have the right to dispose of the surface resources, timber and forage, on a mining claim and neither does the locator. It is in limbo, so to speak.

Senator MALONE. Well, it could be that the folks who have been advocating these laws for 50 years, they lose there once in a while, but most of the time they win. Maybe that is the reason you have not had it.

Mr. McARDLE. Well, as I tried to say in my testimony, the situation was quite different 50 years ago when the national forests were established than it is today. There were not these conflicts in other uses, desires to use these public lands.

There has been testimony here today that there are citizens who desire to buy timber from the public lands who know that there are many thousands of people who have been for a great many years using these public lands to run cattle and sheep, using the forage.

We know that there is an increasing number of towns and communities and some are of no small size, some of which are completely dependent or partly dependent on these public lands for water. Some of these are of considerable size such as Denver, Colo., Portland, Oreg., Salt Lake City. There are at least 2,000 more in western States that have to depend on public lands for their water. They want certain things done with these lands because their water supplies are depended on.

So we have today a great many of the people who want to use these public lands who were not wanting to use them 50 years ago.

Senator MALONE. Some of us have been out there that long, you know.

Where are you from?

Mr. McARDLE. I am from Kentucky. I started my forestry career in Oregon, following which I served in Idaho, Colorado, Wyoming, South Dakota.

Senator MALONE. Some of us have been pretty close to this water storage and municipal water supply in our areas, too.

I never heard much complaint about using the grass by the miners in areas where these lands are located that will be affected outside the forest reserve. I have heard that for 40 years, continual encroachment on the people that are using those lands and have been using them for longer than that period for grazing.

Now, you have a job to do, and I know what it is in a general way, because I have been associated with people that use these lands.

The general disagreement with some of your rules and regulations is not against your forest conservation, but you are not equipped to handle grazing. You are set up to handle forests, and I do not know whether you have been in my State of Nevada or not, have you?

Mr. McARDLE. Yes; I have.

Senator MALONE. Have you been over the land in the forests there?

Mr. McARDLE. I have been to all except one.

Senator MALONE. What one?

Mr. McARDLE. Nevada State Forest.

Senator LONG. You are familiar with what kind of forests we have there?

Mr. McARDLE. That is right.

Senator MALONE. Did I aptly describe it once or twice today?

Mr. McARDLE. The Nevada national forests run largely to grazing lands.

Senator MALONE. But you still have the same rules in your forest land that apply elsewhere?

Mr. McARDLE. The basic rules; yes, sir.

Senator MALONE. That is right. Therefore, any attempt to change them is met with objections by your National Forestry Association that are entirely right where there are real forests because we do not have any real forests there. So I am perfectly familiar with your attempts all these years to do these things, and I think they probably apply in Kentucky or in Pennsylvania, where these forests are where it is not so necessary that the miners and cattlemen and sheepmen make use of these lands if there is any use to be made of them at all.

Mr. McARDLE. Sir, so that I will not be misunderstood on the record, most of the national forests in this country are in the West. There is about 20 million acres out of 180 million acres in the East. But the great bulk of the forests are in the West.

Senator MALONE. But the great bulk of the people that belong to these associations are in the East?

Mr. McARDLE. As to that, I could not say.

Senator MALONE. Well, I am telling you because I checked that. We get their advice all the time.

Mr. McARDLE. I just heard from two associations who are in the West.

Senator MALONE. They are not forest associations?

Mr. McARDLE. The ones we just heard from, yes.

Senator MALONE. There are lumber associations. There is a great difference, in case you had not heard. I supposed you knew.

Mr. McARDLE. Between those two associations?

Senator MALONE. Yes. There is a great difference in a lumberman's association and a forestry association.

Mr. McARDLE. Yes, we recognize that. There is also a difference between a lumberman's association and a grazing association. We deal with all of them.

Senator MALONE. We do not have any trouble with the Lumbermen's Association, nor the grazing or the mining either in our State. However, your statement would lead us to believe that the Lumbermen's Association is a forestry association.

Mr. McARDLE. No, I did not imply that. They deal with forests. They are primarily concerned with harvesting the forest crop.

Senator MALONE. That is correct. You want to bring all the forest land in whether you have anything to do with it or not. You object to any amendment that would confine it to your bailiwick.

Mr. McARDLE. No, sir; I did not say that I either objected or favored. I said, speaking only for myself here today, and not for the Department, that I thought it would be desirable to have all federally

owned land come under the same mining law provisions. That would apply whether they were forest lands or whether they were nonforest lands and primarily for grazing or whatnot.

Senator MALONE. I understand what most of your representatives want, but I am trying to get at what is necessary.

Mr. McARDLE. So far as the national forests are concerned, of course, as I have tried to make plain here today, I am mainly concerned with the administration of the national forests because we have the kind of problems that I attempted to illustrate.

I would like to get those solved. I would think that the Bureau of Land Management would speak for itself as to whether they wanted their problems solved. Certainly we want ours solved.

Senator MALONE. How long have you been in this work?

Mr. McARDLE. Thirty-one years.

Senator MALONE. Confined to the Forest Service work?

Mr. McARDLE. Thirty-one years in the Forest Service.

Senator MALONE. Are you familiar with the provisions of the 1947 Materials Act?

Mr. McARDLE. No, I am not.

Senator MALONE. You said in your testimony you would like to have the pumice and other materials regulated under that act. I thought maybe you knew something about that.

Mr. McARDLE. I am not familiar with the detailed operation of that act.

Senator MALONE. You do know what it is, of course?

Mr. McARDLE. I do know that many claims are now being located, particularly in the forest country of the Northwest, on land which has a showing of pumice. It is low-grade pumice.

Under the mining laws, it would qualify as sand. I think it would be rather difficult to operate those claims for pumice but the timber on them is worth thousands of dollars.

Senator MALONE. Do you know what are the uses of pumice?

Mr. McARDLE. Yes. It is used mostly as an abrasive for building materials.

Senator MALONE. You do not know anything about the 1947 Materials Act.

Mr. McARDLE. I do not pretend to be an expert on that act.

Senator MALONE. You recommended that they be handled under the act and I thought you must know something about it.

Mr. McARDLE. I know enough about it to recommend that.

Senator MALONE. What do you know about it?

Mr. McARDLE. I think if these materials that we are talking about here, such as pumice, stone, sand, and gravel, were handled under some different procedure than they are being handled now, where, frankly, Senator, people are using the basic mining laws in order to gain control of other resources rather than the materials themselves, we would be far better off and we would stop a lot of the complaints and a lot of these difficulties that we are having in the management of these areas.

If they were handled on a leasing basis, the men who had a legitimate desire to obtain those materials for building purposes or for other purposes could still obtain them.

Senator MALONE. That is what you are really for, a leasing system; is that correct?

Mr. McARDLE. I am not saying that I am for a leasing system. I am saying I am against the present system where people are abusing the present laws, and I think this would then put it clearly out in the open as to whether the locators of these areas are primarily for minerals, or whether they are primarily for timber.

Senator MALONE. Suppose we agree that there are abuses, and I think there probably are abuses of all the laws. I guess you would agree that there are abuses of any law on the statute books; is that not correct? We even break the city ordinances now and again.

Mr. McARDLE. Yes.

Senator MALONE. Would you agree that there might be other ways of tightening the administrative end of the mining laws rather than trying to do what some of us believe would give the small prospector a lot of headaches, the fellow who is really trying to discover a mine?

Mr. McARDLE. Let me make it plain again, as I tried to make it in my testimony, that the Department of Agriculture, and the Forest Service as a part of that Department, have no desire whatever to restrict or to hinder legitimate prospecting and legitimate mining.

We are now facing a situation where a lot of claims are being filed and a man does not have to be a legitimate miner or a prospector to file a claim and the mining laws are being abused.

I think these people are making it harder for the type of people you are attempting to protect and I think we are attempting to protect.

Senator MALONE. Let me say this to you, having been with them for 40 years: Many prospectors are farmers who, in the wintertime, do prospecting. They just go out to see if they cannot augment their income a little bit and I do not suppose under your examination they would qualify as miners, and the fellows who discover these mines a lot of times have no experience at all. So many of them go out there and start poking around that every once in a while you get pretty good prospecting, but what we have been doing here in Washington for a couple of decades is fixing it so if they discover something they cannot do anything with it.

I would like to see a tighter administrative policy.

Mr. McARDLE. We have given that a great deal of consideration, Senator Malone, over a good many years in the Forest Service, and in the Bureau of Land Management of the Department of Interior, and the mining industry has also had many discussions with us on that subject.

The difficulties come with the sheer physical fact that there are so many of these claims. It would take thousands of man-years of work. It would take millions of dollars to attempt to clear up some of these situations that are abandoned claims, or invalid claims, or some other reason.

We estimate—and this is purely an estimate—that it would take about \$30 million just to get caught up and about \$5 million a year from here on out. If they keep on filing claims at the rate they are going, then I would want to raise that \$5 million to a much higher figure. That concerns only the national forests. I do not know what it would be for the Bureau of Land Management.

Senator MALONE. Let me give you just a little bit of information.

Many administrative officials in Government over the last several years, up until last August, made speeches, and wrote briefs and

articles in the papers that uranium, for example, we had to get from the Belgian Congo and that we did not have it in the United States.

Some of us just happened to grow up with this thing.

In 1938 I made a report on Utah and Colorado with respect to uranium. I did not know what they were going to use it for particularly. I do not know why I paid so much attention to it, but you will find a report filed last August out of this committee that did not say it in the words I am going to say to you; but, due to the discovery of its use starting in Colorado and Utah, with the now 7 or 8 States covered by these people that you say do not know what they are doing, probably in about 2 years from now, if we do not run them off of the public land, uranium will be running out of your ears.

I only say that to you as an illustration. It took thousands of people to do this. There was an incentive there that they could make some money on account of a guaranteed price until 1962.

I know you would not know anything about this, but I wanted to give you this information so that you can see that anything you put in the way of a miner could very well result in your having to go to the Belgian Congo for something.

Many of us—I do not know how many I speak for—will go along with you for tightening the administration so that no one can do something with these claims that they are not supposed to do.

I do not like to put more power and, if I may say it, in your hands because I have been familiar with the Forest Service operation in the West for 40 years and I have no good reports to give you today on their administration of the grazing privileges and rights. There is a continual fight, and not only with respect to the fees and cutting down on the carrying capacity.

There is no use going into that here, but if it is of interest to you, we will go into it in some other manner. However, that is something that you ought to know something about. Many of us believe you do not know anything about it.

Mr. McARDLE. I may not know a great deal about mining because I do not pretend to be a miner, but I know a good deal about the surpluses of the national forests and I can speak with some conviction and some authority on that.

Senator MALONE. Undoubtedly that is true.

Mr. McARDLE. Not only for one State, but for other States.

Senator MALONE. That is undoubtedly true. You know, we have no forests in Nevada of any particular value. You know that, do you not?

Mr. McARDLE. There are about 2 million acres.

Senator MALONE. I would say about 200,000.

Mr. McARDLE. It is mostly mountain stuff.

Senator MALONE. And there is no timber value except in about 200,000 acres. You should know that. You can get juniper posts out there. There is no use you and I arguing about that because all you have to do is go to your records.

Mr. McARDLE. Those forests are perhaps of considerable value to the people in Nevada. I do not think they are of great value to folks in other States.

Senator MALONE. They are of no value to the Forest Service.

Mr. McARDLE. There is another aspect that I should bring in that has to do with administration. It is one that we have encountered.



That is, that after going through this process for filing, there is nothing to prevent a man from going out the next day and on a new showing restake a claim, and that has been done. Then you go through with it all over again.

Senator MALONE. Do you want to prevent restaking of a claim if there is an actual discovery?

Mr. McARDLE. No. We have not had that. I am talking about one where the protest was sustained. They go back to the same place and on a new showing restake it.

This bill would clear up these hundreds of thousands of old claims, some of which may be abandoned, some of which may be still alive, and would not in any way affect the claimants' mineral rights but would clear up for all time until the claims went to patent.

Senator MALONE. You would bring every one of these men in. They have to make a showing to file with the Secretary of Interior?

Mr. McARDLE. No; they do not have to. As stated this morning, they do not have to come in.

Senator MALONE. If they do not come in, what happens?

Mr. McARDLE. They can come in, but whether they come in or not, their mineral rights are not affected.

Senator MALONE. What is affected?

Mr. McARDLE. Their rights to manage the surface. It gives the Government access across their claims. It gives the Government the right to manage the timber and forage.

Senator MALONE. To show the uselessness of talking to anybody who has no mining experience, how would a prospector know how much timber he is going to need until he hits something of value?

Mr. McARDLE. I do not think he would know, Senator Malone, and there is nothing in this bill that anticipates his future need.

Senator MALONE. You can go in and take the timber off of the claim.

Mr. McARDLE. If there is timber we are taking off, he would be no better or no worse than the man who located where there was no timber.

Senator MILLIKIN. That does not answer anything.

Senator MALONE. That is like a statement that a man would be no worse off with water on his land than a man who located where there was no water.

Mr. McARDLE. There is nothing in this bill, as I understand it, that goes to the question of anticipated future needs of a miner.

Senator MALONE. I think it is obvious because you can take the timber off and it may develop in the following 4 or 5 years that he needs a great amount of timber for his mining operations, and then it is gone.

Senator MILLIKIN. Senator Malone, would you let me ask a question?

Senator MALONE. Yes.

Senator MILLIKIN. Mr. Chairman, would there be an objection to tightening the provisions in this bill whereby if the mining requirements for a claim were not met as far as timber is concerned by taking it away from them that the Forest Service or some responsible Federal agency would supply the timber they need to conduct their mining operations?

Mr. McARDLE. I do not think we would object to that.

Senator ANDERSON. I certainly would not object to it going in the bill.

Senator MILLIKIN. That is what we are talking about and I propose an amendment of that kind.

Senator ANDERSON. I think that would be a clarifying amendment. I can assure you, Senator Millikon, that I do not want anything cleared for any individual who is not going into a mining venture.

I went into one and I needed timber and acquired timber, but I did it in connection with a mining operation. It turned out to be a mistake, but it was my privilege. It was my own money.

Senator MALONE. Once in a while you get a man who will spend a couple of dimes.

Senator ANDERSON. It was a coal mine. Natural gas came in and took my market away from me, just after we put \$200,000 into it.

Senator MALONE. In Virginia City, there was produced a billion dollars. If every dollar that went into those tunnels was subtracted from it, the chances are they did not produce as much as was spent up on the mountain, but that is the way mining is done.

Senator ANDERSON. I think it would be very useful, Senator Millikin, following your questions and Senator Malone's questions along that line, if you would produce an amendment which might be submitted to us so that we could have a chance to submit it to the Interior and Agriculture. It sounds good to me.

Senator MILLIKIN. Thank you very much.

Tomorrow morning we will have Mr. Besley, Mr. Callison, Mr. Hudoba, Mr. Granger and Mr. Palmer.

We will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 5:10 p. m., the hearing was recessed, to reconvene at 10 a. m. Thursday, May 19, 1955.)



# MULTIPLE SURFACE USES OF THE PUBLIC DOMAIN

THURSDAY, MAY 19, 1955

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The committee met at 10 a. m., pursuant to recess, in room 224, Senate Office Building, Hon. Clinton P. Anderson presiding.

Present: Senators Clinton P. Anderson, New Mexico; Alan Bible, Nevada; Richard L. Neuberger, Oregon; George W. Malone, Nevada; Arthur V. Watkins, Utah; and Frank A. Barrett, Wyoming.

Present also: Stewart French, chief counsel, and N. D. McSherry, assistant chief clerk.

Senator ANDERSON. The hearing will come to order. Mr. Besley, of the American Forestry Association, and a number of other witnesses waited all day yesterday to be heard, but the questioning was so detailed and thorough that we were unable to reach them.

Mr. Besley?

## STATEMENT OF LOWELL BESLEY, EXECUTIVE DIRECTOR-FORESTER, THE AMERICAN FORESTRY ASSOCIATION

Mr. BESLEY. Mr. Chairman, my name is Lowell Besley, and I represent the American Forestry Association of which I am the executive director-forester.

Senator ANDERSON. Did you hear the questions yesterday about who the American Forestry Association is?

Mr. BESLEY. Yes, sir.

Senator ANDERSON. I know it well but I thought it might be well to have it in the record.

Mr. BESLEY. I have a written statement, sir, which I should like to submit for the record. Do you want me to read it?

Senator ANDERSON. Yes, if you will.

Mr. BESLEY. Our nonprofit, nongovernmental and noncommercial educational organization joins together some 25,000 or 26,000 members all across the country who, as good citizens and as leaders in community, State, and Nation, believe in the protection, proper management, and wise use of our natural resources.

For 80 years the American Forestry Association has ceaselessly fought for a sound national-forest policy and the wise implementation of that policy. Indeed, it was largely through AFA's influence that the great national forests were originally established.

## MINING ON PUBLIC LANDS

It is therefore small wonder that we have for some time been seriously concerned with the increasing problem of mining claim abuses on national forests and other Federal forest lands. The mining laws have too often been misused to obtain claim or title to valuable timber, summer homesites, or lands blocking access to water needed in the grazing use of the national forests. Other claims have amounted to private hunting or fishing preserves.

Not only has the use of the surface resources of the claims themselves been denied the public but, in many instances, access to adjacent public lands of much larger extent has been effectively obstructed by the strategic locations of these claims.

This situation has been interfering seriously with the orderly management and development of the surface values and resources of the national forests and other western public lands.

In attempting to correct this undue interference with the proper management of our surface resources of timber, water, forage, wildlife, and fish habitats, and outdoor recreation, great care must be used to avoid a converse undue interference with the discovery and development of minerals by the bona fide prospector and miner.

Our country needs these great mineral resources from the bowels of the earth just as it needs the renewable resources from its surface. Basically, both those primarily interested in the surface and those concerned with the minerals have long recognized the problem created by abuses of the mining laws and have wanted these abuses terminated. But they could not agree upon how to accomplish this.

## PAST PROPOSALS FOR CORRECTING ABUSES

I do not need to remind this committee of the many proposals which have been introduced or of the valiant efforts of your committee and the Agriculture Committee during the last three Congresses to arrive at an equitable solution to this problem. These efforts have not been in vain, for as a result of all this study and thought and discussion, you have before you in S. 1713 a unified proposal which we believe will go far toward solving the most serious problems of administering the surface resources without discouraging the continued discovery and development of the minerals.

## AFA'S PROGRAM

Perhaps you will better understand our position if I summarize for you briefly a little of the background of this proposed legislation.

After a preliminary conference and full discussion of 800 natural-resource leaders at the Fourth American Forest Congress in October 1953, a new Program for American Forestry, copy attached, was overwhelmingly adopted by referendum vote of the membership of the American Forestry Association.

Section III D, Mining on Public Lands, of this program reads as follows:

Efficient management of many millions of acres of Federal public lands, including the discovery and development of new or known mineral resources, is in the public interest. The legitimate miner and prospector should be encouraged to carry on such work. However, widespread abuses under the existing mining laws as a means of acquiring Government lands for other than mining purposes should be stopped. We, therefore, recommend that Congress revise the Federal mining laws to prevent their abuse by claimants or patentees who use their claims to tie up more valuable timber or other surface resources than they legitimately need to develop the minerals.

#### SITUATION ON NATIONAL FORESTS

Up until this year unresolved conflicts among leaders have, unfortunately, blocked constructive action. Meanwhile, as evidenced by the table on the next page, the situation has become increasingly acute.

Senator ANDERSON. The table will be made a part of the record.

(The table is as follows:)

*Analysis of mining claims on national forests as of Jan. 1, 1952, and 1955—Estimates prepared from figures published by the U. S. Forest Service by the American Forestry Association, May 1, 1955*

	Arizona	California	Colorado	Idaho	Montana	Nevada	New Mexico	Oregon	South Dakota	Utah	Washington	Wyoming	Total
Patented mining claims, national forests, as of Jan. 1, 1952:													
Number.....	1.1	3.1	17.0	3.2	5.1	0.7	0.7	1.4	1.0	1.4	1.2	0.8	36.3
Area.....	53	135	360	81	117	12	24	27	74	57	21	18	919
Percent of number ever commercially mined	5	14	12	28	17	50	16	22	7	10	8	1	15
Unpatented mining claims, national forests, as of Jan. 1, 1952:													
Number.....	5.0	19.6	9.4	15.8	6.9	2.9	2.3	7.8	2.6	7.8	2.9	0.9	84.0
Area.....	95	583	256	355	133	51	82	267	52	185	72	33	2,164
Volume of timber.....	70	3,490	80	1,170	85	(?)	225	2,301	81	7	751	36	8,298
Estimated value of timber.....	700	50,177	368	8,425	440	(?)	2,000	36,307	542	40	4,111	417	103,527
Value of timber per acre.....	140	2,555	39	532	64	(?)	851	4,756	298	5	1,442	485	1,232
Value of timber per acre.....	7.35	86.00	1.43	23.70	3.32	(?)	24.50	136.00	10.60	0.22	57.50	12.07	47.84
Percent of number producing minerals commercially	9.0	0.8	1.0	4.3	1.7	2.0	3.0	1.8	4.5	2.0	2.2	0.6	2.0
Percent valid under mining laws	22	30	37	42	46	60	24	55	30	50	52	55	40
Unpatented mining claims, national forests, as of Jan. 1, 1955:													
Number.....	34.3	21.0	16.7	18.4	14.6	6.2	8.7	6.7	4.8	28.4	3	2.0	166.2
Area.....	684	602	375	408	282	108	223	215	103	583	94	78	3,755
Unpatented mining claims, national forests, comparison 1955 with 1952:													
Number 1955 as multiple number 1952.....	6.9	1.1	1.8	1.2	2.1	1.8	3.7	0.9	1.9	3.6	1.8	2.5	2.0
Area 1955 as multiple area 1952.....	6.2	1.0	1.5	1.2	2.1	2.3	2.8	0.8	2.0	3.2	1.3	2.4	1.7

In the 12 Western States in which there are mining claims on the national forest, there are now in excess of 166,000 claims, covering nearly 4 million acres and tying up many billion board feet of timber worth many millions of dollars.

Three years ago, when there were only half as many claims, there were 81½ million board feet of lumber, worth at 1951 prices, over \$100 million on mining claims alone, not counting the large amount tied up on adjacent areas by obstruction of access. Unpatented claims on these national forests today are more than four times both in number and area all the claims which have ever been patented on these forests under the mining laws.

This fact is even more significant when we realize that only 15 percent of these patented claims have ever been commercial mining operations. Furthermore, of the 84,000 unpatented claims on these national forests as of January 1, 1952, only 40 percent were estimated to be valid under the very liberal interpretations of the present mining laws, while only 2 percent were estimated to be producing minerals in commercial quantities at that time.

The urgency of finding an answer to the problem is evident when we realize that one new claim is now being filed on the national forests every 8 minutes, 167 a day, 5,000 new claims each month.

#### CONFERENCE ON MINING CLAIMS

It was in this atmosphere that, after exhaustive conferences with Members of Congress and committee staffs, the American Forestry Association asked top leaders of the Departments of Agriculture and Interior and of the mining industry to sit down together around the table in a working conference on February 10, 1955, to try to evolve a workable solution that would eliminate questionable claims while fully protecting the legitimate interests of both the public and the mining industry.

By exhibiting a constructive attitude and a true desire to find a practical answer, and by concentrating on areas of agreement rather than those of disagreement, these representatives were able to forge the framework of the proposal which is before you with your cooperation, Senator Anderson, and that of your committee staff.

At this conference the Forest Service first stated clearly its desires. For new claims, these included:

1. Locator may use so much of the surface as reasonably necessary for prospecting, mining, and development;

2. Locator may use as much of timber on the claim, unless disposed of by the Government prior to use, as is reasonably necessary for prospecting, mining, and development, timber to be cut under sound rules of forest management except in required clearing for mining purposes;

3. Locator may not obstruct or prevent other uses of the surface of the claim if not in conflict with mineral development;

4. Mining claims are or become invalid:

(a) If not filed for record in the local United States district land office within 90 days from date of location;



(b) For noncompliance with the laws as amended, including insufficient discovery to justify further development and failure to meet annual work requirements;

(c) Upon failure for two consecutive years to file notice of performance of assessment work in the local United States district land office, or

(d) If application for patent not made within 10 years of date of location.

Section 4 of the proposed bill includes the first three items in full. Items 4 (a), (b), and (c), referring to land office records, and (d) limiting the life of claims prior to patent, were not agreed to by the conference.

In general, the conference concluded that recording in the land offices would be a hardship on the locator and extra work for the land office which would be unnecessary and of little use as long as the first three items were put into effect. Likewise, the mining industry representatives were strongly opposed to a time limit on claims because of the close relationship between mineral development and economics. It was pointed out that there are valuable mines today which were in claim status for 25 years or more before it became economically feasible to develop them.

The Forest Service proposed several provisions for patenting of new claims which, in effect, would separate the surface values from the minerals and would require the patentee to purchase, at fair market price, the surface and timber rights on his claim if he desired a fee simple title to the whole claim.

The mining representatives strongly opposed this as a destroyer of incentive and as removing a basic part of the long-established and generally successful patent system. Since agreement could not be reached, the conference omitted this proposal.

In lieu of a costly recording system and time limitation on existing claims, the conference agreed upon the "in rem" procedure provided in sections 6 and 7 of the bill for clearing up expeditiously the claim situation on specific areas of public lands.

The suggested proposal respecting common varieties of sand, stone, gravel, pumice, pumicite, and cinders was likewise agreed to and incorporated in section 3 of the bill.

A further report on this conference and subsequent action is contained in the May 1955 issue of *American Forests*, a copy of which has been sent each of you.

See the editorial on page 7 and *The First Step Toward Correcting Abuses of Mining Laws* on pages 18, 19, and 44. (This article is included with the remarks of Representative Cooley in the appendix of the May 10 Congressional Record, pp. A3140-A3141.)

(COMMITTEE NOTE.—The editorial is also on file with the committee and is a part of its records of this hearing.)

Provisions of proposed legislation: Summarizing, the proposed legislation will:

1. Ban the location of mining claims for common varieties of sand, stone, gravel, pumice, pumicite, and cinders and make them subject to disposal by the United States under terms of the Materials Disposal Act.

2. As to mining claims hereafter located, it would, prior to patent:  
 (a) Prohibit use of the mining claims for any purpose other than prospecting, mining, processing, and related activities.

(b) Authorize the Federal Government to manage and dispose of the timber and forage, to manage the other surface resources, and to use the surface of the claim for these purposes or for access to adjacent land, without endangering or materially interfering with mining operations or related activities.

(c) Bar the mining claimant from removing or using the timber or other surface resources except to the extent required for mining or related activities. Any timber cutting by the mining claimant, other than that to provide clearance, must be done in accordance with sound principles of forest management.

3. As to mining claims located prior to enactment of this legislation, an "in rem" procedure, similar to a "quiet-title" action, is provided by which the Federal Government can expeditiously resolve title uncertainties resulting from the existence of abandoned, invalid, dormant, or unidentifiable mining claims in any area. This procedure calls for adequate notice to mining claimants in the area involved, and a local hearing, if needed, to determine any rights to surface resources that may be asserted by claim holders. If a mining claimant fails to assert rights to surface resources, or if the rights he asserts are not upheld, or if he voluntarily waives such rights, the claim would fall under the same rules as for claims hereafter located, as in 2 (a), (b), and (c), above.

#### EFFECTS OF PROPOSED LEGISLATION

From the standpoint of the Federal forest land administrator and from the public using the surface resources, the advantages of this legislation are at once apparent.

The surface of new claims, except for the small areas actually cleared for mining and related purposes may be managed and used just as if there were no claim there. In the case of old claims, the proposed procedure requires the claimants in any specific area being cleared up to come forward and assert their claims to surface resources and, unless the land administering agency waives its right, to substantiate these claims in a public hearing.

If the claims to surface resources are upheld, and it is expected that many will be either voluntarily or involuntarily washed out, their exact locations are made known to the administering agency so that it can plan accordingly.

It is for these reasons that Forest Service representatives have estimated that this legislation would clear up most of their mining claim troubles. Likewise, Bureau of Land Management representatives look upon it with favor as a means of clearing up many troubles without adding undue burdens in the way of the Land Office records specified by certain earlier proposals.

From the standpoint of the bona fide prospector and miner, the principal advantage of the legislation is that it promises to remove the incentive for locating mining claims for purposes other than actual mining operations and related activities without interfering with the rights the legitimate miner now enjoys under the mining laws.

Public condemnation against abuses has fallen indiscriminately upon the whole mining industry, the just and the unjust alike. The

legitimate miner will rejoice in deliverance from this unjust odium. At the same time, he still will enjoy the opportunity of locating mining claims, of mining any minerals found, and of making a profit if he is fortunate enough to discover and develop commercial deposits. Likewise, he can eventually secure his investment with a full title to mining claims when all the requirements for patent have been met.

#### RESOLUTION OF AFA EXECUTIVE COMMITTEE

At its meeting on April 15, 1955, AFA's executive committee unanimously passed the following resolution:

*Resolved*, That the American Forestry Association strongly supports the proposed revision of the mining laws which will permit multiple use of the surface of mining claims, both in national forests and on other public lands, and will eliminate the incentive to locate mining claims for purposes other than actual mining operations and related activities.

This legislation has been placed before the Congress in identical bills introduced by Representatives Dawson, Utah; Fjare, Montana; Young, Nevada; H. R. 5561, 5563, 5572, respectively, and in those which will be introduced or sponsored by many others on succeeding days.

We wish to thank the leaders of the Departments of Agriculture and Interior and of the mining industry who, upon our invitation, sat down together in a working conference and resolved their differences in order to formulate the constructive and sound principles upon which this proposed legislation is based. We wish to thank the representatives of these three groups who drafted the bills incorporating these principles. And we wish to thank the Senators and Representatives who have so enthusiastically undertaken the responsibility of introducing this legislation and who will support it in the Congress. We believe the enactment will be a tremendous step forward in correcting and preventing abuses and in enabling more efficient and more beneficial administration of the surface resources of our national forests and other public lands subject to the mining laws. Therefore, we urge all groups and individuals to join with us in strongly supporting this forward-looking legislation.

In conclusion, I should like to thank you, Mr. Chairman, and your committee, for the privilege of appearing before you on behalf of the American Forestry Association in full support of this sound, constructive, and urgently needed legislation.

I think that all of you received copies of our March issue which commemorates the 50 years of the United States Forest Service, and we were very pleased to have that opportunity to pay tribute to them and to trace their development over the years.

Senator ANDERSON. How long has the American Forestry Association been in existence?

Mr. BESLEY. We were founded in 1875, sir. At our first American Forest Congress back in 1872, there was the proposal for the forest reserves and the second one in 1905 was the one that set up the proposal for the Forest Service.

As you know, several of your predecessors as Secretary of Agriculture served as presidents of our association. Our present directors and officers are listed in the bookmark which is in the material I furnished you.

Naturally, having been so interested all through the years in the Forest Service, we have been extremely concerned with this problem of mining claims because we feel that it has been a serious detriment to the proper management of our national forests. It, of course, is a detriment to other Federal public lands, that is, these mining claim abuses.

It is unnecessary, I am sure, for me to repeat what the witnesses said so ably yesterday, tracing just how serious the mining claim problem is, but, as you know, Mr. Chairman, we, as an association, have no particular interest, as Mr. Hoffman mentioned yesterday; we do not represent the lumber industry although we are very proud to claim among our members a number of people in the industry, including Mr. Hagenstein, who testified yesterday, and he is a life member of our association.

Senator ANDERSON. He in turn represents some people that I have known for a long time. They are fine foresters.

Mr. BESLEY. Exactly.

Senator ANDERSON. Their lumbering and forestry practices are top-notch.

Mr. BESLEY. That is quite so. As a matter of fact, as you probably know, the Industrial Forestry Association is not a typical trade association but is an association of forest land owners of which, of course, a number of them are pulp and paper companies and lumber companies out in the Pacific Northwest. But they are primarily people who are interested in forestry and that is why they call themselves the Industrial Forestry Association.

We are very proud of our membership and of the objectives in the American Forestry Association. We feel that we represent to some extent the general public interest because we are not interested only in the timber but we are also interested in the forage and wildlife and fish habitats which the forests furnish, and we are very happy to have the support of groups who are interested particularly in one or more phases in connection with the national resources which the forests furnish or which are collateral to them.

I do not, of course, need to go into the history of how earnestly Congress has worked over this problem for many years. We feel that it has become extremely urgent that with the, as I understand, 8 new claims every minute on the national forests, and there are already 186,000, with the claims on the national forests having doubled in the last 3 years, that when we have today five times as many claims as has ever been patented back as far as the mining laws were established in 1872, and when we recognize that over half of the claims are believed to be invalid, certainly something must be done and must be done promptly.

I should be very upset if this problem is further delayed because we have worried about it for a great many years and it was one of the points in our program for American forestry which we drew up after careful consultation with the conservation leaders in every line of natural resources in the country after our forest congress in October 1953, at which there were about 800 leaders in the various fields of renewable natural resources.

We have arrived at a program for American forestry which we are trying to implement.

If you will notice where the bookmark is in the program, you will notice that one of the important points in this program has to do with mining on public lands. I might quote, it is a very short quotation:

Efficient management of many millions of acres of Federal public lands, including the discovery and development of new or known mineral resources, is in the public interest. The legitimate miner and prospector should be encouraged

to carry on such work. However, widespread abuses under the existing mining laws—namely, efforts by individuals to use the mining laws as a means of acquiring Government lands for other than mining purposes—should be stopped. We, therefore, recommend that:

1. Congress revise the Federal mining laws to prevent their abuse by claimants or patentees who use their claims to tie up more valuable timber or other surface resources than they legitimately need to develop the minerals.

In order to implement this recommendation, we have recognized the problem as you have, sir. We have tried to figure out some solution. We have backed some of the legislation in the past which we thought was aimed at that solution and it has been unsuccessful because we had a conflict of interest in that the previous legislation was felt by the mining people themselves to curtail and to detract from the proper discovery and development of the mineral resources of this country.

We felt that the best way was to try to get the various groups together to see if we could not work out a system which would be reasonably satisfactory to all and which would help to correct this situation.

With respect to the background of this particular legislation, I believe that we have some responsibility for it. On February 10 we called a conference at our office among the top leaders in the mining industry, with representatives from the American Mining Congress there, with representatives from the Forest Service in the Department of Agriculture, and with representatives from the Department of Interior. And I should like to pay tribute to those men who worked all day long very hard on this problem, who went into that conference with considerable differences of opinion, and who kept their eye on the ball, so to speak, and concentrated on points of agreement rather than on points of disagreement and have constructively laid down some principles which have been embodied into this legislation.

Consequently, we feel that this legislation may not be perfect but it certainly goes a long way toward clearing up one of the—to us—very serious sore spots in the administration of our Federal public lands.

Consequently, my board of directors has authorized me to appear before you and to recommend very strongly the passage of this bill, S. 1713.

Mr. Chairman, I could give you lots of other reasons but I do not want to take your time, with all of the witnesses that you have. I will be glad to answer any additional questions that you might have.

Senator ANDERSON. Thank you very much.

We will take this pamphlet, A Program for American Forestry, for the files.

Any questions, Senator Bible?

Senator BIBLE. I have no questions.

Senator ANDERSON. Senator Barrett?

Senator BARRETT. No questions.

Senator ANDERSON. Thank you, sir.

Mr. BESLEY. Thank you, gentlemen.

Senator ANDERSON. Mr. Callison?

**STATEMENT OF CHARLES H. CALLISON, CONSERVATION DIRECTOR,  
NATIONAL WILDLIFE FEDERATION, WASHINGTON, D. C.**

Mr. CALLISON. Mr. Chairman and members of the committee, my name is Charles H. Callison and I am conservation director of the National Wildlife Federation.

I wish to thank you for the privilege of presenting the views of the National Wildlife Federation on the proposed solution of the mining claim problem on the public lands.

The federation is a national, nonprofit organization whose member are State wildlife federations or sportsmen's leagues in the various States and Territories. We have affiliated organizations now in every State except Georgia, and also in Alaska and the District of Columbia. Through their member clubs and associations these affiliate groups represent some 3 million conservation-minded citizens.

For years conservationists have advocated reform of the mining laws for the purpose of correcting a situation which has widely complicated administration and development of the resources of the public lands.

Thousands of mining claims have been filed by persons described recently by Congressman William A. Dawson as "weekend miners." Their real purpose was not prospecting or mining at all, but rather to secure control of valuable timber or choice sites for fishing camps or summer homes. In some instances the claim sites have been used for commercial ventures bearing no relation to mining.

A recent boom in uranium prospecting has heightened the problem. No one knows what proportion of the total are legitimate mining operations but by January 1, 1955, the Forest Service estimated that 166,000 claims had tied up over 4 million acres of the national forests.

In some forest units, the Service finds itself unable to make a timber sale because both access and timber rights are frozen by mining claims.

In many areas of the West, the confused pyramiding of claims has practically paralyzed the management of the timber, range, and wildlife resources of the national forests. While not so many related resource uses may be involved on the public-grazing lands and on other portions of the public domain, the situation nevertheless is equally serious in many areas outside the national forests.

At their most recent annual convention, held March 11-13 at Montreal, Quebec, the State representatives who make up the voting membership of the National Wildlife Federation adopted a resolution endorsing the principles of the bill introduced by you, Mr. Chairman, S. 687, and the similar bills introduced in the House by Congressman Clifford R. Hope, H. R. 110, and Congressman Harold D. Cooley, H. R. 3414.

Parts of the bill under consideration at this hearing are identical in effect to certain sections of S. 687, and H. R. 3414, the Cooley bill, as they relate to deposits of common varieties of sand, stone, gravel, pumice, pumicite, and cinders. The federation has long favored taking such materials out from under the operations of the general mining laws and making them subject to the Materials Disposal Act of July 31, 1947, as here proposed.

Other sections of S. 1713 do not go as far as the earlier Anderson, Hope, and Cooley bills in separating surface rights from mineral rights in the national forests, and in reforming filing procedures.

This new bill, however, does have other advantages that persuade us to support it. Its corrective features would apply to all of the public lands, not just to the national forests.

It does provide a procedure through which, on given areas of the public domain, claimants can be challenged to show that their claims are legitimate and defensible. Thus, depending on the personnel and funds which may be made available for the purpose, the records and the lands may gradually be cleared of the clutter of phony claims.

As the name of our organization indicates, Mr. Chairman, the membership of the National Wildlife Federation has a special interest in the wildlife resources of the public lands and in the recreational opportunities which those resources may provide to the public.

I don't have to remind this committee of the importance of recreational use of the public lands. The Forest Service last year recorded more than 40 million recreational visits. Over 10 million of these visits were by hunters and fishermen.

Under present law a mining claimant may post his claim against trespass and deny access to a hunter or fisherman. He may deny access also to an agent of the Federal Government who may desire admittance for purposes of managing wild game habitat or improving a fishing stream. Indeed, many claims have been filed apparently for that very purpose.

Claims have been filed astraddle fishing streams, and sportsmen wading those streams have been forced to turn back. Other claims have been filed and posted at points to restrict public access to a good hunting area.

Thus, under the present law, mining claimants have been able to thwart the public harvest and proper management of fish and game resources on the public lands.

We interpret the language of section 4 (b) of S. 1713, Mr. Chairman, as corrective of this situation.

A claimant who files pursuant to this act will not be able legally to post his claim against trespass by hunters or fishermen. He cannot deny access to the Federal Government or its licensees or permittees when access is intended for the purpose of harvesting or otherwise managing the fish and wildlife resources, so long, of course, as such access does not "endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto."

In view of these considerations, we recommend that S. 1713 be reported favorably by committee and enacted by the Congress.

I thank you very much, Mr. Chairman.

SENATOR ANDERSON. We appreciate your coming here personally to do this because I know you were here and waited a long time and had to leave, and we are glad you came back.

Do you have any questions, Senator Bible?

SENATOR BIBLE. I was just wondering, Mr. Chairman, if section 4 (b) does what you claim it does, Mr. Callison. I was reading 4 (b) and I am wondering how that is brought about practically.

MR. CALLISON. Senator Bible, we interpret section 4, subsection (b) as guaranteeing access for hunters and fishermen or for agents of the

Government for purposes of managing wildlife resources because of the language which says:

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof.

Wildlife resources, wildlife and wildlife habitat, or other surface resources thereof.

Senator ANDERSON. In other words, a man might want very much to fish along a stream. However, at the present time anyone could file a claim along the stream—he could file several of them in succession, in fact, as illustrated by the timber man yesterday. In practice, a mining claimant could pretty well block the stream for fishermen by saying that you cannot fish or wade in the stream.

Mining claimants control the entire surface for all purposes, under the present mining law, do they not?

Mr. CALLISON. They certainly do and that very thing has happened in many places in the West and is happening today under the present mining laws.

The next sentence of subsection (b) also applies to that problem, section 4 (b), which says:

Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land.

While in most national forests no special written or formal permit is required by the Federal Government of hunters and fishermen, still they are permittees by virtue of their being permitted to harvest wildlife resources.

Under the laws of the States, the game and fish laws of the States, we have cooperative arrangements with the Federal Government for those purposes.

Senator BIBLE. You think that is sufficient as drafted now, Mr. Callison, to accomplish your purpose?

Mr. CALLISON. Senator Bible, according to our advices and according to our interpretation of the law, it will take care of this situation, our interpretation of the law, rather.

Senator BIBLE. As a practical matter, if I am a fisherman and I have a residence in Nevada and I want to go to Senator Barrett's mining claim across the Truckee River, he has a no trespass sign, what happens if I go across there? Does that fishing license give me access across this stream to his mining claim?

Senator WATKINS. You mean prior to patent?

Senator BIBLE. No. Under section 4.

Senator WATKINS. Prior to patent?

Senator BIBLE. Prior to patent if he has an open mining claim?

Mr. CALLISON. That would be true on claims filed pursuant to this act.

Senator BIBLE. That is what I mean, after this act goes into effect.

Mr. CALLISON. Yes.

Senator BIBLE. You interpret that to mean that after I show my fishing license to Senator Barrett that I can go across the property?

Senator ANDERSON. You may be able to, providing he does not assert he needs the surface for mining operations. He can only have so



much of the surface as is necessary for mining operations. Theoretically, he cannot go down the stream on the public domain and say, "You cannot indulge in any fishing because I have a claim here," unless he is actually using the stream banks for mining purposes.

Senator BIBLE. I was wondering if it was practically accomplished. I feel there is an area where they should not use mining claims to prevent fishermen.

Senator WATKINS. The Senator realizes that that is what is being done many times now?

Senator BIBLE. I understand.

Senator WATKINS. Under the present law.

Senator BIBLE. This is to correct that?

Senator WATKINS. In other words, there is no objection to a miner doing the things that a miner ought to do to develop a mining claim, but when he uses that as a subterfuge to tie up public domain where he does not have a legitimate mining claim, this bill is intended to correct that sort of abuse.

Senator BIBLE. The only purpose of my question was to determine from Mr. Callison if he felt that section 4 did permit the fishermen to go on the stream under those circumstances. I understand his answer is yes.

Mr. CALLISON. Mr. Chairman, in that connection I have a comment here from Seth Gordon, director of the department of fish and game of the State of California, raising the question of access by hunters and fishermen as a result of the present mining laws, and he attaches an opinion to that by the office of the attorney general of the State of California, and an analysis of how the present laws are interpreted to deny access to hunters and fishermen.

I should like to submit that for the record.

Senator ANDERSON. I think it ought to be printed in the record at this point.

(The information referred to follows:)

STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME,  
*Sacramento, Calif., January 13, 1955.*

Mr. CHARLES H. CALLISON,  
*Secretary, National Wildlife Federation,  
Takoma Park, Washington, D. C.*

DEAR CHARLIE: No doubt you have heard something of the difficulties we out here in the West are facing with the posting against all trespass of thousands of new mining claims. Our problems have been particularly aggravated by the multitude of recent uranium claims being filed, which in some cases blanket entire important watersheds.

The gravity of the situation prompted us recently to request an opinion from our attorney general, copy of which is enclosed.

I have today written to the directors of the 11 Western States asking that they give me a sizeup of their problems in this regard, and what steps they have taken so far to combat this serious threat to the use of our public lands by the sportsmen and other recreationists.

We should all, without delay, put forth our best efforts to get quick remedial legislation on the Federal level. We should not wait until we can get general mining-law revisions, although this particular situation could be used to build up public demand for prompt action on the entire problem.

The Federal law should definitely require that in the issuance of mining claims the right to hunt and fish shall be reserved to the public.

I strongly urge that the National Wildlife Federation take immediate action to initiate necessary remedial legislation and promote a campaign to assure

the Nation's sportsmen the right to hunt and fish without hindrance by mining claims.

Hoping you will tackle this problem without delay, I am, with best regards,  
Sincerely yours,

SETH GORDON, *Director.*

OPINION OF EDMUND G. BROWN, ATTORNEY GENERAL; AND RALPH W. SCOTT, DEPUTY ATTORNEY GENERAL

STATE OF CALIFORNIA,  
OFFICE OF THE ATTORNEY GENERAL,  
January 10, 1955.

W. T. Shannon, Deputy Director of the Department of Fish and Game, has submitted the following questions:

1. "May an angler fish along a stream or river which runs through a posted mining claim?"
2. "May a hunter walk over a mining claim on public domain or national forest lands?"
3. "Is it legitimate for the owner of (a) claim to post such areas against trespass?"

Our conclusions are summarized as follows:

A locator of a mining claim who in good faith complies with requirements essential to a valid location is entitled to exclusive possession of the claim and may maintain trespass against anyone entering the claim without his permission. Assuming the stream or river mentioned in question (1) is not navigable and has not become a public highway under the provisions of Government Code sections 25660-25662, an angler may not fish from that portion of the stream or river which runs through a valid mining claim posted against entry.

Question 2 is answered negatively provided the claim is posted against entry or trespass is otherwise prohibited by Penal Code section 602 or section 627.

Assuming the validity of the mining claim, the owner thereof may post such area against trespass.

#### ANALYSIS

The general policy of Federal mining laws is to permit the widespread development and exploitation of the Nation's mineral deposits and to afford mining opportunities to as many persons as possible (*cf. United States etc. v. Ickes*, 98 F. 2d 271, cert. denied, 305 U. S. 619, 83 L. Ed. 395; *Conger v. Weaver*, 6 Cal. 548). To that end Congress enacted legislation many years ago opening the public lands of the United States, not otherwise reserved, to location and patent, for the purpose of extracting minerals therefrom. This legislation is codified in United States Code, title 30, sections 21 et seq. In brief, the lands which are subject to location as mining claims must contain valuable mining deposits, must belong to the United States, and must be unoccupied and unappropriated at the time of location (*cf. South. Calif. Ry. Co. v. O'Donnell*, 3 Cal. App. 382; 17 Cal. Jur. 282). It is settled that a mining claim, once perfected and maintained under law, is property in the fullest sense of that term and may be sold, mortgaged, partitioned, or taken under execution without infringing on the title of the United States (*Brown v. Luddy*, 121 Cal. App. 494; *Van Ness v. Rooney*, 160 Cal. 131; *Wallace v. Hudson*, 170 Cal. 596). For all practical purposes a valid mining claim is an estate in fee (*Buchner v. Malloy*, 155 Cal. 253). It follows that the locator of a valid mining claim is not a mere licensee but is the absolute owner of an estate and cannot be deprived of inchoate rights by the tortious acts of others (*Gobert v. Butterfield*, 23 Cal. App. 1; *Watterson v. Cruise*, 179 Cal. 379; *Dalton v. Clark*, 129 Cal. App. 136). Under Federal law the locators of mining claims have " \* \* so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, \* \* the exclusive right of possession and enjoyment of all the surface included within the lines of their locations. \* \* " (30 U. S. C. sec. 26).

In keeping with this section it has been consistently held in this State that the locator of a mining claim is entitled to all of the privileges and incidences pertaining to the soil and his possession of the claim is sufficient to protect him against trespassers (*Grandall v. Woods*, 8 Cal. 136; *Roue v. Bradley*, 12 Cal. 228; *Lightner Mining Co. v. Superior Court*, 14 Cal. App. 642; *Empire Star Lines Co. v. Butler*, 62 Cal. App. 2d 466; *cf. also Page v. Fowler*, 37 Cal. 100; *Grover v. Hawley*, 5 Cal. 485; *Brandt v. Wheaton*, 52 Cal. 430).

While none of the cases mentioned in the foregoing paragraph involve trespass by hunters or fishermen, it follows as a matter of general application that the possessory rights of a mining claimant who in good faith complies with requirements essential to a valid location, entitles him to post the property against entry by fishermen and hunters (Pen. Code secs. 602, 627). It is elementary that every unauthorized entry upon the land of another is a trespass. However, if the stream or river mentioned in the first question is navigable or has been declared a public highway pursuant to Government Code sections 25660-25662, public entry cannot be denied. Within the limitations of fish and game laws, a person has the right to hunt or fish at any place where he may lawfully go, but the public has no right to invade or cross private lands in order to reach public lands or public waters (*Bolsa Land Co. v. Burdick*, 151 Cal. 254).

Mr. Shannon points out that many of the claims are located "solely for the purpose of obtaining a cabin site and then posted against trespass, commonly in areas which have always been open picnic areas." What we have said hereinabove with respect to the possessory rights of the locator of a mining claim is based upon the assumption that the claim is located in good faith and that the locator has complied and continues to comply with all the requirements of law with respect to the claim such as making improvements, etc. It is quite obvious that possessory rights of the locator depend upon the validity of the location or the legality of his claim. Mining laws do not contemplate the location of mining claims solely for the purpose of permitting the locator to build a cabin thereon for recreational purposes. Each case therefore will stand on its own merits, and if a person is denied access to the lands embraced within a mining claim, he will have the burden of establishing his right of entry by proving the invalidity of the claim (*cf. Watterson v. Cruse*, 179 Cal. 379; *Calif. Dolomite Co. v. Standridge*, 128 A. C. A. 756).

Article I, section 25, of the California Constitution does not appear to be applicable here, for the reason that that provision of the Constitution does not affect Federal public land but only pertains to State public land (*cf. 22 Ops. Cal. Atty. Gen. 134, 136*). As pointed out hereinabove, mining claims can only be located upon lands belonging to the United States.

Senator NEUBERGER. May I ask Mr. Callison one question?

Senator ANDERSON. Yes.

Senator NEUBERGER. You mentioned in your written testimony, Mr. Callison, that you felt while you support S. 1713, it did not go as far as you would like.

In what particular respect did you want it to go farther?

Mr. CALLISON. Well, we still think there will be an inducement for individuals to file mining claims that even under this act will be done for the purpose of gaining title to timber resources rather than mining.

The standing timber in many areas of the national forests is so valuable that there will still be an inducement under this bill.

Senator NEUBERGER. In other words, there is nothing to prevent a man who secures patent and secures a claim from harvesting the timber.

Mr. CALLISON. That is right, after it goes to patent the timber is his. In many instances he may prove a patent on a mining operation which amounts to very little, not enough to encourage a prudent man to proceed but he would acquire title to timber worth far more than any minerals.

Senator WATKINS. Does he not have to go much further than that to get a patent?

Mr. CALLISON. Yes, I think he has to show that he does have a legitimate and proper mining operation but still the timber may be worth more.

Senator WATKINS. That could possibly happen provided it was on a placer claim, but on a small load claim that would not be true. If it is a heavy timbered area, he would use some timber for mining operations?

Mr. CALLISON. Yes.

Senator WATKINS. Then he would be permitted to clear the timber off so he could operate?

Mr. CALLISON. Yes, sir; he is entitled to do that.

Senator WATKINS. For buildings and other things he would have to build. Suppose he had an ordinary sized claim?

Mr. CALLISON. I understand on that even on 20 acres of some of the national forest lands of Oregon and California, the timber may be worth \$15,000 or \$20,000.

Senator NEUBERGER. That is right.

Senator WATKINS. It could be possible on some of them.

Senator NEUBERGER. We had a situation just recently in Oregon, Senator Watkins, where 15 controversial claims, and it was denied that there was sufficient mineralization by both the Bureau of Forest Service and Bureau of Land Management, and yet the Secretary overruled both of those agencies on the basis of a private assay and gave the company patent and they commercially logged the timber on that, not for the use in access or using it for pit props or something like that. They commercially logged it for sale and the Forest Service tells me that the sale amounted to well over \$12,000.

Senator WATKINS. Yes.

Senator MALONE. How many claims?

Senator NEUBERGER. Fifteen. There were 23 claims involved. A patent was granted to eight without controversy. Fifteen were denied by both the Forest Service and the BLM, but the Secretary overruled them on a basis of a study made by a Mobile, Ala., assay corporation.

Senator BARRETT. Mr. Chairman, I would like to ask the witness a question. I understood him to say certain abuses with references to the harvesting of timber would or might occur under this legislation; is that right?

Mr. CALLISON. No; I did not intend to say that. I said there would still be an inducement to certain individuals who file mining claims when their main purpose would be to get the title to the timber rather than for mining purposes.

Senator BARRETT. Under this legislation how could they take advantage of timber resources by these phony filings that you speak of?

Mr. CALLISON. Perhaps it could not be called a phony filing in that sense.

Senator BARRETT. Any kind of filing, whether phony or otherwise?

Mr. CALLISON. When it goes to patent, they would get title. I was making a comparison to the earlier bill introduced by Senator Anderson.

Senator BARRETT. Well, then, what you are talking about is after patent, not before?

Mr. CALLISON. Yes.

Senator WATKINS. But after patent, then, you get the title to the fee of land?

Mr. CALLISON. Yes.

Senator WATKINS. And all that goes with it and you have established the main purpose apparently conclusively.

Senator BARRETT. After you have proved up as a mining claim.

Senator WATKINS. After you have proved that it is a mining claim, and it is a legitimate claim, and you are not there for any other

purpose, that is not in keeping with the objectives of the mining setup.

Mr. CALLISON. That is right.

Senator BARRETT. There is one other statement that I think is rather ambiguous and I am sure you did not intend it.

It is this one on page 2 where you say:

It does provide a procedure through which, on given areas of the public domain, claimants can be challenged to show that their claims are legitimate and defensible.

This legislation does not go quite that far, does it, Mr. Callison?

Mr. CALLISON. Perhaps my use of wordage there is not exactly correct, but what I mean by that was the procedure that is provided in this bill may be used by the Forest Service acting through the Department of the Interior, or by the Bureau of Land Management, through the Department of Interior, through various processes of notifying the claimant to arrange for hearings at which they can go into whether or not the claimant has a legitimate claim, one that can be defended.

Senator BARRETT. I do not think it goes that far; that is the point I am trying to bring out. I think the validity of his mining rights or his right to harvest the minerals from that land are not in question, only the question of the use of the surface resources.

When he gets through, the man can continue to exert his rights to recover any minerals on the claim, even though he may not use the surface except as incidental for that purpose.

Mr. CALLISON. That is essentially true, I believe, Senator Barrett, but I think at the hearing the Government would have an opportunity to show that it was believed he did not have a sufficient showing of minerals. They would have an opportunity at that time.

Of course, he could refile again but then he would refile subject to the provisions of this act.

Senator BARRETT. Yes; he would refile subject to the provisions of this act.

I do not think the purpose of the bill is to question the validity of his mining claim as such. I do not think there is any effort there to deny the man the right to proceed with the orderly development of the claim for mineral purposes.

Mr. CALLISON. I agree with you on that, sir. As you say, my sentence was ambiguous.

Senator BARRETT. I think that is a point we ought to make abundantly clear because that will be very important to these small miners that they will certainly not be subjected to the possibilities of having the right to continue the mining operations attacked by reason of this procedure.

Senator ANDERSON. I do not think there is a possibility of it; certainly that is not the intent and we will state that in the report and on the floor. There could not be any question on that.

Senator WATKINS. They would have no authority beyond stopping the legal operation. They may not be exactly illegal but they are not in keeping with the purposes of mining.

Mr. CALLISON. That is what I intend it to mean when I say challenging to show that their claims are legitimate. I did not mean that there would be opportunity to challenge that mining operation.

Senator WATKINS. This bill would not be necessary if these people had gone ahead and tended strictly to the mining business and nothing else, but they use this apparently as a no-man's land as far as the law is concerned, a rather hazy situation, and use that to develop other interests other than mining.

Senator ANDERSON. Are there additional questions?

Senator MALONE. Mr. Chairman, I would like to say at this time that the thing that disturbs some of us is the continual pressure from all sides, not only on this mining situation but in other situations so that we make the man who is trying to do something, put him on the defensive. You come in the doors and they come in the windows. Close the windows and they come up through the cellar floor.

We had a Secretary of Interior for almost 20 years and he was continually running out of petroleum. He was continually also attacking certain features like the depletion allowance, and if he could have won that fight, he would have run out of oil.

Of course, that is obvious now to everybody. He was not successful in abolishing the depletion allowance and now the oil runs out of our ears, but he ran out of it for 20 years.

Now, we had another situation here that has been fought through the Congress and extended. Now a worker or investor in any industry in this country has to show that his job or his investment is important to national defense in order to be protected.

Now we come to the mining claims and we have the picture of the United States Forest Service and the Bureau of Land Management making an investigation to determine whether a mining claim has any possibility of success.

I have not yet made the acquaintance of anybody in either of those services that knows anything about mining. They are not supposed to. They are built up for another purpose. Still, the witness says that they both made an investigation and they saw no possibility of success and therefore they turned this man down.

The Secretary, on an assay of a reputable assaying outfit, granted a patent.

Now, Mr. Chairman, what I think you are doing with this bill is putting the prospector on the defensive.

It was well established here yesterday morning by one of the witnesses, Mr. Holbrook, that now in order to make a case against a miner on a claim, it must be initiated in the department. It can be done, and if it can be shown that he has not located it for a mining purpose, it can be declared out of bounds.

However, he said it is quite a bit of work for the department to do that so they want something that puts the miner on the defensive so that he has to prove himself before their department that he has a legitimate mining operation.

Now, this is not to say that there are not abuses in all these things. For example, the homestead extension, there is a section that they could file on. All these things are abuses, veterans' pensions are abused. Pretty nearly everything suffers some abuses, but I want to call it to the attention of the distinguished witness here who represents the National Wildlife Federation, and I am in entire sympathy with the wildlife efforts to make available and improve the hunting and the fishing and all of the work in that connection.

We have it in our own State, a good outfit handling it, and they are trying to do a good job and I am trying to help them, but I am not trying to help them beyond their field.

I want to ask the witness what happens on a farm with respect to fishing rights?

Suppose a man owns a piece of land and it happens that a stream runs through it, what are the rules and regulations that affect the Wildlife Federation?

Mr. CALLISON. The owner of private property, private land, Senator, of course, has complete control of trespass. He can post it and keep them off.

When a mining claim goes to patent, the patentee will have similar rights.

Senator MALONE. Are you against all this?

Mr. CALLISON. No, sir.

Senator MALONE. Let me say this to you in all friendliness, that since 1872, when a man goes out and sets up a stake and starts to work his claim and fulfills all of the criteria, all of the rules and regulations laid down in the law to all intents and purposes, as long as he fulfills those regulations of the law, he owns that land. When he quits doing that, he has no rights. You understand that, do you not?

Mr. CALLISON. I understand that he has the right under the present law to post his mining claim; yes, sir.

Senator MALONE. Even if it is just a location, but his assessment work is done and he has full rights.

I have heard this delineated several times in the last 2 or 3 days that naturally you do not object after he gets a patent, but he owns that claim as long as he has his notice up and his location is filed with the county clerk and he has done his assessment work and he is just as proud of that little piece of land and is doing at least the amount of work that the law requires as after he patents it.

I would like for you to explain to me after I say something to you about a homestead why you object to a man controlling it when he has complied with the law, when you do not object after he gets a patent.

Now, this country was mostly settled up west of the Ohio River on homesteads. When a man goes out there and files a homestead, complies with the law, it takes him 3 years to get a patent. You are familiar with that, are you not.

Mr. CALLISON. Yes, sir.

Senator MALONE. Did you have any idea that he had any more rights when he got the patent than when he was filing on his homestead and was complying with all the laws? Do you have any idea that he had any more rights after he got patent than he had when it was underway?

Mr. CALLISON. No; I did not.

I think, Senator Malone, that the situation here is somewhat different in that there are other legitimate rights and interest in the public lands that are subject to mining claims, in addition to the locator's interests, that need to be protected. Some of those rights and interests involve just as much free enterprise and just as much American spirit as the mining enterprise, and I am speaking of the commercial harvesting of timber and the use of those lands for grazing purposes.

Those require certain things and are to the benefit of free enterprise and initiative and all the things that we call American just as much as the mining claim procedures.

Senator MALONE. Have you ever had any experience in the matter of mining or grazing?

Mr. CALLISON. I have in the matter of grazing.

Senator MALONE. Where are you from?

Mr. CALLISON. I was born on a homestead in Alberta.

Senator MALONE. Alberta, Canada?

Mr. CALLISON. Alberta, Canada. My parents were Missourians who went to Canada and homesteaded.

Senator MALONE. When did you come back?

Mr. CALLISON. I have lived in the United States since I was 6 years old.

Senator MALONE. What did you do after you got through school?

Mr. CALLISON. I grew up on a farm in Missouri after they came back to the United States.

After I got through school I have been in newspaper work and in conservation work since.

Senator MALONE. Well, I have been in this business that you are discussing. I have patented many of these claims, have been with these miners and livestock men for 40 years.

Mr. CALLISON. I know that is true, sir.

Senator MALONE. I want to say this to you. What all of us would like to do is not to handicap any other use but not to handicap the original purpose of the bill.

For 20 years there has been an attempt to get control in Government here in Washington. How long have you been in Washington?

Mr. CALLISON. Four years.

Senator MALONE. Well, that is too long. Nobody is normal here after 3 months unless they go back out there where they are earning a living the hard way. Every one of these people in Government begin to believe their clippings and think that, being a graduate of some college, they know everything about the public lands.

As a matter of fact, if you go back a little further until 1934, the policy of the United States Government in relation to public lands was holding them in trust for the States until they could figure out some way, homestead, mining, or some other way, to get them in private hands and let them get on the tax roll.

In 1934 they passed the Taylor Grazing Act. There never had been any charge for public lands. They were always looking for a way to give them to people to use them. They were always giving away good land from Ohio west for a \$15 filing fee, and all you had to do was to comply with the law; that was the duty of the Federal Government officials to see that they complied with the law.

Now, when they got out to western Kansas, where 160 acres was just a kind of aggravation and not enough to make a living, they passed a homestead extension, another 160 acres, and you could get 320. Are you familiar with all this business?

Mr. CALLISON. I am familiar with it.

Senator MALONE. You know it happened?

Mr. CALLISON. Yes, sir.



Senator MALONE. Why did they pass that additional 160? So that the man could make a living.

They got out on the mesas in Colorado and that became an aggravation, so they passed what they call the Stock Homestead Act; I do not have it exactly right but that was where you could file on 640 acres. Are you familiar with that?

Mr. CALLISON. Yes, sir; I am familiar with the history generally and I have personal experience.

Senator MALONE. Many of them went across the short-grass country, across Colorado and Utah. Then you got into the Great American Desert, and that includes a part of my State, and 640 acres was just an aggravation because the investigations of the United States Geodetic Survey said that an average, not every acre, some parts of very few acres can support a cow but in some places they cannot walk far enough in a day to get enough to eat. So the average in the whole State is 140 acres per cow unit, 40 acres per sheep unit.

Now, you are not talking about acres then, you are not talking about sections; you are talking about townships when you start talking about enough cattle and sheep to make a living for a family. A band of sheep or 250 head of cattle or whatever it is, in other words.

Now, to bring you up to date on that, gradually they are changing the objective of the Government, not now to hold the lands in trust for the States until they can find some way to put them in private ownership, but some way of getting tighter control in Washington.

I only mention these other approaches to show you that this is not the only approach. The petroleum approach through Mr. Ickes, he made a thousand speeches that we would be out of oil. You had to save this for war, not having any knowledge that the only way you find additional supplies of gas and oil is to make it profitable for what you have.

Now, when it was made profitable, and through the depletion allowance it was gambling money, that is all it was. Now you do not know what to do with your oil. We are importing oil and shutting down our own wells, but it is an approach to do just what you are trying to do and you do not even know it.

I do not want to say you do not know it; your testimony does not show it. Maybe you do know it. If you do, it is worse.

We have passed something here in the last few days that when it was passed in 1934, it changed a 100-year-old policy. We always protected a worker and the investor to the point of difference in the cost. Now we have a 3-year extension of the thing that a worker and an investor has to show that he is important to national defense to live.

Now we come in with this thing here. I know the mining law has been abused. I know every law on the statute books has been abused; I know every regulation of a city in driving is abused. I do it sometimes myself, although not purposely, but we all do it.

What do we do: abolish the driver, or do we tighten the restrictions?

Senator ANDERSON. There is nothing in the bill that tries to abolish the miner.

Senator MALONE. I know what is in the bill.

Senator ANDERSON. It does not try to abolish the miner.

Senator MALONE. What you are trying to do is put the shoe on the other foot and put the miner on the defensive.

Senator ANDERSON. I think you ought to state what is in the bill.

Senator MALONE. I am talking about what is in the bill. You are breaking the ice, you are starting it. Every man that has been on this thing, they have cited what we did 2 years ago or a year ago as a precedent for this one that this is in line with the uranium setup, which it is not at all.

What we did in that bill was to coordinate the oil and gas-leasing act with the mining act. It has nothing whatever to do with this bill. It did not modify it in any direction at all. It did not put under the Bureau of Land Management or under the Forest Service or under the Fish and Wildlife any direction of the mining law.

Now, this thing is simply a further opening wedge. We discussed this very thing when we coordinated the oil and gas-leasing act with the mining act that it was not to be used as a precedent to get a further leasing foot in the door.

If there is not plenty of authority on the part of the Government now, and it was testified by Mr. Holbrook that they could do it, then we could easily amend the mining act to give them that authority, to go in and make this examination and go to court with it, which he can now do.

But let me say something to you, Mr. Chairman, that if every man, prospector, is put off in his claim in the United States today, that the Forest Service and the Bureau of Land Management do not think has any showing and, as a matter of fact, where you could not find any showing, that I hear a reasonable man would spend his money on, mining men are not reasonable men. They spend their money where there is no showing but they have a hunch that there is ore there if they dig deep enough or if they sell enough stock or something; that is the way they find the mines.

They do not find mines by going to a joker in a department that does not know anything about mining and could not make a living if you gave him the money to start off with because he does not have the determination himself and the fever that sends them into these places to find this ore.

Mr. Chairman, I want to cite you something that if you do a little reading, in Virginia City, Nev., where they produced \$1 billion during and after the Civil War, they did not know the valuable ore there. People went out broke and crying and by accident somebody assayed a blue mud that they had been throwing down the mountainside and they found out it was silver.

Senator ANDERSON. We can tell a thousand stories of it and this does not stop that situation.

Senator MALONE. Yes, it does; it sends these jokers in there that do not know anything about mining at all.

Senator ANDERSON. It does not send a soul in.

Senator MALONE. Here is a man testifying and then supported by a Senator, that the Forest Service went in and decided that there was no sign of a mine there, it was not reasonable. The Bureau of Land Management went in and turned it down. Both of these great organizations turned that miner down and still the Secretary of the Interior, on an assay, decided to go ahead with the patent.

Suppose you had had a Secretary of the Interior like Mr. Ickes or somebody, and he would have said that the Bureau of Land Manage-

ment says there is nothing, and they would have turned down the patent.

Senator ANDERSON. He does not do it on that basis.

Senator MALONE. But he could and this is an encouragement for it.

Senator ANDERSON. He could not do it under existing law and he could not do it under this law. The only way he could reject it is if they had no mine.

Senator MALONE. I hope we have some witnesses later on this, because this, in my opinion, is one step in the whole Government program coming up through the cellar, the doors and windows to keep any man from having any authority over Government land; that started in 1934 and is continuing.

Senator NEUBERGER. The Senator said that the witness did not know anything about mining and that I supported him.

Senator MALONE. I did not say he did not know anything about the mining. I said there was all this timber and it has been turned down by the Bureau of Land Management. I did not say you did not know anything about mining. I may get to that later.

Senator NEUBERGER. How much do these mining operators know about commercial lumbering?

Senator MALONE. The testimony yesterday had been that these men had never sold commercially this timber. I forget who testified that. Maybe you have different information but as I understood it, it was that when they located these claims they had no difficulty in logging off of the claims.

Who was that; does anyone remember? I can look it up.

Senator NEUBERGER. You mean that this timber on those claims in the Rogue River National Forest was not logged or harvested commercially?

Mr. HOLBROOK. I did not testify to that.

Senator MALONE. Somebody testified that they had not generally had trouble with logging the claims off.

Senator NEUBERGER. But I question the specific instance that I referred to. Are you saying that this timber on the Rogue River National Forest, these claims in which the validity of them was challenged by the Forest Service and the Bureau of Land Management, and later both these agencies were overruled by the Secretary on the basis of a private assay by a firm from Mobile, Ala., 3,000 miles from the Rogue River National Forest; are you saying that the timber on those claims was not logged?

Senator MALONE. No, because they were patented.

Senator NEUBERGER. Sure, they were patented, but you are talking about the fact that we did not know anything about mining.

I am asking you how much these mining companies knew about commercial logging and lumbering.

Senator MALONE. They probably did not know much.

Senator WATKINS. They knew of their profit.

Senator MALONE. What I am saying is if the Secretary of the Interior, on an assay, and I do not care where the assayer lives because he does not have to know anything about particular area, if he says there was profitable ore there and the Secretary of the Interior was in accord with that, he owned it.

But no one has objected as a witness yet to their owning the timber after it is patented.

Senator ANDERSON. I was going to say, why do we not settle this among ourselves?

Senator MALONE. I am trying to settle here that the patent was issued by the Secretary because he thought, on the basis of the assay, they deserved it and they logged it.

Senator ANDERSON. On that basis, under the law the mining patentee had the timber, and under S. 1713, if it becomes law, he will have it.

Senator MALONE. Nobody has objected to them having the timber when it is patented. They are only objecting to it at first.

As an example, it was patented because the Secretary of the Interior believed the assays and there was no doubt.

Senator ANDERSON. All I am saying is that exactly the same situation would prevail under this bill.

Senator BARRETT. Mr. Chairman, I want to ask the Senator and the witness a question, if they will permit me to do so.

If you will refer to page 12 of the bill, you will find there this sentence in the middle of that page:

The procedures with respect to notice of such a hearing and conduct thereof, and in respect to appeals, shall follow the then established general procedures and rules of practice of the Department of the Interior in respect to contests or protests affecting public lands of the United States.

Senator MALONE. What are these?

Senator BARRETT. That is the exact procedure that is in force now and has been in force for many years. It involved contests of homestead and mining claims. There is no change at all with reference to the situation in that respect.

Senator MALONE. There is this change, Senator, that it puts the shoe on the other foot.

Senator BARRETT. No; it does not. It is right there as it has always been and that is the thing I am trying to bring out, that there is not any change. The requirements on the mining claimant remain the same.

Senator MALONE. If we have Secretaries like Mr. Ickes, we would not have any petroleum drilling or mining claims or anything else, because they said we did not have these minerals, too.

Senator WATKINS. They can go to the courts. If they do not like the decision of the departments, they can go to the court and have them reverse it, and they do occasionally.

Senator BARRETT. But there is no change in the existing law.

Senator MALONE. The little prospector can go to court and have it reversed?

Senator BARRETT. Let us ask the witness.

Mr. CALLISON. That is the way I interpret it, Senator Barrett; no change in the procedures.

Senator ANDERSON. I was going to say that this man here so testified. Mr. Holbrook is a competent attorney. He has testified that it does not change the rights in any way on this. He has testified over and over again, and if there is a change, I think we ought to have some interpretation of the law to show what it is.

I would be glad to have him come back to the stand.

Senator MALONE. The last question I asked him was, "Did this not reverse the procedure?" and he said it did.

Senator WATKINS. Mr. Chairman, I would like to say this, that I happen to represent a State that has something to do with mining.

Senator MALONE. Not much now. They are just about out of it.

Senator WATKINS. I think they are doing more active work in mining in the State of Utah than any other State.

I hope the Senator will give us a chance to speak. He has made his speech.

I say we have a deep interest in this mining situation. I happen to have an interest in the small miner, the prospector who takes his chances, but I happen to know that the burden has always been on him to show that he complied with the law. If the Department attempted to put him off, then the Department had to indicate where he was violating the law.

I cannot see one legitimate interest of a miner with respect to these public lands that this bill will take away from him. It is the illegitimate use of the mining law to tie up forestlands and other lands where there is not any reasonable hope of developing a mine or where there is sand and gravel, which appears everywhere, and ties up the forest.

I think that is an abuse which every legitimate miner ought to see that we get rid of. If it is going to take away any of the legitimate interests, I certainly will be against this bill and I will be glad to strike out anything that indicates that.

But when they get across the stream and say that you cannot fish here, and he probably does not have much except the hope and is there primarily for the purpose of the timber rather than the minerals, that is another thing.

We see them here and there with a little hole and they go back once in a while and do a little work. They tie it up probably forever and hold up the development of the country. It is that type of fellow we are after, not the fellow trying desperately to get a mine. I will do everything to protect them.

As my colleague over in the House described them, they are weekend miners.

Senator ANDERSON. I was just wondering if we could have Mr. Holbrook state whether or not this bill, S. 1713, would change the procedure for a man who is trying to develop a mine, trying to develop the mineral resources of a tract of public land.

Senator MALONE. Have we lost the other witness?

Senator ANDERSON. No; but we want to hear from Mr. Holbrook on this.

What would be the situation? Would it not be precisely what it is under the existing law, Mr. Holbrook?

#### STATEMENT OF RAYMOND B. HOLBROOK—Resumed

Mr. HOLBROOK. I do not think there is anything in the bill, Senator, that will interfere with legitimate mining operations. I think there is a slight difference in the status of his surface rights, but I do not think this difference in any way affects mining or prospecting or allied operations.

In other words, it is something different than mining.

Now, Senator Malone, I did not intend to create the impression that the procedure set up under this bill reverses the situation. Senator Watkins has stated the rule of law correctly as I understand it, that the burden has always been on the mining claimant to establish that he has a valid mining claim.

Senator WATKINS. That shoe has always been on that foot, has it not?

Mr. HOLBROOK. That is right.

Senator ANDERSON. For 75 years?

Mr. HOLBROOK. Yes. It is an absolute necessity in the matter of administering the law. You cannot prove a negative; it is a well-established point of law. So the miner has to establish that he has a good mining claim.

Senator MALONE. Under this bill?

Mr. HOLBROOK. Under existing law and all of the procedures involved in a contest and a protest, the mining claimant has to establish that he has a mining claim.

Senator WATKINS. You are talking about the mining law that is now in effect?

Mr. HOLBROOK. That is right.

Senator WATKINS. And that was in before we passed the bill last year?

Mr. HOLBROOK. Yes.

Senator MALONE. Let me read a part of this if you are through?

Senator ANDERSON. All right.

Senator MALONE. I am not interrupting anybody?

Senator ANDERSON. No, sir.

Senator MALONE. The bill says here as follows:

Except to the extent required for the mining claimant's prospecting, mining, or processing operations and uses reasonably incident thereto. \* \* \*

Under section 5, we find the following:

The Secretary of the Federal department which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the Office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of the notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public lands surveys which embrace the lands covered by such requests, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The last part of it is the guts of the thing. Then they go on:

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over 21 years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof on the date of such examination, setting forth such facts, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such companies, abstractors, or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting for the name of any person disclosed by such instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record.

"Tract indexes," as used herein, shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

Thereupon, the Secretary of the Interior, at the expense of the requesting department or agency—

In other words, that means one of his own agencies, does it not?

Mr. HOLBROOK. The expense could be borne by one of his own agencies or it could be borne by another Federal agency or department having the responsibility for administering the lands involved, depending upon which agency or department initiated the request.

Senator MALONE. That means the humble taxpayer ultimately, I guess.

Senator ANDERSON. This is all the Government.

Senator MALONE. Yes; after it gets the money from the little people out there.

Thereupon the Secretary of the Interior, at the expense of the requesting department or agency, shall cause notice to mining claimants—

these are the ones they dug out of the records—

to be published in a newspaper having general circulation in the county in which the lands involved are situate.

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such requests for publication was filed (which office shall be specified in such notice)—

I presume that would be the Land Office in each State—

and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

This refers to the locators of the claims.

Mr. HOLBROOK. To the mining claimant.

Senator ANDERSON. Doesn't this refer to the activities of the Department of the Interior?

Mr. HOLBROOK. The individuals he mentioned there are the people that hold the claims.

Senator MALONE. They are the locators of these claims. They are put on notice through publication, and they must then, within 150 days, do these things. And I understand there are nine publications. I think I read it some place in the bill.

Mr. HOLBROOK. That is right.

Senator MALONE. Once each week, is it?

Mr. HOLBROOK. Yes.

Senator MALONE. That would be 2 months. That would be 60 days after the 150. Within 90 days after the last publication then they shall file the following information with the Land Office. And I am talking now about the little mines or anybody that locates a claim:

(1) the date of location;

(2) the book and page of recordation of the notice or certificate of location—

I will ask you how many prospectors have any idea what they file it in, let alone the page and the book—

(3) the section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which

would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument—

Now, Mr. Chairman, all of this is required of the locator. I will read that again so we don't miss it.

Senator WATKINS. From what are you reading?

Senator MALONE. Page 8 of your bill:

(3) the section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument—

The fellow who wrote that never lived out there, I will guarantee you that. I don't know who wrote it—

(4) whether such claimant is a locator or purchaser under such location; and

(5) the name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming an interest or interests in or under such unpatented mining claim—

Now all of us know that these claimants, whenever there is a little discovery in there, anywhere from 5 or 6 or 400 or 500 go in and file claims on top of each other hoping there will be a fraction.

So, Mr. Chairman, a prospector of the kind with which you and I are familiar is to notice this advertising in the paper, and, within 90 days after the last publication, he files this information: the date of the location; the book and page of the recordation of the notice or certificate of location; the section or sections of the public land surveys which embrace such mining claim, or, if unsurveyed, he must tie it in to a mineral monument; and then he must tell them whether such claimant is a locator or a purchaser and who he purchased it from, and trace that back; and the name and address of such claimants, names and addresses so far as known to the claimant or any other person or persons claiming an interest.

If you don't do any of these five things—

such failure shall be conclusively deemed (1) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act—

and those restrictions in section 4 are set out here. I will get back to those pretty soon.

But if he fails to do any one of these things he relinquishes all right and title.

Senator WATKINS. No.

Mr. HOLBROOK. No; not all right and title.

Senator MALONE. Let's go on a little bit. I am reading from your language. I presume you had a hand in writing this bill. Did you?

Mr. HOLBROOK. Yes, sir.

Senator MALONE. I knew that already. So I am glad to have it in the record [reading]:

such failure shall be conclusively deemed (1) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims—

That means what it says, does it not?

Mr. HOLBROOK. Yes, sir.



Senator MALONE (continuing) :

and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims.

If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in nine consecutive issues, or, if in a semiweekly or triweekly paper, in the issue of the same day of each week for 9 consecutive weeks.

Within 15 days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid—

and it goes on with a description.

But, unless this is complied with, according to (i) it constitutes a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions set forth in this bill.

Now I want to make this point in going this far, that this is the first attempt to make every prospector, every man that has any intention of filing a mining claim, to comply with these restrictions. And it is the first time you have made him step up to the barrier and make a public statement to the Bureau of Land Management as to whether or not he has such a filing, and, if not, he is subject to the law in any case.

Mr. HOLBROOK. Did you want me to answer that?

Senator MALONE. I don't care whether you answer it or not. I am telling the truth. This is what the law says.

Go ahead and explain it.

Mr. HOLBROOK. It is not the first time.

Public Law 585, which I understood you to say that you supported last year—

Senator MALONE. And it had nothing whatever to do with this. What it did was to try to get the Oil and Gas Leasing Act coordinated with the Mining Act, and it had nothing to do with going out and talking about grazing.

Senator ANDERSON. Does not that law have exactly these same provisions in it?

Senator MALONE. But there was a reason for that.

Senator ANDERSON. There is a reason they are in this measure also.

Senator MALONE. In my opinion, there is no reason to get a prospector when he is not in conflict with the Oil and Gas Leasing Act. And the oil and gas leasing is not in conflict with the other act.

These were two mining acts we were talking about. We were not talking about fishing and hunting. And we were very emphatic, some of us in the committee, that this should not be considered precedent to go on to the next step, to talk about handicapping a prospector.

Mr. HOLBROOK. May I answer your question?

Senator ANDERSON. Yes, sir.

Mr. HOLBROOK. The provisions as to procedure and the action that must be taken by the mining claimant, the locator, is exactly the same, Senator, in this bill as in Public Law 585.

Senator MALONE. But you extend it; do you not?

Mr. HOLBROOK. In Public Law 585—

Senator MALONE. Will you answer my question? Do you extend it to fishing—

Senator WATKINS. Mr. Chairman, I insist that the witness be able to answer the question.

Senator MALONE. I insist that he answer me.

Senator WATKINS. That is what he is trying to do.

I do not want to take advantage, but the witness is trying to finish his answer.

Senator ANDERSON. He should answer. And then you may ask him if he extended it.

Senator WATKINS. He was right in the middle of his answer, and the Senator interrupted him. It is not fair.

Senator MALONE. I interrupted him because I wanted to find out if it applied to fishing and hunting and grazing and forestry. In other words, he is explaining that all this does is exactly what the other law does. But this extends it. That is right; is not not?

Mr. HOLBROOK. Senator, it is hard to give a yes or no answer without giving a wrong impression at times.

This does extend the law or there would be no occasion for the new bill.

Senator MALONE. That is right. Of course, it is obvious.

Senator ANDERSON. What did the old law do? What did Public Law 585 do with precisely this procedure?

Mr. HOLBROOK. My point was that the procedure, the thing that the mining claimant had to do, the routine he has to follow, is precisely the same under this law as under the other law. Under the other law there was a conflict between the mining rights and the oil and gas rights. If the mining claimant did not make an appearance and assert his rights to the Leasing Act minerals, he lost the Leasing Act minerals. And it went further in this respect: that loss was perpetual. It is written into the patent. It is a part of the right that he gets. In other words, it is subject, if he does not come in, always to someone else claiming the Leasing Act minerals.

Now under this law, if he does not come in and set up his claim to the surface rights in addition to those rights required for mining, then he will lose his rights and his claim will be in exactly the same status as the claim located after this bill is passed.

Senator MALONE. In other words, it extends to grazing and to fishing and to forestry.

Mr. HOLBROOK. What I had—

Senator MALONE. Answer that. That is what it does, does it not? Extend it to these other uses?

Mr. HOLBROOK. Senator, as was testified yesterday, there is grave doubt whether he has the right to use them for those purposes.

But they have been locked up so that no one could use them.

Senator MALONE. Then if you are locked out there is no doubt, is there? In other words, we have tried for 75 years or 77, whatever it is—the chairman said a while ago—to establish the fact, just like a

homestead, that when you put your stake up there and you comply with all of the laws, you have the same rights there as you have after a patent. But if you lapse in any way whatever, you lose it.

But when you have done your \$500 worth of work and you have your showing in accordance with the patent law and you patent it, then it belongs to you just the same. You do not have any additional rights, but you have permanent rights.

Mr. HOLBROOK. No; that is not as I understand it.

A mining claimant cannot dispose of timber prior to the patent; but he can after a patent.

There is just one point, Senator. I don't want to take——

Senator MALONE. Let's just spend a little time on that point.

If he has a showing that he can substantiate in court and before the Secretary of the Interior, and it is located, he has got a location, and he has done his assessment work and has abided by everything in good faith, is there any record of them stopping him from doing anything he wanted to do on the claim?

Mr. HOLBROOK. He cannot cut and sell timber, Senator. That is well established.

Senator ANDERSON. We have a thousand records of that.

Senator MALONE. That is all right. I am trying to establish that.

But he has a right on the claim. Is it established that he cannot use the grazing?

Mr. HOLBROOK. That is in litigation, Senator, right now.

Senator MALONE. If he had a couple of horses and a milk cow or something, and he was living out there——

Mr. HOLBROOK. Certainly. And he can still do it. There will be no change in that.

Senator ANDERSON. It doesn't change it a particle.

Senator MALONE. How do you know he can do it?

Mr. HOLBROOK. I was talking about granting somebody else the right to use grazing rights or using it as a grazing entry. If it is necessary to mining he can still do it.

I know of your deep interest in mining. And my point was this, that under the existing proceedings, but which I call a contest, or it may be called an averse or a protest, the mining claimant must come in and set up his rights. He must prove that he has a valid mining claim. And if he doesn't, he is out.

Senator MALONE. You are making him do it.

Mr. HOLBROOK. What?

Senator MALONE. You are making him do it under this bill.

Mr. HOLBROOK. He has to under the existing law.

Senator MALONE. No; he doesn't have to do it except in a special case when you take issue with him.

This thing is a blanket thing.

Mr. HOLBROOK. What I mean is if a contest is issued he has to come in like any——

Senator MALONE. All right. But that is the point you made yesterday, and I think it was a very good point. But you have to initiate the contest, do you not?

Mr. HOLBROOK. Who does?

Senator MALONE. Through the department.

Mr. HOLBROOK. They initiate the contest in this case.

Senator MALONE. No, no. Just wait.

Mr. HOLBROOK. And they initiate the contest in the other case.

Senator MALONE. This is another thing.

You do it by advertising, and you do it all at once under this bill.

Mr. HOLBROOK. Yes.

Senator MALONE. But in the other case you have to initiate the contest personally against a certain mining claim owner.

Mr. HOLBROOK. I am not sure it cannot be done by publication, as I told you yesterday.

Senator MALONE. It never has been done in a blanket way, has it?

Mr. HOLBROOK. My point is this, that the burden always has been and it still is on the mining claimant to come in and assert his rights.

Senator MALONE. But the difference is—

Now you have put your finger on it again: you did yesterday after about a half hour of questioning; now you have done it again after about the same length of time. This time you are doing it with a blanket setup by publication, making every prospector in the United States come in and do this thing instead of having it as it has been for 75 years or 77 years where, if you don't believe that there is a proper location, you do it and it is a personal matter. You serve the mining claimant with a notice from the department, and then he does have to come in.

What you are doing is that you just throw a handful of shot over the whole thing, and they all have to come up and prove that they are doing a good mining job and that they have a mineral showing that justifies their claim.

Mr. HOLBROOK. All those who have mining claims within the prescribed area given in the notice would have to come in.

Senator MALONE. That is right. But you could, in the notice, take in the whole situation at one time, or you could take a whole county or several counties, can you not?

Mr. HOLBROOK. The notice could include a large area.

Senator MALONE. It could include the whole State of Nevada.

Senator BARRETT. They have got to be from one county. Am I not correct?

Mr. HOLBROOK. It has to be published in each county.

Senator MALONE. It could take in the whole State of Nevada or Wyoming in one fell swoop.

Senator BARRETT. You break it down to 20 claims in 1 county, not more than 20 claims, and it has to be all in 1 county.

Mr. HOLBROOK. The hearing could not embrace more than 20 claims.

Senator BARRETT. The notice would have to be as against all the people in that one county. The notice has got to be published in the county where the land is situated.

Senator MALONE. You can bring them all at one time.

Mr. HOLBROOK. You might, I think, publish a notice, the same notice, in 2 or 3 counties.

Senator MALONE. Or 17 counties.

Mr. HOLBROOK. There would have to be notice in each county.

Senator MALONE. Or 17 counties. You could do it all at once, could you not?

Mr. HOLBROOK. Because of your great interest in—

Senator MALONE. Will you answer that?

You could do it in 17 counties at 1 time by having your protests filed and advertising it in a paper of general circulation in each county. You could do it all at once.

Mr. HOLBROOK. If you describe the land in each county, I would think that could be done.

Senator MALONE. Of course. And what you would do—you are not bound to describe all of the land. The petitioner would only have to describe what he knew about and what you know about. You can get the lists. But the reason for the notice is to catch the people that maybe you don't even know about.

Mr. HOLBROOK. I don't see that it makes a bit of difference, Senator, whether a larger area is described or a smaller area is described, as long as the notice is adequate and as long as the man does not have to come in and sit around for 2 weeks or 3 months or a year for a hearing. The idea is that a hearing should be such that he won't have to wait, and that he doesn't have a transcript that will break him if he wants to take an appeal.

That is exactly why this is limited to 20 claims.

Senator MALONE. All right, it is limited to 20 claims.

Senator WATKINS. You are talking about the act we now have in existence that passed last year.

Mr. HOLBROOK. I am talking about this act.

Senator WATKINS. This is the same as the other one.

Mr. HOLBROOK. I don't believe the 20-claim limitation was in, but that was limited to 640 acres because that is the size, as I recall, of each mineral lease. I have not looked at that for quite a while.

Senator MALONE. I want to make this further point:

That was limited to mining acts. You were merely modifying one to fit into the other, and vice versa. In other words, you were trying to make two mining acts coordinate.

If you are in a hurry you can leave.

Mr. HOLBROOK. I am not, Senator.

Senator MALONE. What I am trying to say to you now is this: You have again made the point you made yesterday in a little different way. This is a blanket advertisement under which you can bring in every prospector in the State of Nevada or the State of Utah and make him comply with the rules and regulations of this act. He must come to town. He must do what you say in these five things here. He must furnish:

- (1) the date of location;
- (2) the book and page of recordation of the notice or certificate of location;
- (3) the section or sections of the public-land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public-land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument;
- (4) whether such claimant is a locator or purchaser under such location; and
- (5) the name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim.

The point is this: You can bring them in under a blanket setup—put the shoe on the other foot, just as you said yesterday, whereas, under the present law, you must take them one at a time or maybe a small group. If there has been a protest here you can file something in your department, or one department into another, and bring them in under the regular law, which you say it doesn't change. But there is no such thing here that you can make them show what you are attempting to make them show here, and to make them do it on a certain date, all of them together.

Mr. HOLBROOK. I don't understand what you mean by putting the shoe on the other foot, Senator. As a lawyer, I don't understand you.

Senator MALONE. Now let's make it a little bit different.

I have had a little difficulty with lawyers over my short career, and most of them are trying to satisfy everybody, and sometimes they don't get into the meat of it.

The meat of it is that now you can file against any mining locator. That is true, is it not?

Mr. HOLBROOK. This is a more expeditious procedure.

Senator MALONE. Wait a minute.

I asked you: You can do that, can you not?

Mr. HOLBROOK. You can publish the notice and bring everybody in, require them to come in, who have claims within the described area.

Senator MALONE. Under this bill.

Mr. HOLBROOK. That is right, sir. And under Public Law 585.

Senator MALONE. 585, as I have explained to you, dealt with two mining acts. That is true, is it not? It dealt with two acts, one of them oil and gas, and, the other, minerals, and they conflicted.

Mr. HOLBROOK. Yes, sir.

Senator MALONE. But they were both mining.

Yes, oils and minerals; they are mining acts.

Mr. HOLBROOK. Yes, sir.

Senator MALONE. We did not bring in fishing; we did not bring in range; we did not bring in the forest service, did we?

Mr. HOLBROOK. That is correct.

Senator MALONE. But still you as a lawyer say that that is a precedent for this.

I don't think it is.

But nevertheless you are entitled to your opinion.

You say they are just alike; nothing is changed here. But under the old act you can't just publish a newspaper article and have them come in or forfeit their rights under certain conditions, can you?

Mr. HOLBROOK. Are you talking about Public Law 585?

Senator MALONE. No. I am talking about the 1872 act as amended up to that time. We didn't touch all this funny stuff at all. What we were doing was trying to get miners together, and we did, and I am in favor of that.

Mr. HOLBROOK. As I indicated——

Senator MALONE. Now you as a lawyer say that is a precedent for anything you want to do.

Mr. HOLBROOK. As I indicated yesterday, Senator, I am not familiar with the details of administrative procedure in one of these adversary actions except that I do know——

Senator MALONE. Under the old act you don't know anything about that.

Mr. HOLBROOK. Except I do know that the burden is on the mining claimant to come in and set up that he has a valid claim.

Senator MALONE. After you file charges against him in an inter-departmental charge.

Mr. HOLBROOK. Yes.

Senator MALONE. And you do that with one or a small group, and you notify the claimant, do you not? You don't just publish it in a newspaper.

Mr. HOLBROOK. I can't answer that because I don't know.

Senator MALONE. Why didn't you look it up? You are testifying on a very important point here, and you are a lawyer. You are working for the—

Who are you working for?

Mr. HOLBROOK. The United States Smelting, Refining & Mining Co.

Senator MALONE. That is what I thought.

Mr. HOLBROOK. We don't initiate any proceedings.

Senator MALONE. Of course you don't. And a company the size of the company that you just mentioned has no trouble at all in doing anything because they have the money to spend.

We are trying to talk about miners as a blanket proposition.

Senator ANDERSON. Would the Senator—

Senator MALONE. I wanted to ask him this one final question.

There is that difference. You say you don't know that there is that difference. But you must know that under the 1872 Mining Act what you do, you protest a claimant, a certain claimant. You don't just throw a handful of shot. You name them, don't you, in the Department of the Interior?

Mr. HOLBROOK. I don't believe that is in the mining law. I think it is, as Mr. Hoffman testified, a matter of rules and regulations in the Department.

Senator MALONE. I will tell you what it is. It is a matter of 75 years of precedent and court decisions. That is what it is.

Senator ANDERSON. Would the Senator permit me to suggest that we put the rules and regulations into the record at this point?

(The rules and regulations referred to are as follows:)

#### PART 221—RULES OF PRACTICE

##### SUBPART A—PROCEEDINGS BEFORE MANAGER

###### INITIATION BY CONTESTS OF PROTESTS

§ 221.1 *By whom contests or protests may be initiated.* (a) Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Bureau of Land Management.

(b) Any protest or application to contest filed by any other person shall be forthwith referred to the State Supervisor of the Bureau, who will promptly investigate the same and recommend appropriate action.

###### APPLICATION TO CONTEST

§ 221.2 *Form of application.* Any person desiring to institute a contest must file, in duplicate, with the manager, application in that behalf, together with statement under oath containing:

(a) Name and residence of each party, adversely interested, including the age of each heir of any deceased entryman.

(b) Description and character of the land involved.

(c) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(d) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(e) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(f) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

(g) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(h) Address to which papers shall be sent for service on such applicant.

§ 221.3 *Corroboration required.* The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

§ 221.4 *Allowance by manager.* The manager may allow any application to contest without reference thereof to the Director; but where notation on the records of the Bureau of Land Management is required, the manager must immediately forward a copy thereof to the Director, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

#### CONSENT NOTICE

§ 221.5 *Form of notice.* The manager shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(a) The names of the parties, description of the lands involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(b) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

#### SERVICE OF NOTICE

§ 221.6 *How notice may be served.* Notice of contest may be served on the adverse party personally or by publication.

§ 221.7 *Personal service.* (a) Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

(b) When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the heirs of the entryman are nonresident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under 14 years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

§ 221.8 *Abatement of contest.* Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of service of notice by publication is made not later than 20 days after the fourth publication, as specified in § 221.10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

#### SERVING NOTICE BY PUBLICATION

§ 221.9 *When notice may be given by publication.* (a) Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

(b) Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.



(c) The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

(d) The affidavit of contest need not be published.

(e) There shall be published with the notice a statement of the dates of publication.

§ 221.10 *Publication and posting of notice.* (a) Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

(b) Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice to registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

(c) Copy of the notice as published shall be posted in the office of the manager and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as provided in paragraph (a) of this section.

§ 221.11 *Proof of service.* (a) Proof of publication of notice shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with §§ 221.9 and 221.10.

(b) Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the manager as to posting in the district land office.

(c) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice, attached to the postmaster's receipt for the letter or (if delivered) the registry return receipt.

#### DEFECTIVE SERVICE OF NOTICE

§ 221.12 *Effect of defective service.* No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the manager.

#### ANSWER

§ 221.13 *When and how answer must be filed.* (a) Within 30 days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within 20 days after the fourth publication, as prescribed by the rules in this part, the party served must file with the manager, answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provide for the personal service of notice of contest.

(b) Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

#### FAILURE TO ANSWER

§ 221.14 *Effect of failure to answer.* Upon failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the manager will forthwith notify the parties by ordinary mail of the action taken.

#### DATE AND NOTICE OF TRIAL

§ 221.15 *Manager to fix time and place for trial.* Upon the filing of answer and proof of service thereof the manager will forthwith fix a time and place for taking testimony, and notify all parties thereof by registered mail not less than 20 days in advance of the date fixed.

PLACE OF SERVICE OF PAPERS

§ 221.16 *Proof of delivery of papers.* (a) Proof of delivery of papers required to be served upon the contestant at the place designated under § 221.2 (h) in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

(b) Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE

§ 221.17 *When hearing may be postponed.* Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that:

(a) The matter to which such witness would testify, if present, is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

§ 221.18 *When more than one continuance may be allowed.* One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

§ 221.19 *When continuance will be denied; continuance on behalf of United States.* (a) No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

(b) Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

DEPOSITIONS AND INTERROGATORIES

§ 221.20 *When testimony may be taken by deposition.* Testimony may be taken by deposition when it appears by affidavit that:

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness cannot be obtained.

§ 221.21 *Affidavit required showing grounds for deposition; proposed interrogatories.* The party desiring to take deposition must serve upon the adverse party and file with the manager an affidavit setting forth the name and address of the witness and one or more of the grounds set forth in § 221.20 for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

§ 221.22 *Cross interrogatories.* The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding section, serve and file cross-interrogatories.

§ 221.23 *Commission to take deposition.* (a) After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, a commission to take the deposition shall be issued by the manager directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

(b) Ten days' notice of the time and place of taking such deposition shall be given by the party in whose behalf such deposition is to be taken to the adverse party.

§ 221.24 *Completion of deposition.* The officer before whom such deposition is taken shall cause each interrogatory to be written out and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

§ 221.25 *Deposition to be returned to manager.* The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be enclosed in a sealed package, endorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the manager, who will endorse thereon the date of reception thereof, and the time of opening said deposition.

§ 221.26 *When certificate of official character is required.* If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

§ 221.27 *Deposition by filing stipulation.* Deposition may, by stipulation filed with the manager be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

§ 221.28 *Testimony taken by order of manager.* Testimony may, by order of the manager and after such notice as he may direct, be taken before a United States Commissioner or other officer authorized to administer oaths, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the manager in the like manner as is provided with reference to depositions.

§ 221.29 *No charge for examining deposition.* No charge will be made by the manager for examining testimony taken by deposition.

§ 221.30 *Fees for taking testimony.* Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by managers.

§ 221.31 *Substitution of officer to take testimony.* When the officer designated to take deposition cannot act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

§ 221.32 *Time for issuing order to take testimony.* No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

#### TRIALS

§ 221.33 *Exclusion of witnesses from the trial.* The manager and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

§ 221.34 *Examination of witnesses by manager.* The manager will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officer should, whenever necessary, personally interrogate and direct the examination of a witness.

§ 231.36. *Facts to be ascertained under homestead and other laws.* Under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined. The manager will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of this office.

§ 221.37 *Cross-examination of witnesses.* Due opportunity will be allowed opposing claimants to cross-examine witnesses.

§ 221.38 *Objections to evidence.* Objections to evidence will be duly noted, but not ruled upon, by the manager, and such objections will be considered by the Director. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

§ 221.39 *Testimony to be reduced to writing.* (a) At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

(b) When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided, however*, That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

(c) The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

§ 221.40. *Action on demurrers.* (a) If a defendant demurs to the sufficiency of the evidence, the manager will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

(b) When testimony is taken, before an officer other than the manager, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the manager will rule upon such demurrer when the record is submitted for his consideration.

(c) If said demurrer is sustained, the manager will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

(d) Upon the completion of the evidence in a contest proceeding, the manager will render a report and opinion thereon making full and specific reference to the posting and annotations upon the records.

§ 221.41 *Decision of manager; right to move for new trial, or appeal.* The manager will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the Director.

#### NEW TRIAL

§ 221.42 *Ground for new trial.* (a) The decision of the manager will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: *Provided, however*, That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

(b) No appeal will be allowed from an order granting new trial, but the manager will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony therefore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

§ 221.43 *Notice of motion for new trial; time for answer.* Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the manager not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

§ 221.44. *Consideration of motions for new trial.* Motions for new trial will not be considered or decided in the first instance by the Director or the Secretary of the Interior, or otherwise than on review of the decision thereof by the manager.

§ 221.45 *Manager to forward all papers to Director.* (a) If motion for new trial is not made or if made and not allowed, the manager will, at the expiration of the time for appeal, promptly forward the same with the testimony and all papers in the case, to the Director, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

(b) The manager will not, after forwarding of decision, as provided in paragraph (a) of this section, take further action in the case unless so instructed by the Director.

## FINAL PROOF, PENDING CONTEST

**§ 221.46** *Submission of final proof excused pending disposition of proceedings.*

(a) The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

(b) In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

(c) The final proof should be retained in the district land office until the record in the contest case is forwarded to the Bureau of Land Management, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

(d) In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

## APPEALS TO DIRECTOR

**§ 221.47** *Service and filing of notice required.* No appeal from the action or decision of the manager will be considered unless notice thereof is served and filed in the land office in the manner and within the time specified in § 221.48.

**§ 221.48** *Notice of appeal; filing of briefs.* Notice of appeal from the decision of the manager shall be served upon the adverse party and filed with the manager within 30 days after receipt of notice of the decision. Within 20 days after service of notice of appeal, the appellant may file a brief, a copy of which must be served upon the appellee. Within 20 days after such service the appellee may file his brief, a copy of which must be served upon the appellant. Briefs must be served upon the opposing party within the same period of time allowed for their filing with the manager. When a motion for a new trial is made and denied, notice of an appeal shall be served within 15 days after the receipt of notice of the denial of the motion.

**§ 221.49** *Effect of failure to answer or appear.* No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the manager.

**§ 221.50** *Notice of appeal to be in writing; failure to serve and file notice closes case.* (a) Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal, in the form of specifications of error, which shall be separately stated and numbered; where error is based upon insufficiency of the evidence to justify the decision, in the assignment thereof the particulars wherein it is deemed insufficient must be specifically set forth in the notice. All grounds of error not assigned or noticed and argued in the brief will be considered as waived.

(b) Upon failure to serve and file notice of appeal as provided in §§ 221.47 to 221.49 the case will be closed.

**§ 221.51** *Effect of failure to move for new trial or appeal.* (a) When any party fails to move for a new trial or to appeal from the decision of the manager within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of fraud or gross irregularity.

(b) No case will be remanded for any defect which does not materially affect the aggrieved party.

**§ 221.52** *Manager to keep all documents on file.* All documents received by the manager must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the manager, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

## COSTS AND APPORTIONMENT THEREOF

**§ 221.53** *Costs to preference-right and other claimants.* A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), must pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting

motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

§ 221.54 *Excessive costs.* Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

§ 221.55 *Cost to settlers.* Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185) the costs of contest will be imposed as prescribed in the second sentence of § 221.53.

CROSS REFERENCES: See the following parts in this chapter: For homesteads, Alaska, Parts 65, 66; for homesteads, generally, Parts 166-170; for soldiers' and sailors' homestead rights, Part 181; for desert-land entries, Part 232.

§ 221.56 *Cost chargeable by managers.* The only cost of contest chargeable by managers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

§ 221.57 *Security for costs.* Managers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

§ 221.58 *Return of excess deposit.* Upon the filing of the transcript of the testimony in the land office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

§ 221.59 *Cost to Government.* When hearings are ordered on behalf of the Government all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by § 221.53.

§ 221.60 *Collection of costs.* The costs provided for by the preceding rules will be collected by the manager when the parties are brought before him in obedience to the order for hearing.

#### NOTICES

§ 221.61 *Preparation and service of notices.* All notices and other papers not required to be served by the manager must be prepared and served by the respective parties.

§ 221.62 *Manager to make provision for notices not specifically provided for.* The manager will require proper provision to be made for such notices not specifically provided for in the rules in this part as may become necessary in the usual progress of the case to final decision.

#### APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS

§ 221.63 *Action by manager to facilitate appeals.* To facilitate appeals from his action relative to applications to file, enter, or locate upon the public lands, the manager will:

(a) Endorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of the action and of his right of appeal.

(c) Note upon his records a memorandum of the transaction.

§ 221.64 *When notice of appeal must be filed; form of notice.* The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the land office. The notice of appeal, when filed, will be forwarded to the Bureau of Land Management with full report upon the case, which should recite all the facts and proceedings had and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the land office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

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(b) Description of the tract involved and statement of its status, as shown by the records of the land office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.



Senator ANDERSON. The department does do it by publication, and has done it by publication. I myself have participated in that.

Senator MALONE. That is all right.

What I am trying to say is you name the claimant. It is not a blanket proposition.

This time what you are doing is stepping out and you can do it for the whole State at one time. You are cooking up the objections yourself within your own department. That is what I am objecting to.

Mr. HOLBROOK. Senator, may I make one statement?

Because of your great interest in mining as a Western man, I would like the record perfectly clear on this point.

I think there is a great advantage to the mining industry in this respect about such a proceeding, and Senator Barrett mentioned it yesterday. Under the existing proceedings, in a contest when the mining claimant comes in, he wins or loses in whole; there is no half-way point.

Senator MALONE. That is what he should do.

Mr. HOLBROOK. If he loses he has nothing.

Under this new proceeding it merely raises the issues of these surface rights that you have been talking about. It reserves to him all of the surface rights that are required in his mining operation.

Senator MALONE. That he knows of at the present time.

Mr. HOLBROOK. Well, the language of the statute is that he has the right to use it for prospecting, mining, processing, and incidental uses. We thought that was broad enough.

Senator MALONE. Yesterday it was very well established that no prospector knows how much timber or anything else he is going to need unless he hits something. He always thinks he is going to and keeps spending his money.

So if you log that off, the Senator from Colorado suggested an amendment that you furnish the timber after you had taken it away from him if he eventually needs it. I think that might run into some complications, too. But it is a fairly good suggestion.

Let us go on here with this act.

Senator ANDERSON. Could I ask a question about this particular point?

Senator MALONE. Yes.

Senator ANDERSON. I recognize that Senator Malone is just as much interested in protecting the rights of the miners as anybody I have ever seen in my life. I am trying not to get in a controversy with him about this bill. But I want to deal with this question of these sections he has been quoting and reading. They only deal with surface rights, do they not?

Mr. HOLBROOK. That is the only issue involved in the proceeding. That is all that it is intended to do. It says "Subject to the limitations and restrictions of section 4." And those are the rights of the Government and its permittees to use the surface for purposes which will not interfere with mining.

Senator ANDERSON. So they only deal with surface rights which are not necessary for mining?

Mr. HOLBROOK. That is right.

Senator MALONE. Not as I read the next paragraph.

Senator ANDERSON. Yes, but the fact is as Mr. Holbrook and I have stated with reference to this section, it deals only with surface rights

not needed for mining. It doesn't touch a claimant's minerals. He does not have to do a thing about answering the descriptions—

Senator WATKINS. Unless he wants to raise it himself. If he wants to come in and raise it himself I think he would be very unwise, as Mr. Holbrook pointed out yesterday. He said he would advise his client not to raise the question of mineral rights. There is no jurisdiction to decide those unless he raises them.

Senator MALONE. There are many people I know you are not even going to reach with these newspaper advertisements. And if you do they haven't got the money to come in and do this.

Senator ANDERSON. Yes, but it only deals with surface rights and with respect to them is restricted to those not necessary for mining.

Senator MALONE. I understand that. Let me go on. If he doesn't do this his failure shall be deemed—

(ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and

(iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim, contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims.

In other words, you probably won't find some of them at all, and it will go by default. If you do, they will come in and tell you a pitiful story that they are working here and doing this thing, and they don't know how much timber they are going to need. They don't know how much of anything else that is on the claim they are going to need.

So what can they say to you with your formal hearing where they have to establish that they are going to need, we will say, 100,000 board-feet for timbering their mine when they are just getting a good start and they don't have a commercial claim?

Mr. HOLBROOK. There would not be any issue, Senator, as to how much timber would be required at all.

The only issue that would be involved was whether or not he is entitled to those surface rights, and that would depend upon whether he had a valid mining claim.

Senator MALONE. If he has a valid mining claim then he is entitled to all the surface rights. Is that it?

Mr. HOLBROOK. If he has a valid mining claim and he can establish it, that ends it.

Senator ANDERSON. He gets them all.

Senator MALONE. In other words, you cannot go on there and sell any of the timber or grazing.

Mr. HOLBROOK. That is right. You cannot take any right—

Senator MALONE. You just told me a while ago that the prospector did not have these rights until he has patented it. I did not question it because you are a lawyer. You are familiar with it.

Mr. HOLBROOK. What I had in mind then was that, as to claims located in the future under this law or as to claims located in the past, if he doesn't come in and set up his rights.

If he comes in and sets up his rights and establishes that he has a bona fide mining claim I don't think that we could pass any law that would take those away from him because he has a vested right in a claim at the time this law is passed.

Senator MALONE. But on a future location he would not secure these rights under this act.

Mr. HOLBROOK. Under this act all future locations will be subject to the limitations and restrictions specified in section 4.

Senator MALONE. Just what I have been reading.

Mr. HOLBROOK. I think you did read part of section 4.

Senator MALONE. And unless he makes this showing, unless he comes in at his own expense and makes this showing, he relinquishes his right.

Mr. HOLBROOK. That is right.

Senator ANDERSON. But only as to the surface rights not necessary for his mining. They can't touch his minerals.

Senator MALONE. I am talking about a man having to come in and defend himself in the things that he may have to do on this claim.

What you have done here in this bill is to make every one of these people get away from this thing and make them come in and file so that the Government would know exactly who they are and where they are.

Senator ANDERSON. Not if they don't want anything beyond the surface rights that are necessary for mining. If they want to run a saloon or a dance hall, then they do have to come in.

Senator MALONE. I don't know but what maybe you might want an eating house on it if you had to feed the help.

Senator ANDERSON. That would be essential to mining, required for mining. That would not be in question either.

Senator WATKINS. Not a commercial enterprise.

Senator MALONE. Drinking is legitimate. This is an academic thing. Some people like it after a day's work. And maybe that is necessary if there aren't any within 50 miles.

Senator ANDERSON. I think saloons have uniformly run into difficulty. I would sort of hope they would continue to. But a man can do his own buying and bring it home.

Senator MALONE. I am talking about Federal law. There is no Federal law against it, is there?

Senator ANDERSON. There is no Federal law against it, but that is not regarded as essential to mining.

Senator MALONE. I am against it. I am not so sure. Most of the mining has been done that way in most of the West. I am not saying it is necessary. I have worked in the mines and I am not saying it is necessary to have a drink. But if we are passing a prohibition law, let's get into that.

Senator ANDERSON. You aren't.

We are talking about abuses that have taken and are taking place I read you a court decision yesterday. These abuses have been going on under the 1872 law for 75 years.

Senator MALONE. All right.

I don't know of anything that has been prohibited. If it is already prohibited, what do you need the act for?

Senator ANDERSON. We tried to explain yesterday that here sat some timber in a State that the Government cannot sell because people have come in and filed fictitious mining claims for the sole purpose of holding them up.

Senator MALONE. Then we come back finally to the timber.

I have asked the question 50 times if you object to confining it to forest reserves.

Mr. HOLBROOK. Senator Malone—

Senator MALONE. What you are after is to get beyond the forest reserves, using that as bait.

Mr. HOLBROOK. As I stated yesterday, I think if it is a good rule on the forests it is a good rule on all public lands.

Senator MALONE. But it cannot be for the same purpose. You all come back and say that they are prohibited from coming in and selling the timber. That is exactly the reason we passed the other law, was because it prohibited uranium claimants from going on oil and gas leases. They couldn't proceed to a patent, and, therefore, they weren't legal.

We cured that; did we not?

Now we want to cure any problem that proves to be a problem on the public domain without killing the fellow. Just cure him; don't kill him.

Mr. HOLBROOK. There are problems outside of the national forests.

Senator MALONE. You don't have the problem of forests outside the national forests.

Mr. HOLBROOK. There are some other forests.

Senator WATKINS. You have fishing streams and the Taylor Grazing Act.

Senator MALONE. That is exactly what you are trying to do; get them all in.

Senator ANDERSON. The C. and C. lands are not in a national forest. But they are forest lands. Those are the Oregon and California lands we have been discussing.

Senator MALONE. Let us make a stipulation in it that it be classified as forest lands. We have got 4 or 5 million acres in national forests. If there are 200 acres that I cannot run or jump over I will eat the tree.

Senator ANDERSON. That is why this law would have little significance in your State.

Senator MALONE. This law would have application in my State.

Senator ANDERSON. That is right; but there probably is no State in the Union where the surface rights are of as little significance in connection with mining claims as is the case with Nevada.

Senator MALONE. This law says specifically, or it implies that you can send the Bureau of Land Management in there and harass the miner and do anything they need to do to rent this land and see that the people get the grazing. That is what it says.

Senator ANDERSON. I wish you would find the language in the bill.

Senator MALONE. It implies that here.

Senator ANDERSON. It doesn't mean to, Senator. I am sure of that.

Senator MALONE. Can we except the grazing, except everything except that which can classify as timber?

Senator WATKINS. I would like to answer that question.

I think the mining law should be that mining claims should be confined to mining purposes. And if it is for the grazing of his own animals that he has on the place, and that he needs in connection with his mining, all well and dandy. But if he is going to take a mining claim—and a placer claim runs into hundreds of acres—if he is going to take all of that and use it under the guise of mining

to get the right to graze, then I think that ought to be stopped in the future.

Senator MALONE. I am really familiar with this in my State, and it is not a contest. None of the stockmen are having trouble.

Senator WATKINS. Then they won't have any trouble if they are not violating the law. It is only the violators that have trouble.

Senator ANDERSON. Can we move on?

Did you have one more statement?

Mr. HOLBROOK. I would like to make this one observation, Senator Malone:

You have referred to the possibility of blanket proceedings. I think it is an unfair assumption to assume that there will be blanket proceedings.

There is never any occasion to institute a proceeding or a lawsuit unless there are some issues.

May I finish my statement, please?

Senator MALONE. Yes, sir. I did not interrupt you, I don't think.

Mr. HOLBROOK. Unless there is some conflict between the surface uses and the mining claims, I think there is no occasion to assume that there will ever be any proceeding. There is just no reason for doing it.

I don't think Government officials, any more than individuals, are just starting proceedings because of the entertainment in doing it. Where there is a contest, there are some surface rights involved, my thoughts is that the mining claimant is much better off not to be putting all of his chips on the table, but to have some chips left if he loses.

You pointed out very effectively, particularly with respect to mining locations, the great problems in getting discoveries. And that is how mining claimants lose their claims.

Senator MALONE. Are you familiar with the court decisions on determining discoveries? It seems to me the courts are rather lenient, and have been in a succession of decisions for 75 years. I do not know that you would run very many people off their claims because they did not have what you would consider something you would invest your money in. That doesn't happen. It just doesn't happen.

Mr. HOLBROOK. Senator, the day before I left I considered some patent applications that involved the sufficiency of some discoveries. They had been contested by the Government. We discussed it fully with our engineers and our geologists, and we concluded that it would probably be best for us not to make an issue of it. We were not sure that we would win.

Senator MALONE. I think maybe you had good judgment. But I have had those decisions to make, to, as a mineral surveyor, and I have made them. Maybe I would go out and turn down the job because I did not think they had the required amount of work done. Because the patent surveyor has to make the affidavit, as you know.

But if the patent surveyor makes the affidavit, generally it may not even be a commercial operation at the time.

You know we have prospects now in Utah and Nevada—and I take in Utah because I am somewhat familiar with it—where they were in the mining business in lead and zinc until we got this idea of free trade and furnishing Europe with the money to buy the stuff to send in here. So they turned it into country rock.

But I would like for some of you smart people to go out there and try to keep them from patenting some of these claims that they mined profitably up until this law passed.

You can't do it. And I know you know that.

But it is not profitable now, and they are shutting down. They are going broke. One of the finest Utah men I know they just broke. He was in the manganese business out there in Nevada and Utah, the lead and zinc business. He is on his coattails.

Mr. HOLBROOK. I am in complete agreement with you that the commercial—

Senator MALONE. It doesn't have anything to do with commercial.

Mr. HOLBROOK. Has nothing to do with discovery.

Senator MALONE. It is the mineral there and the amount of work done, and the general overall judgment of the mineral surveyor and the Secretary of the Interior when it finally comes down to it, isn't it?

Mr. HOLBROOK. All those facts are considered.

Senator MALONE. Of course, we all know what they are. I have been in it for 30 years.

What you are doing with these things here is you are simply bringing in what I predicted. I think probably the hearings will show it—when we were holding the hearings and I was chairman of the committee 2 years ago and we passed the first act—that they will try to use this as a precedent to go further into other situations to control the rights of the man that is trying to mine these claims when, as a matter of fact, all we did—and I have heard it used as a precedent here 50 times in the last day or two—all we did was to try to coordinate two mining acts. We did not say to these prospectors in there that they have to come in under the Bureau of Land Management and the Forest Service and all of the rest of it. It was a very simple matter to coordinate.

And we don't want conflicts. There may be serious conflicts where your uranium claim or some other mineral claim would conflict where you wanted to drill a well. But we ended that by the first locator. In a conflict the first locator prevails.

So there is no such thing. This is not a precedent for this cockeyed thing that you have here now. But you are using it for a precedent.

Mr. HOLBROOK. I have referred to it as a similar procedure.

I am inclined to think, Senator, that in all cases if natural resources are locked up, which are not necessary in a mining operation, that those resources should be made available.

Senator MALONE. What resources are locked up? I will just let you explain that one more time.

Mr. HOLBROOK. Well, the most classic example of resources being locked up is the many cases that have been referred to where access to timber is denied.

Senator MALONE. It is a simple thing.

Mr. HOLBROOK. Senator, I am fully aware that you are trying to limit this bill to the national forests.

Senator MALONE. It is a simple thing. Maybe not national forests but to forests.

If you go out on a prospect in Nevada where there isn't a tree within 40 miles he is not obstructing the Forest Service. He is not obstructing the marketing of timber, is he? All you have to do is just have someone see the claim that is in contest. And if it can be classified

as a timber claim I have no particular objection to your bill. But you are not doing that. You are making this a blanket thing. That has been tried so many times in the last 22 years. And the next thing is a leasing act.

Don't try to explain it to me. I know what you are after.

Senator ANDERSON. Thank you, Mr. Holbrook, for your testimony.

Mr. HOLBROOK. Thank you, Mr. Chairman.

Senator ANDERSON. Mr. Hudoba?

**STATEMENT OF MICHAEL HUDOBA, WASHINGTON REPRESENTATIVE, SPORTS AFIELD MAGAZINE**

Senator ANDERSON. Will you identify yourself for the record, please?

Mr. HUDOBA. Thank you, Mr. Chairman.

My name is Michael Hudoba. I am Washington editor of Sports Afield magazine.

Senator MALONE. What paper?

Mr. HUDOBA. Sports Afield magazine.

Senator MALONE. Do you have a statement that we can have?

Mr. HUDOBA. Senator Malone, I was just going to make a brief oral comment and ask for the privilege to insert several requests by organizations for endorsement.

I want to thank the chairman and the committee for the privilege of appearing to make a brief presentation in support of S. 1713.

We feel that mining is one of the most essential industries in this Nation, also that it is one of the most glamorous, reflecting probably the last vestige of the original system under which this country was developed and explored.

We also feel that the multiple-purpose use of the public lands and national forests is extremely important, those multiple-purpose uses to include and including watershed protection, minerals, grazing, timber production, and recreational uses.

We are interested in this particular bill because we feel that there are a number of abusers, using the mining laws of 1867 which were codified in 1872, whose purpose is not for mining at all and, yet, who have served, through their spurious activity, to prevent the multiple-purpose uses of surface values of the resources under the management of the United States Government.

We do not wish to restrict any of the individual multiple-purpose uses, but we feel that it is urgent, in order to protect a balanced management program for all of the resources of this type by the objectives of this legislation.

Our interest has come into this because we have received over the years a number of letters from some of the 40 million visitors who have gone onto public lands and the national forests for recreational activity and have come up against the adverse effects of the phony or spurious mining claim which has restricted a public-interest use.

As a result of that we employed an experienced observer-reporter to make an 8,000-mile trip that covered the better part of a year investigating these various reports that come to us via voluntary letters.

Mr. Chairman, I would like to offer, from the May 1952 issue of Sports Afield, the article on page 47 which was the result of that survey.

(The article referred to was filed as an exhibit for the information of the committee.)

Senator MALONE. Who was the writer?

Mr. HUDOBA. Cleveland Van Dresser.

Senator MALONE. What was his background?

Mr. HUDOBA. Newspaper business, newspaper reporter.

Senator MALONE. How old a man is he?

Mr. HUDOBA. He is in his early fifties.

Senator MALONE. What has been his experience in the mining field and in the field of public lands prior to this?

Mr. HUDOBA. The purpose of the article, Senator Malone, was to investigate the reports, and, as a trained, experienced reporter, to determine whether there was substance to the statements in the material that had been submitted to us.

Senator MALONE. In order to determine that—I don't want to interfere with your statement because we can take this up later—but, in order to determine whether there was substance to it, he would have to know whether there was a sufficient showing of mining, minerals, or a showing in accordance with the law, and whether the work was being done in accordance with the law, would he not?

Mr. HUDOBA. The purpose of the survey was to determine whether there were loopholes in the 1867-72 mining laws that encouraged and induced the type of spurious and phony claim activities.

Senator MALONE. In other words, you think he was experienced enough to determine by himself as to whether there was a showing sufficient to justify the location of a mining claim in this area.

Mr. HUDOBA. We did not expect him to make an individual survey on an individual claim as to the validity of the claim.

Senator MALONE. What he did was to determine that these people had located claims in the forest reserves, and they had interfered with recreation and forests. Is that what he investigated?

Mr. HUDOBA. Yes. He would—

Senator MALONE. The claims were there. And the forest reserve people and some of the recreation people said it interfered with their activities. Is that what he investigated?

Mr. HUDOBA. There would be a report of a very palatial residence located on a forest reserve area. And, in checking into it, he would find that it was a mining claim location—

Senator MALONE. But no mine.

Mr. HUDOBA. But no mining activities of any sort. And that is the type of evidence.

Senator MALONE. Have you ever entered any complaint to the Secretary of the Interior on these cases? Or did you just assume that the mining act was wrong because he was there?

Mr. HUDOBA. There was no assumption of any wrong until we had this material developed and looked into. And then the article was made available.

Senator MALONE. Then you just assumed that there was no remedy at the present time for it.

Mr. HUDOBA. We make no assumption of there not being a remedy because we are here endorsing this S. 1713.

Senator MALONE. Then if you are convinced that there is a remedy it would be a criticism of the Department of Interior, would it not?



Senator ANDERSON. There is no remedy under existing law, is there, for a palatial residence being built?

Senator MALONE. I guess not.

I have known of people that build a mill before they find the ore.

Senator ANDERSON. I not only know of them but I did it once, I am sorry to say.

Senator MALONE. I do not want you to be sour against our prospectors on that account because it would take a pretty good salesman to raise the money for a mill to show that it is an active area.

I am trying to find out from you just the objective of this article.

You just wanted to find out if these people were out there. You did not investigate whether there was a remedy for it in the first instance, did you?

Mr. HUDOB. The article did come to the conclusion that the difference between the surface and subsurface rights was an aggravation and an inducement which created these particular problems. And because those problems did exist and because we do feel that mining activities and prospecting of individuals—some of whom are ardent fishermen and hunters in their own right—but because of that type of phony and spurious activity we are also concerned that it has been a serious reflection on the legitimate mining operations.

Senator MALONE. Let me ask you another question because this is very interesting to me.

You, of course, know or at least you did not follow up my question that this man you sent out had no mining experience, no experience in anything except observing, and he observed a man who had come there and located a mining claim and built a residence.

Now did he investigate whether they had mineral showing or not? And, if they did not, did he make a complaint, or were there any complaints made by the Forest Service and others to the Department of the Interior so that they might investigate and make him show his mineral showing? Make him prove it?

Mr. HUDOB. Well, these investigations, Senator Malone, were the obvious, glaring examples.

Senator MALONE. I understand.

We used to have some fellow—I forget who he is—make a periodical trip through the West and write an article about the desert lands and how they are being abused by the stockmen and all that.

What was his name? You should remember. You are in that business.

Mr. HUDOB. Well, there are a number of writers.

Senator MALONE. He is the one that Colliers published several times. What was his name?

Mr. HUDOB. I don't recall the one you are talking about.

Senator MALONE. He is a mighty good writer, but he showed an abysmal ignorance on the use of forage on the public lands.

What was his name?

Senator BARRETT. De Voto.

Senator MALONE. De Voto.

You must be familiar with the great DeVoto's writings on the desert lands.

Mr. HUDOB. I read some of them.

Senator MALONE. Is this article the same as those on lands except in the forests? The man knows nothing about what he is writing

about except he goes out and finds that these lands have been located, and he doesn't investigate whether there is a remedy for it or anything at all?

Mr. HUDOBA. We feel we have an objective reporter, Senator Malone. Senator MALONE. You think you had.

The objective was to see if these men were there, and talk to the Forest Service people and the Bureau of Land Management people——

Mr. HUDOBA. And mining people.

Senator MALONE. Did you find a miner that objected to it?

Mr. HUDOBA. I don't have the notes of the individual who wrote the article, Senator Malone.

Senator MALONE. Would he be available to come here to the committee?

Mr. HUDOBA. I imagine that he would.

Senator MALONE. I think we ought to hear him since you have made this a matter of record.

Mr. HUDOBA. I imagine he would. He is not in our employ. He is a free-lance writer.

Senator MALONE. Where are you from, for instance?

Mr. HUDOBA. I was born in Ohio.

Senator MALONE. How long have you been here?

Mr. HUDOBA. I have been here off and on for 20 years.

Senator MALONE. I haven't been here that long. I have been coming here for about 30. From what I know and what I believe, it would take many years, and, without becoming familiar with the work and paying the taxes, you could not write that article.

Mr. HUDOBA. But from where I live I commute 120 miles a day, Senator Malone. The community I live in has a population of about 100, and we are concerned with farming operations.

Senator MALONE. That is wonderful.

All these people within 20 miles of Washington are living on Washington, in case you hadn't heard, unless they inherited money.

Mr. HUDOBA. I will show you a lot of callouses.

Senator MALONE. I have got them, too, but they are from bridle reins. I do it to keep my weight down.

You are probably an agriculturist. Do you know the difference between a farmer and an agriculturist?

Mr. HUDOBA. Yes; I believe I do.

Senator MALONE. The farmer makes his money on the farm and spends it in town. The agriculturist makes it in town and spends it on the farm.

Washington and New York are full of them.

We have got quite a few of them in Nevada now from the outside who come in and stay there, but we don't take their testimony in mining claims.

I am interested in wildlife. And I am probably more interested in Nevada than you are. We try to coordinate all of our expenditures on flood control and irrigation with wildlife propagation and fish and all that sort of thing. We are right in the middle of it now with the Carson project.

And I read your magazine. I picked it up on the newsstand in Chicago coming in the other night.

But you always have to identify what a man says with his background. That is the reason I am inquiring about it.

Mr. HUDORA. I appreciate your invitation to do that, Senator Malone, because one of the requirements of an editor on our staff is that we get out and participate. And it has been just within the past year that I took a considerable amount of time and money from the magazine to make an extensive trip, and, in line with that, I get away from Washington at least once every 3 weeks. We have personal friends in every State of the Union, and I have been in every State in the Union and spent time.

Senator MALONE. Do you investigate mining operations? Livestock operations?

Mr. HUDORA. Yes, sir, I have. And, as a matter of fact, I have been an improvement man myself for at least 3 years in prospecting.

You have mentioned the illustration of Virginia City. You had some blue metal going down with the mine tailings as waste that gets some yellow metal called carnotite back there when there was no market for it.

Senator MALONE. You must know by now—you have just had a taste of it, and the chairman says he has—that probably there is more money spent in mining than is ever taken out and marketed. Mining is a fever. Some people have it and some don't. I never had the mining fever. I only had the fever to work for these people in mining. And I have seen them, hundreds of them broke, and once in a while one of them gets out with a little money. But that fever persists as long as they have an opportunity, which we gave them under the 1872 Mining Act.

Some of us have tried to preserve it. But when you make it unprofitable, which we have done in Washington now, you are not raising a new set of miners. The kind of miners you are raising is like you. They take a flyer because it looks easy. They lose a little money, maybe more than they can afford, but they are cured.

You don't cure a miner.

Mr. HUDORA. I agree with you on that because I have not been cured in over 20 years.

Senator ANDERSON. I want to agree with him also. If I could get away from the Senate and have the life to live that I wanted to I think I would spend most of it actually out in the field prospecting. It is the most fascinating business, and I know it is the easiest to lose money in of any I have ever seen.

Senator MALONE. That is right.

But the thing you have to do is make an incentive and have it profitable. And we right here in Washington in 22 years have taken the profit out of mining. And the people who took it out don't have the faintest idea that they have done it, in most cases. But the people who promote these activities that the good people promote, there are some behind that who do know what they are doing, and they make it just impossible for a prospector to go out and get any money now because the fellow says to him and grins at him, "What would you do with it if you found it?"

Lead, zinc, gold, all the rest of it, you can't mine any more because you can mine it in cheaper-living countries and bring it in cheaper than you can mine it here.

The last straw is to start moving in on him on the public lands. Go ahead. I am sorry I interrupted you.

Mr. HUDOBA. Mr. Chairman, I have appreciated the opportunity to get back to some very pleasant memories because I intend to get back into the western country which has captured me so wonderfully.

Senator MALONE. You are talking about interfering with timber and all that.

I would just like to have the opportunity, if I am able to do it, to take you on a little trip.

Mr. HUDOBA. I have an invitation from the Governor to do that. I am looking forward to it as soon as possible.

Senator ANDERSON. Senator Malone was connected for many years with an organization interested in the development of western resources. He has traveled every one of those Western States, including mine. If you ever get started with him on a trip in Nevada he may end up with you in the middle of Montana because he is interested in the West, and loses all track of State lines. I promise you he will take you all over the Rocky Mountain West.

Senator MALONE. In 1931 I served on the President's Public Lands Committee. Some prominent people from New Mexico, the Senator's State, and the Senator on this work that he was talking about, helped materially in setting it up. We don't disagree on the objective; we disagree on how these bureau officials here edge in and finally make it impossible for anybody to do anything on public lands.

Senator ANDERSON. Finish your statement and submit what you can as briefly as you can, Mr. Hudoba.

Mr. HUDOBA. Yes, Mr. Chairman.

I am extremely interested that no emergency of any sort imperil or invade any constitutional freedom of any individual. But we are also concerned that the conservation and wise use of our natural resources is fundamental to the strength of this country. And what is done with those individual resources is extremely important to the future, especially in this world peril.

We are concerned that where there are loopholes which abuse and permit the inadequate management of grazing, timber, recreational assets, and other assets which we may not know about at the present moment, there is something that needs to be done to examine that problem carefully and to offer solutions for it.

In 1872 the population of this country was 38,550,000. There was 1 person for each 10 square miles in Nevada; 4 persons for each 10 square miles in New Mexico.

The population today is 165 million. Forty million people go out to these public lands to enjoy and to appreciate the resources that are available. The resources of these lands are extremely important to the economic and material wealth of this country. And the development that can come out of mineral discoveries and mineral development will be extremely important, particularly in this new age of the atom when we will need new types of minerals and new types of mineral products to meet the needs that will be developed.

So my interest in conservation is an unselfish interest in a desire to see to it that we urge and support the claims that will help the total country and not restrict individual rights.

I would like to offer, Mr. Chairman, for the record, a letter from the Izaak Walton League of America, in which they endorse the objectives of S. 1713.

Senator MALONE. It will go into the record at this point.  
(The letter referred to is as follows:)

THE IZAAK WALTON LEAGUE OF AMERICA, INC.,

Chicago 2, Ill., May 3, 1955.

HON. WALTER ROGERS,

*Chairman, Mines and Mining Subcommittee,  
Committee on Interior and Insular Affairs,  
House Office Building, Washington 25, D. C.*

DEAR MR. ROGERS: Since it will be impossible for me to be in Washington this month when hearings are held on H. R. 5561 and other bills relating to mining claims (H. R. 5563, H. R. 5572, H. R. 5577, H. R. 5595, H. R. 5742, and perhaps others of a similar nature), I would appreciate your having this inserted in the record of your hearings as the expressed opinion of the Izaak Walton League of America.

We would like the Izaak Walton League to be recorded in favor of the essence of these bills as introduced. We are convinced that such language is, however, the absolute rock-bottom minimum that should be considered for the strengthening and improvement of the mining claims situation from the standpoint of administration of law, administration of related or adjacent resources, and the general welfare of the country.

As an organization, the Izaak Walton League has for many years helped in publicizing and focusing attention upon the fraudulent or undesirable practices possible under our antiquated Federal mining laws. More recently we have been greatly disturbed by developments connected with uranium prospecting and claim filing. Federal departments and others testifying before this committee no doubt will detail these things completely and there is no need of burdening the record with additional facts and factors now.

The Izaak Walton League of America is happy to join with the American Mining Congress, livestock interests, the Departments of Agriculture and Interior, timber interests, and other natural resource conservation organizations in urging early and favorable action on H. R. 5561 and similar bills, provided such bills are acted upon without substantial, crippling, weakening amendments. We do wish to emphasize that we consider the present language of the bills as our final defense position below which we do not care to retreat through compromise or conciliation.

Sincerely,

WILLIAM VOIGT,  
*Executive Director.*

Mr. HUDORA. Also, I offer, for the record, at the request of the National Parks Association, a letter to the chairman in endorsement of S. 1713.

Senator ANDERSON. Is that the letter of May 16?

Mr. HUDORA. Yes, sir.

Senator ANDERSON. The chairman was asked to include it, and, since you also have it, I will include it in the record at this point.  
(The letter referred to is as follows:)

NATIONAL PARKS ASSOCIATION,  
Washington, D. C., May 16, 1955.

Senator JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

DEAR SENATOR MURRAY: The National Parks Association believes revision of the mining laws to correct prevalent abuses and to prevent future misuse of national forest and other publicly owned lands is urgently needed. Present practices have thrown the administration of these lands for their varied benefits and resources seriously out of kilter. The fraudulent claimant, who is not honestly seeking to develop mineral resources, is able to secure privileges far removed from the proper intent of mining laws; he can seize title to timber, homesites, or other lands in the guise of mining, prevent public use of large tracts of other

lands, and even endanger the orderly management of entire forest units. The National Parks Association is especially concerned by the threat to the national forest wild and wilderness area system represented by such illegitimate claims.

Proposals to amend the laws to achieve this goal have been before Congress for several years. The problem has long been criticized, but the present uranium boom has made it so acute that further delay would be seriously against the national interest.

It is our belief that the problem can best be solved by reserving the surface rights and resources to the United States, subject only to such use by miners as are essential to that purpose. Nonmetallic substances should be placed under the Mineral Leasing Acts, which provide for their orderly extraction without the dangers inherent in including them in the location acts. The present inefficient and ineffective procedures for determining the validity of many claims should be streamlined, and a method for eliminating the obsolete and fraudulent claims now existing should be devised.

The board of trustees of the National Parks Association formally endorsed Senator Anderson's and Congressman Hope's bills, now before Congress as S. 687 and H. R. 110, as most effectively solving this problem, and believes they, or the Cooley bill, H. R. 3414, should be enacted. However, in view of the jurisdictional disputes and opposition that have arisen about them, and because of the need for steps to be taken at once to ameliorate the problem, it is desirable that if S. 687 and H. R. 110 cannot be enacted, S. 1713 and H. R. 5561 should be approved promptly. These bills are carefully drawn and will correct a large part of the difficulty, while still protecting the interests of the miners. We note the provision of section 1 that exempts the national park system from this legislation, and concur with that provision.

It is requested that this letter be made a part of the official record.

Sincerely yours,

FRED M. PACKARD, *Executive Secretary.*

Senator MALONE. I would like to suggest that, as long as we brought this special writer into it and his article has been included in the record, that we bring him before the committee. I would like to question him and see what he knows about it because these special writers, I must say to the chairman, are very important. They spend their lives learning how to write to influence the public, which is a very fine profession. They also can be very dangerous.

Mr. DeVoto is a very dangerous writer because of his lack of personal knowledge of what he is doing.

Most of them read the menu backward, if you know what I mean. They have objectives that they want to accomplish, and they set out to get the evidence to do that.

I don't say that you sent this man to get the evidence to do this, but I could go out with my knowledge of the West, where most of these lands are located, and spoof anybody that does not have any personal knowledge of his own.

There are 2 or 3 stages in a man's education. Mine and yours are in the first stage.

I have had to learn something about public relations because I was State engineer of my State at one time. Now I am here.

I was in the private engineering business for 30 years. I learned something about it. I was a consulting engineer in the Central Valley project in California, and State engineer in my State where we built some dams.

What do you think we did with the fish?

It was full of bass, and below it was full of trout.

Mr. HUDOB. If I may interrupt, sir, our fishing editor spends his winters in your State.

Senator MALONE. That is great.

Let me say something to you.

I am also interested in hospitals. I am interested in public relations. I am interested in your magazine. I read it. But I don't know anything about the business of it.

Don't you see?

I don't know what makes a success of your magazine, or how to run a hospital.

I am one of the ones who helped build some hospitals all over this Nation. I have just been a little cog in the wheel. But I don't know anything about running them.

When I get to talking about business I talk only about the things that I think I understand, the range and mining and engineering and how to build a dam, and those various things.

But when I find men posing as experts to influence legislation on something about which they know nothing, my temper gets shorter and shorter.

If we were investigating how to run a successful sports magazine, you would be a wonderful witness.

In the matter of mining, unless you establish yourself—and I have always had to establish myself as an expert witness when I go before any court—unless you establish yourself as an expert witness you can be very dangerous, if you know what I mean.

I have a most friendly feeling toward you because you are one of the people who provide reading material. I don't get to fish much, but I like to find out what the fishermen are doing.

I am not an expert in fishing. I depend on people like our own fish and game commission to tell me what they want, and then we try to make it a part of the law. We are trying to do it now on the Truckee and Carson Rivers. It is a question of hearing.

There is a difference between an expert witness and one who knows what he wants as an objective and knows nothing about the practical matters that lead up to it.

In 1934 we changed our whole objective of the public lands from Ohio west. The Congress' position was we were holding them in trust for the States until such time as they could figure out some kind of law to get them into private ownership and on the tax rolls. All you have to do is read it. That was for 140 years.

In 1934 we changed that. Mr. Ickes discovered 100 million acres or a billion acres—whatever it was—that nobody knew anything about at all. The only people that knew about them were the people who were making a living off them.

He said we should charge for the use of the stock to the stockmen of all these lands. As a matter of fact, every public land State had been taxing these lands through the livestock on patented land. You couldn't raise the taxes on the stockman. All you could do is redistribute it if he owned all those public lands.

But you heard me outline a while ago that 960 acres was the greatest acreage any man could own. When he got over in the short-grass country—take a sheepman: do you have any idea how much land it takes to run them on out there? We are talking about a township, not sections. Therefore, we were taxing this sheepman, taxing his patented land for waterholes and irrigated land, everything the traffic would bear, which meant he had to have these lands to run his band of sheep.

Ickes comes in and, entirely ignorant of everything—God bless him, he is dead now, but they said all these things while he was alive, so I

am not bringing him up for any purpose except an illustration—he practically ruined many stockmen by his rules and regulations. And the Forest Service is doing the same thing because they are a national outfit.

I have no quarrel with them in the way they run the forests. I think they are expert. But when they get out where there are no trees—and they have lands in the forest reserve—they do not know how to run a range.

Anybody that could stay in business running a magazine these days is an expert because there are certain laws that affect them, too. We just had one up here. That is another thing that might interest you. You are not testifying as an expert in things you know about; you are testifying as an expert in something about which you know nothing, according to your own testimony.

I am sorry I have to say that.

Ninety percent of the witnesses who have been here have no personal knowledge whatever about what they are testifying to.

Senator ANDERSON. You may proceed with your statement.

Mr. HUBODA. Having specialized and dealt with this subject of natural resources for the past 14 years, having been recognized and received a number of awards for such service and knowledge of resources—

Senator MALONE. Received what?

Mr. HUBODA. Awards.

Senator MALONE. What did this experience include? Tell us again. I am interested in it. I really am. And I am sorry to have to go into it.

Mr. HUBODA. Probably no group of individuals, Senator Malone, are more sensitive and more on-the-ground alert to the whole subject of surface values and surface resources than the hunters and fishermen of this country.

Senator MALONE. I am a hunter and a fisherman. Every year I get a deer because I can shoot a rifle.

Mr. HUBODA. You would do better than most of the deer hunters.

Senator MALONE. I know how to shoot a rifle. That is not theoretical with me. I am interested in that very much. But I also have my roots down in the thing we are talking about here, and you don't.

I want to know what you got those awards for, what your experience entails. You brought the subject up.

Mr. HUBODA. To continue, Senator Malone, the statement that I had started, that those interested in the out-of-doors, the hunters and fishermen like yourself, have a unique appreciation of the surface values and the scenic outdoor opportunities, the 33 million license buyers in this country—

Senator MALONE. That includes me.

Mr. HUBODA. The 33 million license buyers of this country, one of each 5 adult individuals, are a cross-section representing every field of activity—you, the distinguished Senator from Nevada, the distinguished chairman from New Mexico, the lawyers, the miners—

Senator MALONE. All of that I admit. But I don't testify as an expert witness on anything that I am not entirely familiar with. And they have not given me any awards for hunting, although I think maybe I could compete with some that have received them. They don't give me any awards for knowing how to handle a recreation area because it is not my business.



I have just known practically all about them in my own State and generally in other States.

What they give me an expert standing on is a matter of building dams and reclamation and flood control and mining and various things where for 30 years I have been familiar and have been drawing pay for it. I could qualify in a court. You can't qualify in a court for running a magazine and talking about a situation about which you are entirely unfamiliar. That is the thing you don't know, in my opinion.

You don't know that the safety of this country depends on producing enough of these minerals or having them produced in an area available to us in time of war, for our safety, for our security. You can do without buffalo, you can do without deer in time of war, but you cannot do without these minerals.

Senator ANDERSON. He might. You can't probe his mind.

Senator MALONE. I want to see if he knows. He has nothing to say that indicates it at all.

Mr. HUBODA. I think possibly the statement that Senator Malone has just made about the future strength and welfare of this country depending on the natural resources may likely have originated in my own editorial columns.

Senator MALONE. Give us one of your editorials, the substance of it.

I know what your editorial probably is, that you have to save these minerals and import them until a war starts, and then you would go out and dig them out. That is what Ickes started, and I think you all followed him.

Senator ANDERSON. Couldn't he testify on this bill?

Senator MALONE. He did. I want to qualify him and see what he knows about it.

Mr. HUBODA. My knowledge of mining has been enhanced in listening to the testimony and the cross-examination by Senator Malone over the past 2 days.

I also have had the privilege of reading a number of reports and documents which he has originated in his own committee.

And, in listening and in covering the capital for 12 years and attending practically every hearing on natural resources subjects and having available the authorities of the country up here in Washington and in the various States, and as a reporter trained to talk and to probe, just as you have been doing in this particular instance, to get the information, we feel that some of it has possibly rubbed off.

But in each instance as we publish once a month we have got to get a vote of confidence, which means that our readers have to accept or reject what they read. And we can only reflect what the body of readers—

Senator MALONE. Right at that point, I am sorry that I have to interrupt, but I think you have established it already.

I can testify on a hospital like you are testifying about this business, but I do not have any information of my own. In other words, if you were testifying about the best rifle to use in shooting a deer, I might dispute what you said but I would have to recognize you as somewhat of an expert. You have hunted and you have studied and you can write an article about that with substance in it.

But when you go beyond that, when you want some regulation out here just as Ickes was successful in getting on the forage when he didn't know the south end of a cow going north, it is something that interferes with the living of these people and the security of this country. And it has been sold to this country. Maybe you helped to sell it. That is the reason I wanted to get this editorial.

"Save our minerals; don't mine them until after the war starts." We can just have them, you see.

Ickes wanted to save all the oil because we would be out of oil. It is running out of our ears now and he is dead.

Of course, there is nothing you can do about it. But his policies did not prevail.

If your policies prevail we are finally going to get a leasing act, and that is what you all want in this mining business. This is another step. I think you are out of the mining business. Of course, you are out of it anyway as long as some of the laws Congress has passed are in force.

But you say you have been here studying this testimony for 12 years. I could study a doctor's testimony for 400 years if I lived that long and still not know what I am talking about.

Mr. Chairman, that is all I have to say about it. I think this witness has established that he is here because he believes the things he has been hearing as to how you ought to handle public land.

I respect you in your business. I read your magazine.

Senator ANDERSON. Go right ahead and finish your statement.

Mr. HUBODA. Mr. Chairman, if I may continue just briefly, referring to the bill, we are concerned in this legislation about the wildlife refuges and the effect it would have on the wildlife refuges. We are also concerned under section 2 that there are special acts of Congress dealing with the appropriation of money on refuge receipts, and so forth, and that matter may be taken into consideration.

We have a concern in section 4 (b) that if the interpretation of the United States is a United States agency, its permittees and licensees, that there may be an effect upon an individual fisherman or hunter who is licensed by a State, and whether there would be a restriction there.

If the United States is interpreted to be the individual State, then there would be no concern. But if the interpretation is an agency of the Government, the Federal Government does not issue fishing and hunting licenses.

Senator MALONE. I think we are coming to that in due time, that about the next thing will be, after we get all through with this thing, the Government will be issuing fishing licenses.

So no one has to move out of Washington. They can just sit here on their nice soft cushions with air conditioning and do the whole business right from here.

Mr. HUBODA. Senator Malone, the Supreme Court has stated in decisions that the fish and wildlife resources, with the exception of migratory birds, are the property of the State which is the custodian for the resources.

Senator MALONE. I have seen that Supreme Court change entirely around in 30 years. So you can expect anything just as soon as they get a place to hang their hats.

Mr. HUBODA. In closing, Mr. Chairman, I would like to state that we are again interested in the multiple-purpose use of all of the resources. We do not feel that any constitutional freedom of an individual should be impaired under any circumstance for any emergency.

In examination of this proposed legislation we do not feel that that is the case. And I want to endorse the excellent statement on conservation made by Senator Anderson as a preliminary to this hearing. I want to commend the American Mining Congress for its recognition of this problem, and the American Forestry for its auspices in helping to bring this matter to this point.

Thank you.

Senator MALONE. I have been glad to see you.

Senator ANDERSON. Let me just say that the Izaak Walton League also sent a letter addressed to the chairman, which will be placed in the record at this point.

(The letter referred to follows:)

THE IZAAK WALTON LEAGUE OF AMERICA, INC.,  
WESTERN OFFICE,  
Denver, Colo., May 16, 1955.

Re S. 1713.

HON. JAMES E. MURRAY,

*Chairman, Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.*

DEAR SENATOR MURRAY: Izaak Walton League members living in the western public-land States have long been concerned at the grave loss of public values in the national forests due to our antiquated mining laws. We have been hopeful that some changes might be devised, acceptable to all interests concerned, which would eliminate the abuses possible under present law and eliminate avoidable loss and damage to the important surface values of timber, watersheds, grazing, wildlife, and recreation.

We have studied the legislation which your committee is now considering, especially S. 1713. We do not believe this legislation, if enacted, will solve all the problems. However, we do believe it will go a long way toward correcting many of them, and it has our endorsement.

We respectfully urge that your committee report S. 1713 favorably.

Sincerely,

J. W. PENFOLD,  
*Western Representative.*

Senator ANDERSON. Senator Malone, I did not put the magazine article in the record. I merely put it in the files of the committee.

Senator MALONE. That is a good idea.

Could we call the man in who wrote that article?

Mr. HUBODA. I don't know where he is. He is on another assignment now for us, and I would have to find out.

Senator MALONE. Find out where he is.

Mr. HUBODA. He is not our employee.

Senator ANDERSON. May I put in the record also a letter from Alfred J. Kreft, past president, Portland (Oreg.) Chapter of the Izaak Walton League of America, dated May 11, 1955, enclosing an editorial which he requests permission to put in the record. The letter reads as follows:

HON. CLINTON ANDERSON,

*Chairman, Interior and Insular Affairs Committee,  
United States Senate, Washington, D. C.*

DEAR SIR: I enclose a very excellent editorial from the Portland (Oreg.) Journal, an independent newspaper, which commends very highly the proposed bills that you and Representative Ellsworth have introduced this session in your respective branches of the Congress. The editor hopes for its passage, as do many of us.

As past president of the Portland (Oreg.) Chapter of the Izaak Walton League of America, I have personally studied this bill and find that it corrects most of the abuses that the league has been criticizing.

I urge that your committee approve this bill and work for its passage in the Congress. Please make this editorial and my letter part of the official record of the hearings.

Very sincerely,

ALFRED J. KREFT, M. D.,

*Past President, Portland (Oreg.) Chapter, Izaak Walton League of America.*

The editorial from the Oregon Journal reads:

#### REALISTIC MINING-TIMBER ACT

Last year 1,067 mining claims were filed on national forest lands in Oregon and Washington. They have pushed the total of unpatented claims on Forest Service lands in the two States to 10,417, of which 6,667 are in Oregon.

They have tied up 284,588 acres of forest land, on much of which the Federal Government can neither harvest timber nor build access roads to adjacent lands.

This tells only a small part of the story of widespread abuses based on the weak and outmoded mining laws of 1872. "Bogus miners" by the thousands have filed claims on valuable stands of timber and summer-home sites with no intention of seeking mineral deposits. Last year, of 84,000 unpatented claims in the Nation, only 2 percent were producing commercial quantities of ore, according to Forest Service figures. It was estimated that not more than 40 percent might prove to be valid under the mining laws.

Year after year remedial legislation has been presented in Congress but has always met defeat, partly through pressure on the part of legitimate mining interests which feared the proposals went too far.

Legislation now before Congress seems to have a better chance of success. H. R. 5577, bearing the name of Oregon's Representative Ellsworth, would go far toward cleaning up the mining-law abuses. Several other identical bills are in the House, and a like bill in the Senate is signed by Senator Clinton Anderson (Democrat, New Mexico), author of a more drastic 1953 bill which failed.

These proposals have the backing of the Departments of Agriculture and Interior, the American Forestry Association, and several mining organizations.

The legislation would put an end to the practice of filing mining claims for sand, stone, gravel, pumice, and cinders, and make them subject to the Mineral Disposal Act.

It would, prior to patent, prohibit use of mining claims for any other purpose than prospecting, mining, and related activities; permit the Government to manage and dispose of timber and other surface resources and to build access roads; prevent the mining claimant from removing timber or other surface resources, except for that required for mining activities; set up a legal procedure by which the Federal Government might more expeditiously resolve thousands of abandoned, dormant, or unidentifiable claims.

Earlier bills sought to keep control of timber in Government hands even after patent. This the Ellsworth bill does not do, but forestry officials assure us that by far the larger number of abuses lie in claims which never could be patented. They are satisfied with the bill as written. We hope Congress will give it the green light.

I would like also to have in the record at this point a statement from the Independent Timber Farmers of America.

(The statement referred to follows:)

#### STATEMENT OF CHRISTOPHER M. GRANGER, REPRESENTING THE INDEPENDENT TIMBER FARMERS OF AMERICA IN SUPPORT OF THE ENACTMENT OF S. 1713

The Independent Timber Farmers of America is an association of small timberland owners and operators active in a number of central and northwestern States. Its purpose is to facilitate the operations of its members and to promote good forestry practices on their holdings. Also, as forest-land managers, the group is strongly conservation minded and favors all constructive conservation legislation. It endorses the purposes of S. 1713 and recommends its enactment.

It is known that this measure represents a compromise between Federal land administrators, the mining industry, and conservation groups. Concessions were

made by the three groups in the interest of joint support of a measure to remove or lessen some of the abuses of the general mining law. Unquestionably the bill, if enacted, will represent a very desirable step in that direction, without interfering with legitimate mining operations on the Federal lands.

The situation requires prompt action. Mining claims are being located at a terrific rate on Federal lands, multiplying daily the actual or potential difficulties of properly administering the other resources of these lands. It is urged that this legislation be enacted without fail during this session of Congress.

When enacted, this measure should be given a fair and thorough trial. I have no thought of suggesting any amendments now. But it is well to bear in mind that conservationists would like to have seen included several added features which have appeared in whole or in part in earlier bills, such as:

1. A requirement that the claimant should pay a fair price for the surface resources of the claim upon patent—particularly the timber not needed in operating the claim. This would further reduce any incentive to patent a claim of low mineral value in order to obtain high-value surface resources.

2. A requirement that surface operations, including placer mining measures, and discovery operations on both placer and lode claims must be conducted under reasonable restrictions to minimize soil erosion, pollution of water resources, damage to watersheds, and for restoration of the surface. A large and increasing amount of avoidable damage is occurring.

Experience under this bill, if enacted, may show the need for later consideration by those who united to advocate this legislation of some additions similar to the foregoing.

CHRISTOPHER M. GRANGER.

Senator ANDERSON. I also am in receipt of a letter dated May 12, 1955, from Stuart Moir, Forest Counsel of the Western Forestry and Conservation Association, addressed to me, which reads as follows:

DEAR SENATOR ANDERSON: We would like to present our views on your bill, S. 1713, which is a proposal to amend the mining laws so as to correct certain weaknesses in the existing laws.

The Western Forestry and Conservation Association represents forest landowners in the western United States. It is a nonprofit organization, interested in the proper protection and management of forest lands and the wise use and sound administration of all natural resources.

We realize that the mining industry is essential to the economic welfare of the United States and that an efficient domestic mining industry must be maintained as a basic component of national security, and that any legislation affecting the mining laws must give full cognizance to this fact.

For years there has been a conflict of interest in several areas in the West with the forest properties on one hand and mining claims on the other. In many cases the mining claims were for common materials such as sand, gravel, stone and pumice. These conflicts have materially increased in recent years, due to the impetus given to the development of both mineral and forest resources resulting from the recent war and its aftermath.

We believe that the frequent abuse of the present law to acquire summer homesites or tracts of valuable timber by locating such common materials should be corrected promptly. The filing on a marginal timber claim just to acquire timber should be made unlawful.

Many forest operators are now seriously handicapped in their operations by being cut off from access to their properties by mining claims; and many millions of feet of Government-owned timber is bottled up and rendered unavailable for operation by the same action on the part of some mine claimants.

Your bill, S. 1713, provides safeguards against the abuses of the mining laws, such as I have mentioned above, and will enable the United States Forest Service and the Bureau of Land Management to sell timber on mining claims prior to their being patented and will also provide for access across mining claims to operating forests. Its provisions would not adversely affect a bona fide mining claim locator engaged in the development of the mineral resources. Approval of the bill by your committee and its enactment by Congress is greatly to be desired, and this association sincerely hopes that Congress will accomplish this improvement.

We respectfully submit this statement for your consideration and request that it be included in the hearings of the Committee.

Sincerely yours,

STUART MOIR,  
Forest Counsel.

Senator ANDERSON. Also for the record the committee is in receipt of a telegram from the American National Cattlemen's Association, F. E. Mollin, executive secretary, which reads as follows:

We wish to make the following statement in favor of enactment of S. 1713 and ask that it be included in the record.

The American National Cattlemen's Association, Denver, Colo., was organized in 1898 and is a voluntary association representing 24 State cattlemen's associations, many local and regional and regional cattlemen's groups and thousands of individual cattlemen.

In January the association passed a resolution deploring the present laws with respect to letting and holding mining claims as outmoded and inconsistent with the proper use of Federal land, pointing out that many claims are filed on and held for years for purposes other than mining. The resolution asked that our mining laws be revised so that claims will be held consistent with the proper use and management of Federal lands for all users.

The American National Cattlemen's Association has consistently supported free enterprise and individual initiative and has always favored full development of the natural resources of the Nation for the benefit of all the people. It has no desire to interfere with the legitimate efforts of prospectors to locate and develop claims.

However, there has been in recent years a growing tendency to take advantage of the broad latitude in our present mining laws and to use claims held under those laws for purposes far removed from development of mineral resources.

We believe that S. 1713 will help to correct this tendency and that it is in accordance with the desire expressed in our resolution cited above. It would bar the use of unpatented mining claims for purposes other than prospecting and mining and processing and gives the Government the right to dispose of timber, forage, and other surface resources not actually needed in the mining operation.

Old and abandoned mining claims have created uncertainties and confusion as to the rights to the use of many pieces of land for grazing. S. 1713 provides for a procedure under which control of the surface value of lands can be resolved and uncertainties cleared up, with due consideration for the rights of legitimate operators of active claims.

The bill provides that the Government or its licensees or permittees may use such surfaces of unpatented claims as are necessary for access to adjacent land so long as that does not interfere with the mining or related operations. Mining claims have often unnecessarily blocked livestock trails and prevented proper use of adjacent land.

May we urge your favorable consideration of S. 1713.

Senator ANDERSON. Also, for the record, I have a letter addressed to the chairman, dated April 29, 1955, from C. H. Murphey, executive director, New Mexico Mining Association, which reads as follows:

DEAR SENATOR MURRAY: It is our understanding that S. 1713 will probably come before your committee for consideration shortly after the middle of May.

In order that you may be informed concerning the attitude of our organization with respect to this proposed piece of legislation, we wish to advise that the majority of our members endorse enough of its provisions to permit a full endorsement on our part. It is expected that some of the abuses of the mining laws that have been erroneously charged against our industry will be corrected with the enactment of this measure.

With assurance of our best wishes, I am

Cordially yours,

C. H. MURPHEY,  
Executive Director.

Senator ANDERSON. Now we will hear from Mr. Palmer.  
Mr. Palmer, will you identify yourself and your organization.

**STATEMENT OF ROBERT S. PALMER, EXECUTIVE VICE PRESIDENT,  
COLORADO MINING ASSOCIATION**

Mr. PALMER. My name is Robert S. Palmer.

Senator ANDERSON. What is your position?

Mr. PALMER. My position is that of executive vice president of the Colorado Mining Association. I am actively engaged in mining in New Mexico and Utah and in Colorado, and I have been in the active practice of the law, mining law in particular, for the last 22 years.

Senator ANDERSON. Your office is in Denver?

Mr. PALMER. My office is in Denver. I appear here by request and not through any desire of mine to impose upon the time of this committee.

The National Western Mining Conference held in Denver last February attended by 2 members of your Senate committee and some 3,500 mining people from public land States unanimously adopted a resolution opposing any change in the basic mining law on the grounds that it had been interpreted by the courts to such an extent that it could be easily understood by the average prospector without fear of some new interpretation involving expensive litigation.

The executive committee of the Colorado Mining Association recently voiced its approval of S. 1713 with the expressed hope that its provisions would be amended so as to restrict its application to national forests, and the further hope that no valid mining locator would be deprived of the use of timber found on his claim or contiguous claim for essential mining purposes.

The executives of the association which I represent have a very high regard for the acting chairman of this committee and the other sponsors of this legislation, and were greatly impressed with the assurance of Senator Clinton P. Anderson that it was not the intent of the legislation to deprive any miner of valid rights.

May I here add that we in Colorado consider Senator Eugene D. Millikin the ablest mining lawyer who has ever served our State in the Congress, and we rely implicitly on his analysis of pending legislation affecting our vital industry. As for Senator George Malone, we are highly appreciative of the great work he has done and is doing to make America a have nation as far as minerals are concerned so that the United States will not become dangerously dependent upon foreign sources for the safety and security of our people.

The fear we have of this legislation is that its administration and interpretation may not be in line with the intent of Congress.

As an illustration of this point, when the Leasing Act of 1921 was enacted into law it was not the intent of Congress, as shown by the debates, that leased lands were to be withdrawn from mineral entry. Yet the Department of the Interior, in Joseph E. McCloy, et al. (50 L. D. 623, 1924), held that the Leasing Act was effective to withdraw from mining location all lands known to be valuable for Leasing Act minerals and all lands for which an application was pending for a mineral lease.

I wish to state that I am one of the few people who has read all of the debates on the floor of the Senate when the Leasing Act was under consideration, and can state without any fear of contradiction that there was no intent on the part of any Member of the Senate expressed

in that debate that the Oil Leasing Act was designed to withdraw any area from mineral entry.

Under present law, lands in national forests are open to location only in strict accordance with forest regulations. I have before me a reprint of the *Utah Law Review*, volume 4, No. 2, which was recently presented to me by the editor, in which this is pointed out.

The cases cited are *U. S. v. Mobley* (45 Fed. Supp. 407, supplemented by 46 Fed. Supp. 676 (S. D. Cal. 1942)) and *U. S. v. Rizzinelli* (182 Fed. 675).

Senator ANDERSON. That is the saloon case which I mentioned yesterday.

Mr. PALMER. The latter case, as we all know, decided, as far as the law is concerned, that no one can acquire a mining claim for the purpose of locating a saloon there.

Formal acts of appropriation must be accomplished in strict compliance with Federal and State law in order to initiate rights to a lode claim.

The average miner, therefore, asks why penalize valid locators of mining claims simply because some unscrupulous people attempt to violate the law.

We have pointed out many times that enforcement of the present law will alleviate the difficulty. This was not only the position of our association, but every other mining association, including the Mining Congress, up until last year.

Why the change?

Mr. Richard E. McArdle, Chief of the Forest Service, said yesterday, in part, and I quote:

The problem of preventing misuse of mining claims on the national forest and providing equitably for multiple development of both minerals and national forest surface resources on such claims is probably the most important single problem facing the Forest Service at the present time in its administration of the national forests.

If we accept this statement at face value, one might reasonably ask why extend the provisions of the proposed legislation to all public lands outside the national forests.

The answer has been suggested that all areas should be treated alike. We ask, if it is impossible to patrol the national forests, how is it going to be possible to enforce the legal requirements for valid locations and see that every tree or bush is cut on every location—and I quote from the bill: “in accordance with sound principles of forest management.”

A miner asked me before I left Denver, “Suppose I locate a claim on the Colorado Plateau and cut a tree or bush not in accordance with sound principles of forest management. Under the provisions of this act are they going to throw me in jail?”

Senator ANDERSON. What did you tell him?

Mr. PALMER. I refused to answer the question, sir.

Senator ANDERSON. But you could have answered it.

Mr. PALMER. I am not sure what the answer is.

Senator ANDERSON. How many years have you practiced mining law?

Mr. PALMER. I was admitted to practice in 1928.

I will be very happy to give him your answer, Senator.



As William Colby, that eminent mining lawyer who practiced law in California for some 30 years with the great Lindley, who compiled the classic works on mining law, said, if you can't enforce the present law, what assurance do we have of enforcement of the new law?

Mr. McArdle said this bill is a very significant and major step forward, and, if funds are available for its implementation, will result in correcting a very substantial portion of our problem.

A step forward to what?

Elimination of the prospector from the national forests?

Are we to have Forest Rangers chasing miners all over our mountains?

If so, then I fear there will be serious reaction in the public land States.

Senator ANDERSON. Do you believe that is the purpose of the bill?

Mr. PALMER. I do not believe that the Congress intends that as the purpose of the bill.

Senator ANDERSON. Do you think that if it is passed that the Forest Rangers will start running the mining prospectors off?

Mr. PALMER. Senator, may I say to you that I honestly believe that more miners have come into my office in Denver for advice on conflicts with the Forest Service than into any office in the United States. It so happened that just before I left Denver three miners came into the office stating that their mining location was being contested by the Forest Service under the present law.

Senator ANDERSON. Do you mean the present law?

Mr. PALMER. Under the present law.

Senator ANDERSON. I thought the present law was something they couldn't touch a man under.

Senator MALONE. Yes; that is what I have been arguing about for 2 days.

Mr. PALMER. I strictly said here, Mr. Chairman—"Enforced."

Senator ANDERSON. The present law was enforced.

Mr. PALMER. That is right.

Senator MALONE. That is right.

Mr. PALMER. And these men were being hounded by the forest ranger for constructing a cabin on a location which they had made for the purpose of developing a mine. The mineral that they had found in place was iron pyrite. They were driving a tunnel with hand steel. They were formerly employed in Leadville as miners and were now retired because of age and were attempting to make a livelihood through the location of a mining claim in a national forest.

Senator ANDERSON. How did the forest ranger harass them?

Mr. PALMER. The forest ranger is said to have told them to get off the property, that they had not found any mineral in place in such quantity as would justify a reasonable person in pursuing his claim, and with the further allegation, which has been filed with the regional administrator of the Land Office, that the lands were more valuable for forest uses than they would be for mineral uses.

Senator ANDERSON. Does the forest ranger concede that he made that statement?

Mr. PALMER. I have discussed the matter with the local authorities. I have not discussed the matter with the forester himself. But the matter is being set for hearing under contest procedure.

The point that I make is that here is a situation in which, under present law, there is quite a good deal of activity on the part of the officials of the Forest Service.

I might cite to you just one other illustration.

One of our members has some patented placer claims in the vicinity of Denver. On these patented claims are some trees. The owner of the property authorized the cutting of some of the trees for the purpose of thinning out an area. The cutters trespassed on the national forest 10 feet without knowing that they were doing so, and immediately the forest ranger appeared and advised them of the trespass, and suggested that they pay the Government a stumpage fee for the timber that had mistakenly been cut.

Senator ANDERSON. Is there anything wrong with that?

There is nothing wrong with that. I commend the Forest Service for enforcement of the law.

Mr. PALMER. The point I am making is that the statement was made in testimony here that it is not possible for the Forest Service, with present personnel, to enforce the mining laws in the national forests.

As far as I know, in Colorado it not only is possible; it is being enforced.

Senator ANDERSON. In my home town a man built a garage and he inadvertently built it an inch and a-half over on the other man's area. Now as a lawyer you know what the other man's remedy was, don't you?

Mr. PALMER. That is right.

Senator ANDERSON. He told him to move the whole building.

He had that right, didn't he?

Mr. PALMER. That is right.

Senator ANDERSON. The Forest Service had the right, did it not?

Mr. PALMER. That is right.

Senator MALONE. I think the point was that the fellow was on the job and he was enforcing it and doing a good job and was to be commended. But the testimony here for 2 days has been that it is not effective the way it is now; the present law is not effective.

Senator ANDERSON. I was thinking, Senator Malone, of an incident when I went home one summer. I spent 4 or 5 days in Albuquerque and tried to maintain an office in the Federal Building. One of our men who is most militant against the Forest Service—I heard his boots coming down the hall, and he came in boiling. He told me that the Forest Service had taken his telephone number away from him at his sheep camp. He had 22R at his house, and 22J at his sheep camp. And they had taken his number away from him, and he wanted the Forest Ranger fired that day.

That is why I asked the question about the Forest Ranger.

He insisted that I fire him then on his absolute assurance that that had happened.

That man was a fine man, a long-time personal friend.

Senator MALONE. Maybe he overrates the Senator as to what he can do.

Senator ANDERSON. At that time I was the Secretary of Agriculture.

He wanted me to fire him that day, and he wanted me to do it personally while he stood and watched me do it.

I delegated to one of the men the responsibility of running the case to a complete end.

He found the man, and the man admitted that the telephone company had done it, and, on his own volition, the Forest Ranger had driven all the way in to Albuquerque, 100 miles, to protest because he said that this man would not take it lying down.

The Forest Service Ranger did that, but to this day we keep hearing the story about how he took his telephone number away from him.

That is why I wanted to know if these Forest people had admitted that they had been in there browbeating people and harassing people.

Senator MALONE. The Forest people in Nevada, I have no quarrel with them at all as far as forests are concerned. I only quarrel with them when they try to do something entirely out of their field.

Of course, in our State it may be an exception. I think they do a good job. I think they are fully capable of doing the job that this bill is designed to do. That is, I think, the point that Mr. Palmer made.

Mr. PALMER. Now, Mr. McArdle estimates that at the beginning of this year there were 166,000 national forest mining claims. If this be true, then in our forests alone there will have to be completed \$16,600,000 worth of assessment work this year, and if the 4 million acres go to patent there will have to be \$83 million worth of work done on those claims, and, in addition, the United States Government will receive \$20 million in revenues besides the mineral surveyor fees, court costs, beans and bacon, legal fees, trucks, equipment, supplies and whatnot which will have to be paid for by the miners.

And I have assumed in these compilations, Senator, that no production from any of these claims will take place. If production takes place the revenue received by the Federal Government will be in substantial amounts.

Senator ANDERSON. Do you know whether or not a man has to do his assessment work the very first year when he files one of these claims?

Dr. PALMER. I know the law, yes, sir.

Senator ANDERSON. Do you know any loopholes to the law?

Mr. PALMER. No, sir; not when it is properly enforced.

Senator ANDERSON. Do you know that if a man fails to state on his application blank that he is a citizen of the United States that in certain types of mining claims, at least, that can delay it from 14 to 18 months? It just takes that long to go through the routine of writing back and getting data to show that he is a citizen.

Mr. PALMER. You mean in a contest?

Senator ANDERSON. No. In the first step of mining. I don't say when he goes out and files under the ordinary 1872 law, but when he is filing for a coal mine, for example, under the 1920 law. How many years can you postpone it before you have to do any assessment work?

Mr. PALMER. Under the mining law you are required to do it every year.

Senator ANDERSON. Would you anticipate that out of these claims all of them or a substantial part of them are trying to do assessment work?

Mr. PALMER. That is a very difficult question for me to answer, but I would say that at the present time—and I assume that a great many of

these claims are uranium locations that have been cited by the representative of the Forest Service—a great deal of money is being expended in the exploration and development of these claims.

I would like to take just a minute here to say one word about these expert miners, geologists, and mining engineers who have been referred to as competent locators of mining claims.

Would Charlie Steen or Vernon Pick qualify as an experienced, qualified mining man?

Senator ANDERSON. Do you find anything in this bill that would prevent Charlie Steen from going out and hunting for it?

Mr. PALMER. I find nothing whatever. But the Forest Service, before bringing a contest, generally sends out a competent mining official to examine the premises and to see whether ore has been found or mineral has been found in place in such quantity as would justify a reasonable person—not a miner, but a person—in the development of his claim. And I wish to—

Senator ANDERSON. You understand, don't you, that there is not a person connected with this bill who wants to stop that from being done?

Mr. PALMER. I think that is a correct statement with respect to the Members of Congress.

Senator ANDERSON. That is what I said, a person connected with the bill.

Mr. PALMER. The only reason that I appear here by request is to point out that, No. 1, legislation has been enacted by this Congress which has been interpreted by the Departments adversely to the best interests of the Nation and to the best interests of the development of our mines.

Secondly, we feel that a great deal of money has been expended in litigation, cases which have been decided by our Supreme Court with respect to the present law. And I am sure you will agree that when new legislation is enacted that the miners or anyone else do not know its true meaning until the courts have interpreted the language.

We have full confidence in the authors of this bill and in the members of this committee. But we have some apprehension as to what the interpretations may be in its application to an industry which we consider vital to the welfare of the Nation.

Senator ANDERSON. I think I would agree with you to this extent, that a good law can be so badly administered that it might better not have been passed at all.

But that does not justify administering agricultural laws the way they were not intended to be handled. And I think you will see that in every Department of the Government.

I only say that all you can do in the Congress is to try to enact what you think is going to be a good law and going to improve the situation, and probably hope for the best.

Mr. PALMER. Well, I wish to commend Mr. Holbrook and the American Mining Congress committee, and Mr. Bennett and others who have participated in the drafting of part of this legislation. I really feel they have done an excellent job. But I do feel that when you draft new legislation affecting the mining industry that great care is required. It is not because we do not agree with you in principle. It is not that we are critical of any of these other

organizations, or in disagreement as to fundamental concepts of mining law. It is just that the average miner today does not have the funds with which to enjoy the luxury of litigation.

Senator ANDERSON. He need not have litigation, Mr. Palmer. Public Law 585 that we passed attempted to say that there was a conflict between oil and gas, on the one hand, and mining or minerals on the other, and tried to resolve that by exactly the same in rem procedures that are involved in this. Not precisely, but almost precisely.

In this particular instance you have the same sort of a conflict between surface rights and mining rights, and you try to handle it on exactly the same basis.

The only conflict is as to surface rights not connected with mining. But you recognize that this law does not in any way touch the Mining Act of 1872 as far as minerals are concerned, nor the use of surface rights for that mineral.

It does involve the illegitimate and improper uses. And I have difficulty understanding why mining men are opposed to that sort of thing.

There used to be an editorial writer at the old London Spectator who wrote many years ago that a great wrong dies in the hour of its greatest triumph. And this filing of thousands and thousands of uranium claims and trying to tie up timber development, and doing it in the name of liberty for the individual miner, may cause trouble to the mining law of this country some day. But if you would permit us to try to rectify that great wrong, then you will preserve the mining law of 1872 and continue to have it applicable.

Mr. PALMER. May I make this observation of that statement, Mr. Chairman—

Senator ANDERSON. Yes, I wish you would because, as you know, we don't seem to agree on this legislation. But I have a good deal of respect for your judgment over a long period of years. I am interested in what you have to say.

Mr. PALMER. I say that officially we agree with you on this legislation. We are trying not to disagree with you. If it were sponsored by others we certainly might.

You are chairman of the Joint Committee on Atomic Energy. As late as a year ago the former chairman of the Atomic Energy Commission wrote a book—I refer to Gordon Dean—"A Report on the Atom," which led the reader to conclude that there were no substantial amounts of primary uranium ore in the United States. In other words, the United States was largely dependent for its sources of atomic energy on outside sources.

Senator ANDERSON. That is not the interpretation of that statement, I don't believe.

Gordon Dean knows that the Colorado Plateau is full of uranium, and says so in the book, the Report on the Atom.

Mr. PALMER. Gordon Dean specifically stated in the book that there were no substantial amounts of primary uranium ore in the United States.

Senator ANDERSON. Is there?

Mr. PALMER. Since that report the people to whom you have referred as going out and locating mining claims have uncovered primary deposition of substance in the United States. Just before leaving the West it was announced that in a new area in Utah which had

previously been pronounced barren, uranium ore was being found as a result of drilling. Claims which some people would have condemned as invalid locations were now valid. Because somebody had sense enough to put down a drill hole, and ore was found at a depth.

Senator ANDERSON. I am sure there must be a misunderstanding as to his use of the term because at the time he wrote the book, just prior to his writing the book, he discussed with me the large mining in New Mexico which has \$100 million worth of uranium ore. You and I know which State now has the largest undeveloped uranium ore deposits in the Union.

Mr. PALMER. I recognize your leadership, sir.

Senator ANDERSON. Gordon Dean and I discussed that before his book was published and while he was engaged in the writing of it.

So I say to you that it is a confusion of terms. He understands that there is uranium in this country.

Mr. PALMER. Yes as to the deposits which are not considered as primary. I think the term I am using is correct. I think the term used by Gordon Dean was correct at that particular time. I am not criticizing Mr. Dean. I have a very high regard for him.

But the point I make is that some people are criticized for making questionable locations, which later developments prove are very much in the public interest. The people who are primarily responsible for the uranium development in the United States are not major companies and are not necessarily engineers or capable locators but just average Mr. America. The people who have brought into production the major deposits of uranium in the United States have been the prospectors concerning whom Senator George Malone has addressed a great many of his comments.

I wish to point the value of the prospector.

Senator ANDERSON. I don't argue this question of prospectors, not only in these minerals but in oil. We all know the story as to who digs up the new fields and brings them in.

As I say, I recognize that you don't always succeed.

You are familiar probably with the mining venture that I got myself into in the northern part of New Mexico.

Senator MALONE. Mr. Chairman, I would say right at that point, and I think the distinguished Senator from New Mexico, if he stops to think, knows as well as the Senator from Nevada or the secretary of the Colorado Mining Association, that it is the wildcatters and prospectors without adequate funds, many times without any funds, to carry through the operation, that go out and find this material—oil, gas, and minerals—because they just have nothing better to do. They spend their lives doing that. If they hit it, they make some money; that is, if Washington does not interfere with it; and if they do not hit it, they die broke.

Hundreds of them broke where one makes it. We all know that. It is a fever.

Now, the men with the money generally are represented by an engineer of some reputation. He sends his engineer in after the discovery has been made. These engineers really go out on exploration ahead of time.

Now, they do have some that do that, but the majority of the explorers and prospectors and wildcatters are financed by their friends or through selling stock.

I could name 5 or 6 men that have money or have backing, like Odlum, who has gone in and bought out 1 man that did not know any more about prospecting for uranium than my grandson, bought him out for \$9 million or \$10 million. He says himself in his life story that he knew nothing about uranium, but he went in there with his wife and they worked like a pair of slaves and they had a little luck of the Irish and they found some ore that the money was attracted to.

I could name 5 or 6 that have gone in there, but they did not go in and find it. They go in on some of these people that found it on the claims that these experts, these soft-cushion experts in Washington, would have run off the claim.

They are the people I am talking about.

The fellows that these men have testified to, this is the second day, would not let these people go. They would say no prudent man would put his money in there. Of course, they wouldn't. But they are not prudent men, these wildcatters, in the oil and gas. They are not prudent men these prospectors. They are men sometimes at the end of their rope. They have to do something and they have this fever. When they get the showing which 1 out of every 100 maybe gets, gets something like Odlum or someone representing them, and they buy control.

Very often the man who sells it doesn't make much money, but it is a good deal to them. But they have money to lose. But the men we are interested in are the men these people have been talking about for 3 or 4 days. What did they call it? They had a name for it. Fraud. That is what they said. These are fraudulent claims that this man found this uranium and got \$10 million. That is a fraudulent claim, if these fellows had examined it ahead of time.

Senator ANDERSON. That is not correct.

Senator MALONE. There is nothing in there that a prudent man would put money in.

Senator ANDERSON. Let me ask this question: Is it any cheaper for a miner to defend himself under the rules and procedure now established under the law of 1872 than it would be under S. 1713?

Mr. PALMER. The answer to that question obviously as to the validity of his claim is "no." But the full answer to the question is that there is an obligation placed upon the locator under the terms and conditions of this bill which does not exist in the present legislation.

Senator ANDERSON. As to surface rights not needed for mining?

Mr. PALMER. Well, of course, people may differ as to what surface rights needed for mining are.

May I point out, to you, Senator, that there are some other questions involved in this bill which are quite substantial. For example, at the present time, they are finding uranium in conjunction with coal beds. Now, under the terms and conditions of this bill it is possible for a licensee to acquire coal lands and to have a very definite advantage over a locator of uranium on the same area; that is a question which I do not think can be decided at this hearing, and undoubtedly will require some interpretation.

I understand the commission is giving it some thought and consideration at the present time.

Senator ANDERSON. Let me say that when that arrives, I will try just as hard as I tried on the original Public Law 585 to be fair and to be helpful to the people in that area as will Senator Malone and everybody else. I do not believe we have different goals. I do believe very strongly that the continued filing of mining claims for the purpose of getting surface rights and not intending to try to get the minerals is placing the whole mining program in jeopardy. Such practices make it more difficult to be of assistance to mining than it has been in the past.

My whole purpose in sponsoring this proposed legislation from the very beginning was to try to make sure that we did not get so many bad practices that the prospecting for minerals would get into difficulties. I still hope to keep it on that basis.

Mr. PALMER. Will there be bad practices under your law as well as under present law?

Senator ANDERSON. I think there will not be. I think, for example, the people who go and try to acquire a piece of mineral land for the sake of water and timber will not do it.

Mr. PALMER. I wish to point out, Senator, and I am sure you are familiar with the area in which most of the uranium is being found, that it is not in a green forest with a babbling brook flowing through it but an isolated area where temperatures go as low as 25 or 26 below, where mud conditions are extreme and where sand and other difficulties are encountered causing a great hardship for those miners who seek to locate claims in these areas.

Senator ANDERSON. I agree with you completely. I wish you would do this, Mr. Palmer, if you have any additional suggestions with regard to this bill or any additional points that are at issue, that you would submit them to the committee.

We do not want you to feel that we are not interested in your opinion. We are very much interested.

Mr. PALMER. Thank you very much.

Senator MALONE. Mr. Chairman, I would like to ask Mr. Palmer a couple of questions because I think it might clear up some of the uncertainties in the testimony.

Would you for the record, Mr. Palmer, give us a statement on the coordination of the Federal and State laws as far as the location of mining claims is concerned, whether the Federal laws cover it and the area covered by State laws?

Mr. PALMER. May I call your attention to the fact, Senator, that the State of Colorado and the State of Wyoming have recently amended the location requirements?

Senator MALONE. This is important, Mr. Chairman.

Mr. PALMER. In other words, doing away with the necessity of the former requirement of a 10-foot pit or shaft. Both of those statutes have nothing to do with discovery but simply with location shafts and, under new procedure both in Colorado and Wyoming was adopted permitting other methods of discovery. These State laws were designed to do away with the criticism that bulldozers were being used across the country and ruining the grazing and forestry areas. No longer in these two States, nor in Utah for that matter, is it necessary to sink a location shaft.



I think the practice in Wyoming and Colorado will be to use other methods of discovery of minerals in place rather than digging a pit 10 feet deep; such a shaft is still required in Nevada, I believe.

Senator MALONE. That is a pit?

Mr. PALMER. That is right.

Senator MALONE. Now, you changed the law there so that the required amount of work, \$100 worth of assessment work, can be done in a different way?

Mr. PALMER. A drill hole is sufficient.

Senator MALON. If you spend \$100 in diamond drilling, for example, you have done your work?

Mr. PALMER. And make a discovery.

Senator MALONE. That, then, is in the control of the State itself, is it?

Mr. PALMER. Well, the discovery provision is a Federal provision.

Senator MALONE. But the method of discovery?

Mr. PALMER. The method of discovery or the regulation is a matter of State requirement.

Senator MALONE. The discovery that is required by the Federal statute has nothing to do with the type of work?

Mr. PALMER. That is right.

Senator MALONE. Does it specify the amount of work?

Mr. PALMER. It simply is that the accepted definition of a discovery is a mineral in place and such quantities as will justify a reasonable person in pursuing the development of his claim.

Senator MALONE. That is now the law?

Mr. PALMER. That is the law.

Senator MALONE. The point is, then, that there is no requirement in the Federal law that any work be done at all. If you make your discovery in an exposed ledge, that is all that is necessary?

Mr. PALMER. That is right, except the annual assessment requirement of \$100 a year.

Senator MALONE. That is a Federal law?

Mr. PALMER. That is a Federal requirement.

Senator MALONE. That is what I wanted to establish for the record. How you do that \$100 worth of work is within the purview of the legislature of the State.

Senator ANDERSON. The discretion of the individual, is it not?

Mr. PALMER. The detailed requirements are generally set forth in State legislation on location. I know of no specific provisions on annual assessment work but the courts have held consistently that the work must be done in improving the property.

Senator MALONE. You say that the law has changed from a 10-foot shaft in Colorado and in Wyoming to allow the work to be done in another manner, like the diamond drilling?

Mr. PALMER. That is right; that is in the establishment of your valid location.

Senator MALONE. And could be by a bulldozer?

Mr. PALMER. It can be done by a bulldozer, yes.

Senator MALONE. In Utah, you say it is still a law that you have to have this 10-foot shaft?

Mr. PALMER. No, it has never been the law in Utah but it is the law in Nevada, I believe.

Senator MALONE. But that has not been changed?

Mr. PALMER. That has not been changed.

Senator MALONE. And you still have to have the 10-foot shaft?

Mr. PALMER. That is right.

Senator MALONE. For discovery?

Mr. PALMER. Yes.

Senator MALONE. And to do the assessment work?

Mr. PALMER. It has nothing to do with the assessment work.

Senator MALONE. Establishing the location?

Mr. PALMER. Establishing the validity of your location; that is right.

Senator MALONE. In other words, if you in Nevada discovered a ledge, outcropping, you still have to sink your 10-foot shaft?

Mr. PALMER. Senator, that is a matter of Nevada law and I am not thoroughly familiar with the court interpretation in your State, but I feel reasonably sure they would follow the same reasoning and procedure which exists in Colorado.

Senator MALONE. But it is the law?

Mr. PALMER. It is the law.

Senator MALONE. Now, as long as that is the law, that you have to have a discovery, then, if I have followed your testimony, all the departments have to do is to enforce the law?

Mr. PALMER. That is correct.

Senator MALONE. Now, I am very much interested in your testimony and your resolution there that this act, if it is passed, be confined to the forest areas.

Does your resolution confine it to the forest areas or the forest reserves?

Mr. PALMER. To the national forests, the reason for that being that the complaint we have read in the press has generally been designed to impress the public with the incorrect idea that miners are going out and making locations in forests and destroying the forest reserves of the Nation.

If that is the intent and purpose of this legislation to correct that, then why should these isolated areas such as I have mentioned in the Four Corners district in which uranium is being found be placed under this particular type of legislation?

Senator MALONE. Is it not a fact that the areas in States like my own State of Nevada are practically all isolated when you get away from the small towns and the population centers?

Mr. PALMER. That is correct.

Senator MALONE. So that what we have been trying to do over the years is to induce people to go out there and do a little digging and to acquire property; is that not right?

Mr. PALMER. That is right.

Senator MALONE. What happens when a man locates a mining claim and he has a valid location filed, keeps up his assessment work; is he subject to the county assessor waiting on him just the same as any other property?

Mr. PALMER. That is correct. In Colorado and in your State they have the right to assess and in Utah they have the right to assess unpatented mining property.

Senator MALONE. That is up to the State?

Mr. PALMER. That is up to the State.

Senator MALONE. The Federal Government does not interfere with it one way or the other?

Mr. PALMER. That is correct.

Senator MALONE. Now, the Federal Government comes in and if there is an income from the sale of this ore or the sale of the property, then the United States Government gets its share according to the law?

Mr. PALMER. That is right.

Senator MALONE. I think you covered this particular question that I had in mind but are you familiar with the fact that prominent officials in this Government, very prominent I might say, are making continual speeches up until last summer that of course we had to defend Belgium in order to get uranium from the Belgian Congo because there was no adequate amount here and that it was just assumed up until very recently that there was no adequate amount of uranium in sight; is that a fact?

Mr. PALMER. That is correct.

I call your attention to the often-cited illustration of a meeting in the Blair House, at which time it was represented that unless certain secrets were disclosed with respect to the manufacture of atomic energy, that our foreign supply of uranium would be curtailed or cut off.

Senator ANDERSON. I have no knowledge of such a meeting.

Mr. PALMER. It was attended by the two Senators from Colorado—Senators Millikin and Johnson. I understand the decision was made that the information would not be disclosed and that the program of the Atomic Energy Commission was adopted which encouraged the production of uranium in the United States and we have found substantial deposits here which many feel would make us self-sufficient in case of an emergency.

Senator ANDERSON. When was that meeting?

Mr. PALMER. Approximately 1948, I would say.

Senator MALONE. There was much publicity at the time, not of the meeting, Mr. Chairman, but evidently the result of this meeting that unless publicity throughout the country fostered by international mining publishers, and I could name a good many of the people that would make us break down and cry, that unless we disclosed these secrets they would do the same thing in uranium that they had recently done in monazite sands in India.

They thought we did not have monazite sands so in peacetime India curtailed the shipment of monazite sands, not that they needed the money but they thought they could blackmail us into another agreement. That is exactly what was attempted under this uranium setup.

Now, this committee rendered a report last August with which the chairman of this committee is fully familiar and assisted in the work, and since that time there have been no such speeches made by any prominent Government official that you had to go across an ocean to get such material. I do not believe there will be any more made because it would be very embarrassing.

I want to call attention to the fact that this publicity is carried forward for another objective, in the opinion of the Senator from Nevada, to carry out something that they want to do, having an objective, and then they use this shortage of this material as a weapon.

Many people want to buy all of the materials from the foreign nations and I guess they are going to accomplish that unless the people rise up and destroy the foundation for it, which I feel they will do in time.

One more question in that regard. The people that have really discovered these minerals and are profiting by it, are they always the experts and engineers that have found them? What kind of people are they?

Mr. PALMER. No; I have stated that most of the men who have been the most successful are the inexperienced prospectors.

One man from Minneapolis found one of the most substantial deposits.

Senator MALONE. Do you think the experts in the Forest Service or the experts in the Bureau of Land Management would be qualified to determine whether a man had a valid location or not?

Mr. PALMER. Well, there has to be some reasonable gage, I will admit that. I will say that even in the opinion of Mr. Woosley, the field examiners have been incorrect in some of their examinations.

Senator ANDERSON. That, however, could likewise be said about some of the people who have made examinations of oil properties?

Mr. PALMER. Correct.

Senator ANDERSON. They said, "You have a good prospect here and a bad prospect there." You develop the bad prospect and get oil and the good prospect is a dud.

Senator MALONE. You are right, Mr. Chairman. For 50 years the geologists said there was no oil in a volcanic area. In Nevada we forgot it, they were experts.

I was in school when they first made that statement. Finally, in Utah some of these wildcatters got off the reservation and spent money in an area where the Bureau of Land Management would not let them locate in the first place and they hit an oil well.

We now have an oil well in the middle of Nevada and the geologists say that it is likely it will spread over a considerable area.

We are all familiar, of course, with the great worry of the Department of the Interior over a couple of decades that we were running out of oil and had to save it. Now it is running out of our ears and we do not know what to do with it, but due to the wildcatters, not the people who come out of Chicago and New York and get these nice jobs down here out of school and immediately become experts.

What is the history of mining? You have been familiar with it, Mr. Palmer, over a long period of years. When these fellows who do not know anything about it go out there and finally get it, 1 out of 5,000 of them because the rest die broke, what becomes of this prospect? Does he carry it through, or does someone with plenty of money set him up as part owner to go on and develop it, or how is it done?

Mr. PALMER. The trend on the plateau at the present time is consolidation with substantial financial interests in the further exploration and development of the properties. I think that has been the history of the mining industry, generally speaking, that many the small miner under trends in world events has been pushed out of business and some more substantial people have been able to take over properties and operate them.

I think that one of the tragedies throughout the United States is the slaughter of the small miners.

In your State of Nevada, I used to attend large meetings where there would be thousands of people who were in the mining business.

In Colorado we used to have thousands of small miners before the uranium boom.

In New Mexico, when I used to address the New Mexico Mining Association, it was composed of a large number of small operators.

I would say that conditions are quite changed today.

Senator MALONE. To what do you attribute the decrease in the number of enthusiastic small prospectors, miners?

Mr. PALMER. Well, there are quite a few factors. I would say that had this committee passed a piece of legislation in which our groups was very much interested, or had the Congress passed that legislation, I think much of the difficulties which exist would have been alleviated.

I think that it has been well established that with cheap transportation from abroad by boat, with low-cost labor abroad, with the international trend that seems to prevail, that it is possible to import materials into the United States at a much lower cost than they can be produced in the United States under American standards of living.

Senator ANDERSON. Could I break in to ask you if you had reference to S. 2105 that we struggled with in this committee as one of the things that might have helped?

Mr. PALMER. I want the chairman to know that the mining people throughout the Rocky Mountain region are still deeply grateful to the chairman and the other members of the committee for the great battle you put up in behalf of that legislation.

Senator ANDERSON. We tried hard. Senator Malone and I went down together on each one of those rounds.

Senator MALONE. I want to follow just a little further.

Is the fact that we have put our miners in direct competition with these low-wage countries in the matter of the production of these minerals, has that had anything to do with the lack of young people going into this business?

Mr. PALMER. It has made the mining business, up until the incentives which were offered for uranium, very unattractive, and I think that in the event of an emergency in the United States, we are going to find a definite shortage of experienced miners.

Senator MALONE. This uranium incentive, that is a fixed price to 1962?

Mr. PALMER. Right.

Senator MALONE. I predict that after 1962, you will either have to extend the special price or guarantee for a substantial length of time or you will have to have a tariff on uranium to stay in business.

Is it not a fact for as long as I remember, which is quite a considerable length of time, that most of these prospectors and miners that are out there without capital, their chief hope is to discover something of a nature that an engineer that represents capital will come down and look at it?

Is that not the common talk which has been going around for 30 or 40 years?

Mr. PALMER. Well, I think that is correct, Senator.

Senator MALONE. Then the hope is that he will recommend that one of his clients spend a few thousand dollars to go deeper to find out whether he has anything; is that right?

Mr. PALMER. We find that \$10,000 for developing a mining claim today is insignificant as compared with a few years ago.

Senator MALONE. Well, that is true, but as long as these people can make money with discovery, if they made a lead discovery or tungsten discovery, generally a prospector had a pretty good idea how rich it

had to be to interest anyone but as long as the condition prevailed that when he discovered a deposit of a certain value per ton, they knew they would operate, would they not?

Mr. PALMER. Yes.

Senator MALONE. What is the reason they are not operating there now, that if they make the discovery they still cannot make any money?

Mr. PALMER. That is correct.

Senator MALONE. I think, Mr. Palmer, you have made a great contribution to the testimony. You are the only one, so far, with any mining experience to appear before the committee.

I say again, Mr. Chairman, that I would like very much that the importance of this legislation I have noticed over a period of years that it is not the legislation that you do not pass that hurts the country. If we could have time at the end of this session to hold hearings out through the mining country and get some evidence from people who perhaps cannot afford to come back here on their own and do not represent an association, and do not represent a Government department on an expense account, I believe this committee would be in a much better position to pass on a modification of the mining law.

I wanted to ask once more the question if you would have any particular objection to this act if it were confined to the forest reservation?

Mr. PALMER. That is the resolution of our association, that they would support the bill with that reservation.

Senator MALONE. One more. Does your association, your members, or any association that you know about, have they been flooded with information for a considerable time that they would either take some legislation like this or you would get a more restrictive act?

Mr. PALMER. Yes, I think that is the general sentiment; that was the information which has been passed on and is the explanation which has been given as to why some of the organizations which have felt that strict enforcement of the present law would answer the problem have succumbed and are endorsing this proposal.

Senator ANDERSON. Mr. Palmer, you mean in New Mexico? Have you talked in New Mexico to any miner who has that impression?

I have letters without end from down there and not one has told me that.

Mr. PALMER. That is correct.

Senator ANDERSON. Did Joe Taylor tell you that?

Mr. PALMER. No; Joe Taylor did not.

Senator ANDERSON. Can you find me one that did that I do know?

Mr. PALMER. I have a very high regard for Joe Taylor and I respect his judgment very highly.

Senator ANDERSON. You may.

Mr. PALMER. I think that it is a mistake for mining executives in eastern mining offices to make decisions on legislation as important to the average life of the average miner as this legislation is without consulting with the fellows who day after day are confronted with the problem of making valid locations.

I know there is more understanding in the mind of an executive than in the mind of the average miner. I am fully cognizant of the fact that there are pressures here which must be taken into con-

sideration by the Congress, but I would say without any fear of contradiction that if hearings were held on this proposed legislation in most of the mining camps of the West, that there would be very strong opposition to its passage.

There has been strong opposition expressed to me not only by miners but by very, very prominent geologists and mining engineers whose names I would prefer not to mention. A certain amount of leadership is required here and a certain amount of understanding which I think is being exercised by the leaders of the mining congress and others.

If this is to set a precedent, however, then I feel that in other matters, when additional legislation is introduced it would be very much worthwhile to hold hearings in the areas where the miners themselves can attend and express their feelings.

Senator MALONE. Mr. Chairman, this would be embarrassing to some people but it is not to me. I know all of these people and some of these larger organizations referred to by the secretary of the Colorado Mining Association. I have the highest regard for them. I think they are very efficiently run, they make money, they are wonderful people and maybe if I were president of one of the companies I would do just what they are doing because they are working for their stockholders. I want to say to you that legislation that does not touch those people, or if it does touch them it helps them, because any time you can make a thing more technical, make location a little harder to comply with, make it more technical, you help a going concern, large company, at the expense of the smaller fellow because this thing, this evolution, is going on all the time.

When a man that did not know anything about uranium at all went out and stuck a stake down, and there are probably 5,000 of them out there that have done the same thing but have not made any money, other than this one man who came out with \$10 million. Now, he is not too close from now on to the fellow like he was when he started because he is now doing the best he can to promote the whole setup, but he is not down there with them every day.

People that come in with the money, that an engineer represents, people that will spend \$2,000, \$5,000, \$10,000, \$50,000 to develop a prospect that a prospector has found, they are not prospectors and it is making easier for them to get this from the prospector because he does not have the money, for example, to do what someone testified to yesterday, that the large operators, they have a man on each claim out there. No prospector can do that. When he makes a new discovery he locates 7 or 8 mining claims around it and you correct me if I am wrong, Mr. Palmer, you are an attorney long experienced in this business.

You can do your assessment work on one spot if it is reasonable to suppose that you can develop the whole group.

Mr. PALMER. If it tends to improve the whole group.

Senator MALONE. In other words, you do your best to locate along the line of the vein or discovery. Maybe you are right and maybe you are wrong, but you can do it if you have 5 claims, you can do \$500 worth of work on one place if you are reasonably sure that it will develop the whole thing?

Mr. PALMER. That is right.

Senator MALONE. Those things are well established in court, as Mr. Palmer has said.

I want to say to you, Mr. Chairman, one more time. I know a lot of these people. I grew up with them. I surveyed their mining claims in their locations and in their further patents, many of them. A lot of those fellows, if they have a tobacco can in their pocket and a piece of note paper to make the location, that is a secondary consideration.

He looks around for that after he makes his discovery. He gets to his county seat and that is as far as he is going to go, or he sends somebody; that location is made. If he had to file with somebody else or if he has to answer a newspaper advertisement to come in and defend himself, he is simply not going to do it in 99 percent of the cases.

Senator ANDERSON. And of course he does not have to.

Senator MALONE. He does not have to if he does not lose some stuff under this bill.

Senator ANDERSON. Not a thing in the world.

Senator MALONE. In other words, he will lose the timber.

Senator ANDERSON. Not if he needs it for mining.

Senator MALONE. If he does not establish it at that time, he has lost it.

Senator ANDERSON. No; he does not lose it.

Senator MALONE. All right, I will read it to you again. It says that after this notice, 9 consecutive weeks of having it published, that if this man does not come in within 150 days from the date of the first publication of such notice, "which date shall be specified in such notice, a verified statement which shall set forth, as to such unpatented mining claim," and then you have 1, 2, 3, 4, 5. I have already read them into the record.

Senator ANDERSON. Yes.

Senator MALONE. If he does not do that, he is subject to these other provisions.

Senator ANDERSON. Those provisions are that he loses his claim to the surface except what is needed for mining.

Senator MALONE. That is right, but he does not know what is needed for mining until several years have passed.

Senator ANDERSON. He does not have to. This preserves him. This preserves all of his rights.

Senator MALONE. In the meantime, they can take the timber off.

Senator ANDERSON. Exactly, and that is what Senator Millikin has suggested and that is what we are going to try to correct.

Senator MALONE. I should say that there are several things we need to correct and one of them is to confine it where the damage is being done.

I have no quarrel with the Forest Service because we have 5 million acres that I hope to get reclassified sometime to put it out of the Forest Service. We will come to that some day here because it ought to be in the public land classification and should not be in the Forest Service at all; that is something we can take up later because if it is a question then of damage done to timber and it is more valuable for a forest reserve than anything else, and I hear that statement made all the time that, regardless of the mining location, if it is more valuable for something else, a miner should not be there.

I would go along with that but, Mr. Chairman, I am very reluctant to go along with a bill that digs these fellows out of the canyons and



they have to come in and make a showing and register with an outfit, with a Federal registration, that they are simply, many of them, not only incapable of making without an attorney which they could not hire, but they do not have the money to come in and do it.

Mr. Palmer, I am very appreciative that you have come before this committee. I think you have assisted in establishing a good record.

Senator ANDERSON. I am, too.

Mr. PALMER. Thank you.

Senator ANDERSON. The Western Oil & Gas Association has entered some objections to portions of this bill and has suggested some revised language.

We will check with them to find out whether they want this material made a part of this record.

(COMMITTEE NOTE.—The Western Oil & Gas Association proposals are as follows:)

WESTERN OIL & GAS ASSOCIATION,  
Los Angeles, Calif., May 17, 1955.

HON. CLINTON P. ANDERSON,  
Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.

DEAR SENATOR: The public lands committee of the Western Oil & Gas Association feels some concern that S. 1713 upon which your committee will conduct hearings tomorrow, might, under some interpretations, affect the reservation of Leasing Act minerals under Public Laws 250 and 585, 83d Congress.

You will recall that legislation enacting those two public laws was passed at the suggestion of this association's committee and with a good deal of cooperative effort on the part of Messrs. R. T. Patton and J. M. Jessen, members of said committee.

Mr. Patton has sent me the attached letter in which he proposes a simple amendment to section 7 which would remove any doubt as to the intentions of the authors of S. 1713 with respect to limiting the reservation of Leasing Act minerals. He feels, with the concurrence of other members of our public lands committee, that the amendment is essential even though the authors of this legislation had no contrary intention.

Your consideration of our viewpoint will be greatly appreciated.

Due to their interest in the legislation which became Public Law 585 and Public Law 250 I am sending copies of this letter and copies of Mr. Patton's letter to Mr. Frank Barrett and Mr. Stewart French.

Sincerely yours,

FRANK W. ROGERS,  
Washington Representative.

MULTIPLE SURFACE USE BILLS H. R. 5561, 5563, 5572, 5577, 5891, S. 1713

MAY 12, 1955.

MR. FRANK W. ROGERS,  
Western Oil & Gas Association,  
Washington 6, D. C.

DEAR FRANK: Confirming our telephone conversation of last week, we should like to submit the following amendment to these bills:

Substitute a semicolon for the period at the end of the last section (sec. 7) and add the following: "and nothing in this act shall be construed in any manner to modify, amend, supersede or repeal any of the provisions of the act of August 12, 1953 (67 Stat. 539) or the act of August 13, 1954 (68 Stat. 708)."

The purpose of the suggested amendment is to make sure that nothing in the multiple surface use legislation limits or affects the Leasing Act minerals reservation in either unpatented or patented mining claims under Public Law 250 and Public Law 585, 83d Congress, and that the provisions of section 6 of Public Law 585 will continue to control in regard to the use of the land as between mining operators and Leasing Act operators.

While I am sure the authors of the multiple surface use legislation had no contrary intention, there is some language in the bills which, read literally and alone, might raise a doubt (comments based on the corrected copy of H. R. 5577):

Section 4 (a) : "Any mining claim hereafter located under the mining laws of the United States shall not be used, *prior to issuance of patent therefor*, for any purpose other than prospecting, mining, or processing operations and uses reasonably incident thereto." [Emphasis added.]

This suggests that, conversely, the mining claimant might have carte blanche use of the lands after patent is issued, which is of course not the case under Public Law 585 in situations where the patent is issued subject to the Leasing Act minerals reservation.

Section 4 (b), second sentence : "Any such mining claim shall also be subject *prior to the issuance of patent therefor*, to the right of the United States, its permittees and licensees, to use so much of the surface thereof as may be necessary *for such purposes or for access to adjacent land*." [Emphasis added.]

Since the right of access referred to is not expressed as being solely for the purpose of disposing of vegetative and other surface resources, the underscored language suggests the possibility that the right of the United States, its permittees and licensees, to access to adjacent land for all purposes would be cut off after the issuance of patent. If so, this would seriously limit the comprehensive extralateral rights which section 4 (2) of Public Law 585 gives to the United States, its lessees, *permittees and licensees*, not only prior to the issuance of patent but also in the proper case after the issuance of patent.

The closing proviso of section 4 (b) : "*Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto*." [Emphasis added.]

This restriction is not confined to the use of the land for disposition of vegetative and other surface resources, but applies to "any use" of the surface by the United States, its permittees or licensees, which would include mineral Leasing Act operations. Furthermore, standing alone it would impose an absolute and unlimited noninterference requirement on Leasing Act operations, with no recognition of "first on the ground" preferential position, whereas section 6 (c) of Public Law 585 requires only noninterference with existing mining facilities and their use and also provides for adjudication of conflicting uses.

The closing proviso of section 7 : "and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any limitation or restriction not otherwise authorized by law"—

protects the mining claimant against any unauthorized limitation or restriction in his patent. However, being in the negative, this proviso could not be safely relied on to affirm and preserve all other limitations and restrictions which are authorized by law (such as those in Public Law 585) in view of the presence in the bills of the provisions discussed above.

I have taken this matter up with Mr. Mattel, who agrees that any inferences in the multiple surface use bills which could in any way, however remote, suggest conflict with Public Laws 250 and 585 should be cured in order to avoid even the possibility of doubt or controversy. I feel that the suggested proviso at the end of section 7 is the simplest way of accomplishing the purpose and I would see no reason for any objection to it.

Your assistance will be appreciated and any views or suggestions will be welcomed.

With best regards.

Sincerely,

ROBERT T. PATTON.

Senator MALONE. Will we have any further hearings?

Senator ANDERSON. I do not contemplate any further hearings at this time. Of course, if in our consideration of the bill, the need for additional facts and views becomes apparent, then the committee will consider when and where those facts and views should be obtained. But for the present, I think the record is sufficiently complete to enable the committee to reach a determination on the measure.

Senator MALONE. In that event, Mr. Chairman, I will want to make a statement on this bill.

Senator ANDERSON. The committee will of course be glad to have your views in the printed record.

**STATEMENT OF HON. GEORGE W. MALONE, UNITED STATES  
SENATOR FROM THE STATE OF NEVADA**

Senator MALONE. Mr. Chairman, the purpose of your proposed amendment to the 1872 mining law is, according to its sponsors, to prevent:

1. Clearly invalid mining locations, unsupported by any semblance of discovery, and
2. Mining locations having mineral disclosures which might satisfy the basic requirement of discovery, but which were in fact made for a purpose other than mining.
3. To make it easier for the Federal bureaus to bring up for review claims and claimants which in their judgment includes land more valuable for another purpose.

That is the statement of the principal witness, Mr. Raymond B. Holbrook, an attorney employed by the United States Smelting, Refining & Mining Co. for 17 years, and who is the chairman of the public lands committee of the American Mining Congress. Mr. Holbrook was the nearest approach to a mining man who appeared for the bill.

**LEGITIMATE OBJECTIONS COVERED BY MINING LAWS AND DECISIONS**

The first purpose is amply covered by the present mining law as interpreted over the years by the Supreme Court of the United States. Both the public and the prospector are fully protected, with recourse to the courts.

The second and third are clearly an imposition on the rights of the prospector since they open the door for the first time in more than 80 years for a Government bureau employee to allege that the land is more valuable for another purpose than mining and bring the case before his own bureau where the only appeal is to a higher employee or official in that same bureau.

**CONGRESS COULD DESTROY INCENTIVE**

Since it is even conceivable that evidence might show that the value for other purposes might temporarily be greater than the immediate value of a small mining property, it is inconceivable that the Congress would allow a bureau official, in no way connected with mining, such as the Forest Service or the Bureau of Land Management, and having no firsthand knowledge of the industry, to be the complainant, judge, and jury.

The history of mining is clear that you must have prospects before you have small mines and you must have small mines before you can have big mines—and that it often requires many years before the larger bodies of ore can be developed, even after they are known to exist.

**FIRST LOCATOR SELDOM PROFITS**

History also shows that the property many change hands many times through the first locators “going broke” and either relinquishing the claim to another locator or selling out for what they can get because of their inability to continue working the property, or because

of lack of "assessment" work simply losing to another locator. Rarely does the first locator profit from the discovery.

There used to be a byword in the ranching business—that it was the third or fourth homesteader of a homestead that made it stick. The mining business is even tougher.

#### GOVERNMENT BUREAUS

The principal witness, Mr. Holbrook, further testified that—

We have had the pleasure of working with the Forest Service and the Bureau of Land Management and understand their position is that these problems could not be entirely met by effective administration of existing laws for the following reasons:

1. The available remedies are slow, expensive, and not conclusive; and
2. There is great difficulty in establishing the invalidity of a location, supported by discovery, on the basis that the location was made for a purpose other than mining.

The weight of evidence of the witnesses called—all but one holding some Government position—was that the Government bureaus should be given the clear power to determine the validity of a mining location within their own department.

This power in the hands of the bureau officials would destroy the prospector and reverse the Supreme Court decisions for more than 80 years.

They would also have the authority to determine whether or not the land is more valuable for another purpose than mining.

#### OBJECTIVE—LEASING SYSTEM

It is clear that the Government bureaus are still moving toward a leasing system which they have continually advocated for two decades.

#### DESTROY LAW INTENT AND COURT DECISION

The prospector can be moved under the 1872 law if he has not complied with it, which is the intent and the extent of the original law.

The Supreme Court decisions, for more than 80 years, have clarified and established the law.

It has been established that if the prospector has complied with the law in setting up his monuments, in filing with the county recorder, and has done the required "assessment" work, that a Government department cannot move him or interfere with his work by alleging that "a reasonably prudent man would not expend his money and his effort in the hopes of developing a mine" (Holbrook, p. 91, May 18, 1955).

The amended act opens the door for continual interference by Government officials.

It limits the locators' inherent rights prior to patent, since when patent issues there is no change in the fee simple ownership, and the timber, forage, and all other assets go to the patentee. It does not make sense to allow the Government to deplete his claim in accordance with their judgment before patent.

There may have been abuses under the law, but when investigated it will generally be found that the Government has not met its responsibilities under existing law and that the law itself or court decisions provide the remedy.

## PROSPECTOR ON THE DEFENSIVE

As it now stands, the Government must initiate any proceedings to prove the location invalid, which is exactly what was intended and must be maintained, under the proposed law the prospector will be on the defensive and will be continually harried and tormented by inexperienced and irresponsible Bureau officials.

## HEARINGS IN MINING AREAS

It is abundantly clear that hearings should be held in the mining areas of this Nation before any action is taken, since no real miners were heard and the mining associations of the several States were clearly intimidated through threats of more severe legislation unless they accepted the proposed legislation as written.

## LAST STAND OF SMALL CAPITAL

The present simple location system for acquiring prospecting ground for mining is the last stand for the man of small capital.

It requires no money, just a sack of beans and some coffee and many of them have been known to dispense with the coffee until they can show enough to acquire a grubstake from someone who is willing to gamble with them.

They can build a rock mound or stick up a stake and lodge the location notice on it, then set up the corners within 30 days and start the location work.

The ground is then his own as long as he does the required annual assessment work and files proof of it in the country recorder's office of his county.

It is not necessary to have a surveyor or an accurate placing of the corners of his property. If he inadvertently takes in too much territory then, when there is a conflict, which there will most certainly be when and if he makes a strike, he can only hold the 1,500 by 600 feet of the regulation mining claim.

## MINING IS A GAMBLE—NO PRUDENT MAN

Mining is a gamble. It is also a disease, which once acquired means that they will "hit" a mine or die broke. Where a very limited few develop a mine, thousands die broke, but it is the incentive of "striking it rich" that keeps them in the hills where the ore is to be found.

Probably 90 percent of the digging done by prospectors is on ground where no "prudent man" would dig—and this Nation can thank God that they have continued to dig on such ground, because most of the prospects developing into mines are discovered by these miners confirmed in the faith.

The testimony by Government witness, and witnesses inexperienced in the actual prospecting operation, was to the effect that many mining claims are located on ground where no "prudent man" would dig. Prospectors are not prudent men.

ONLY ONE MINING MAN HEARD

There was only one mining man at the hearing who testified and his testimony was emphatically against the bill unless modified, and he recommended that hearings be held in the mining areas before it was reported to the Senate floor. The witness was Mr. Robert S. Palmer, secretary-treasurer of the Colorado Mining Association, which is one of the largest and most important of such associations in this Nation.

NO PRECEDENT

Several witnesses have testified that a precedent for this proposed legislation was set in the passage of Public Law No. 250, 83d Congress, amending the 1872 Mining Act.

There could have been no precedent set in the previous legislation for this type of bill since it only dealt with coordinating the use of the same mining claims for different minerals—petroleum, uranium, and other minerals. The amended act provided that you could mine uranium on an oil claim but the petroleum producer had the priority and you could not interfere with him, and that you could develop and produce oil on a uranium claim but that you could not interfere with the operation of the prior locator.

PRECEDENT WOULD BE SET

It positively had nothing to do with timber or forage or sagebrush. It had absolutely nothing in common with Senate bill 1713, which does set a precedent for leasing ground for materials.

HEARINGS IN MINING AREAS

Certainly hearings should be held in the mining areas. Let the miners have a chance to help work it out.

CAN BE WORKED OUT

I believe that if this is done a satisfactory piece of legislation can be worked out that will benefit all concerned, and that will not curb the prospector, and that will not discourage independent investors and grubstakers interested in locating, developing, and producing minerals.

SHOULD BE CONFINED TO FOREST AREAS

If the legislation is to be voted on today as set up without hearings in the mining areas of the country, then its application should certainly be confined to the forest reserve areas where most of the testimony before the committee applied.

Senator ANDERSON. Thank you. The committee hearing will now stand in recess.

(Whereupon, at 2:10 p. m., the committee recessed subject to the call of the Chair.)



# **VIRGIN ISLANDS NATIONAL PARK**

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**HEARING**  
**BEFORE THE**  
**SUBCOMMITTEE ON**  
**TERRITORIES AND INSULAR AFFAIRS**  
**OF THE**  
**COMMITTEE ON**  
**INTERIOR AND INSULAR AFFAIRS**  
**UNITED STATES SENATE**  
**EIGHTY-FOURTH CONGRESS**  
**FIRST SESSION**  
**ON**  
**S. 1604**  
**A BILL TO AUTHORIZE THE ESTABLISHMENT OF THE**  
**VIRGIN ISLANDS NATIONAL PARK, AND FOR**  
**OTHER PURPOSES**

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**MAY 19, 1955**

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**Printed for the use of the Committee on Interior and Insular Affairs**



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# VIRGIN ISLANDS NATIONAL PARK

THURSDAY, MAY 19, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON TERRITORIES AND  
INSULAR AFFAIRS OF THE COMMITTEE,  
ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met, pursuant to call, at 10:30 a. m., in room 224-A, Senate Office Building, Senator Henry M. Jackson, chairman of the subcommittee, presiding.

Present: Senators Henry M. Jackson, Washington (chairman of the subcommittee); and Alan Bible, Nevada.

Also present: Stewart French, chief counsel and staff director.

Senator JACKSON. The subcommittee will come to order.

We will consider first S. 1604, a bill introduced by the chairman at the request of the Department of the Interior to authorize the establishment of the Virgin Islands National Park.

I understand that the proposed park is not to exceed 9,500 acres. Of this total, up to 50 acres may be on the Island of St. Thomas, with the remainder on the Island of St. John or the smaller islands in the vicinity of St. John.

I understand that Mr. Laurance Rockefeller has already acquired over 5,000 acres on the Island of St. John for donation to the proposed national park. The remainder of the park area would be acquired with donated funds.

We are pleased to have as witnesses this morning Mr. Conrad Wirth, director of the National Park Service, and Mr. Allston Boyer, representing Mr. Rockefeller.

We will place a copy of S. 1604 in the record at this point, together with copies of the letter of transmittal from the Interior Department, and the favorable report of the Bureau of the Budget.

(The documents the inclusion of which was directed by the Chairman are as follows:)

[S. 1604, 84th Cong., 1st sess.]

A BILL To authorize the establishment of the Virgin Islands National Park, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a portion of the Virgin Islands of the United States, containing outstanding scenic and other features of national significance, shall be established, as prescribed in section 2 hereof, as the "Virgin Islands National Park."*

The national park shall be administered and preserved by the Secretary of the Interior in its natural condition for the public benefit and inspiration, in accordance with the laws governing the administration of the National Parks (16 U. S. C. 1, and the following).

SEC. 2. The Secretary of the Interior is hereby authorized, subject to the following conditions and limitations, to proceed in such manner as he shall find

to be necessary in the public interest to consummate the establishment of the Virgin Islands National Park:

(a) The acreage of the national park shall be limited to a total of not more than 9,500 acres of land area, such total to be comprised of not more than 50 acres on the Island of Saint Thomas, and not more than 9,450 additional acres to be comprised of portions of the Island of Saint John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park.

(b) Tentative exterior boundary lines, to include land not in excess of the aforesaid acreage limitations, may be selected for the park in order to establish the particular areas in which land may be acquired pursuant to this Act, such tentative boundaries to be selected and adjusted as may be necessary by the Secretary of the Interior.

(c) The Secretary, on behalf of the United States, is authorized to accept donations of real and personal property within the areas selected for the park until such time as the aforesaid total of 9,500 acres shall have been acquired for the park by the United States, and he may also accept donations of funds for the purposes of this Act.

(d) Funds made available for purposes of this Act may be used by the Secretary in such manner as he shall find to be in the public interest, in order to procure by purchase or otherwise, land or interests therein for the park.

(e) Any Federal properties situated within the areas selected for the park, upon agreement by the particular agency administering such properties that such properties should be made available for the park, may be transferred without further amortization to the Secretary by such agency for purposes of this Act.

(f) Establishment of the Virgin Islands National Park, in its initial phase, shall be and is hereby declared to be accomplished and effective for purposes of administration when a minimum acreage of not less than 5,000 acres in Federal ownership for purposes of this Act shall have been acquired by the United States in specific areas containing such acquired lands to be designated by the Secretary.

(g) Notice of the establishment of the park as authorized and prescribed by this Act shall be published in the Federal Register.

---

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY.  
Washington 25, D. C., March 17, 1955.

HON. RICHARD M. NIXON,  
*President of the Senate,*  
Washington, D. C.

MY DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill to authorize the establishment of the Virgin Islands National Park, and for other purposes. This would provide for the establishment of a national park of not to exceed 9,500 acres in extent. It would permit the acceptance of lands and funds that will be donated for the purpose. Mr. Laurance S. Rockefeller has already acquired over 5,000 acres on the Island of St. John for donation to the Government for the park. The remainder of the park area would be acquired with funds to be donated.

We shall appreciate the reference of this proposed bill to the appropriate committee for consideration. We recommend that it be enacted.

The purpose of the proposed park is to conserve for public benefit and enjoyment a portion of the Virgin Islands containing outstanding scenic and other features of national significance, educational value, and fine recreation possibilities. In addition, we believe that its establishment would materially help the Virgin Islands economy, through the tourist industry, to become more self-supporting.

The proposed park, limited to 9,500 acres in extent, would be comprised of not more than 50 acres on the Island of St. Thomas and not more than 9,450 additional acres to be comprised of portions of the Island of St. John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park.

St. John Island is a mountainous area, 9 miles long and approximately 5 miles wide, with a total area of 19.2 square miles. The highest peak is 1,277 feet

above sea level. About 85 percent or more of the island is covered by bush and second-growth tropical forest. There is little arable land, the largest area being west of Coral Bay, at the eastern end of the island, which area would not be included in the park. The climate is subtropical and pleasant—the lowest temperature ever recorded being 69°, the highest 91°. Seven hundred and forty-six people were reported living on the island in 1950.

The scenic quality, plant life, and the setting of the island in the protected channels of the Virgin Islands are totally different from anything set apart in the United States or its Territories for national-park purposes. The plant and animal life of the island and of the surrounding waters are of exceptional interest and educational value. The proposed park presents fine recreation possibilities, including excellent sport fishing in the surrounding waters. Relics of the prehistoric Carib Indians are found on the island, as well as remnants of sugar mills and the plantations of the early historic period. The island in its picturesque surroundings is unquestionably of national-park caliber. The Nation will be fortunate indeed if Mr. Rockefeller's generous offer is accepted and the national park established. There has been favorable editorial comment and support for the proposal in the press in New York, the Virgin Islands, and elsewhere.

The proposed boundaries would include the finest portions of the island for park purposes and would exclude the settlements and agricultural lands required by the natives. The proposed park would not require elaborate development, since retention of the area's unspoiled charm would be a principal objective. We estimate that approximately \$60,000 would be required annually for its maintenance and operation.

The Bureau of the Budget has advised that there is no objection to the submission of this proposed legislation.

Sincerely yours,

ORME LEWIS,  
*Assistant Secretary of the Interior.*

**A BILL To authorize the establishment of the Virgin Islands National Park, and for other purposes**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a portion of the Virgin Islands of the United States, containing outstanding scenic and other features of national significance, shall be established, as prescribed in section 2 hereof, as the "Virgin Islands National Park."*

The national park shall be administered and preserved by the Secretary of the Interior in its natural condition for the public benefit and inspiration, in accordance with the laws governing the administration of the National Parks (16 U. S. C. 1, and the following) :

SEC. 2. The Secretary of the Interior is hereby authorized, subject to the following conditions and limitations, to proceed in such manner as he shall find to be necessary in the public interest to consummate the establishment of the Virgin Islands National Park :

(a) The acreage of the national park shall be limited to a total of not more than 9,500 acres of land area, such total to be comprised of not more than 50 acres on the Island of St. Thomas, and not more than 9,450 additional acres to be comprised of portions of the Island of St. John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park ;

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(c) The Secretary, on behalf of the United States, is authorized to accept donations of real and personal property within the areas selected for the park until such time as the aforesaid total of 9,500 acres shall have been acquired for the park by the United States, and he may also accept donations of funds for the purposes of this Act.

(d) Funds made available for purposes of this Act may be used by the Secretary in such manner as he shall find to be in the public interest, in order to procure by purchase or otherwise, land or interests therein for the park ;

(e) Any Federal properties situated within the areas selected for the park, upon agreement by the particular agency administering such properties that

such properties should be made available for the park, may be transferred without further authorization to the Secretary by such agency for purposes of this Act;

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D. C., April 14, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs, United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of this Bureau on S. 1604, a bill to authorize the establishment of the Virgin Islands National Park, and for other purposes.

The bill authorizes a park of not to exceed 9,500 acres of land area. Of this total, not more than 50 acres may be on the island of St. Thomas, not more than 9,450 acres on the island of St. John, and not more than 1,000 acres on small islands, rocks, and cays in the general vicinity of St. John. The Secretary of the Interior is authorized to accept donations of real and personal property within the areas selected for the park, and also to accept donations of funds for park purposes. The park shall be considered established when a minimum of 5,000 acres have been acquired.

Mr. Laurence S. Rockefeller recently purchased over 5,000 acres on the island of St. John which he has offered to give to the United States for park purposes. Thus, if S. 1604 is enacted into law, the Government can acquire without cost sufficient lands to establish the park. The National Park Service estimates that annual cost of operation and maintenance will approximate \$60,000.

The greatest assets of the Virgin Islands are their scenic beauty and remarkably fine year-round climate. Exploitation of these assets through development of the tourist industry should materially improve the economic condition of the islands, an contribute to their eventual self-support. Establishment of a national park in the islands should make a major contribution to the development of a thriving tourist industry.

Accordingly, the Bureau of the Budget recommends that your committee give favorable consideration to this bill.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

Senator JACKSON. I am sorry, gentlemen, that we are in rather cramped quarters this morning. We are having another committee meeting in the other room, but as long as we can get some work done, I assume you do not mind. As a matter of fact, as far as I am concerned, I enjoy it.

Mr. Wirth, do you care to make a statement?

STATEMENTS OF CONRAD L. WIRTH, DIRECTOR, NATIONAL PARK SERVICE; WILLIAM ARNOLD, ASSISTANT DIRECTOR, OFFICE OF TERRITORIES, IN CHARGE OF ISLAND AFFAIRS; AND A. M. EDWARDS, ASSOCIATE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. WIRTH. I think in opening up, Mr. Chairman, I would like to sketch briefly the efforts that have been made in the past, a little bit about the park, some of the plans we have, the economic values, and what the people in the Virgin Islands think of it.

First, we had considered this park back in the thirties, and in 1939 we had a report made of the area and were proceeding to bring it to the attention of Congress with our recommendations. However, the war emergencies came along and that was never done.

Senator JACKSON. You say a study was made of it in 1939?

Mr. WIRTH. In 1938 and 1939 when we were operating the CCC program down there. I was down there at the time, and our man, Mr. Hubler, made a study for us. That laid dormant up until just a little over a year ago when Mr. Rockefeller had the same idea. A few years preceding that he had been on a cruise down there and had fallen in love with the island and bought Caneel Bay as a place to go to and make the place available for other visitors.

I met Mr. Rockefeller shortly after this idea occurred to him, and he was talking about it. He had read one of our earlier reports and found out that we had been interested in it. He wanted to know whether we were still interested. I told him we were as far as I knew, but I would not be in position to say definitely or make any recommendation on it until we had another study of the island, because so much time had elapsed since 1938, and I did not know exactly what conditions prevailed.

This study was made last year. In the meantime Mr. Rockefeller did go ahead and has bought about 5,000 acres with the idea that if the proposed park is authorized he would give everything that he has down there, including Caneel Bay. In order not to embarrass anybody, and knowing the full impact of national parks on land values and the local economy, he felt it would be wise to buy the land prior to park establishment. If the park is authorized, he would then make the donation. If it is not authorized, that would be something else. I want to make it clear, that his whole purpose is a gift to the public and that there is no personal profit involved.

Senator JACKSON. When did he start acquiring the land?

Mr. WIRTH. He acquired Caneel Bay about 3 years ago, and he started acquiring this land just last fall. He has now acquired about 5,000 acres of the proposed area.

His intention is to give everything that he has there. In fact, he has already transferred the title to the Jackson Hole Preserve, Inc., which is a nonprofit corporation organized under the laws of the State of New York for charitable, educational, and scientific purposes, including the purpose of restoring, protecting, and preserving for the benefit of the public the primitive grandeur and natural beauties of the landscape in areas notable for picturesque scenery, and particularly in the Jackson Hole area in the State of Wyoming, although the acquisitions by the corporation are not limited to Jackson Hole.

Senator JACKSON. How can they transfer it to a corporation for a purpose for which the corporation is not set up? That is a corporate entity set up for preserving land in the Jackson Hole National Monument, is it not?

Mr. WIRTH. No, sir. The corporation has that name, but its purposes are applicable anywhere in the United States. The corporation is acquiring the land on St. John Island. The money is given to the corporation and it acquires the land for the purpose of donating it to the Government if the proposed park is authorized.





# VIRGIN ISLANDS NATIONAL PARK

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
TERRITORIES AND INSULAR AFFAIRS  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
**S. 1604**  
A BILL TO AUTHORIZE THE ESTABLISHMENT OF THE  
VIRGIN ISLANDS NATIONAL PARK, AND FOR  
OTHER PURPOSES

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MAY 19, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1955

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# VIRGIN ISLANDS NATIONAL PARK

THURSDAY, MAY 19, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON TERRITORIES AND  
INSULAR AFFAIRS OF THE COMMITTEE,  
ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met, pursuant to call, at 10:30 a. m., in room 224-A, Senate Office Building, Senator Henry M. Jackson, chairman of the subcommittee, presiding.

Present: Senators Henry M. Jackson, Washington (chairman of the subcommittee); and Alan Bible, Nevada.

Also present: Stewart French, chief counsel and staff director.

Senator JACKSON. The subcommittee will come to order.

We will consider first S. 1604, a bill introduced by the chairman at the request of the Department of the Interior to authorize the establishment of the Virgin Islands National Park.

I understand that the proposed park is not to exceed 9,500 acres. Of this total, up to 50 acres may be on the Island of St. Thomas, with the remainder on the Island of St. John or the smaller islands in the vicinity of St. John.

I understand that Mr. Laurance Rockefeller has already acquired over 5,000 acres on the Island of St. John for donation to the proposed national park. The remainder of the park area would be acquired with donated funds.

We are pleased to have as witnesses this morning Mr. Conrad Wirth, director of the National Park Service, and Mr. Allston Boyer, representing Mr. Rockefeller.

We will place a copy of S. 1604 in the record at this point, together with copies of the letter of transmittal from the Interior Department, and the favorable report of the Bureau of the Budget.

(The documents the inclusion of which was directed by the Chairman are as follows:)

[S. 1604, 84th Cong., 1st sess.]

A BILL To authorize the establishment of the Virgin Islands National Park, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a portion of the Virgin Islands of the United States, containing outstanding scenic and other features of national significance, shall be established, as prescribed in section 2 hereof, as the "Virgin Islands National Park."

The national park shall be administered and preserved by the Secretary of the Interior in its natural condition for the public benefit and inspiration, in accordance with the laws governing the administration of the National Parks (16 U. S. C. 1, and the following).

SEC. 2. The Secretary of the Interior is hereby authorized, subject to the following conditions and limitations, to proceed in such manner as he shall find

to be necessary in the public interest to consummate the establishment of the Virgin Islands National Park:

(a) The acreage of the national park shall be limited to a total of not more than 9,500 acres of land area, such total to be comprised of not more than 50 acres on the Island of Saint Thomas, and not more than 9,450 additional acres to be comprised of portions of the Island of Saint John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park.

(b) Tentative exterior boundary lines, to include land not in excess of the aforesaid acreage limitations, may be selected for the park in order to establish the particular areas in which land may be acquired pursuant to this Act, such tentative boundaries to be selected and adjusted as may be necessary by the Secretary of the Interior.

(c) The Secretary, on behalf of the United States, is authorized to accept donations of real and personal property within the areas selected for the park until such time as the aforesaid total of 9,500 acres shall have been acquired for the park by the United States, and he may also accept donations of funds for the purposes of this Act.

(d) Funds made available for purposes of this Act may be used by the Secretary in such manner as he shall find to be in the public interest, in order to procure by purchase or otherwise, land or interests therein for the park.

(e) Any Federal properties situated within the areas selected for the park, upon agreement by the particular agency administering such properties that such properties should be made available for the park, may be transferred without further amortization to the Secretary by such agency for purposes of this Act.

(f) Establishment of the Virgin Islands National Park, in its initial phase, shall be and is hereby declared to be accomplished and effective for purposes of administration when a minimum acreage of not less than 5,000 acres in Federal ownership for purposes of this Act shall have been acquired by the United States in specific areas containing such acquired lands to be designated by the Secretary.

(g) Notice of the establishment of the park as authorized and prescribed by this Act shall be published in the Federal Register.

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY.  
Washington 25, D. C., March 17, 1955.

HON. RICHARD M. NIXON,  
*President of the Senate,*  
Washington, D. C.

MY DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill to authorize the establishment of the Virgin Islands National Park, and for other purposes. This would provide for the establishment of a national park of not to exceed 9,500 acres in extent. It would permit the acceptance of lands and funds that will be donated for the purpose. Mr. Laurance S. Rockefeller has already acquired over 5,000 acres on the Island of St. John for donation to the Government for the park. The remainder of the park area would be acquired with funds to be donated.

We shall appreciate the reference of this proposed bill to the appropriate committee for consideration. We recommend that it be enacted.

The purpose of the proposed park is to conserve for public benefit and enjoyment a portion of the Virgin Islands containing outstanding scenic and other features of national significance, educational value, and fine recreation possibilities. In addition, we believe that its establishment would materially help the Virgin Islands economy, through the tourist industry, to become more self-supporting.

The proposed park, limited to 9,500 acres in extent, would be comprised of not more than 50 acres on the Island of St. Thomas and not more than 9,450 additional acres to be comprised of portions of the Island of St. John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park.

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above sea level. About 85 percent or more of the island is covered by bush and second-growth tropical forest. There is little arable land, the largest area being west of Coral Bay, at the eastern end of the island, which area would not be included in the park. The climate is subtropical and pleasant—the lowest temperature ever recorded being 69°, the highest 91°. Seven hundred and forty-six people were reported living on the island in 1950.

The scenic quality, plant life, and the setting of the island in the protected channels of the Virgin Islands are totally different from anything set apart in the United States or its Territories for national-park purposes. The plant and animal life of the island and of the surrounding waters are of exceptional interest and educational value. The proposed park presents fine recreation possibilities, including excellent sport fishing in the surrounding waters. Relics of the pre-historic Carib Indians are found on the island, as well as remnants of sugar mills and the plantations of the early historic period. The island in its picturesque surroundings is unquestionably of national-park caliber. The Nation will be fortunate indeed if Mr. Rockefeller's generous offer is accepted and the national park established. There has been favorable editorial comment and support for the proposal in the press in New York, the Virgin Islands, and elsewhere.

The proposed boundaries would include the finest portions of the island for park purposes and would exclude the settlements and agricultural lands required by the natives. The proposed park would not require elaborate development, since retention of the area's unspoiled charm would be a principal objective. We estimate that approximately \$60,000 would be required annually for its maintenance and operation.

The Bureau of the Budget has advised that there is no objection to the submission of this proposed legislation.

Sincerely yours,

ORME LEWIS,  
*Assistant Secretary of the Interior.*

**A BILL To authorize the establishment of the Virgin Islands National Park, and for other purposes**

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BUREAU OF THE BUDGET,  
Washington, D. C., April 14, 1955.

HON. JAMES E. MURRAY.

*Chairman, Committee on Interior and Insular Affairs, United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of this Bureau on S. 1604, a bill to authorize the establishment of the Virgin Islands National Park, and for other purposes.

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Accordingly, the Bureau of the Budget recommends that your committee give favorable consideration to this bill.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

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Mr. Wirth, do you care to make a statement?

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Mr. WIRTH. I think in opening up, Mr. Chairman, I would like to sketch briefly the efforts that have been made in the past, a little bit about the park, some of the plans we have, the economic values, and what the people in the Virgin Islands think of it.

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I met Mr. Rockefeller shortly after this idea occurred to him, and he was talking about it. He had read one of our earlier reports and found out that we had been interested in it. He wanted to know whether we were still interested. I told him we were as far as I knew, but I would not be in position to say definitely or make any recommendation on it until we had another study of the island, because so much time had elapsed since 1938, and I did not know exactly what conditions prevailed.

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Senator JACKSON. How can they transfer it to a corporation for a purpose for which the corporation is not set up? That is a corporate entity set up for preserving land in the Jackson Hole National Monument, is it not?

Mr. WIRTH. No, sir. The corporation has that name, but its purposes are applicable anywhere in the United States. The corporation is acquiring the land on St. John Island. The money is given to the corporation and it acquires the land for the purpose of donating it to the Government if the proposed park is authorized.

I might say that through the years Mr. John D. Rockefeller, Jr., and now Mr. Laurance Rockefeller following his footsteps, have donated to the Government park purpose moneys, lands, improvements, and various other things amounting I believe to more than \$30 million.

For instance, in the Great Smokies he matched dollar for dollar the \$5 million raised by North Carolina and Tennessee.

Senator JACKSON. I know they have an outstanding record.

Mr. WIRTH. Everything he has down there, including Caneel Bay, is in the area to be transferred for the park if it is approved.

As to the island itself, it is an outstanding Caribbean island with only 700 people on it. I would like to tell you some facts about the island. It is located 1,400 miles southeast of New York and 50 miles east of Puerto Rico. I would like to point out that 1,400 miles is about half the distance between New York and San Francisco. Relatively, therefore, the proposed park is not as distant as many of the western parks.

As to the physical characteristics, the island of St. John is 19.2 square miles, or a little over 12,000 acres, about half the size of the District of Columbia. The highest point on the island is Bordeaux Mountain, 1,277 feet. Eighty-five percent of the island is covered with brush and second growth timber. There are only about three or four hundred acres of arable land, and that land is outside of the area we are proposing as the national park.

The lowest temperature down there ever recorded is 69, and the highest is 91. While you have a warm sun, you have cool evenings and nights. It is very delightful. It has about 50 inches of rainfall, mostly at night, and there is no clearly defined rainy season.

Perhaps one of the most interesting features is Coral Bay on the east side of the island, which has a beautiful harbor. The harbor is about a mile and a quarter across the mouth and about two and a half miles long.

As to the history, the island was apparently first sighted by Columbus in 1493. It was then inhabited by the Carib Indians, who probably came from South America. A German historian by the name of Oldendorp, records that the Indians were driven from the island in 1555 by Charles V of Spain.

The Virgin Islands were first settled in 1625 and St. John in 1684. Denmark claimed the island in 1687, but ownership was contested by Great Britain.

On March 25, 1717, the first permanent colony was established by the Danes at Coral Harbor on the east end of St. John, and they defied the British to drive them off. They had at that time 20 planters and 5 soldiers, and they built what is known as Fort Berg on the east end of the island. The ruins of the fort are still there.

Senator JACKSON. This is the Danish invasion you are talking about?

Mr. WIRTH. This is when the Danes took over the island, made the first permanent colony and defied the British to drive them off.

In 1733 there was a total of 38 planters on St. John and everything was apparently prosperous and gay, but there was slavery. On November 23, 1733, the slaves revolted, and the whites sought protection on what is now known as Caneel Bay Plantation. For about 4 months, the plantations of the island were pillaged, until they just ran rampant.

The French captured the slaves—some of whom killed themselves by jumping off the rocks. Slavery continued until 1848. Since the abolition of slavery, the economy of the island has deteriorated. Most of the island has now reverted to jungle.

The United States almost bought it in 1887, but the United States Senate refused to ratify a treaty that had been arranged by Secretary Seward and the Danish Government. In 1917 the United States bought St. John and certain other Virgin Islands.

Senator JACKSON. Bought it, together with the islands of St. Thomas and St. Croix.

Mr. WIRTH. Yes; bought those islands as a group.

That gives you a brief idea of the history. All through the islands there are ruins of the early plantations. There are also Indian stone writings.

We have pictures here, which Mr. Boyer will show a little later, showing the general character of the island. It has a beautiful shoreline with white-sand beaches and much of the forest is coming back, including mahoganies, bay, limes, coconuts, and numerous other species of tropical trees. There are no poisonous snakes on the island.

Another interesting feature is the fish and shell life of the coral reefs around the island.

Senator JACKSON. What disturbs me, Mr. Wirth, just looking at this, and having spent a day at Caneel Bay on St. John when I was in the Virgin Islands a few years back, is simply this: What is so unique about it that it should be made a national park? That is No. 1. The second thing I would like to know is, What percentage of the total acreage in the Virgin Islands is involved in this transfer?

Mr. WIRTH. I would like to show you this map, if I may, and I will try to explain it in such a way that it will be recorded properly. As to the grandeur of the island, the pictures will show that. Mr. Boyer has quite a few here.

This is Cruz Bay. A considerable number of the people live at Cruz Bay.

Mr. BOYER. This is a picture of Cruz Bay.

Senator JACKSON. Caneel Bay is where they have the cottages?

Mr. BOYER. Yes, sir. This is Caneel Bay. This is the point where the cottages are.

Mr. WIRTH. We are recommending that the park not exceed 9,500 acres, of which not more than 50 would be on St. Thomas, which is principally for a dock and utility area and a parking place, and not to exceed a thousand acres of the surrounding rocks and cays, nearly all of which are uninhabited. The rest of St. John Island, which would be about one-third, is the land that is usable for agriculture and settlement, and would not be included in the proposed park. We would expect that the park would attract people to the island and that these lands outside the park would leave room for the building of accommodations to take care of the people rather than having to provide additional accommodations at Caneel Bay.

Senator JACKSON. Two-thirds of the island is involved in this proposal?

Mr. WIRTH. That is right.

Senator JACKSON. You have 50 acres over on the island of St. Thomas?

Mr. WIRTH. Yes; purely a jumping-off place—a place where we can have a utility area and dock and to permit parking. Perhaps less land will be required there.

Senator JACKSON. I agree it is a beautiful place, but I can take you up on some of the islands of San Juan that program just as distinctive beauty as this particular island. I do not really in my own mind understand what in particular stands out that makes it worthy of national park status.

Mr. WIRTH. The combination of tropical plant and animal life, the colorful channels between the islands, the fish and invertebrate life of the coral reefs, the beautiful beaches and superb scenic views as well as the historic and prehistoric structures—all are different from anything in any of the national parks at the present time. I have never seen anything that equals it.

Senator JACKSON. Not in any of the national parks, but in other islands in the Caribbean.

Mr. WIRTH. I do not know of any other that would exceed this, and I have been over to Puerto Rico and all the Virgin Islands that we have anything to do with.

Senator BIBLE. How many people would you estimate would visit there a year?

Mr. WIRTH. It would be hard to say how many would, but I would say that within the next 4 or 5 years there would be at least fifty or one hundred thousand people come down there.

Senator JACKSON. How many are visiting there now?

Mr. WIRTH. Practically none.

Senator JACKSON. The only way, Senator Bible, as I understand it, that you can get to the island—at least it was a while back—is by small motor launch from the island of St. Thomas. Is that correct, Mr. Boyer?

Mr. BOYER. Yes.

Senator JACKSON. It has been set up as rather an exclusive honeymoon isle. It is completely isolated, and has a very beautiful harbor at Caneel Bay. They have beautiful sand, and wonderful beaches and a lot of fine plant growth on the island, but I just wonder what makes it so particularly unique. We are talking about a national park. There are many beautiful places in the Western Hemisphere.

Mr. WIRTH. This picture, in color, will give you some idea of the kind of thing you have down there. I do not know where you see anything like that in Puerto Rico [indicating].

Senator JACKSON. Over on the island of St. Thomas there are a number of similar sites.

Mr. WIRTH. St. Thomas is all being developed. It is the center of population; whereas St. John is being made available for national park purposes, which would be putting the land to its best economic use.

Senator JACKSON. Can you leave these with the committee temporarily to be returned later?

Mr. BOYER. I can, but all those are not of the island. I would be delighted to leave this, but I just would like to point out that they are not all of St. John.

Senator JACKSON. Some of these are St. Thomas.

Mr. BOYER. Yes, and some are on San Juan.

Senator BIBLE. What would it cost to maintain this a year?

Mr. WIRTH. We estimate \$60,000 a year.

Senator JACKSON. How much money are we going to have to spend in improvements?

Mr. WIRTH. We estimate that the total amount of improvements, leaving these lands out for taking care of the people outside the park, would cost us over the period of the next 4 or 5 years about \$120,000.

Senator JACKSON. Would that be your master plan, the total?

Mr. WIRTH. Yes. We have not made a detailed plan, but we did make an estimate.

Senator JACKSON. \$120,000?

Mr. WIRTH. Yes.

Senator JACKSON. We have quite a time, as you know, with appropriations for the operation and maintenance of parks. I think both of us have had a little experience on that. I served on the House Appropriations Committee for a long time.

Mr. WIRTH. That is true.

Senator JACKSON. We have \$60,000 here for operation and maintenance. Every year that will be added on to the sum total.

Mr. WIRTH. I would like to point out a fact here. I was anticipating the possibility of the question of money and I made a few notes here. There have been certain surveys made, in which the committee will be interested. I maintain that the parks are set aside and preserved for human enjoyment. That is their main value.

However, there is a byproduct to the parks that we do not fully realize. Here is a research study of the Stanford Research Institute, Mountain States division, Phoenix, Ariz., from which I would like to read an excerpt, as follows:

Coconino County, in the heart of northern Arizona, has the greatest future potential for growth, barring the discovery of important mineral resources elsewhere. Its greatest resources are scenic and climatic, although timber and grazing lands are important for the lumber and livestock industry they support. The tourist industry accounts, directly or indirectly, for approximately 50 percent of the Coconino County's total income.

The economy of northern Arizona is dependent to a much greater extent upon tourist travel than is that of the southern counties, and northern Arizona's future growth and prosperity are largely dependent upon development of resources which attract out-of-State visitors. Some 35 percent of its retail sales are direct tourist expenditures, against less than 15 percent of retail sales attributed directly to tourists for the State as a whole.

Senator JACKSON. I agree with you, but that is like a grant-in-aid to the States. Secretary Humphrey does not get any of the income which you mention nor does it help to balance the Federal budget. We can account for it if the money came directly into the Park Service and into the Department of Interior, and I think we would be in much better shape, and I am completely in sympathy with what you say.

However, when we get up on the floor of the Senate and we have the Interior appropriation bill up, we find it a bit of a problem because here is an additional item for operation and maintenance, you see.

Mr. WIRTH. We are confronted with this everywhere we go, and the States realize the value of these areas. Here is a report on Yellowstone made in 1950 by the State of Wyoming.

Senator JACKSON. I have used the same argument in justifying my support of Olympic National Park, and I am in complete sympathy with you. The only problem that we have is when we get on the floor,

here is \$60,000 more and here is \$120,000 additional in the next 4 or 5 years for construction; and the problem that I have noticed, Senator Bible, when I was in the House especially, is this constant attrition of funds. We have to fight all the time to maintain and keep our parks in decent shape. Our roads and our trails, of existing parks, have been declining over a long period of time.

It is an argument that we have to face on the floor. I would not want you to think, Mr Wirth, because I asked adverse questions that that necessarily indicates my final point of view. I am here to try to get some information that might be helpful later.

Mr. WIRTH. I am glad that you are asking because I would like to get it in the record. They say that figures lie sometimes, and liars figure, and so forth and so on, but the Bureau of Internal Revenue now states that 28 cents out of every dollar that is spent goes in some form of taxes.

Here is this report in 1950 saying that at Yellowstone and vicinity the traveling public, there in that 1 year, spent \$18,996,000. If Internal Revenue's statement is correct, \$4,700,000 went into taxes of various kinds.

Senator JACKSON. Of course, a lot of this money is for local taxes.

Mr. WIRTH. But it creates an income value for the Virgin Islands, which is important, and will reduce the amount of money, I think, in the long run that Uncle Sam will have to give to help the islands. Nevertheless, I do not like to emphasize the money angle, since we are concerned with scenic and other recreational resources and their value to present and future generations keeping some of the native scenery that the good Lord blessed us with for public enjoyment.

To emphasize the size of the proposed park, I took the 9,500 acres and indicated on different national-park maps the relatively small amount of land we are talking about.

Senator JACKSON. Yes, but it is all relative. How many acres are there in the Virgin Islands group?

Mr. WIRTH. St. John is the smallest island. Do you know how many acres there are in St. Thomas and St. Croix?

Mr. ARNOLD. I believe there are approximately 70,000 acres.

Mr. FRENCH. Overall.

Senator JACKSON. The whole aggregate.

Mr. EDWARDS. A little over 85,000 acres for the whole aggregate of the American Virgin Islands.

Mr. WIRTH. I do want to say this, though, that St. John Island has practically no industry on it at the present time. There are 600 or 700 people living there. There is one Senator from the St. John district.

Senator JACKSON. How many people are there on the island of St. John?

Mr. WIRTH. Between 600 and 700 on the island of St. John.

Senator JACKSON. The total population of the Virgin Islands is about 30,000; is it not?

Mr. ARNOLD. 27,000.

Senator JACKSON. You see this involves 9,500 acres out of a total of 85,000. It is roughly one-ninth the area of the islands.

Mr. WIRTH. If you will notice from those pictures we showed you, there are no particularly good land use potentialities within the proposed park. It is rugged.

Senator JACKSON. As I recall the history of the island of St. John—you mentioned it in part—back in, I thought it was in the 1800's, they had this massacre that occurred on the island during a time that they were engaged in sugarcane production.

Mr. WIRTH. They had the island largely cleared. There were 38 plantations on the island at that time in 1733 when they had the uprising of the slaves.

Senator JACKSON. They were producing sugarcane?

Mr. WIRTH. Yes.

Senator JACKSON. And the production of sugarcane in that area was profitable at that time solely because of slave labor?

Mr. WIRTH. That is right.

Senator JACKSON. And with the elimination of slave labor, it was no longer economically feasible to produce sugarcane, and the last remaining sugarcane produced in the Virgin Island group was on the island of St. Croix? There is still some production, but it has declined, too, with the elimination of the rum business.

Mr. WIRTH. Here is a picture of one of the old plantation houses up in the woods. They lived well, the 38 planters there.

Senator JACKSON. Are you going to rehabilitate any of those old places?

Mr. WIRTH. No. We will have trails into certain of them and into the areas that had the old forts, to explain the history and how the people lived at that time.

Senator JACKSON. That is a part of the \$120,000 estimate of construction costs over a period of years, and it is a \$60,000 annual maintenance cost?

Mr. WIRTH. Yes. There is very limited transportation on the island and most likely the transportation on the island will consist of improvement of minor roads [indicating] that now exist, and trails.

Senator JACKSON. Is it intended that the island remain somewhat in its present capacity rather primitive, and restrict the traffic, ocean or water traffic, into the island?

Mr. WIRTH. We hope to get more traffic over the island and more people here [indicating] and spending their summers there or their winters there in visiting and using the beaches, but the part we have will be kept in its natural condition, which would be the attraction, and the area left out will be the part put to commercial use by the various business enterprises that would be developed in order to take care of the people that come over there.

In other words, we are leaving them out of Government control entirely as far as we are concerned, to develop their accommodations outside as we are doing in several of the parks. The Great Smoky Mountains is one of them. The Everglades is another one. We would leave business interests out of the park so they would not be under our supervision. In Yellowstone, because of its size, we always have had concessioners, and in Yosemite, also. In the proposed Virgin Islands National Park most of the development to take care of the people would be on the edge and on the outside of the park.

Senator JACKSON. Who would operate the concessions in this proposed park?

Mr. WIRTH. It would be operated similar to the way we are working with the Jackson Hole Preserve, Inc., in Grand Teton National



Park. They have a separate company that is incorporated and pays all the taxes, but any money the separate company makes goes to the Jackson Hole Preserve, Inc., for nonprofit, park purposes.

Senator JACKSON. In other words, the Rockefellers would have business interests there operated through this nonprofit corporation, and all earnings would be used for acquisition, maybe, of additional lands, but at least for a nonprofit objective? Is that correct?

Mr. BOYER. Definitely, yes, sir; absolutely.

Senator JACKSON. As I said earlier, I think it is wonderful what the Rockefeller family has done. I am completely familiar with what they have done in the past. I am sure, just for the record, it ought to be made clear that the Rockefeller interests have nothing to gain privately. I ask it just so the record is clear and no one can get up and say that this is a charitable contribution on one hand and a private venture on the other. The Rockefeller Corp., this nonprofit corporation that you referred to earlier, would be set up to assist in providing facilities either in or adjacent to the park to encourage people to come into the park?

Mr. WIRTH. The way they work it is this: The money is put in the Jackson Hole Preserve, Inc., which provides the improvements: the operation of the lodge is by a regular corporation that pays taxes, and any money that the operating company makes goes back to the Jackson Hole Preserve.

Senator JACKSON. Would it be a private corporation?

Mr. WIRTH. Yes. It would be a corporation controlled by the Jackson Hole Preserve, Inc. The reason that is done is to permit the operating company to pay all the taxes that the community or State would otherwise get for such operations.

Senator JACKSON. It would be a private corporation, not a nonprofit corporation, but the net earnings after payment of taxes would go to the nonprofit corporation, the Jackson Hole Preserve?

Mr. BOYER. Caneel Bay Plantation, Inc., which operates the resort facility at the present time, is a wholly owned subsidiary of Jackson Hole Preserve, Inc.; Jackson Hole Preserve, Inc., owns all the stock. Mr. Laurance Rockefeller purchased the stock but gave it all to Jackson Hole, Inc., as of January 10 of this year.

In other words, Mr. Rockefeller has no personal interest of any kind in this project.

Senator JACKSON. What is the name of the corporation?

Mr. BOYER. Caneel Bay Plantation, Inc.

Senator JACKSON. Is it set up as a private corporation?

Mr. BOYER. It is a private corporation; yes, sir.

Senator JACKSON. However, all of the capital stock of that company is, in turn, owned by the nonprofit corporation, the Jackson Hole Preserve, Inc.?

Mr. BOYER. Yes, sir.

Senator JACKSON. And the earnings, therefore, of the private corporation would inure to the benefit of the nonprofit corporation?

Mr. BOYER. Definitely.

Senator JACKSON. So that it is merely a business device to carry on the functions in that area so that the local government will have the benefit of taxes that would normally accrue to any private enterprise?

Mr. BOYER. Yes, sir.

Senator JACKSON. I mean that would normally accrue from a private enterprise to the island?

Mr. BOYER. Yes, sir.

Senator JACKSON. Otherwise, you could set it up as a nonprofit corporation, but what you are doing is trying to help the local government, assist them in taxes and so on?

Mr. BOYER. Yes, sir. It is the same arrangement which is employed in Jackson Hole at Grand Teton. As Director Wirth has said, the Grand Teton Lodge and Transportation Co. owns the Jackson Lake Lodge, which is the new hotel opening on June 12 of this year. It is a wholly owned subsidiary of Jackson Hole Preserve, Inc.

Senator JACKSON. We will have you as the next witness after Mr. Wirth to find out what the plans are in the way of development and so on from the standpoint of the Caneel Bay Co.

Mr. WIRTH. I do not have anything else to say, sir, except that the Governor of the Virgin Islands is in favor of the proposed park.

Senator JACKSON. Who is the present Governor?

Mr. WIRTH. Governor Alexander. He has been there 1 year now.

Mr. FRENCH. He took office a year ago in April.

Senator JACKSON. Is he the one from the Middle West?

Mr. FRENCH. Yes, the Des Moines, Iowa, contractor.

Mr. WIRTH. The member of the Virgin Islands Senate from St. John is also in favor of it, and, we have so been informed, the local newspaper on St. Croix and St. Thomas. They not only reported the news very accurately and favorably, but they also have written editorials in support of it, and I think it might be well, if I may, to incorporate those in your record. I will not take time to read them, but they are all very favorable.

(The news articles referred to follow:)

[From the Daily News, Charlotte Amalie, V. I., Saturday, November 20, 1954].

**L. S. ROCKEFELLER OFFERS UNITED STATES A VIRGIN ISLANDS PARK—HE SEEKS TO PRESERVE THE UNspoiled BEAUTY OF ST. JOHN 'PARADISE'—NO RESIDENT TO BE DISPLACED**

(By Morris Kaplan)

Laurence S. Rockefeller has acquired options to purchase about half of the scenic island of St. John in the Virgin Islands. The third son of John Rockefeller, Jr., affirmed yesterday reports that he would like eventually to have two-thirds of the island's 12,700 acres accepted as a national park.

Back from a 5-day examination of the green hills and white beaches of the Caribbean Isle, Mr. Rockefeller reported that Conrad Wirth, director of the National Park Service, had expressed interest in the project.

Mr. Wirth accompanied Mr. Rockefeller and Frank Stick, noted ichthyologist and conservationist of Kitty Hawk, N. C., on the trip to Caneel Bay Plantation, a 650-acre resort area bought by Mr. Rockefeller in 1952 from the Rhode Island Charities Trust.

Mr. Stick and two associates own 1,500 acres on the island.

The plan for a national park on St. John, the smallest of the three Virgin Islands bought by the United States from Denmark in 1917 for \$25 million, was first broached in 1939 by Harold A. Hubler, an officer of the Park Service, but the idea was tabled.

Mr. Rockefeller's interest was whetted by a trip he made 3 years ago in his 65-foot cabin cruiser, *Dauntless*, with his wife, the former Mary French, and friends. They had been voyaging in the Lesser Antilles and sailed into St. John from British-owned Antigua.

"I found the combination of mountains, beaches and sea unique in the Caribbean," Mr. Rockefeller said: "The unspoiled nature of the area appealed to me and I wish to preserve it against overdevelopment."

He mentioned the larger Virgin Island of St. Thomas and St. Croix, where, he said, commercial ventures and the tourist trade had increased. Long interested in the conservation of scenic areas, he said he was disturbed that the most beautiful areas of St. John might some day be altered so as to destroy their natural beauty.

He read the Hubler report and discussed it with Mr. Wirth. As a result of their trip, Mr. Wirth has reaffirmed the interest of the National Park Service, "but we have no assurances at all," Mr. Rockefeller cautioned.

A national park must be approved by an act of Congress.

While the project now is in the planning and development stage, Mr. Rockefeller reported that Mr. Wirth would report to Secretary of the Interior Douglas McKay. He said he had acquired through Jackson Hole Preserve, Inc., a number of options of St. John and would discuss plans informally next month with Mr. Wirth, Mr. McKay and Archie A. Alexander, Governor of the Virgin Islands.

#### ISLAND HAS ONLY 700 RESIDENTS

Should a national park be approved, Mr. Rockefeller said, it would not displace anyone, would allow for the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay, and would not in any way adversely affect the livelihood of the 700 persons on the island.

Of that number there are 350 Negroes and 50 whites, of whom 25 are major property owners, he reported. The taxes amount to \$7,500 annually, he said.

Mr. Rockefeller envisaged a plan whereby he would transfer ownership of the acreage acquired, including his Caneel Bay property, to Jackson Hole Preserve, Inc. This is an agency previously used by the Rockefeller family to create and expand such projects as the Grand Teton National Park, Wyo., the redwoods of California, and several of the country's national parks, including Acadia, Maine; Great Smoky Mountains, Tennessee-North Carolina, and Shenandoah, Va.

Mr. Rockefeller gave assurance that existing settlements would not be disturbed. His associates reported that at least 4,000 acres in the Cruz Bay and Coral Bay areas would not be included in the projected park, thus leaving 8,000 acres for conservation purposes.

#### MUCH WORK UNDERWAY

He has already spent a substantial sum, it was reported, in developing the Caneel Bay area and its hotel, now able to accommodate 48 guests. The hotel is being doubled in size, a new sewer system and powerplant are being installed as well as a water catchment and new employees' quarters.

The roads and docks are being enlarged and extensive landscaping of the shore is planned. Mr. Rockefeller is also restoring a sugar mill built in 1810.

The park project's cost will run "into the millions" but close associates of Mr. Rockefeller said it would be impossible to estimate the total cost.

St. John, one of the leeward islands in the Caribbean chain, is 1,442 miles southeast of New York and 40 miles east of Puerto Rico. Nine miles long and 5 miles wide, it is covered by bush and second growth timber, including such trees as mahogany, bay, coconut, ebony, tamarind, mango, and lime.

It rises abruptly from the sea, its highest elevation, 1,277 feet. The island is accessible only by boat, but nearby St. Thomas and St. Croix have airports.

#### "PARADISE," SAYS ROCKEFELLER

Mr. Hubler's report described St. John as "by far the most beautiful" of the Virgin Islands.

"The pure white sand of her north side beaches makes a perfect contrast between the green of her wooded hills and the turquoise waters washing her shores," he wrote.

Mr. Rockefeller yesterday agreed that it was "a paradise."

The passage between St. John and British Tortola takes its name from Sir Francis Drake or "El Draque," as the Spaniards called him. Sir Francis was the first to sail through its tortuous channels, in 1580.

Christopher Columbus, the first white man to see St. John, in 1493, christened it "The Eleven Thousand Virgins," Mr. Hubler reported. It was not settled until 1684. In 1687 the Danish West India and Guinea Co. laid claim into St. John,

but it was not until March 25, 1717, that the first permanent colony was established there.

Life went smoothly for 3,000 whites until November 23, 1733, when the 2,500 slaves revolted. French soldiers from the island of Martinique quelled the riot eventually, and carried off the Negroes to slavery.

With the abolition of slavery it became impossible to keep up the old estates, so the island reverted to bush, the white owners departed and for years the natives have eked out a meager existence from fishing and gathering bay leaf for bay rum.

St. John was well known in the days of piracy and buccaneering because of her excellent harbors. There are, of course, many tales of pirate treasure buried on the island.

Mr. Rockefeller, 44 years old, has long been associated with conservation organizations. He is a trustee and second vice president of the New York Zoological Society, trustee of the Conservation Foundation, director of the Hudson River Conservation Society, commissioner and secretary of the Palisades Interstate Park Commission, and president of Jackson Hole Preserve.

He is president of Rockefeller Brothers, Inc., an investment and research organization, and chairman of the board of Rockefeller Center, Inc., a post previously held by his brother, Nelson.

[From the Daily News, Charlotte Amalie, V. I., Monday, November 22, 1954]

#### NATURAL PARK FOR ST. JOHN

Laurence S. Rockefeller, owner of Caneel Bay and chairman of the board of Rockefeller Center, Inc., has taken option to purchase nearly half of the island of St. John which he plans to give to the Federal Government to establish a national park. Mr. Rockefeller's chief interest is the preservation of the scenic area of the island.

According to the plan as outlined it will not be necessary to relocate any of the residents nor would the development of the park hinder the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay. The work at present being done on the resort area of Caneel Bay is a good indication of the future envisioned by this great financier.

Mr. Rockefeller has long been associated with development of this kind throughout the United States. He is president of Rockefeller Brothers, Inc., an investment research organization, which has financed such projects as the Grand Teton National Park, Wyo.; the Red Woods of California; and several of the country's national parks including Arcadia, Mo.; Great Smoky Mountains, Tenn. and N. C., and Shenandoah in Virginia.

In recent years visitors to the islands have shown great concern over the fact that most of the natural beauty and scenic charm of St. Thomas and St. Croix are being destroyed. Many of these persons who spend several months each year in St. Thomas or St. Croix are finding the peace and quiet that they seek in the many resort areas of the islands, in St. John. It is this fact more than any other that prompts the present plan to insure that St. John's natural beauty might not be destroyed.

Some people might be misled into the belief that the residents in that island will be placed in a less favorable position by this development. As we see it, it is the most fortunate thing that has happened to St. John in several decades. The development of a natural park would bring new activity to the small island and improve the economic condition. That island will become one of the principal showplaces for tourists and should boost the tourist program to large proportions. This cultural development will also attract a better type of visitors to the island.

We hope that the administration and the legislature will cooperate fully in bringing about this most significant development for the benefit of the entire Virgin Islands.

[From the St. Croix Avis, St. Croix, V. I., U. S. A., Saturday, November 27, 1954]

#### ISLAND "PARADISE"

Laurence S. Rockefeller's announcement that he will offer much of St. John as a national park is perhaps the most significant news to come out of these shores in many a day. The importance of the news can be determined by the wide coverage given to it by the national press, led by the New York Times.

**STATEMENT OF HON. GEORGE W. MALONE, UNITED STATES  
SENATOR FROM THE STATE OF NEVADA**

Senator MALONE. Mr. Chairman, the purpose of your proposed amendment to the 1872 mining law is, according to its sponsors, to prevent:

1. Clearly invalid mining locations, unsupported by any semblance of discovery, and
2. Mining locations having mineral disclosures which might satisfy the basic requirement of discovery, but which were in fact made for a purpose other than mining.
3. To make it easier for the Federal bureaus to bring up for review claims and claimants which in their judgment includes land more valuable for another purpose.

That is the statement of the principal witness, Mr. Raymond B. Holbrook, an attorney employed by the United States Smelting, Refining & Mining Co. for 17 years, and who is the chairman of the public lands committee of the American Mining Congress. Mr. Holbrook was the nearest approach to a mining man who appeared for the bill.

**LEGITIMATE OBJECTIONS COVERED BY MINING LAWS AND DECISIONS**

The first purpose is amply covered by the present mining law as interpreted over the years by the Supreme Court of the United States. Both the public and the prospector are fully protected, with recourse to the courts.

The second and third are clearly an imposition on the rights of the prospector since they open the door for the first time in more than 80 years for a Government bureau employee to allege that the land is more valuable for another purpose than mining and bring the case before his own bureau where the only appeal is to a higher employee or official in that same bureau.

**CONGRESS COULD DESTROY INCENTIVE**

Since it is even conceivable that evidence might show that the value for other purposes might temporarily be greater than the immediate value of a small mining property, it is inconceivable that the Congress would allow a bureau official, in no way connected with mining, such as the Forest Service or the Bureau of Land Management, and having no firsthand knowledge of the industry, to be the complainant, judge, and jury.

The history of mining is clear that you must have prospects before you have small mines and you must have small mines before you can have big mines—and that it often requires many years before the larger bodies of ore can be developed, even after they are known to exist.

**FIRST LOCATOR SELDOM PROFITS**

History also shows that the property many change hands many times through the first locators “going broke” and either relinquishing the claim to another locator or selling out for what they can get because of their inability to continue working the property, or because

of lack of "assessment" work simply losing to another locator. Rarely does the first locator profit from the discovery.

There used to be a byword in the ranching business—that it was the third or fourth homesteader of a homestead that made it stick. The mining business is even tougher.

#### GOVERNMENT BUREAUS

The principal witness, Mr. Holbrook, further testified that—

We have had the pleasure of working with the Forest Service and the Bureau of Land Management and understand their position is that these problems could not be entirely met by effective administration of existing laws for the following reasons :

1. The available remedies are slow, expensive, and not conclusive; and
2. There is great difficulty in establishing the invalidity of a location, supported by discovery, on the basis that the location was made for a purpose other than mining.

The weight of evidence of the witnesses called—all but one holding some Government position—was that the Government bureaus should be given the clear power to determine the validity of a mining location within their own department.

This power in the hands of the bureau officials would destroy the prospector and reverse the Supreme Court decisions for more than 80 years.

They would also have the authority to determine whether or not the land is more valuable for another purpose than mining.

#### OBJECTIVE—LEASING SYSTEM

It is clear that the Government bureaus are still moving toward a leasing system which they have continually advocated for two decades.

#### DESTROY LAW INTENT AND COURT DECISION

The prospector can be moved under the 1872 law if he has not complied with it, which is the intent and the extent of the original law.

The Supreme Court decisions, for more than 80 years, have clarified and established the law.

It has been established that if the prospector has complied with the law in setting up his monuments, in filing with the county recorder, and has done the required "assessment" work, that a Government department cannot move him or interfere with his work by alleging that "a reasonably prudent man would not expend his money and his effort in the hopes of developing a mine" (Holbrook, p. 91, May 18, 1955).

The amended act opens the door for continual interference by Government officials.

It limits the locators' inherent rights prior to patent, since when patent issues there is no change in the fee simple ownership, and the timber, forage, and all other assets go to the patentee. It does not make sense to allow the Government to deplete his claim in accordance with their judgment before patent.

There may have been abuses under the law, but when investigated it will generally be found that the Government has not met its responsibilities under existing law and that the law itself or court decisions provide the remedy.

## PROSPECTOR ON THE DEFENSIVE

As it now stands, the Government must initiate any proceedings to prove the location invalid, which is exactly what was intended and must be maintained, under the proposed law the prospector will be on the defensive and will be continually harried and tormented by inexperienced and irresponsible Bureau officials.

## HEARINGS IN MINING AREAS

It is abundantly clear that hearings should be held in the mining areas of this Nation before any action is taken, since no real miners were heard and the mining associations of the several States were clearly intimidated through threats of more severe legislation unless they accepted the proposed legislation as written.

## LAST STAND OF SMALL CAPITAL

The present simple location system for acquiring prospecting ground for mining is the last stand for the man of small capital.

It requires no money, just a sack of beans and some coffee and many of them have been known to dispense with the coffee until they can show enough to acquire a grubstake from someone who is willing to gamble with them.

They can build a rock mound or stick up a stake and lodge the location notice on it, then set up the corners within 30 days and start the location work.

The ground is then his own as long as he does the required annual assessment work and files proof of it in the country recorder's office of his county.

It is not necessary to have a surveyor or an accurate placing of the corners of his property. If he inadvertently takes in too much territory then, when there is a conflict, which there will most certainly be when and if he makes a strike, he can only hold the 1,500 by 600 feet of the regulation mining claim.

## MINING IS A GAMBLE—NO PRUDENT MAN

Mining is a gamble. It is also a disease, which once acquired means that they will "hit" a mine or die broke. Where a very limited few develop a mine, thousands die broke, but it is the incentive of "striking it rich" that keeps them in the hills where the ore is to be found.

Probably 90 percent of the digging done by prospectors is on ground where no "prudent man" would dig—and this Nation can thank God that they have continued to dig on such ground, because most of the prospects developing into mines are discovered by these miners confirmed in the faith.

The testimony by Government witness, and witnesses inexperienced in the actual prospecting operation, was to the effect that many mining claims are located on ground where no "prudent man" would dig. Prospectors are not prudent men.

ONLY ONE MINING MAN HEARD

There was only one mining man at the hearing who testified and his testimony was emphatically against the bill unless modified, and he recommended that hearings be held in the mining areas before it was reported to the Senate floor. The witness was Mr. Robert S. Palmer, secretary-treasurer of the Colorado Mining Association, which is one of the largest and most important of such associations in this Nation.

NO PRECEDENT

Several witnesses have testified that a precedent for this proposed legislation was set in the passage of Public Law No. 250, 83d Congress, amending the 1872 Mining Act.

There could have been no precedent set in the previous legislation for this type of bill since it only dealt with coordinating the use of the same mining claims for different minerals—petroleum, uranium, and other minerals. The amended act provided that you could mine uranium on an oil claim but the petroleum producer had the priority and you could not interfere with him, and that you could develop and produce oil on a uranium claim but that you could not interfere with the operation of the prior locator.

PRECEDENT WOULD BE SET

It positively had nothing to do with timber or forage or sagebrush. It had absolutely nothing in common with Senate bill 1713, which does set a precedent for leasing ground for materials.

HEARINGS IN MINING AREAS

Certainly hearings should be held in the mining areas. Let the miners have a chance to help work it out.

CAN BE WORKED OUT

I believe that if this is done a satisfactory piece of legislation can be worked out that will benefit all concerned, and that will not curb the prospector, and that will not discourage independent investors and grubstakers interested in locating, developing, and producing minerals.

SHOULD BE CONFINED TO FOREST AREAS

If the legislation is to be voted on today as set up without hearings in the mining areas of the country, then its application should certainly be confined to the forest reserve areas where most of the testimony before the committee applied.

Senator ANDERSON. Thank you. The committee hearing will now stand in recess.

(Whereupon, at 2:10 p. m., the committee recessed subject to the call of the Chair.)

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# VIRGIN ISLANDS NATIONAL PARK

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
TERRITORIES AND INSULAR AFFAIRS  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
**S. 1604**  
A BILL TO AUTHORIZE THE ESTABLISHMENT OF THE  
VIRGIN ISLANDS NATIONAL PARK, AND FOR  
OTHER PURPOSES

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MAY 19, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



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# VIRGIN ISLANDS NATIONAL PARK

THURSDAY, MAY 19, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON TERRITORIES AND  
INSULAR AFFAIRS OF THE COMMITTEE,  
ON INTERIOR AND INSULAR AFFAIRS,  
Washington, D. C.

The subcommittee met, pursuant to call, at 10:30 a. m., in room 224-A, Senate Office Building, Senator Henry M. Jackson, chairman of the subcommittee, presiding.

Present: Senators Henry M. Jackson, Washington (chairman of the subcommittee); and Alan Bible, Nevada.

Also present: Stewart French, chief counsel and staff director.

Senator JACKSON. The subcommittee will come to order.

We will consider first S. 1604, a bill introduced by the chairman at the request of the Department of the Interior to authorize the establishment of the Virgin Islands National Park.

I understand that the proposed park is not to exceed 9,500 acres. Of this total, up to 50 acres may be on the Island of St. Thomas, with the remainder on the Island of St. John or the smaller islands in the vicinity of St. John.

I understand that Mr. Laurance Rockefeller has already acquired over 5,000 acres on the Island of St. John for donation to the proposed national park. The remainder of the park area would be acquired with donated funds.

We are pleased to have as witnesses this morning Mr. Conrad Wirth, director of the National Park Service, and Mr. Allston Boyer, representing Mr. Rockefeller.

We will place a copy of S. 1604 in the record at this point, together with copies of the letter of transmittal from the Interior Department, and the favorable report of the Bureau of the Budget.

(The documents the inclusion of which was directed by the Chairman are as follows:)

[S. 1604, 84th Cong., 1st sess.]

A BILL To authorize the establishment of the Virgin Islands National Park, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a portion of the Virgin Islands of the United States, containing outstanding scenic and other features of national significance, shall be established, as prescribed in section 2 hereof, as the "Virgin Islands National Park."

The national park shall be administered and preserved by the Secretary of the Interior in its natural condition for the public benefit and inspiration, in accordance with the laws governing the administration of the National Parks (16 U. S. C. 1, and the following).

SEC. 2. The Secretary of the Interior is hereby authorized, subject to the following conditions and limitations, to proceed in such manner as he shall find

to be necessary in the public interest to consummate the establishment of the Virgin Islands National Park:

(a) The acreage of the national park shall be limited to a total of not more than 9,500 acres of land area, such total to be comprised of not more than 50 acres on the Island of Saint Thomas, and not more than 9,450 additional acres to be comprised of portions of the Island of Saint John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park.

(b) Tentative exterior boundary lines, to include land not in excess of the aforesaid acreage limitations, may be selected for the park in order to establish the particular areas in which land may be acquired pursuant to this Act, such tentative boundaries to be selected and adjusted as may be necessary by the Secretary of the Interior.

(c) The Secretary, on behalf of the United States, is authorized to accept donations of real and personal property within the areas selected for the park until such time as the aforesaid total of 9,500 acres shall have been acquired for the park by the United States, and he may also accept donations of funds for the purposes of this Act.

(d) Funds made available for purposes of this Act may be used by the Secretary in such manner as he shall find to be in the public interest, in order to procure by purchase or otherwise, land or interests therein for the park.

(e) Any Federal properties situated within the areas selected for the park, upon agreement by the particular agency administering such properties that such properties should be made available for the park, may be transferred without further amortization to the Secretary by such agency for purposes of this Act.

(f) Establishment of the Virgin Islands National Park, in its initial phase, shall be and is hereby declared to be accomplished and effective for purposes of administration when a minimum acreage of not less than 5,000 acres in Federal ownership for purposes of this Act shall have been acquired by the United States in specific areas containing such acquired lands to be designated by the Secretary.

(g) Notice of the establishment of the park as authorized and prescribed by this Act shall be published in the Federal Register.

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY.  
Washington 25, D. C., March 17, 1955.

HON. RICHARD M. NIXON,  
*President of the Senate,*  
Washington, D. C.

MY DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill to authorize the establishment of the Virgin Islands National Park, and for other purposes. This would provide for the establishment of a national park of not to exceed 9,500 acres in extent. It would permit the acceptance of lands and funds that will be donated for the purpose. Mr. Laurance S. Rockefeller has already acquired over 5,000 acres on the Island of St. John for donation to the Government for the park. The remainder of the park area would be acquired with funds to be donated.

We shall appreciate the reference of this proposed bill to the appropriate committee for consideration. We recommend that it be enacted.

The purpose of the proposed park is to conserve for public benefit and enjoyment a portion of the Virgin Islands containing outstanding scenic and other features of national significance, educational value, and fine recreation possibilities. In addition, we believe that its establishment would materially help the Virgin Islands economy, through the tourist industry, to become more self-supporting.

The proposed park, limited to 9,500 acres in extent, would be comprised of not more than 50 acres on the Island of St. Thomas and not more than 9,450 additional acres to be comprised of portions of the Island of St. John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park.

St. John Island is a mountainous area, 9 miles long and approximately 5 miles wide, with a total area of 19.2 square miles. The highest peak is 1,277 feet.

above sea level. About 85 percent or more of the island is covered by bush and second-growth tropical forest. There is little arable land, the largest area being west of Coral Bay, at the eastern end of the island, which area would not be included in the park. The climate is subtropical and pleasant—the lowest temperature ever recorded being 69°, the highest 91°. Seven hundred and forty-six people were reported living on the island in 1950.

The scenic quality, plant life, and the setting of the island in the protected channels of the Virgin Islands are totally different from anything set apart in the United States or its Territories for national-park purposes. The plant and animal life of the island and of the surrounding waters are of exceptional interest and educational value. The proposed park presents fine recreation possibilities, including excellent sport fishing in the surrounding waters. Relics of the prehistoric Carib Indians are found on the island, as well as remnants of sugar mills and the plantations of the early historic period. The island in its picturesque surroundings is unquestionably of national-park caliber. The Nation will be fortunate indeed if Mr. Rockefeller's generous offer is accepted and the national park established. There has been favorable editorial comment and support for the proposal in the press in New York, the Virgin Islands, and elsewhere.

The proposed boundaries would include the finest portions of the island for park purposes and would exclude the settlements and agricultural lands required by the natives. The proposed park would not require elaborate development, since retention of the area's unspoiled charm would be a principal objective. We estimate that approximately \$60,000 would be required annually for its maintenance and operation.

The Bureau of the Budget has advised that there is no objection to the submission of this proposed legislation.

Sincerely yours,

ORME LEWIS,  
*Assistant Secretary of the Interior.*

**A BILL To authorize the establishment of the Virgin Islands National Park, and for other purposes**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a portion of the Virgin Islands of the United States, containing outstanding scenic and other features of national significance, shall be established, as prescribed in section 2 hereof, as the "Virgin Islands National Park."

The national park shall be administered and preserved by the Secretary of the Interior in its natural condition for the public benefit and inspiration, in accordance with the laws governing the administration of the National Parks (16 U. S. C. 1, and the following):

Sec. 2. The Secretary of the Interior is hereby authorized, subject to the following conditions and limitations, to proceed in such manner as he shall find to be necessary in the public interest to consummate the establishment of the Virgin Islands National Park:

(a) The acreage of the national park shall be limited to a total of not more than 9,500 acres of land area, such total to be comprised of not more than 50 acres on the Island of St. Thomas, and not more than 9,450 additional acres to be comprised of portions of the Island of St. John and such small islands, rocks, and cays not in excess of 1,000 acres in the general vicinity thereof as may be desirable for inclusion within the park;

(b) Tentative exterior boundary lines, to include land not in excess of the aforesaid acreage limitations, may be selected for the park in order to establish the particular areas in which land may be acquired pursuant to this Act, such tentative boundaries to be selected and adjusted as may be necessary by the Secretary of the Interior;

(c) The Secretary, on behalf of the United States, is authorized to accept donations of real and personal property within the areas selected for the park until such time as the aforesaid total of 9,500 acres shall have been acquired for the park by the United States, and he may also accept donations of funds for the purposes of this Act.

(d) Funds made available for purposes of this Act may be used by the Secretary in such manner as he shall find to be in the public interest, in order to procure by purchase or otherwise, land or interests therein for the park;

(e) Any Federal properties situated within the areas selected for the park, upon agreement by the particular agency administering such properties that



such properties should be made available for the park, may be transferred without further authorization to the Secretary by such agency for purposes of this Act;

(f) Establishment of the Virgin Islands National Park, in its initial phase, shall be and is hereby declared to be accomplished and effective for purposes of administration when a minimum acreage of not less than 5,000 acres in Federal ownership for purposes of this Act shall have been acquired by the United States in specific areas containing such acquired lands to be designated by the Secretary; and

(g) Notice of the establishment of the park as authorized and prescribed by this Act shall be published in the Federal Register.

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D. C., April 14, 1955.

HON. JAMES E. MURRAY.

*Chairman, Committee on Interior and Insular Affairs, United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of this Bureau on S. 1604, a bill to authorize the establishment of the Virgin Islands National Park, and for other purposes.

The bill authorizes a park of not to exceed 9,500 acres of land area. Of this total, not more than 50 acres may be on the island of St. Thomas, not more than 9,450 acres on the island of St. John, and not more than 1,000 acres on small islands, rocks, and cays in the general vicinity of St. John. The Secretary of the Interior is authorized to accept donations of real and personal property within the areas selected for the park, and also to accept donations of funds for park purposes. The park shall be considered established when a minimum of 5,000 acres have been acquired.

Mr. Laurence S. Rockefeller recently purchased over 5,000 acres on the island of St. John which he has offered to give to the United States for park purposes. Thus, if S. 1604 is enacted into law, the Government can acquire without cost sufficient lands to establish the park. The National Park Service estimates that annual cost of operation and maintenance will approximate \$60,000.

The greatest assets of the Virgin Islands are their scenic beauty and remarkably fine year-round climate. Exploitation of these assets through development of the tourist industry should materially improve the economic condition of the islands, and contribute to their eventual self-support. Establishment of a national park in the islands should make a major contribution to the development of a thriving tourist industry.

Accordingly, the Bureau of the Budget recommends that your committee give favorable consideration to this bill.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

Senator JACKSON. I am sorry, gentlemen, that we are in rather cramped quarters this morning. We are having another committee meeting in the other room, but as long as we can get some work done, I assume you do not mind. As a matter of fact, as far as I am concerned I enjoy it.

Mr. Wirth, do you care to make a statement?

**STATEMENTS OF CONRAD L. WIRTH, DIRECTOR, NATIONAL PARK SERVICE; WILLIAM ARNOLD, ASSISTANT DIRECTOR, OFFICE OF TERRITORIES, IN CHARGE OF ISLAND AFFAIRS; AND A. M. EDWARDS, ASSOCIATE SOLICITOR, DEPARTMENT OF THE INTERIOR**

Mr. WIRTH. I think in opening up, Mr. Chairman, I would like to sketch briefly the efforts that have been made in the past, a little bit about the park, some of the plans we have, the economic values, and what the people in the Virgin Islands think of it.

First, we had considered this park back in the thirties, and in 1939 we had a report made of the area and were proceeding to bring it to the attention of Congress with our recommendations. However, the war emergencies came along and that was never done.

Senator JACKSON. You say a study was made of it in 1939?

Mr. WIRTH. In 1938 and 1939 when we were operating the CCC program down there. I was down there at the time, and our man, Mr. Hubler, made a study for us. That laid dormant up until just a little over a year ago when Mr. Rockefeller had the same idea. A few years preceding that he had been on a cruise down there and had fallen in love with the island and bought Caneel Bay as a place to go to and make the place available for other visitors.

I met Mr. Rockefeller shortly after this idea occurred to him, and he was talking about it. He had read one of our earlier reports and found out that we had been interested in it. He wanted to know whether we were still interested. I told him we were as far as I knew, but I would not be in position to say definitely or make any recommendation on it until we had another study of the island, because so much time had elapsed since 1938, and I did not know exactly what conditions prevailed.

This study was made last year. In the meantime Mr. Rockefeller did go ahead and has bought about 5,000 acres with the idea that if the proposed park is authorized he would give everything that he has down there, including Caneel Bay. In order not to embarrass anybody, and knowing the full impact of national parks on land values and the local economy, he felt it would be wise to buy the land prior to park establishment. If the park is authorized, he would then make the donation. If it is not authorized, that would be something else. I want to make it clear, that his whole purpose is a gift to the public and that there is no personal profit involved.

Senator JACKSON. When did he start acquiring the land?

Mr. WIRTH. He acquired Caneel Bay about 3 years ago, and he started acquiring this land just last fall. He has now acquired about 5,000 acres of the proposed area.

His intention is to give everything that he has there. In fact, he has already transferred the title to the Jackson Hole Preserve, Inc., which is a nonprofit corporation organized under the laws of the State of New York for charitable, educational, and scientific purposes, including the purpose of restoring, protecting, and preserving for the benefit of the public the primitive grandeur and natural beauties of the landscape in areas notable for picturesque scenery, and particularly in the Jackson Hole area in the State of Wyoming, although the acquisitions by the corporation are not limited to Jackson Hole.

Senator JACKSON. How can they transfer it to a corporation for a purpose for which the corporation is not set up? That is a corporate entity set up for preserving land in the Jackson Hole National Monument, is it not?

Mr. WIRTH. No, sir. The corporation has that name, but its purposes are applicable anywhere in the United States. The corporation is acquiring the land on St. John Island. The money is given to the corporation and it acquires the land for the purpose of donating it to the Government if the proposed park is authorized.

I might say that through the years Mr. John D. Rockefeller, Jr., and now Mr. Laurance Rockefeller following his footsteps, have donated to the Government park purpose moneys, lands, improvements, and various other things amounting I believe to more than \$30 million.

For instance, in the Great Smokies he matched dollar for dollar the \$5 million raised by North Carolina and Tennessee.

Senator JACKSON. I know they have an outstanding record.

Mr. WIRTH. Everything he has down there, including Caneel Bay, is in the area to be transferred for the park if it is approved.

As to the island itself, it is an outstanding Caribbean island with only 700 people on it. I would like to tell you some facts about the island. It is located 1,400 miles southeast of New York and 50 miles east of Puerto Rico. I would like to point out that 1,400 miles is about half the distance between New York and San Francisco. Relatively, therefore, the proposed park is not as distant as many of the western parks.

As to the physical characteristics, the island of St. John is 19.2 square miles, or a little over 12,000 acres, about half the size of the District of Columbia. The highest point on the island is Bordeaux Mountain, 1,277 feet. Eighty-five percent of the island is covered with brush and second growth timber. There are only about three or four hundred acres of arable land, and that land is outside of the area we are proposing as the national park.

The lowest temperature down there ever recorded is 69, and the highest is 91. While you have a warm sun, you have cool evenings and nights. It is very delightful. It has about 50 inches of rainfall, mostly at night, and there is no clearly defined rainy season.

Perhaps one of the most interesting features is Coral Bay on the east side of the island, which has a beautiful harbor. The harbor is about a mile and a quarter across the mouth and about two and a half miles long.

As to the history, the island was apparently first sighted by Columbus in 1493. It was then inhabited by the Carib Indians, who probably came from South America. A German historian by the name of Oldendorp, records that the Indians were driven from the island in 1555 by Charles V of Spain.

The Virgin Islands were first settled in 1625 and St. John in 1684. Denmark claimed the island in 1687, but ownership was contested by Great Britain.

On March 25, 1717, the first permanent colony was established by the Danes at Coral Harbor on the east end of St. John, and they defied the British to drive them off. They had at that time 20 planters and 5 soldiers, and they built what is known as Fort Berg on the east end of the island. The ruins of the fort are still there.

Senator JACKSON. This is the Danish invasion you are talking about?

Mr. WIRTH. This is when the Danes took over the island, made the first permanent colony and defied the British to drive them off.

In 1733 there was a total of 38 planters on St. John and everything was apparently prosperous and gay, but there was slavery. On November 23, 1733, the slaves revolted, and the whites sought protection on what is now known as Caneel Bay Plantation. For about 4 months, the plantations of the island were pillaged, until they just ran rampant.

The French captured the slaves—some of whom killed themselves by jumping off the rocks. Slavery continued until 1848. Since the abolition of slavery, the economy of the island has deteriorated. Most of the island has now reverted to jungle.

The United States almost bought it in 1887, but the United States Senate refused to ratify a treaty that had been arranged by Secretary Seward and the Danish Government. In 1917 the United States bought St. John and certain other Virgin Islands.

Senator JACKSON. Bought it, together with the islands of St. Thomas and St. Croix.

Mr. WIRTH. Yes; bought those islands as a group.

That gives you a brief idea of the history. All through the islands there are ruins of the early plantations. There are also Indian stone writings.

We have pictures here, which Mr. Boyer will show a little later, showing the general character of the island. It has a beautiful shoreline with white-sand beaches and much of the forest is coming back, including mahoganies, bay, limes, coconuts, and numerous other species of tropical trees. There are no poisonous snakes on the island.

Another interesting feature is the fish and shell life of the coral reefs around the island.

Senator JACKSON. What disturbs me, Mr. Wirth, just looking at this, and having spent a day at Caneel Bay on St. John when I was in the Virgin Islands a few years back, is simply this: What is so unique about it that it should be made a national park? That is No. 1. The second thing I would like to know is, What percentage of the total acreage in the Virgin Islands is involved in this transfer?

Mr. WIRTH. I would like to show you this map, if I may, and I will try to explain it in such a way that it will be recorded properly. As to the grandeur of the island, the pictures will show that. Mr. Boyer has quite a few here.

This is Cruz Bay. A considerable number of the people live at Cruz Bay.

Mr. BOYER. This is a picture of Cruz Bay.

Senator JACKSON. Caneel Bay is where they have the cottages?

Mr. BOYER. Yes, sir. This is Caneel Bay. This is the point where the cottages are.

Mr. WIRTH. We are recommending that the park not exceed 9,500 acres, of which not more than 50 would be on St. Thomas, which is principally for a dock and utility area and a parking place, and not to exceed a thousand acres of the surrounding rocks and cays, nearly all of which are uninhabited. The rest of St. John Island, which would be about one-third, is the land that is usable for agriculture and settlement, and would not be included in the proposed park. We would expect that the park would attract people to the island and that these lands outside the park would leave room for the building of accommodations to take care of the people rather than having to provide additional accommodations at Caneel Bay.

Senator JACKSON. Two-thirds of the island is involved in this proposal?

Mr. WIRTH. That is right.

Senator JACKSON. You have 50 acres over on the island of St. Thomas?

Mr. WIRTH. Yes; purely a jumping-off place—a place where we can have a utility area and dock and to permit parking. Perhaps less land will be required there.

Senator JACKSON. I agree it is a beautiful place, but I can take you up on some of the islands of San Juan that program just as distinctive beauty as this particular island. I do not really in my own mind understand what in particular stands out that makes it worthy of national park status.

Mr. WIRTH. The combination of tropical plant and animal life, the colorful channels between the islands, the fish and invertebrate life of the coral reefs, the beautiful beaches and superb scenic views as well as the historic and prehistoric structures—all are different from anything in any of the national parks at the present time. I have never seen anything that equals it.

Senator JACKSON. Not in any of the national parks, but in other islands in the Caribbean.

Mr. WIRTH. I do not know of any other that would exceed this, and I have been over to Puerto Rico and all the Virgin Islands that we have anything to do with.

Senator BIBLE. How many people would you estimate would visit there a year?

Mr. WIRTH. It would be hard to say how many would, but I would say that within the next 4 or 5 years there would be at least fifty or one hundred thousand people come down there.

Senator JACKSON. How many are visiting there now?

Mr. WIRTH. Practically none.

Senator JACKSON. The only way, Senator Bible, as I understand it, that you can get to the island—at least it was a while back—is by small motor launch from the island of St. Thomas. Is that correct, Mr. Boyer?

Mr. BOYER. Yes.

Senator JACKSON. It has been set up as rather an exclusive honey-moon isle. It is completely isolated, and has a very beautiful harbor at Caneel Bay. They have beautiful sand, and wonderful beaches and a lot of fine plant growth on the island, but I just wonder what makes it so particularly unique. We are talking about a national park. There are many beautiful places in the Western Hemisphere.

Mr. WIRTH. This picture, in color, will give you some idea of the kind of thing you have down there. I do not know where you see anything like that in Puerto Rico [indicating].

Senator JACKSON. Over on the island of St. Thomas there are a number of similar sites.

Mr. WIRTH. St. Thomas is all being developed. It is the center of population; whereas St. John is being made available for national park purposes, which would be putting the land to its best economic use.

Senator JACKSON. Can you leave these with the committee temporarily to be returned later?

Mr. BOYER. I can, but all those are not of the island. I would be delighted to leave this, but I just would like to point out that they are not all of St. John.

Senator JACKSON. Some of these are St. Thomas.

Mr. BOYER. Yes, and some are on San Juan.

Senator BIBLE. What would it cost to maintain this a year?

Mr. WIRTH. We estimate \$60,000 a year.

Senator JACKSON. How much money are we going to have to spend in improvements?

Mr. WIRTH. We estimate that the total amount of improvements, leaving these lands out for taking care of the people outside the park, would cost us over the period of the next 4 or 5 years about \$120,000.

Senator JACKSON. Would that be your master plan, the total?

Mr. WIRTH. Yes. We have not made a detailed plan, but we did make an estimate.

Senator JACKSON. \$120,000?

Mr. WIRTH. Yes.

Senator JACKSON. We have quite a time, as you know, with appropriations for the operation and maintenance of parks. I think both of us have had a little experience on that. I served on the House Appropriations Committee for a long time.

Mr. WIRTH. That is true.

Senator JACKSON. We have \$60,000 here for operation and maintenance. Every year that will be added on to the sum total.

Mr. WIRTH. I would like to point out a fact here. I was anticipating the possibility of the question of money and I made a few notes here. There have been certain surveys made, in which the committee will be interested. I maintain that the parks are set aside and preserved for human enjoyment. That is their main value.

However, there is a byproduct to the parks that we do not fully realize. Here is a research study of the Stanford Research Institute, Mountain States division, Phoenix, Ariz., from which I would like to read an excerpt, as follows:

Coconino County, in the heart of northern Arizona, has the greatest future potential for growth, barring the discovery of important mineral resources elsewhere. Its greatest resources are scenic and climatic, although timber and grazing lands are important for the lumber and livestock industry they support. The tourist industry accounts, directly or indirectly, for approximately 50 percent of the Coconino County's total income.

The economy of northern Arizona is dependent to a much greater extent upon tourist travel than is that of the southern counties, and northern Arizona's future growth and prosperity are largely dependent upon development of resources which attract out-of-State visitors. Some 35 percent of its retail sales are direct tourist expenditures, against less than 15 percent of retail sales attributed directly to tourists for the State as a whole.

Senator JACKSON. I agree with you, but that is like a grant-in-aid to the States. Secretary Humphrey does not get any of the income which you mention nor does it help to balance the Federal budget. We can account for it if the money came directly into the Park Service and into the Department of Interior, and I think we would be in much better shape, and I am completely in sympathy with what you say.

However, when we get up on the floor of the Senate and we have the Interior appropriation bill up, we find it a bit of a problem because here is an additional item for operation and maintenance, you see.

Mr. WIRTH. We are confronted with this everywhere we go, and the States realize the value of these areas. Here is a report on Yellowstone made in 1950 by the State of Wyoming.

Senator JACKSON. I have used the same argument in justifying my support of Olympic National Park, and I am in complete sympathy with you. The only problem that we have is when we get on the floor,

here is \$60,000 more and here is \$120,000 additional in the next 4 or 5 years for construction; and the problem that I have noticed, Senator Bible, when I was in the House especially, is this constant attrition of funds. We have to fight all the time to maintain and keep our parks in decent shape. Our roads and our trails, of existing parks, have been declining over a long period of time.

It is an argument that we have to face on the floor. I would not want you to think, Mr Wirth, because I asked adverse questions that that necessarily indicates my final point of view. I am here to try to get some information that might be helpful later.

Mr. WIRTH. I am glad that you are asking because I would like to get it in the record. They say that figures lie sometimes, and liars figure, and so forth and so on, but the Bureau of Internal Revenue now states that 28 cents out of every dollar that is spent goes in some form of taxes.

Here is this report in 1950 saying that at Yellowstone and vicinity the traveling public, there in that 1 year, spent \$18,996,000. If Internal Revenue's statement is correct, \$4,700,000 went into taxes of various kinds.

Senator JACKSON. Of course, a lot of this money is for local taxes.

Mr. WIRTH. But it creates an income value for the Virgin Islands, which is important, and will reduce the amount of money, I think, in the long run that Uncle Sam will have to give to help the islands. Nevertheless, I do not like to emphasize the money angle, since we are concerned with scenic and other recreational resources and their value to present and future generations keeping some of the native scenery that the good Lord blessed us with for public enjoyment.

To emphasize the size of the proposed park, I took the 9,500 acres and indicated on different national-park maps the relatively small amount of land we are talking about.

Senator JACKSON. Yes, but it is all relative. How many acres are there in the Virgin Islands group?

Mr. WIRTH. St. John is the smallest island. Do you know how many acres there are in St. Thomas and St. Croix?

Mr. ARNOLD. I believe there are approximately 70,000 acres.

Mr. FRENCH. Overall.

Senator JACKSON. The whole aggregate.

Mr. EDWARDS. A little over 85,000 acres for the whole aggregate of the American Virgin Islands.

Mr. WIRTH. I do want to say this, though, that St. John Island has practically no industry on it at the present time. There are 600 or 700 people living there. There is one Senator from the St. John district.

Senator JACKSON. How many people are there on the island of St. John?

Mr. WIRTH. Between 600 and 700 on the island of St. John.

Senator JACKSON. The total population of the Virgin Islands about 30,000; is it not?

Mr. ARNOLD. 27,000.

Senator JACKSON. You see this involves 9,500 acres out of a total of 85,000. It is roughly one-ninth the area of the islands.

Mr. WIRTH. If you will notice from those pictures we showed you, there are no particularly good land use potentialities within the proposed park. It is rugged.

Senator JACKSON. As I recall the history of the island of St. John—you mentioned it in part—back in, I thought it was in the 1800's, they had this massacre that occurred on the island during a time that they were engaged in sugarcane production.

Mr. WIRTH. They had the island largely cleared. There were 38 plantations on the island at that time in 1733 when they had the uprising of the slaves.

Senator JACKSON. They were producing sugarcane?

Mr. WIRTH. Yes.

Senator JACKSON. And the production of sugarcane in that area was profitable at that time solely because of slave labor?

Mr. WIRTH. That is right.

Senator JACKSON. And with the elimination of slave labor, it was no longer economically feasible to produce sugarcane, and the last remaining sugarcane produced in the Virgin Island group was on the island of St. Croix? There is still some production, but it has declined, too, with the elimination of the rum business.

Mr. WIRTH. Here is a picture of one of the old plantation houses up in the woods. They lived well, the 38 planters there.

Senator JACKSON. Are you going to rehabilitate any of those old places?

Mr. WIRTH. No. We will have trails into certain of them and into the areas that had the old forts, to explain the history and how the people lived at that time.

Senator JACKSON. That is a part of the \$120,000 estimate of construction costs over a period of years, and it is a \$60,000 annual maintenance cost?

Mr. WIRTH. Yes. There is very limited transportation on the island and most likely the transportation on the island will consist of improvement of minor roads [indicating] that now exist, and trails.

Senator JACKSON. Is it intended that the island remain somewhat in its present capacity rather primitive, and restrict the traffic, ocean or water traffic, into the island?

Mr. WIRTH. We hope to get more traffic over the island and more people here [indicating] and spending their summers there or their winters there in visiting and using the beaches, but the part we have will be kept in its natural condition, which would be the attraction, and the area left out will be the part put to commercial use by the various business enterprises that would be developed in order to take care of the people that come over there.

In other words, we are leaving them out of Government control entirely as far as we are concerned, to develop their accommodations outside as we are doing in several of the parks. The Great Smoky Mountains is one of them. The Everglades is another one. We would leave business interests out of the park so they would not be under our supervision. In Yellowstone, because of its size, we always have had concessioners, and in Yosemite, also. In the proposed Virgin Islands National Park most of the development to take care of the people would be on the edge and on the outside of the park.

Senator JACKSON. Who would operate the concessions in this proposed park?

Mr. WIRTH. It would be operated similar to the way we are working with the Jackson Hole Preserve, Inc., in Grand Teton National



Park. They have a separate company that is incorporated and pays all the taxes, but any money the separate company makes goes to the Jackson Hole Preserve, Inc., for nonprofit, park purposes.

Senator JACKSON. In other words, the Rockefellers would have business interests there operated through this nonprofit corporation, and all earnings would be used for acquisition, maybe, of additional lands, but at least for a nonprofit objective? Is that correct?

Mr. BOYER. Definitely, yes, sir; absolutely.

Senator JACKSON. As I said earlier, I think it is wonderful what the Rockefeller family has done. I am completely familiar with what they have done in the past. I am sure, just for the record, it ought to be made clear that the Rockefeller interests have nothing to gain privately. I ask it just so the record is clear and no one can get up and say that this is a charitable contribution on one hand and a private venture on the other. The Rockefeller Corp., this nonprofit corporation that you referred to earlier, would be set up to assist in providing facilities either in or adjacent to the park to encourage people to come into the park?

Mr. WIRTH. The way they work it is this: The money is put in the Jackson Hole Preserve, Inc., which provides the improvements: the operation of the lodge is by a regular corporation that pays taxes, and any money that the operating company makes goes back to the Jackson Hole Preserve.

Senator JACKSON. Would it be a private corporation?

Mr. WIRTH. Yes. It would be a corporation controlled by the Jackson Hole Preserve, Inc. The reason that is done is to permit the operating company to pay all the taxes that the community or State would otherwise get for such operations.

Senator JACKSON. It would be a private corporation, not a nonprofit corporation, but the net earnings after payment of taxes would go to the nonprofit corporation, the Jackson Hole Preserve?

Mr. BOYER. Caneel Bay Plantation, Inc., which operates the resort facility at the present time, is a wholly owned subsidiary of Jackson Hole Preserve, Inc.; Jackson Hole Preserve, Inc., owns all the stock. Mr. Laurance Rockefeller purchased the stock but gave it all to Jackson Hole, Inc., as of January 10 of this year.

In other words, Mr. Rockefeller has no personal interest of any kind in this project.

Senator JACKSON. What is the name of the corporation?

Mr. BOYER. Caneel Bay Plantation, Inc.

Senator JACKSON. Is it set up as a private corporation?

Mr. BOYER. It is a private corporation; yes, sir.

Senator JACKSON. However, all of the capital stock of that company is, in turn, owned by the nonprofit corporation, the Jackson Hole Preserve, Inc.?

Mr. BOYER. Yes, sir.

Senator JACKSON. And the earnings, therefore, of the private corporation would inure to the benefit of the nonprofit corporation?

Mr. BOYER. Definitely.

Senator JACKSON. So that it is merely a business device to carry on the functions in that area so that the local government will have the benefit of taxes that would normally accrue to any private enterprise?

Mr. BOYER. Yes, sir.

Senator JACKSON. I mean that would normally accrue from a private enterprise to the island?

Mr. BOYER. Yes, sir.

Senator JACKSON. Otherwise, you could set it up as a nonprofit corporation, but what you are doing is trying to help the local government, assist them in taxes and so on?

Mr. BOYER. Yes, sir. It is the same arrangement which is employed in Jackson Hole at Grand Teton. As Director Wirth has said, the Grand Teton Lodge and Transportation Co. owns the Jackson Lake Lodge, which is the new hotel opening on June 12 of this year. It is a wholly owned subsidiary of Jackson Hole Preserve, Inc.

Senator JACKSON. We will have you as the next witness after Mr. Wirth to find out what the plans are in the way of development and so on from the standpoint of the Caneel Bay Co.

Mr. WIRTH. I do not have anything else to say, sir, except that the Governor of the Virgin Islands is in favor of the proposed park.

Senator JACKSON. Who is the present Governor?

Mr. WIRTH. Governor Alexander. He has been there 1 year now.

Mr. FRENCH. He took office a year ago in April.

Senator JACKSON. Is he the one from the Middle West?

Mr. FRENCH. Yes, the Des Moines, Iowa, contractor.

Mr. WIRTH. The member of the Virgin Islands Senate from St. John is also in favor of it, and, we have so been informed, the local newspaper on St. Croix and St. Thomas. They not only reported the news very accurately and favorably, but they also have written editorials in support of it, and I think it might be well, if I may, to incorporate those in your record. I will not take time to read them, but they are all very favorable.

(The news articles referred to follow: )

[From the Daily News, Charlotte Amalie, V. I., Saturday, November 20, 1954].

**L. S. ROCKEFELLER OFFERS UNITED STATES A VIRGIN ISLANDS PARK—HE SEEKS TO PRESERVE THE UNSPOILED BEAUTY OF ST. JOHN 'PARADISE'—NO RESIDENT TO BE DISPLACED**

(By Morris Kaplan)

Laurence S. Rockefeller has acquired options to purchase about half of the scenic island of St. John in the Virgin Islands. The third son of John Rockefeller, Jr., affirmed yesterday reports that he would like eventually to have two-thirds of the island's 12,700 acres accepted as a national park.

Back from a 5-day examination of the green hills and white beaches of the Caribbean isle, Mr. Rockefeller reported that Conrad Wirth, director of the National Park Service, had expressed interest in the project.

Mr. Wirth accompanied Mr. Rockefeller and Frank Stick, noted ichthyologist and conservationist of Kitty Hawk, N. C., on the trip to Caneel Bay Plantation, a 650-acre resort area bought by Mr. Rockefeller in 1952 from the Rhode Island Charities Trust.

Mr. Stick and two associates own 1,500 acres on the island.

The plan for a national park on St. John, the smallest of the three Virgin Islands bought by the United States from Denmark in 1917 for \$25 million, was first broached in 1939 by Harold A. Hubler, an officer of the Park Service, but the idea was tabled.

Mr. Rockefeller's interest was whetted by a trip he made 3 years ago in his 65-foot cabin cruiser, *Dauntless*, with his wife, the former Mary French, and friends. They had been voyaging in the Lesser Antilles and sailed into St. John from British-owned Antigua.

"I found the combination of mountains, beaches and sea unique in the Caribbean," Mr. Rockefeller said: "The unspoiled nature of the area appealed to me and I wish to preserve it against overdevelopment."

He mentioned the larger Virgin Island of St. Thomas and St. Croix, where, he said, commercial ventures and the tourist trade had increased. Long interested in the conservation of scenic areas, he said he was disturbed that the most beautiful areas of St. John might some day be altered so as to destroy their natural beauty.

He read the Hubler report and discussed it with Mr. Wirth. As a result of their trip, Mr. Wirth has reaffirmed the interest of the National Park Service, "but we have no assurances at all," Mr. Rockefeller cautioned.

A national park must be approved by an act of Congress.

While the project now is in the planning and development stage, Mr. Rockefeller reported that Mr. Wirth would report to Secretary of the Interior Douglas McKay. He said he had acquired through Jackson Hole Preserve, Inc., a number of options of St. John and would discuss plans informally next month with Mr. Wirth, Mr. McKay and Archie A. Alexander, Governor of the Virgin Islands.

#### ISLAND HAS ONLY 700 RESIDENTS

Should a national park be approved, Mr. Rockefeller said, it would not displace anyone, would allow for the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay, and would not in any way adversely affect the livelihood of the 700 persons on the island.

Of that number there are 350 Negroes and 50 whites, of whom 25 are major property owners, he reported. The taxes amount to \$7,500 annually, he said.

Mr. Rockefeller envisaged a plan whereby he would transfer ownership of the acreage acquired, including his Caneel Bay property, to Jackson Hole Preserve, Inc. This is an agency previously used by the Rockefeller family to create and expand such projects as the Grand Teton National Park, Wyo., the redwoods of California, and several of the country's national parks, including Acadia, Maine; Great Smoky Mountains, Tennessee-North Carolina, and Shenandoah, Va.

Mr. Rockefeller gave assurance that existing settlements would not be disturbed. His associates reported that at least 4,000 acres in the Cruz Bay and Coral Bay areas would not be included in the projected park, thus leaving 8,000 acres for conservation purposes.

#### MUCH WORK UNDERWAY

He has already spent a substantial sum, it was reported, in developing the Caneel Bay area and its hotel, now able to accommodate 48 guests. The hotel is being doubled in size, a new sewer system and powerplant are being installed as well as a water catchment and new employees' quarters.

The roads and docks are being enlarged and extensive landscaping of the shore is planned. Mr. Rockefeller is also restoring a sugar mill built in 1810.

The park project's cost will run "into the millions" but close associates of Mr. Rockefeller said it would be impossible to estimate the total cost.

St. John, one of the leeward islands in the Caribbean chain, is 1,442 miles southeast of New York and 40 miles east of Puerto Rico. Nine miles long and 5 miles wide, it is covered by bush and second growth timber, including such trees as mahogany, bay, coconut, ebony, tamarind, mango, and lime.

It rises abruptly from the sea, its highest elevation, 1,277 feet. The island is accessible only by boat, but nearby St. Thomas and St. Croix have airports.

#### "PARADISE," SAYS ROCKEFELLER

Mr. Hubler's report described St. John as "by far the most beautiful" of the Virgin Islands.

"The pure white sand of her north side beaches makes a perfect contrast between the green of her wooded hills and the turquoise waters washing her shores," he wrote.

Mr. Rockefeller yesterday agreed that it was "a paradise."

The passage between St. John and British Tortola takes its name from Sir Francis Drake or "El Drague," as the Spaniards called him. Sir Francis was the first to sail through its tortuous channels, in 1580.

Christopher Columbus, the first white man to see St. John, in 1493, christened it "The Eleven Thousand Virgins," Mr. Hubler reported. It was not settled until 1684. In 1687 the Danish West India and Guinea Co. laid claim into St. John

but it was not until March 25, 1717, that the first permanent colony was established there.

Life went smoothly for 3,000 whites until November 23, 1733, when the 2,500 slaves revolted. French soldiers from the island of Martinique quelled the riot eventually, and carried off the Negroes to slavery.

With the abolition of slavery it became impossible to keep up the old estates, so the island reverted to bush, the white owners departed and for years the natives have eked out a meager existence from fishing and gathering bay leaf for bay rum.

St. John was well known in the days of piracy and buccaneering because of her excellent harbors. There are, of course, many tales of pirate treasure buried on the island.

Mr. Rockefeller, 44 years old, has long been associated with conservation organizations. He is a trustee and second vice president of the New York Zoological Society, trustee of the Conservation Foundation, director of the Hudson River Conservation Society, commissioner and secretary of the Palisades Interstate Park Commission, and president of Jackson Hole Preserve.

He is president of Rockefeller Brothers, Inc., an investment and research organization, and chairman of the board of Rockefeller Center, Inc., a post previously held by his brother, Nelson.

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[From the Daily News, Charlotte Amalie, V. I., Monday, November 22, 1954]

#### NATURAL PARK FOR ST. JOHN

Laurence S. Rockefeller, owner of Caneel Bay and chairman of the board of Rockefeller Center, Inc., has taken option to purchase nearly half of the island of St. John which he plans to give to the Federal Government to establish a national park. Mr. Rockefeller's chief interest is the preservation of the scenic area of the island.

According to the plan as outlined it will not be necessary to relocate any of the residents nor would the development of the park hinder the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay. The work at present being done on the resort area of Caneel Bay is a good indication of the future envisioned by this great financier.

Mr. Rockefeller has long been associated with development of this kind throughout the United States. He is president of Rockefeller Brothers, Inc., an investment research organization, which has financed such projects as the Grand Teton National Park, Wyo.; the Red Woods of California; and several of the country's national parks including Arcadia, Mo.; Great Smoky Mountains, Tenn. and N. C., and Shenandoah in Virginia.

In recent years visitors to the islands have shown great concern over the fact that most of the natural beauty and scenic charm of St. Thomas and St. Croix are being destroyed. Many of these persons who spend several months each year in St. Thomas or St. Croix are finding the peace and quiet that they seek in the many resort areas of the islands, in St. John. It is this fact more than any other that prompts the present plan to insure that St. John's natural beauty might not be destroyed.

Some people might be misled into the belief that the residents in that island will be placed in a less favorable position by this development. As we see it, it is the most fortunate thing that has happened to St. John in several decades. The development of a natural park would bring new activity to the small island and improve the economic condition. That island will become one of the principal showplaces for tourists and should boost the tourist program to large proportions. This cultural development will also attract a better type of visitors to the island.

We hope that the administration and the legislature will cooperate fully in bringing about this most significant development for the benefit of the entire Virgin Islands.

[From the St. Croix Avis, St. Croix, V. I., U. S. A., Saturday, November 27, 1954]

#### ISLAND "PARADISE"

Laurence S. Rockefeller's announcement that he will offer much of St. John as a national park is perhaps the most significant news to come out of these shores in many a day. The importance of the news can be determined by the wide coverage given to it by the national press, led by the New York Times.

such properties should be made available for the park, may be transferred without further authorization to the Secretary by such agency for purposes of this Act;

(f) Establishment of the Virgin Islands National Park, in its initial phase, shall be and is hereby declared to be accomplished and effective for purposes of administration when a minimum acreage of not less than 5,000 acres in Federal ownership for purposes of this Act shall have been acquired by the United States in specific areas containing such acquired lands to be designated by the Secretary; and

(g) Notice of the establishment of the park as authorized and prescribed by this Act shall be published in the Federal Register.

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D. C., April 14, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs, United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of this Bureau on S. 1604, a bill to authorize the establishment of the Virgin Islands National Park, and for other purposes.

The bill authorizes a park of not to exceed 9,500 acres of land area. Of this total, not more than 50 acres may be on the island of St. Thomas, not more than 9,450 acres on the island of St. John, and not more than 1,000 acres on small islands, rocks, and cays in the general vicinity of St. John. The Secretary of the Interior is authorized to accept donations of real and personal property within the areas selected for the park, and also to accept donations of funds for park purposes. The park shall be considered established when a minimum of 5,000 acres have been acquired.

Mr. Laurence S. Rockefeller recently purchased over 5,000 acres on the island of St. John which he has offered to give to the United States for park purposes. Thus, if S. 1604 is enacted into law, the Government can acquire without cost sufficient lands to establish the park. The National Park Service estimates that annual cost of operation and maintenance will approximate \$60,000.

The greatest assets of the Virgin Islands are their scenic beauty and remarkably fine year-round climate. Exploitation of these assets through development of the tourist industry should materially improve the economic condition of the islands, an contribute to their eventual self-support. Establishment of a national park in the islands should make a major contribution to the development of a thriving tourist industry.

Accordingly, the Bureau of the Budget recommends that your committee give favorable consideration to this bill.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

Senator JACKSON. I am sorry, gentlemen, that we are in rather cramped quarters this morning. We are having another committee meeting in the other room, but as long as we can get some work done, I assume you do not mind. As a matter of fact, as far as I am concerned, I enjoy it.

Mr. Wirth, do you care to make a statement?

**STATEMENTS OF CONRAD L. WIRTH, DIRECTOR, NATIONAL PARK SERVICE; WILLIAM ARNOLD, ASSISTANT DIRECTOR, OFFICE OF TERRITORIES, IN CHARGE OF ISLAND AFFAIRS; AND A. M. EDWARDS, ASSOCIATE SOLICITOR, DEPARTMENT OF THE INTERIOR**

Mr. WIRTH. I think in opening up, Mr. Chairman, I would like to sketch briefly the efforts that have been made in the past, a little bit about the park, some of the plans we have, the economic values, and what the people in the Virgin Islands think of it.

First, we had considered this park back in the thirties, and in 1939 we had a report made of the area and were proceeding to bring it to the attention of Congress with our recommendations. However, the war emergencies came along and that was never done.

Senator JACKSON. You say a study was made of it in 1939?

Mr. WIRTH. In 1938 and 1939 when we were operating the CCC program down there. I was down there at the time, and our man, Mr. Hubler, made a study for us. That laid dormant up until just a little over a year ago when Mr. Rockefeller had the same idea. A few years preceding that he had been on a cruise down there and had fallen in love with the island and bought Caneel Bay as a place to go to and make the place available for other visitors.

I met Mr. Rockefeller shortly after this idea occurred to him, and he was talking about it. He had read one of our earlier reports and found out that we had been interested in it. He wanted to know whether we were still interested. I told him we were as far as I knew, but I would not be in position to say definitely or make any recommendation on it until we had another study of the island, because so much time had elapsed since 1938, and I did not know exactly what conditions prevailed.

This study was made last year. In the meantime Mr. Rockefeller did go ahead and has bought about 5,000 acres with the idea that if the proposed park is authorized he would give everything that he has down there, including Caneel Bay. In order not to embarrass anybody, and knowing the full impact of national parks on land values and the local economy, he felt it would be wise to buy the land prior to park establishment. If the park is authorized, he would then make the donation. If it is not authorized, that would be something else. I want to make it clear, that his whole purpose is a gift to the public and that there is no personal profit involved.

Senator JACKSON. When did he start acquiring the land?

Mr. WIRTH. He acquired Caneel Bay about 3 years ago, and he started acquiring this land just last fall. He has now acquired about 5,000 acres of the proposed area.

His intention is to give everything that he has there. In fact, he has already transferred the title to the Jackson Hole Preserve, Inc., which is a nonprofit corporation organized under the laws of the State of New York for charitable, educational, and scientific purposes, including the purpose of restoring, protecting, and preserving for the benefit of the public the primitive grandeur and natural beauties of the landscape in areas notable for picturesque scenery, and particularly in the Jackson Hole area in the State of Wyoming, although the acquisitions by the corporation are not limited to Jackson Hole.

Senator JACKSON. How can they transfer it to a corporation for a purpose for which the corporation is not set up? That is a corporate entity set up for preserving land in the Jackson Hole National Monument, is it not?

Mr. WIRTH. No, sir. The corporation has that name, but its purposes are applicable anywhere in the United States. The corporation is acquiring the land on St. John Island. The money is given to the corporation and it acquires the land for the purpose of donating it to the Government if the proposed park is authorized.

I might say that through the years Mr. John D. Rockefeller, Jr., and now Mr. Laurance Rockefeller following his footsteps, have donated to the Government park purpose moneys, lands, improvements, and various other things amounting I believe to more than \$30 million.

For instance, in the Great Smokies he matched dollar for dollar the \$5 million raised by North Carolina and Tennessee.

Senator JACKSON. I know they have an outstanding record.

Mr. WIRTH. Everything he has down there, including Caneel Bay, is in the area to be transferred for the park if it is approved.

As to the island itself, it is an outstanding Caribbean island with only 700 people on it. I would like to tell you some facts about the island. It is located 1,400 miles southeast of New York and 50 miles east of Puerto Rico. I would like to point out that 1,400 miles is about half the distance between New York and San Francisco. Relatively, therefore, the proposed park is not as distant as many of the western parks.

As to the physical characteristics, the island of St. John is 19.2 square miles, or a little over 12,000 acres, about half the size of the District of Columbia. The highest point on the island is Bordeaux Mountain, 1,277 feet. Eighty-five percent of the island is covered with brush and second growth timber. There are only about three or four hundred acres of arable land, and that land is outside of the area we are proposing as the national park.

The lowest temperature down there ever recorded is 69, and the highest is 91. While you have a warm sun, you have cool evenings and nights. It is very delightful. It has about 50 inches of rainfall, mostly at night, and there is no clearly defined rainy season.

Perhaps one of the most interesting features is Coral Bay on the east side of the island, which has a beautiful harbor. The harbor is about a mile and a quarter across the mouth and about two and a half miles long.

As to the history, the island was apparently first sighted by Columbus in 1493. It was then inhabited by the Carib Indians, who probably came from South America. A German historian by the name of Oldendorp, records that the Indians were driven from the island in 1555 by Charles V of Spain.

The Virgin Islands were first settled in 1625 and St. John in 1684. Denmark claimed the island in 1687, but ownership was contested by Great Britain.

On March 25, 1717, the first permanent colony was established by the Danes at Coral Harbor on the east end of St. John, and they defied the British to drive them off. They had at that time 20 planters and 5 soldiers, and they built what is known as Fort Berg on the east end of the island. The ruins of the fort are still there.

Senator JACKSON. This is the Danish invasion you are talking about?

Mr. WIRTH. This is when the Danes took over the island, made the first permanent colony and defied the British to drive them off.

In 1733 there was a total of 38 planters on St. John and everything was apparently prosperous and gay, but there was slavery. On November 23, 1733, the slaves revolted, and the whites sought protection on what is now known as Caneel Bay Plantation. For about 4 months, the plantations of the island were pillaged, until they just ran rampant.

The French captured the slaves—some of whom killed themselves by jumping off the rocks. Slavery continued until 1848. Since the abolition of slavery, the economy of the island has deteriorated. Most of the island has now reverted to jungle.

The United States almost bought it in 1887, but the United States Senate refused to ratify a treaty that had been arranged by Secretary Seward and the Danish Government. In 1917 the United States bought St. John and certain other Virgin Islands.

Senator JACKSON. Bought it, together with the islands of St. Thomas and St. Croix.

Mr. WIRTH. Yes; bought those islands as a group.

That gives you a brief idea of the history. All through the islands there are ruins of the early plantations. There are also Indian stone writings.

We have pictures here, which Mr. Boyer will show a little later, showing the general character of the island. It has a beautiful shoreline with white-sand beaches and much of the forest is coming back, including mahoganies, bay, limes, coconuts, and numerous other species of tropical trees. There are no poisonous snakes on the island.

Another interesting feature is the fish and shell life of the coral reefs around the island.

Senator JACKSON. What disturbs me, Mr. Wirth, just looking at this, and having spent a day at Caneel Bay on St. John when I was in the Virgin Islands a few years back, is simply this: What is so unique about it that it should be made a national park? That is No. 1. The second thing I would like to know is, What percentage of the total acreage in the Virgin Islands is involved in this transfer?

Mr. WIRTH. I would like to show you this map, if I may, and I will try to explain it in such a way that it will be recorded properly. As to the grandeur of the island, the pictures will show that. Mr. Boyer has quite a few here.

This is Cruz Bay. A considerable number of the people live at Cruz Bay.

Mr. BOYER. This is a picture of Cruz Bay.

Senator JACKSON. Caneel Bay is where they have the cottages?

Mr. BOYER. Yes, sir. This is Caneel Bay. This is the point where the cottages are.

Mr. WIRTH. We are recommending that the park not exceed 9,500 acres, of which not more than 50 would be on St. Thomas, which is principally for a dock and utility area and a parking place, and not to exceed a thousand acres of the surrounding rocks and cays, nearly all of which are uninhabited. The rest of St. John Island, which would be about one-third, is the land that is usable for agriculture and settlement, and would not be included in the proposed park. We would expect that the park would attract people to the island and that these lands outside the park would leave room for the building of accommodations to take care of the people rather than having to provide additional accommodations at Caneel Bay.

Senator JACKSON. Two-thirds of the island is involved in this proposal?

Mr. WIRTH. That is right.

Senator JACKSON. You have 50 acres over on the island of St. Thomas?



Mr. WIRTH. Yes; purely a jumping-off place—a place where we can have a utility area and dock and to permit parking. Perhaps less land will be required there.

Senator JACKSON. I agree it is a beautiful place, but I can take you up on some of the islands of San Juan that program just as distinctive beauty as this particular island. I do not really in my own mind understand what in particular stands out that makes it worthy of national park status.

Mr. WIRTH. The combination of tropical plant and animal life, the colorful channels between the islands, the fish and invertebrate life of the coral reefs, the beautiful beaches and superb scenic views as well as the historic and prehistoric structures—all are different from anything in any of the national parks at the present time. I have never seen anything that equals it.

Senator JACKSON. Not in any of the national parks, but in other islands in the Caribbean.

Mr. WIRTH. I do not know of any other that would exceed this, and I have been over to Puerto Rico and all the Virgin Islands that we have anything to do with.

Senator BIBLE. How many people would you estimate would visit there a year?

Mr. WIRTH. It would be hard to say how many would, but I would say that within the next 4 or 5 years there would be at least fifty or one hundred thousand people come down there.

Senator JACKSON. How many are visiting there now?

Mr. WIRTH. Practically none.

Senator JACKSON. The only way, Senator Bible, as I understand it, that you can get to the island—at least it was a while back—is by small motor launch from the island of St. Thomas. Is that correct, Mr. Boyer?

Mr. BOYER. Yes.

Senator JACKSON. It has been set up as rather an exclusive honeymoon isle. It is completely isolated, and has a very beautiful harbor at Caneel Bay. They have beautiful sand, and wonderful beaches and a lot of fine plant growth on the island, but I just wonder what makes it so particularly unique. We are talking about a national park. There are many beautiful places in the Western Hemisphere.

Mr. WIRTH. This picture, in color, will give you some idea of the kind of thing you have down there. I do not know where you see anything like that in Puerto Rico [indicating].

Senator JACKSON. Over on the island of St. Thomas there are a number of similar sites.

Mr. WIRTH. St. Thomas is all being developed. It is the center of population; whereas St. John is being made available for national park purposes, which would be putting the land to its best economic use.

Senator JACKSON. Can you leave these with the committee temporarily to be returned later?

Mr. BOYER. I can, but all those are not of the island. I would be delighted to leave this, but I just would like to point out that they are not all of St. John.

Senator JACKSON. Some of these are St. Thomas.

Mr. BOYER. Yes, and some are on San Juan.

Senator BIBLE. What would it cost to maintain this a year?

Mr. WIRTH. We estimate \$60,000 a year.

Senator JACKSON. How much money are we going to have to spend in improvements?

Mr. WIRTH. We estimate that the total amount of improvements, leaving these lands out for taking care of the people outside the park, would cost us over the period of the next 4 or 5 years about \$120,000.

Senator JACKSON. Would that be your master plan, the total?

Mr. WIRTH. Yes. We have not made a detailed plan, but we did make an estimate.

Senator JACKSON. \$120,000?

Mr. WIRTH. Yes.

Senator JACKSON. We have quite a time, as you know, with appropriations for the operation and maintenance of parks. I think both of us have had a little experience on that. I served on the House Appropriations Committee for a long time.

Mr. WIRTH. That is true.

Senator JACKSON. We have \$60,000 here for operation and maintenance. Every year that will be added on to the sum total.

Mr. WIRTH. I would like to point out a fact here. I was anticipating the possibility of the question of money and I made a few notes here. There have been certain surveys made, in which the committee will be interested. I maintain that the parks are set aside and preserved for human enjoyment. That is their main value.

However, there is a byproduct to the parks that we do not fully realize. Here is a research study of the Stanford Research Institute, Mountain States division, Phoenix, Ariz., from which I would like to read an excerpt, as follows:

Coconino County, in the heart of northern Arizona, has the greatest future potential for growth, barring the discovery of important mineral resources elsewhere. Its greatest resources are scenic and climatic, although timber and grazing lands are important for the lumber and livestock industry they support. The tourist industry accounts, directly or indirectly, for approximately 50 percent of the Coconino County's total income.

The economy of northern Arizona is dependent to a much greater extent upon tourist travel than is that of the southern counties, and northern Arizona's future growth and prosperity are largely dependent upon development of resources which attract out-of-State visitors. Some 35 percent of its retail sales are direct tourist expenditures, against less than 15 percent of retail sales attributed directly to tourists for the State as a whole.

Senator JACKSON. I agree with you, but that is like a grant-in-aid to the States. Secretary Humphrey does not get any of the income which you mention nor does it help to balance the Federal budget. We can account for it if the money came directly into the Park Service and into the Department of Interior, and I think we would be in much better shape, and I am completely in sympathy with what you say.

However, when we get up on the floor of the Senate and we have the Interior appropriation bill up, we find it a bit of a problem because here is an additional item for operation and maintenance, you see.

Mr. WIRTH. We are confronted with this everywhere we go, and the States realize the value of these areas. Here is a report on Yellowstone made in 1950 by the State of Wyoming.

Senator JACKSON. I have used the same argument in justifying my support of Olympic National Park, and I am in complete sympathy with you. The only problem that we have is when we get on the floor,

here is \$60,000 more and here is \$120,000 additional in the next 4 or 5 years for construction; and the problem that I have noticed, Senator Bible, when I was in the House especially, is this constant attrition of funds. We have to fight all the time to maintain and keep our parks in decent shape. Our roads and our trails, of existing parks, have been declining over a long period of time.

It is an argument that we have to face on the floor. I would not want you to think, Mr Wirth, because I asked adverse questions that that necessarily indicates my final point of view. I am here to try to get some information that might be helpful later.

Mr. WIRTH. I am glad that you are asking because I would like to get it in the record. They say that figures lie sometimes, and liars figure, and so forth and so on, but the Bureau of Internal Revenue now states that 28 cents out of every dollar that is spent goes in some form of taxes.

Here is this report in 1950 saying that at Yellowstone and vicinity the traveling public, there in that 1 year, spent \$18,996,000. If Internal Revenue's statement is correct, \$4,700,000 went into taxes of various kinds.

Senator JACKSON. Of course, a lot of this money is for local taxes.

Mr. WIRTH. But it creates an income value for the Virgin Islands, which is important, and will reduce the amount of money, I think, in the long run that Uncle Sam will have to give to help the islands. Nevertheless, I do not like to emphasize the money angle, since we are concerned with scenic and other recreational resources and their value to present and future generations keeping some of the native scenery that the good Lord blessed us with for public enjoyment.

To emphasize the size of the proposed park, I took the 9,500 acres and indicated on different national-park maps the relatively small amount of land we are talking about.

Senator JACKSON. Yes, but it is all relative. How many acres are there in the Virgin Islands group?

Mr. WIRTH. St. John is the smallest island. Do you know how many acres there are in St. Thomas and St. Croix?

Mr. ARNOLD. I believe there are approximately 70,000 acres.

Mr. FRENCH. Overall.

Senator JACKSON. The whole aggregate.

Mr. EDWARDS. A little over 85,000 acres for the whole aggregate of the American Virgin Islands.

Mr. WIRTH. I do want to say this, though, that St. John Island has practically no industry on it at the present time. There are 600 or 700 people living there. There is one Senator from the St. John district.

Senator JACKSON. How many people are there on the island of St. John?

Mr. WIRTH. Between 600 and 700 on the island of St. John.

Senator JACKSON. The total population of the Virgin Islands is about 30,000; is it not?

Mr. ARNOLD. 27,000.

Senator JACKSON. You see this involves 9,500 acres out of a total of 85,000. It is roughly one-ninth the area of the islands.

Mr. WIRTH. If you will notice from those pictures we showed you, there are no particularly good land use potentialities within the proposed park. It is rugged.

Senator JACKSON. As I recall the history of the island of St. John—you mentioned it in part—back in, I thought it was in the 1800's, they had this massacre that occurred on the island during a time that they were engaged in sugarcane production.

Mr. WIRTH. They had the island largely cleared. There were 38 plantations on the island at that time in 1733 when they had the uprising of the slaves.

Senator JACKSON. They were producing sugarcane?

Mr. WIRTH. Yes.

Senator JACKSON. And the production of sugarcane in that area was profitable at that time solely because of slave labor?

Mr. WIRTH. That is right.

Senator JACKSON. And with the elimination of slave labor, it was no longer economically feasible to produce sugarcane, and the last remaining sugarcane produced in the Virgin Island group was on the island of St. Croix? There is still some production, but it has declined, too, with the elimination of the rum business.

Mr. WIRTH. Here is a picture of one of the old plantation houses up in the woods. They lived well, the 38 planters there.

Senator JACKSON. Are you going to rehabilitate any of those old places?

Mr. WIRTH. No. We will have trails into certain of them and into the areas that had the old forts, to explain the history and how the people lived at that time.

Senator JACKSON. That is a part of the \$120,000 estimate of construction costs over a period of years, and it is a \$60,000 annual maintenance cost?

Mr. WIRTH. Yes. There is very limited transportation on the island and most likely the transportation on the island will consist of improvement of minor roads [indicating] that now exist, and trails.

Senator JACKSON. Is it intended that the island remain somewhat in its present capacity rather primitive, and restrict the traffic, ocean or water traffic, into the island?

Mr. WIRTH. We hope to get more traffic over the island and more people here [indicating] and spending their summers there or their winters there in visiting and using the beaches, but the part we have will be kept in its natural condition, which would be the attraction, and the area left out will be the part put to commercial use by the various business enterprises that would be developed in order to take care of the people that come over there.

In other words, we are leaving them out of Government control entirely as far as we are concerned, to develop their accommodations outside as we are doing in several of the parks. The Great Smoky Mountains is one of them. The Everglades is another one. We would leave business interests out of the park so they would not be under our supervision. In Yellowstone, because of its size, we always have had concessioners, and in Yosemite, also. In the proposed Virgin Islands National Park most of the development to take care of the people would be on the edge and on the outside of the park.

Senator JACKSON. Who would operate the concessions in this proposed park?

Mr. WIRTH. It would be operated similar to the way we are working with the Jackson Hole Preserve, Inc., in Grand Teton National

Park. They have a separate company that is incorporated and pays all the taxes, but any money the separate company makes goes to the Jackson Hole Preserve, Inc., for nonprofit, park purposes.

Senator JACKSON. In other words, the Rockefellers would have business interests there operated through this nonprofit corporation, and all earnings would be used for acquisition, maybe, of additional lands, but at least for a nonprofit objective? Is that correct?

Mr. BOYER. Definitely, yes, sir; absolutely.

Senator JACKSON. As I said earlier, I think it is wonderful what the Rockefeller family has done. I am completely familiar with what they have done in the past. I am sure, just for the record, it ought to be made clear that the Rockefeller interests have nothing to gain privately. I ask it just so the record is clear and no one can get up and say that this is a charitable contribution on one hand and a private venture on the other. The Rockefeller Corp., this nonprofit corporation that you referred to earlier, would be set up to assist in providing facilities either in or adjacent to the park to encourage people to come into the park?

Mr. WIRTH. The way they work it is this: The money is put in the Jackson Hole Preserve, Inc., which provides the improvements; the operation of the lodge is by a regular corporation that pays taxes, and any money that the operating company makes goes back to the Jackson Hole Preserve.

Senator JACKSON. Would it be a private corporation?

Mr. WIRTH. Yes. It would be a corporation controlled by the Jackson Hole Preserve, Inc. The reason that is done is to permit the operating company to pay all the taxes that the community or State would otherwise get for such operations.

Senator JACKSON. It would be a private corporation, not a nonprofit corporation, but the net earnings after payment of taxes would go to the nonprofit corporation, the Jackson Hole Preserve?

Mr. BOYER. Caneel Bay Plantation, Inc., which operates the resort facility at the present time, is a wholly owned subsidiary of Jackson Hole Preserve, Inc.; Jackson Hole Preserve, Inc., owns all the stock. Mr. Laurance Rockefeller purchased the stock but gave it all to Jackson Hole, Inc., as of January 10 of this year.

In other words, Mr. Rockefeller has no personal interest of any kind in this project.

Senator JACKSON. What is the name of the corporation?

Mr. BOYER. Caneel Bay Plantation, Inc.

Senator JACKSON. Is it set up as a private corporation?

Mr. BOYER. It is a private corporation; yes, sir.

Senator JACKSON. However, all of the capital stock of that company is, in turn, owned by the nonprofit corporation, the Jackson Hole Preserve, Inc.?

Mr. BOYER. Yes, sir.

Senator JACKSON. And the earnings, therefore, of the private corporation would inure to the benefit of the nonprofit corporation?

Mr. BOYER. Definitely.

Senator JACKSON. So that it is merely a business device to carry on the functions in that area so that the local government will have the benefit of taxes that would normally accrue to any private enterprise?

Mr. BOYER. Yes, sir.

Senator JACKSON. I mean that would normally accrue from a private enterprise to the island?

Mr. BOYER. Yes, sir.

Senator JACKSON. Otherwise, you could set it up as a nonprofit corporation, but what you are doing is trying to help the local government, assist them in taxes and so on?

Mr. BOYER. Yes, sir. It is the same arrangement which is employed in Jackson Hole at Grand Teton. As Director Wirth has said, the Grand Teton Lodge and Transportation Co. owns the Jackson Lake Lodge, which is the new hotel opening on June 12 of this year. It is a wholly owned subsidiary of Jackson Hole Preserve, Inc.

Senator JACKSON. We will have you as the next witness after Mr. Wirth to find out what the plans are in the way of development and so on from the standpoint of the Caneel Bay Co.

Mr. WIRTH. I do not have anything else to say, sir, except that the Governor of the Virgin Islands is in favor of the proposed park.

Senator JACKSON. Who is the present Governor?

Mr. WIRTH. Governor Alexander. He has been there 1 year now.

Mr. FRENCH. He took office a year ago in April.

Senator JACKSON. Is he the one from the Middle West?

Mr. FRENCH. Yes, the Des Moines, Iowa, contractor.

Mr. WIRTH. The member of the Virgin Islands Senate from St. John is also in favor of it, and, we have so been informed, the local newspaper on St. Croix and St. Thomas. They not only reported the news very accurately and favorably, but they also have written editorials in support of it, and I think it might be well, if I may, to incorporate those in your record. I will not take time to read them, but they are all very favorable.

(The news articles referred to follow:)

[From the Daily News, Charlotte Amalie, V. I., Saturday, November 20, 1954].

**L. S. ROCKEFELLER OFFERS UNITED STATES A VIRGIN ISLANDS PARK—HE SEEKS TO PRESERVE THE UNSPOILED BEAUTY OF ST. JOHN 'PARADISE'—NO RESIDENT TO BE DISPLACED**

(By Morris Kaplan)

Laurence S. Rockefeller has acquired options to purchase about half of the scenic island of St. John in the Virgin Islands. The third son of John Rockefeller, Jr., affirmed yesterday reports that he would like eventually to have two-thirds of the island's 12,700 acres accepted as a national park.

Back from a 5-day examination of the green hills and white beaches of the Caribbean isle, Mr. Rockefeller reported that Conrad Wirth, director of the National Park Service, had expressed interest in the project.

Mr. Wirth accompanied Mr. Rockefeller and Frank Stick, noted ichthyologist and conservationist of Kitty Hawk, N. C., on the trip to Caneel Bay Plantation, a 650-acre resort area bought by Mr. Rockefeller in 1952 from the Rhode Island Charities Trust.

Mr. Stick and two associates own 1,500 acres on the island.

The plan for a national park on St. John, the smallest of the three Virgin Islands bought by the United States from Denmark in 1917 for \$25 million, was first broached in 1939 by Harold A. Hubler, an officer of the Park Service, but the idea was tabled.

Mr. Rockefeller's interest was whetted by a trip he made 3 years ago in his 65-foot cabin cruiser, *Dauntless*, with his wife, the former Mary French, and friends. They had been voyaging in the Lesser Antilles and sailed into St. John from British-owned Antigua.

"I found the combination of mountains, beaches and sea unique in the Caribbean," Mr. Rockefeller said: "The unspoiled nature of the area appealed to me and I wish to preserve it against overdevelopment."

He mentioned the larger Virgin Island of St. Thomas and St. Croix, where, he said, commercial ventures and the tourist trade had increased. Long interested in the conservation of scenic areas, he said he was disturbed that the most beautiful areas of St. John might some day be altered so as to destroy their natural beauty.

He read the Hubler report and discussed it with Mr. Wirth. As a result of their trip, Mr. Wirth has reaffirmed the interest of the National Park Service, "but we have no assurances at all," Mr. Rockefeller cautioned.

A national park must be approved by an act of Congress.

While the project now is in the planning and development stage, Mr. Rockefeller reported that Mr. Wirth would report to Secretary of the Interior Douglas McKay. He said he had acquired through Jackson Hole Preserve, Inc., a number of options of St. John and would discuss plans informally next month with Mr. Wirth, Mr. McKay and Archie A. Alexander, Governor of the Virgin Islands.

#### ISLAND HAS ONLY 700 RESIDENTS

Should a national park be approved, Mr. Rockefeller said, it would not displace anyone, would allow for the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay, and would not in any way adversely affect the livelihood of the 700 persons on the island.

Of that number there are 350 Negroes and 50 whites, of whom 25 are major property owners, he reported. The taxes amount to \$7,500 annually, he said.

Mr. Rockefeller envisaged a plan whereby he would transfer ownership of the acreage acquired, including his Caneel Bay property, to Jackson Hole Preserve, Inc. This is an agency previously used by the Rockefeller family to create and expand such projects as the Grand Teton National Park, Wyo., the redwoods of California, and several of the country's national parks, including Acadia, Maine; Great Smoky Mountains, Tennessee-North Carolina, and Shenandoah, Va.

Mr. Rockefeller gave assurance that existing settlements would not be disturbed. His associates reported that at least 4,000 acres in the Cruz Bay and Coral Bay areas would not be included in the projected park, thus leaving 8,000 acres for conservation purposes.

#### MUCH WORK UNDERWAY

He has already spent a substantial sum, it was reported, in developing the Caneel Bay area and its hotel, now able to accommodate 48 guests. The hotel is being doubled in size, a new sewer system and powerplant are being installed as well as a water catchment and new employees' quarters.

The roads and docks are being enlarged and extensive landscaping of the shore is planned. Mr. Rockefeller is also restoring a sugar mill built in 1810.

The park project's cost will run "into the millions" but close associates of Mr. Rockefeller said it would be impossible to estimate the total cost.

St. John, one of the leeward islands in the Caribbean chain, is 1,442 miles southeast of New York and 40 miles east of Puerto Rico. Nine miles long and 5 miles wide, it is covered by bush and second growth timber, including such trees as mahogany, bay, coconut, ebony, tamarind, mango, and lime.

It rises abruptly from the sea, its highest elevation, 1,277 feet. The island is accessible only by boat, but nearby St. Thomas and St. Croix have airports.

#### "PARADISE," SAYS ROCKEFELLER

Mr. Hubler's report described St. John as "by far the most beautiful" of the Virgin Islands.

"The pure white sand of her north side beaches makes a perfect contrast between the green of her wooded hills and the turquoise waters washing her shores," he wrote.

Mr. Rockefeller yesterday agreed that it was "a paradise."

The passage between St. John and British Tortola takes its name from Sir Francis Drake or "El Draque," as the Spaniards called him. Sir Francis was the first to sail through its tortuous channels, in 1580.

Christopher Columbus, the first white man to see St. John, in 1493, christened it "The Eleven Thousand Virgins," Mr. Hubler reported. It was not settled until 1684. In 1687 the Danish West India and Guinea Co. laid claim into St. John.

but it was not until March 25, 1717, that the first permanent colony was established there.

Life went smoothly for 3,000 whites until November 23, 1733, when the 2,500 slaves revolted. French soldiers from the island of Martinique quelled the riot eventually, and carried off the Negroes to slavery.

With the abolition of slavery it became impossible to keep up the old estates, so the island reverted to bush, the white owners departed and for years the natives have eked out a meager existence from fishing and gathering bay leaf for bay rum.

St. John was well known in the days of piracy and buccaneering because of her excellent harbors. There are, of course, many tales of pirate treasure buried on the island.

Mr. Rockefeller, 44 years old, has long been associated with conservation organizations. He is a trustee and second vice president of the New York Zoological Society, trustee of the Conservation Foundation, director of the Hudson River Conservation Society, commissioner and secretary of the Palisades Interstate Park Commission, and president of Jackson Hole Preserve.

He is president of Rockefeller Brothers, Inc., an investment and research organization, and chairman of the board of Rockefeller Center, Inc., a post previously held by his brother, Nelson.

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[From the Daily News, Charlotte Amalie, V. I., Monday, November 22, 1954]

#### NATURAL PARK FOR ST. JOHN

Laurence S. Rockefeller, owner of Caneel Bay and chairman of the board of Rockefeller Center, Inc., has taken option to purchase nearly half of the island of St. John which he plans to give to the Federal Government to establish a national park. Mr. Rockefeller's chief interest is the preservation of the scenic area of the island.

According to the plan as outlined it will not be necessary to relocate any of the residents nor would the development of the park hinder the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay. The work at present being done on the resort area of Caneel Bay is a good indication of the future envisioned by this great financier.

Mr. Rockefeller has long been associated with development of this kind throughout the United States. He is president of Rockefeller Brothers, Inc., an investment research organization, which has financed such projects as the Grand Teton National Park, Wyo.; the Red Woods of California; and several of the country's national parks including Arcadia, Mo.; Great Smoky Mountains, Tenn. and N. C., and Shenandoah in Virginia.

In recent years visitors to the islands have shown great concern over the fact that most of the natural beauty and scenic charm of St. Thomas and St. Croix are being destroyed. Many of these persons who spend several months each year in St. Thomas or St. Croix are finding the peace and quiet that they seek in the many resort areas of the islands, in St. John. It is this fact more than any other that prompts the present plan to insure that St. John's natural beauty might not be destroyed.

Some people might be misled into the belief that the residents in that island will be placed in a less favorable position by this development. As we see it, it is the most fortunate thing that has happened to St. John in several decades. The development of a natural park would bring new activity to the small island and improve the economic condition. That island will become one of the principal showplaces for tourists and should boost the tourist program to large proportions. This cultural development will also attract a better type of visitors to the island.

We hope that the administration and the legislature will cooperate fully in bringing about this most significant development for the benefit of the entire Virgin Islands.

[From the St. Croix Avis, St. Croix, V. I., U. S. A., Saturday, November 27, 1954]

#### ISLAND "PARADISE"

Laurence S. Rockefeller's announcement that he will offer much of St. John as a national park is perhaps the most significant news to come out of these shores in many a day. The importance of the news can be determined by the wide coverage given to it by the national press, led by the New York Times.



There are at least two very good reasons why this project of Mr. Rockefeller is extremely important to the Virgin Islands as a whole. While plans are still in the making and many steps have to be taken with respect to the project, it is a virtual certainty that after the remainder of the land is acquired and the way cleared through the Governor and Secretary of the Interior, Congress will pass the bill.

First, such natural beauty as St. John has deserves to be preserved. We venture to say that the natural, unspoiled beauty of St. John is unmatched anywhere in the world, and the term "paradise" is therefore most appropriate as a description of it. Said Mr. Rockefeller, "The unspoiled nature of the area appealed to me, and I wish to preserve it against overdevelopment."

Second, with much of St. John as a national park, the fame and fortunes of these islands will rise. The National Park Service will no doubt carry out the proper program of development, and with that come employment and development to highlight what will be necessary. National parks are sources of great attraction, and St. John would be no exception.

These islands are, indeed, grateful to Mr. Rockefeller, whose purchase of much of the island will make possible the park project. And along with him go words of gratitude to Conrad Wirth, director of the National Park Service, and Frank Stick, noted conservationist. Mention must also be made of the initial idea thrown out by Harold A. Hubler, who in 1939 envisioned the possibility of St. John as a national park.

There is every justification for optimism and faith in the future; that men of vision and means will make their contribution to the enhancement and development of these islands in ways which will not only increase their resources but heighten that sense of gratification which comes only from the fulfillment of dreams and the satisfaction of a job well done.

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[From the Daily News, Charlotte Amalie, V. I., Monday, April 4, 1955]

**BILL AUTHORIZES 9,500 ACRES FOR VIRGIN ISLANDS NATIONAL PARK—50 ACRES IN ST. THOMAS, 1,000 ACRES IN SMALL ISLANDS, CAYS**

A bill introduced in the Senate by Senator Jackson authorizes the establishment of a national park in the Virgin Islands containing outstanding scenic and other features of national significance. The acreage of the park would be limited to 9,500 and comprised of not more than 50 acres in St. Thomas and 9,450 acres on the island of St. John including such rocks and cays not in excess of 1,000 acres in the general vicinity that may be desirable for inclusion within the park. This will constitute three-fourths of St. John which has approximately 12,000 acres.

The Secretary, on behalf of the United States would be authorized to accept donations of real and personal property within the areas selected for the park until the total acreage has been acquired.

Establishment of the park in its initial phase will be declared to be accomplished and effective when a minimum acreage of 5,000 is in Federal ownership.

The bill also transfers any Federal properties within the areas selected for the park without further authorization to the Secretary of the Interior by the agency now in possession of it.

Plans for a national park in the Virgin Islands which had been under consideration for several years were completed recently when Laurence Rockefeller, owner of Caneel Bay, concluded purchase of several thousand acres of land in the sparsely populated island to give to the Federal Government as a nucleus for a park because of the scenic value. The bill before the Senate is intended to complete this effort and provide the Virgin Islands with a park for the public benefit and inspiration, in accordance with the laws governing the administration of the national park.

Senator JACKSON. Who is unfavorable?

Mr. WIRTH. I do not know.

Senator JACKSON. Locally?

Mr. WIRTH. There are some people. We never get 100 percent, but I have not had any correspondence from them and do not know. I might say that this had pretty wide coverage in the United States, and I have also copies of the articles from the papers.

They cover such papers as the New York Times, the Herald Tribune, the Christian Science Monitor, New York Mirror, the Norfolk Pilot, the Philadelphia Inquirer, the Lincoln State Journal, the Hartford Courier, and the Cincinnati Enquirer. I think that covers my presentation, sir, unless there are some questions.

Senator JACKSON. Last year in the new organic act that we passed for the Virgin Islands, I think we made all the income from internal-revenue taxes and income-taxes available to the islands government on a matching basis. Would they have enough money to take care of a park on an annual maintenance basis?

Mr. WIRTH. The Territory?

Senator JACKSON. Yes.

Mr. WIRTH. Oh, no.

Senator JACKSON. Is anyone here from the Department who can indicate the financial balance sheet of the islands?

Mr. FRENCH. William Arnold is here.

Senator BIBLE. I was just going to ask whether you have any comparable national parks outside of continental United States, just for my own information.

Mr. WIRTH. Yes.

Senator BIBLE. I am very well aware of Lake Mead National Park. If they all worked out as well as that, it would be splendid.

Mr. WIRTH. We have in Hawaii the Hawaii National Park.

Senator JACKSON. You mean the volcano?

Mr. WIRTH. The volcano. There are 2 extinct volcanoes and 2 active ones. Then, of course, we have Mount McKinley in Alaska, and the Katmai and Glacier Bay in Alaska, and Sitka in Alaska. The last three I named are national monuments, but they are operated on the same basis.

Senator BIBLE. What type of interest do you develop in the public in those national parks? In the islands, for instance, how many people visit there annually?

Mr. WIRTH. I did not bring that. We have a complete tabulation on visitation, and I can insert that in the record for the territorial islands.

Senator BIBLE. I thought it might be helpful in developing the public use of a national park.

Mr. WIRTH. Yes.

Senator JACKSON. Yes, we will ask them to put that in the record.

Mr. WIRTH. We will put that in the record.

(This information together with other material submitted by the National Park Service is as follows:)

DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE,  
Washington, D. C., May 24, 1955.

HON. HENRY M. JACKSON,

*Chairman, Senate Subcommittee on Territories and Insular Affairs,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR JACKSON: As a part of the record of the hearing you held May 19 on S. 1604, a bill to authorize the establishment of the Virgin Islands National Park, and for other purposes, you asked that I provide certain additional information, which is herewith presented.

1. Why the Service considers the proposed national park eligible for national park status?

The Virgin Islands, situated in the Torrid Zone are characterized by climate, scenery, and plant and animal life distinctly different from that of the conti-

mental United States. Of the American Virgin Islands, St. John Island, and its surrounding rocks and cays are the most primitive and unspoiled. St. John is a mountainous island, from many points of which spectacular views may be had of the other Virgin Islands and the colorful waters of the Caribbean. It has numerous white sand beaches fringed with native palms and other tropical plants. More than 260 species of native woody plants have been identified on this relatively small island, of which 154 are trees, 72 are shrubs, 26 are woody vines, and 8 are cacti. Many of these species are not native to the continental United States and some of the plant and animal species are found only on St. John and neighboring islands in the Caribbean. No comparable tropical area has yet been given protection as a national park or monument. The island and surrounding cays also possess prehistoric pictographs and numerous ruins of the Danish colonial period, dating back to the early 18th century, some of which exhibit fine architectural qualities.

The unusual combination of scenic qualities, objects of scientific and historic interest, which also have educational value, and the outstanding recreational potentialities of St. John Island, are considered to be worthy of national park status by the National Park Service, which became interested in the preservation of the island 20 years ago; by the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments, which is established by law to advise the Secretary of the Interior, and by others who have traveled widely. A copy of the Advisory Board's resolution of April 20, 1955, is enclosed. Mr. Laurance Rockefeller, who has offered to acquire and donate approximately two-thirds of St. John Island for national park purposes, selected this island as the area of greatest natural beauty and interest after having cruised in the Caribbean at intervals for several years. The late Senator Butler, in his 1950 report on the Virgin Islands, referred to the Caneel Bay plantation on St. John Island, which Mr. Rockefeller proposes to donate, as " \* \* surely one of the undiscovered tourist meccas in the Western Hemisphere."

The acceptance of this generous offer will make it possible to preserve a uniquely beautiful and interesting island, the present character of which otherwise will surely be destroyed, and will make it possible in the future for citizens of average means to see and enjoy the kind of tropical island that heretofore has been accessible primarily to people of greater means.

2. Area of proposed park and total area of Virgin Islands: Total land area of St. Thomas, St. John, and St. Croix Islands, 85,120 acres. Total area of proposed Virgin Islands National Park, 9,500 acres. The proposed park would be about one-ninth of the total area of the islands.

3. Number of people who visited the Virgin Islands in 1954, 103,867.

4. Visitors to Territorial and Commonwealth national parks in 1954: Hawaii National Park, 444,551; Mount McKinley National Park, Alaska, 4,999; San Juan national historic site, San Juan, P. R., 39,983.

5. Estimated annual operation and maintenance costs and capital investments for first 5 years.

There is enclosed a listing of the estimated fund requirements for the proposed Virgin Islands National Park. This does not include an item specifically for possible buildings of a utility nature which may become desirable at the eastern end of St. Thomas Island. Since, in the foreseeable future practically all travel to and from the proposed national park will be by boat from the eastern end of St. Thomas Island, it is thought that need might arise in the future for utility and passenger facilities. It is not probable, however, that such facilities would be needed during the first 5 years of the park, and we have not, therefore, made any plans for them nor included an estimate of cost.

I believe this covers the points on which you requested further information. If additional information is required, please let me know.

Sincerely yours,

CONRAD L. WIRTH, *Director.*

#### ESTABLISHMENT OF THE VIRGIN ISLANDS NATIONAL PARK

The Advisory Board on National Parks, Historic Sites, Buildings, and Monuments has reviewed the reports of the National Park Service on the proposal to establish the Virgin Islands National Park, on St. John Island, in the Territory of the Virgin Islands. The Board believes that the scenic quality, plantlife, and the setting of St. John Island in the protected channels of the Virgin Islands are totally different from anything set apart in the United States or its Territories

for national park purposes, and that it well qualifies for national park status. The Board recommends its approval and urges its establishment as a national park.

Approved: April 20, 1955.

C. G. WOODBURY, *Secretary*.

*Estimated fund requirements—Proposed Virgin Islands National Park*

ANNUAL OPERATING NEEDS

**Management and protection:**

Superintendent, GS-11-----	\$5,940
Chief ranger, GS-9-----	5,060
Naturalist, GS-9-----	5,060
Ranger, GS-7-----	4,205
Administrative aid, GS-6-----	3,795
Clerk-stenographer, GS-4 (2)-----	6,350

Permanent positions (7)-----	30,410
Territorial differential (25 percent)-----	7,003

Total, personal services-----	38,013
General expenses, including travel, communications, supplies, materials, etc-----	9,000

Total management and protection-----	47,013
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**Maintenance and rehabilitation:**

Temporary and seasonal labor-----	6,000
General expenses-----	6,987

Total maintenance and rehabilitation-----	12,987
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Total annual operating needs-----	60,000
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*Capital investments*

[Needed in first 5 years after park establishment]

<b>Trails</b> -----	\$10,000
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About 150 miles of low-grade roads and trails, will require clearing of bush and trees, and bringing up to standards suitable for pedestrian and saddlehorse travel.

<b>Roads</b> -----	50,000
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Rehabilitation of about 18 miles of roads to a low-grade standard for automobile traffic. A few jeeps and 4-wheel drive trucks are on the island. Only those roads along the east, west, and north-western shores of the island, and the so-called Centerline Road running from Cruz Bay on the west to Coral Harbor on the east, would be proposed for automobile use.

<b>Buildings and structures</b> -----	25,000
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It is believed that park headquarters could be provided in existing buildings at the Caneel Bay locality at the west end of the island; however, a ranger station should be provided at another location such as at Reef Bay on the south. It is estimated that such a station, in addition to trailside shelters, comfort stations, repair of docks, etc.

<b>Sewage, light, water, and communications</b> -----	20,000
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Power can probably be purchased at the west end of the island; however, some utilities would be required in other portions of the island, such as a gasoline powered electric generating system; wells or reservoirs and water system lines; septic tanks and sewage disposal fields; and some radio or telephone communication facilities.

*Capital investments—Continued*

Archeological surveys and salvage----- \$15,000

The island abounds in archaeological values, many of which should be salvaged before they are irreparably damaged or destroyed as a result of a large volume of public use. The salvaged artifacts would provide the primary features of a museum collection. It is estimated that surveys to determine and record archaeological sites and other data of scientific interest, and to salvage those materials most likely to be otherwise lost.

Total, initial capital investment needs----- 120,000

Mr. WIRTH. I might say that we expect a big influx of travel at Mount McKinley as soon as the road is completed in to Mount McKinley. Of course, in the last few years down in Hawaii we have had a tremendous influx due to the eruptions, and that has really taxed our facilities to the limit.

Senator BIBLE. Do you recall what the travel was to Hawaii?

Mr. WIRTH. No.

Senator BIBLE. I would be very happy to have you do that.

Mr. WIRTH. I will do that.

Mr. EDWARDS. I want to make a correction on the total acreage. It is 85,120 in the 3 major islands.

Senator JACKSON. That is about one-ninth, roughly. The population is 27,000?

Mr. EDWARDS. It is between 26,000 and 27,000.

Senator JACKSON. I was going to ask Mr. Arnold now about the revenue situation in the islands under the new act.

Mr. ARNOLD. I might say that the Government comptroller certified to the collection of \$2,026,207 for the fiscal year 1954.

Senator JACKSON. Revenue that was taken in?

Mr. ARNOLD. Revenues from all sources.

Senator JACKSON. In the islands?

Mr. ARNOLD. In the islands.

Senator JACKSON. Under the new act?

Mr. ARNOLD. Well, sir, the new act provides that that money will be matched from Internal Revenue collections derived from products of the Virgin Islands, which is rum primarily. Each dollar of local revenue certified by the Comptroller will be matched from these collections.

Senator JACKSON. But the \$2 million is what they collected locally?

Mr. ARNOLD. That is correct.

Senator JACKSON. And that will be matched by the Federal Government from the other revenue sources, making a total of \$4 million?

Mr. ARNOLD. Yes, sir.

Senator JACKSON. What is their budget?

Mr. ARNOLD. That is a rather complicated thing at the present time because of the fact that we are going through a reorganization period. There are three budgets. The first two are for general administration, using local revenues and matching funds, and a third one for what we call special projects approved by the Secretary of the Interior. The general administration budget for next year will be approximately the same amount as this \$2,026,000 plus the matching Internal Revenue funds, which would bring your total to about \$4,050,000 for general administration.

Senator JACKSON. So the aggregate budget will about equal the income?

Mr. ARNOLD. Except for the fact that there is some money left over from the Internal Revenue funds which are also given them for the first 2 years for emergency and special projects, amounting to about \$2½ million.

Senator JOHNSON. We spent a little money in 1951. We made available funds for a new hospital and a new school right in the town of Charlotte Amalie on the island of St. Thomas.

Mr. ARNOLD. Yes. That is a Virgin Islands public-works program which has now come to an end and the Territorial government will now be responsible for such.

Senator JACKSON. We gave them a pretty heavy capital investment with which to carry on.

Mr. ARNOLD. About \$11 million.

Senator JACKSON. Taking care of this basic requirement. They had a boondoggling project on the harbor that was established. It was about as lush as anybody could ask for, whereas they had a health and a school problem that needed immediate attention, and I think we saved a lot of money on that trip.

Mr. ARNOLD. Eleven million dollars was the total of the program which ran for about 7 years. That includes hospitals and schools primarily.

Senator JACKSON. They are in pretty good shape now, are they not? As far as schools and hospitals are concerned?

Mr. ARNOLD. That is right.

Senator JACKSON. They have a housing problem, and so on, that may be rather difficult.

Mr. ARNOLD. In addition to that money, up until the present time, that is, up until the new organic act came into effect, Congress had to every year appropriate about three-quarters of a million dollars to make up the deficits down there in general administration.

Senator JACKSON. I am quite familiar with that. We were subsidizing it, and the rum business went flat, and that is what threw them out of balance as far as the economy is concerned, when the rum business terminated. I think the great future for those islands, from what little I have seen of them, would seem to be in the tourist business.

Mr. ARNOLD. That is what we think, too.

Senator JACKSON. That is their most valuable asset, and a pretty valuable asset in this day and age, I guess.

Mr. WIRTH. May I enter in the record here, sir, a matter which I neglected? The real property tax assessment for the land under consideration in the park would not exceed \$6,300 as compared with the total revenues of over \$2 million.

Senator JACKSON. How much is that?

Mr. WIRTH. \$6,277.36.

Senator JACKSON. That is the present tax rate on the land in question?

Mr. WIRTH. The land in question; yes. I daresay that, with the establishment of the park, the remaining land on the island would absorb that in very quick order.

Senator JACKSON. By increased valuation?

Mr. WIRTH. Yes, sir.

Senator JACKSON. Mr. Arnold, would you want to testify next, or should Mr. Boyer testify at this point?

Mr. ARNOLD. I would not have anything to add, Mr. Chairman.

Senator JACKSON. All right. Mr. Boyer, suppose you identify yourself again for the record.

### **STATEMENT OF ALLSTON BOYER, REPRESENTING LAURANCE ROCKEFELLER**

Mr. BOYER. Allston Boyer, vice president of Colonial Williamsburg, Inc., representative of Rockefeller interests in conservation and restoration projects for about 20 years.

Mr. Senator, I would like very much to supplement what Director Wirth has said about this area in answer to your question as to why should this be a national park. I know that these views reflect Mr. Rockefeller's own thinking, namely that the island of St. John is without any question the most beautiful island in the Caribbean.

Every winter for 6 years he has cruised around the area. It is his belief that the island of St. John has the most superb beaches and views of any place he has ever seen. That prompted his initial interest in it. I would like to show you some pictures of St. John. I do not think that you see beaches like that anywhere.

Senator JACKSON. I want to confirm that the beach at Caneel Bay is wonderful. I was in swimming one day there. It is indeed a beautiful beach. There is not any question about it. It is a beautiful harbor.

Mr. BOYER. The other side of the island which perhaps you did not see, Senator, is shown in these panoramic views, which are absolutely superb.

There is much to see on horseback trips on the paths which Director Wirth mentioned—old Indian rock inscriptions of which there are a number on the island, most interesting examples of the bygone age. There are old sugar mill ruins, forts, and old gun emplacements.

Senator JACKSON. Are they across from Caneel Bay?

Mr. BOYER. In Coral Bay. Speaking as someone who has been engaged in similar activity for a great many years in Williamsburg, I say that the whole island presents unique opportunities for restoration and exhibits of unusual public interest.

Senator JACKSON. I think it is important that we document the record on this question of unique features of the island because I think that is quite important as far as designation of this area as a national park. Do you agree, Senator Bible?

Senator BIBLE. Yes, I do.

Mr. BOYER. It is not only a most unique place, Senator, but it is inevitable that unless it is saved, it will be ruined, as I believe St. Thomas has been ruined.

Senator JACKSON. You mean by commercialization?

Mr. BOYER. By commercialism. These beautiful hills and countryside will be scarred by subdivisions and by hotels with neon signs, as has happened in the harbor of Charlotte Amalie.

Senator JACKSON. What will prevent commercialized interests from moving in, in the nonpark area of the island, the remaining one-third?

Mr. BOYER. Nothing, Senator, but by saving those significant areas that Director Wirth has mentioned, you will save the important and interesting parts.

In other words, the developments here in Cruz Bay and Coral Bay provide opportunities for commercial interests without ruining the heart of the land—the beaches and the mountains from which there are superb views such as from Bordeaux Mountain, of Coral Bay. It is a uniquely beautiful and interesting area. There are unique waterfalls with interesting Indian rock inscriptions particularly at Reef Bay.

Senator JACKSON. What is the forest situation on the island? What is the native, what is indigenous?

Mr. BOYER. Timber?

Senator JACKSON. You mentioned something about mahogany.

Mr. WIRTH. It has mahogany, bay trees, and many other species of tropical plants. I have a complete list of the material here.

Senator JACKSON. I think it would be helpful, Mr. Wirth—we do not have to do it right now—if we had a bill of particulars, a brief, setting out the basic considerations that are involved in this proposal and why it fits in the pattern of a national park. We ought to have that spelled out. I think the record should be made because we can run into a lot of difficulty on this thing. I do not think we want to start jumping off the deep end before we have a complete and adequate record.

(The information referred to follows:)

See Wirth letter of May 24, 1955, p. 17.

Mr. BOYER. I would also like to support your own views, Senator. Since tourism is the main industry of this area which is owned by the United States, a national park in this area can do more to focus the attention of the Nation on the tourism and vacation aspects of the area than any other single thing.

I would like to support that by mentioning the great interest by the press in this proposed national park. Not only did the story break on the front page of the New York Times, but the Saturday Evening Post is preparing an article on the proposed park. It is scheduled to come out later this year. The National Geographic is also preparing an article and Life magazine has expressed an interest.

In other words, it is something that is of national interest and focuses the attention of the people on the area.

Senator JACKSON. Could we have copies of those advance articles, together with an article that I read about 4 years ago—I think it was in Holiday magazine—on the Island of St. John, which was one of your best ones, if you could get that?

Mr. BOYER. Yes, sir.

Senator JACKSON. Holiday magazine dedicated a greater part of their issue in 1951 to the Virgin Islands. I think it would be helpful to have that available for the committee, together with the articles that you mentioned are coming out.



He mentioned the larger Virgin Island of St. Thomas and St. Croix, where, he said, commercial ventures and the tourist trade had increased. Long interested in the conservation of scenic areas, he said he was disturbed that the most beautiful areas of St. John might some day be altered so as to destroy their natural beauty.

He read the Hubler report and discussed it with Mr. Wirth. As a result of their trip, Mr. Wirth has reaffirmed the interest of the National Park Service, "but we have no assurances at all," Mr. Rockefeller cautioned.

A national park must be approved by an act of Congress.

While the project now is in the planning and development stage, Mr. Rockefeller reported that Mr. Wirth would report to Secretary of the Interior Douglas McKay. He said he had acquired through Jackson Hole Preserve, Inc., a number of options of St. John and would discuss plans informally next month with Mr. Wirth, Mr. McKay and Archie A. Alexander, Governor of the Virgin Islands.

#### ISLAND HAS ONLY 700 RESIDENTS

Should a national park be approved, Mr. Rockefeller said, it would not displace anyone, would allow for the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay, and would not in any way adversely affect the livelihood of the 700 persons on the island.

Of that number there are 350 Negroes and 50 whites, of whom 25 are major property owners, he reported. The taxes amount to \$7,500 annually, he said.

Mr. Rockefeller envisaged a plan whereby he would transfer ownership of the acreage acquired, including his Caneel Bay property, to Jackson Hole Preserve, Inc. This is an agency previously used by the Rockefeller family to create and expand such projects as the Grand Teton National Park, Wyo., the redwoods of California, and several of the country's national parks, including Acadia, Maine; Great Smoky Mountains, Tennessee-North Carolina, and Shenandoah, Va.

Mr. Rockefeller gave assurance that existing settlements would not be disturbed. His associates reported that at least 4,000 acres in the Cruz Bay and Coral Bay areas would not be included in the projected park, thus leaving 8,000 acres for conservation purposes.

#### MUCH WORK UNDERWAY

He has already spent a substantial sum, it was reported, in developing the Caneel Bay area and its hotel, now able to accommodate 48 guests. The hotel is being doubled in size, a new sewer system and powerplant are being installed as well as a water catchment and new employees' quarters.

The roads and docks are being enlarged and extensive landscaping of the shore is planned. Mr. Rockefeller is also restoring a sugar mill built in 1810.

The park project's cost will run "into the millions" but close associates of Mr. Rockefeller said it would be impossible to estimate the total cost.

St. John, one of the leeward islands in the Caribbean chain, is 1,442 miles southeast of New York and 40 miles east of Puerto Rico. Nine miles long and 5 miles wide, it is covered by bush and second growth timber, including such trees as mahogany, bay, coconut, ebony, tamarind, mango, and lime.

It rises abruptly from the sea, its highest elevation, 1,277 feet. The island is accessible only by boat, but nearby St. Thomas and St. Croix have airports.

#### "PARADISE," SAYS ROCKEFELLER

Mr. Hubler's report described St. John as "by far the most beautiful" of the Virgin Islands.

"The pure white sand of her north side beaches makes a perfect contrast between the green of her wooded hills and the turquoise waters washing her shores," he wrote.

Mr. Rockefeller yesterday agreed that it was "a paradise."

The passage between St. John and British Tortola takes its name from Sir Francis Drake or "El Draque," as the Spaniards called him. Sir Francis was the first to sail through its tortuous channels, in 1580.

Christopher Columbus, the first white man to see St. John, in 1493, christened it "The Eleven Thousand Virgins," Mr. Hubler reported. It was not settled until 1684. In 1687 the Danish West India and Guinea Co. laid claim into St. John,

but it was not until March 25, 1717, that the first permanent colony was established there.

Life went smoothly for 3,000 whites until November 23, 1733, when the 2,500 slaves revolted. French soldiers from the island of Martinique quelled the riot eventually, and carried off the Negroes to slavery.

With the abolition of slavery it became impossible to keep up the old estates, so the island reverted to bush, the white owners departed and for years the natives have eked out a meager existence from fishing and gathering bay leaf for bay rum.

St. John was well known in the days of piracy and buccaneering because of her excellent harbors. There are, of course, many tales of pirate treasure buried on the island.

Mr. Rockefeller, 44 years old, has long been associated with conservation organizations. He is a trustee and second vice president of the New York Zoological Society, trustee of the Conservation Foundation, director of the Hudson River Conservation Society, commissioner and secretary of the Palisades Interstate Park Commission, and president of Jackson Hole Preserve.

He is president of Rockefeller Brothers, Inc., an investment and research organization, and chairman of the board of Rockefeller Center, Inc., a post previously held by his brother, Nelson.

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[From the Daily News, Charlotte Amalie, V. I., Monday, November 22, 1954]

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Laurence S. Rockefeller, owner of Caneel Bay and chairman of the board of Rockefeller Center, Inc., has taken option to purchase nearly half of the island of St. John which he plans to give to the Federal Government to establish a national park. Mr. Rockefeller's chief interest is the preservation of the scenic area of the island.

According to the plan as outlined it will not be necessary to relocate any of the residents nor would the development of the park hinder the natural expansion and economic development of the settlement areas of Coral Bay and Cruz Bay. The work at present being done on the resort area of Caneel Bay is a good indication of the future envisioned by this great financier.

Mr. Rockefeller has long been associated with development of this kind throughout the United States. He is president of Rockefeller Brothers, Inc., an investment research organization, which has financed such projects as the Grand Teton National Park, Wyo.; the Red Woods of California; and several of the country's national parks including Arcadia, Mo.; Great Smoky Mountains, Tenn. and N. C., and Shenandoah in Virginia.

In recent years visitors to the islands have shown great concern over the fact that most of the natural beauty and scenic charm of St. Thomas and St. Croix are being destroyed. Many of these persons who spend several months each year in St. Thomas or St. Croix are finding the peace and quiet that they seek in the many resort areas of the islands, in St. John. It is this fact more than any other that prompts the present plan to insure that St. John's natural beauty might not be destroyed.

Some people might be misled into the belief that the residents in that island will be placed in a less favorable position by this development. As we see it, it is the most fortunate thing that has happened to St. John in several decades. The development of a natural park would bring new activity to the small island and improve the economic condition. That island will become one of the principal showplaces for tourists and should boost the tourist program to large proportions. This cultural development will also attract a better type of visitors to the island.

We hope that the administration and the legislature will cooperate fully in bringing about this most significant development for the benefit of the entire Virgin Islands.

[From the St. Croix Avis, St. Croix, V. I., U. S. A., Saturday, November 27, 1954]

#### ISLAND "PARADISE"

Laurence S. Rockefeller's announcement that he will offer much of St. John as a national park is perhaps the most significant news to come out of these shores in many a day. The importance of the news can be determined by the wide coverage given to it by the national press, led by the New York Times.

There are at least two very good reasons why this project of Mr. Rockefeller is extremely important to the Virgin Islands as a whole. While plans are still in the making and many steps have to be taken with respect to the project, it is a virtual certainty that after the remainder of the land is acquired and the way cleared through the Governor and Secretary of the Interior, Congress will pass the bill.

First, such natural beauty as St. John has deserves to be preserved. We venture to say that the natural, unspoiled beauty of St. John is unmatched anywhere in the world, and the term "paradise" is therefore most appropriate as a description of it. Said Mr. Rockefeller, "The unspoiled nature of the area appealed to me, and I wish to preserve it against overdevelopment."

Second, with much of St. John as a national park, the fame and fortunes of these islands will rise. The National Park Service will no doubt carry out the proper program of development, and with that come employment and development to highlight what will be necessary. National parks are sources of great attraction, and St. John would be no exception.

These islands are, indeed, grateful to Mr. Rockefeller, whose purchase of much of the island will make possible the park project. And along with him go words of gratitude to Conrad Wirth, director of the National Park Service, and Frank Stick, noted conservationist. Mention must also be made of the initial idea thrown out by Harold A. Hubler, who in 1939 envisioned the possibility of St. John as a national park.

There is every justification for optimism and faith in the future; that men of vision and means will make their contribution to the enhancement and development of these islands in ways which will not only increase their resources but heighten that sense of gratification which comes only from the fulfillment of dreams and the satisfaction of a job well done.

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[From the Daily News, Charlotte Amalie, V. I., Monday, April 4, 1955]

**BILL AUTHORIZES 9,500 ACRES FOR VIRGIN ISLANDS NATIONAL PARK—50 ACRES IN ST. THOMAS, 1,000 ACRES IN SMALL ISLANDS, CAYS**

A bill introduced in the Senate by Senator Jackson authorizes the establishment of a national park in the Virgin Islands containing outstanding scenic and other features of national significance. The acreage of the park would be limited to 9,500 and comprised of not more than 50 acres in St. Thomas and 9,450 acres on the island of St. John including such rocks and cays not in excess of 1,000 acres in the general vicinity that may be desirable for inclusion within the park. This will constitute three-fourths of St. John which has approximately 12,000 acres.

The Secretary, on behalf of the United States would be authorized to accept donations of real and personal property within the areas selected for the park until the total acreage has been acquired.

Establishment of the park in its initial phase will be declared to be accomplished and effective when a minimum acreage of 5,000 is in Federal ownership.

The bill also transfers any Federal properties within the areas selected for the park without further authorization to the Secretary of the Interior by the agency now in possession of it.

Plans for a national park in the Virgin Islands which had been under consideration for several years were completed recently when Laurence Rockefeller, owner of Caneel Bay, concluded purchase of several thousand acres of land in the sparsely populated island to give to the Federal Government as a nucleus for a park because of the scenic value. The bill before the Senate is intended to complete this effort and provide the Virgin Islands with a park for the public benefit and inspiration, in accordance with the laws governing the administration of the national park.

Senator JACKSON. Who is unfavorable?

Mr. WIRTH. I do not know.

Senator JACKSON. Locally?

Mr. WIRTH. There are some people. We never get 100 percent, but I have not had any correspondence from them and do not know. I might say that this had pretty wide coverage in the United States, and I have also copies of the articles from the papers.

They cover such papers as the New York Times, the Herald Tribune, the Christian Science Monitor, New York Mirror, the Norfolk Pilot, the Philadelphia Inquirer, the Lincoln State Journal, the Hartford Courier, and the Cincinnati Enquirer. I think that covers my presentation, sir, unless there are some questions.

Senator JACKSON. Last year in the new organic act that we passed for the Virgin Islands, I think we made all the income from internal-revenue taxes and income-taxes available to the islands government on a matching basis. Would they have enough money to take care of a park on an annual maintenance basis?

Mr. WIRTH. The Territory?

Senator JACKSON. Yes.

Mr. WIRTH. Oh, no.

Senator JACKSON. Is anyone here from the Department who can indicate the financial balance sheet of the islands?

Mr. FRENCH. William Arnold is here.

Senator BIBLE. I was just going to ask whether you have any comparable national parks outside of continental United States, just for my own information.

Mr. WIRTH. Yes.

Senator BIBLE. I am very well aware of Lake Mead National Park. If they all worked out as well as that, it would be splendid.

Mr. WIRTH. We have in Hawaii the Hawaii National Park.

Senator JACKSON. You mean the volcano?

Mr. WIRTH. The volcano. There are 2 extinct volcanoes and 2 active ones. Then, of course, we have Mount McKinley in Alaska, and the Katmai and Glacier Bay in Alaska, and Sitka in Alaska. The last three I named are national monuments, but they are operated on the same basis.

Senator BIBLE. What type of interest do you develop in the public in those national parks? In the islands, for instance, how many people visit there annually?

Mr. WIRTH. I did not bring that. We have a complete tabulation on visitation, and I can insert that in the record for the territorial islands.

Senator BIBLE. I thought it might be helpful in developing the public use of a national park.

Mr. WIRTH. Yes.

Senator JACKSON. Yes, we will ask them to put that in the record.

Mr. WIRTH. We will put that in the record.

(This information together with other material submitted by the National Park Service is as follows:)

DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE,  
Washington, D. C., May 24, 1955.

HON. HENRY M. JACKSON,

*Chairman, Senate Subcommittee on Territories and Insular Affairs,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR JACKSON: As a part of the record of the hearing you held May 19 on S. 1604, a bill to authorize the establishment of the Virgin Islands National Park, and for other purposes, you asked that I provide certain additional information, which is herewith presented.

1. Why the Service considers the proposed national park eligible for national park status?

The Virgin Islands, situated in the Torrid Zone are characterized by climate, scenery, and plant and animal life distinctly different from that of the conti-

mental United States. Of the American Virgin Islands, St. John Island, and its surrounding rocks and cays are the most primitive and unspoiled. St. John is a mountainous island, from many points of which spectacular views may be had of the other Virgin Islands and the colorful waters of the Caribbean. It has numerous white sand beaches fringed with native palms and other tropical plants. More than 260 species of native woody plants have been identified on this relatively small island, of which 154 are trees, 72 are shrubs, 26 are woody vines, and 8 are cacti. Many of these species are not native to the continental United States and some of the plant and animal species are found only on St. John and neighboring islands in the Caribbean. No comparable tropical area has yet been given protection as a national park or monument. The island and surrounding cays also possess prehistoric pictographs and numerous ruins of the Danish colonial period, dating back to the early 18th century, some of which exhibit fine architectural qualities.

The unusual combination of scenic qualities, objects of scientific and historic interest, which also have educational value, and the outstanding recreational potentialities of St. John Island, are considered to be worthy of national park status by the National Park Service, which became interested in the preservation of the island 20 years ago; by the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments, which is established by law to advise the Secretary of the Interior, and by others who have traveled widely. A copy of the Advisory Board's resolution of April 20, 1955, is enclosed. Mr. Laurance Rockefeller, who has offered to acquire and donate approximately two-thirds of St. John Island for national park purposes, selected this island as the area of greatest natural beauty and interest after having cruised in the Caribbean at intervals for several years. The late Senator Butler, in his 1950 report on the Virgin Islands, referred to the Caneel Bay plantation on St. John Island, which Mr. Rockefeller proposes to donate, as " \* \* \* surely one of the undiscovered tourist meccas in the Western Hemisphere."

The acceptance of this generous offer will make it possible to preserve a uniquely beautiful and interesting island, the present character of which otherwise will surely be destroyed, and will make it possible in the future for citizens of average means to see and enjoy the kind of tropical island that heretofore has been accessible primarily to people of greater means.

2. Area of proposed park and total area of Virgin Islands: Total land area of St. Thomas, St. John, and St. Croix Islands, 85,120 acres. Total area of proposed Virgin Islands National Park, 9,500 acres. The proposed park would be about one-ninth of the total area of the islands.

3. Number of people who visited the Virgin Islands in 1954, 103,867.

4. Visitors to Territorial and Commonwealth national parks in 1954: Hawaii National Park, 444,551; Mount McKinley National Park, Alaska, 4,999; San Juan national historic site, San Juan, P. R., 39,983.

5. Estimated annual operation and maintenance costs and capital investments for first 5 years.

There is enclosed a listing of the estimated fund requirements for the proposed Virgin Islands National Park. This does not include an item specifically for possible buildings of a utility nature which may become desirable at the eastern end of St. Thomas Island. Since, in the foreseeable future practically all travel to and from the proposed national park will be by boat from the eastern end of St. Thomas Island, it is thought that need might arise in the future for utility and passenger facilities. It is not probable, however, that such facilities would be needed during the first 5 years of the park, and we have not, therefore, made any plans for them nor included an estimate of cost.

I believe this covers the points on which you requested further information. If additional information is required, please let me know.

Sincerely yours,

CONRAD L. WIRTH, *Director.*

#### ESTABLISHMENT OF THE VIRGIN ISLANDS NATIONAL PARK

The Advisory Board on National Parks, Historic Sites, Buildings, and Monuments has reviewed the reports of the National Park Service on the proposal to establish the Virgin Islands National Park, on St. John Island, in the Territory of the Virgin Islands. The Board believes that the scenic quality, plantlife, and the setting of St. John Island in the protected channels of the Virgin Islands are totally different from anything set apart in the United States or its Territories

for national park purposes, and that it well qualifies for national park status. The Board recommends its approval and urges its establishment as a national park.

Approved: April 20, 1955.

C. G. WOODBURY, *Secretary.*

*Estimated fund requirements—Proposed Virgin Islands National Park*

ANNUAL OPERATING NEEDS

<b>Management and protection:</b>	
Superintendent, GS-11-----	\$5,940
Chief ranger, GS-9-----	5,060
Naturalist, GS-9-----	5,060
Ranger, GS-7-----	4,205
Administrative aid, GS-6-----	3,795
Clerk-stenographer, GS-4 (2)-----	6,350
Permanent positions (7)-----	30,410
Territorial differential (25 percent)-----	7,603
Total, personal services-----	38,013
General expenses, including travel, communications, supplies, materials, etc-----	9,000
Total management and protection-----	47,013
<b>Maintenance and rehabilitation:</b>	
Temporary and seasonal labor-----	6,000
General expenses-----	6,987
Total maintenance and rehabilitation-----	12,987
Total annual operating needs-----	60,000

*Capital investments*

[Needed in first 5 years after park establishment]

<b>Trails-----</b>	<b>\$10,000</b>
About 150 miles of low-grade roads and trails, will require clearing of bush and trees, and bringing up to standards suitable for pedestrian and saddlehorse travel.	
<b>Roads-----</b>	<b>50,000</b>
Rehabilitation of about 18 miles of roads to a low-grade standard for automobile traffic. A few jeeps and 4-wheel drive trucks are on the island. Only those roads along the east, west, and north-western shores of the island, and the so-called Centerline Road running from Cruz Bay on the west to Coral Harbor on the east, would be proposed for automobile use.	
<b>Buildings and structures-----</b>	<b>25,000</b>
It is believed that park headquarters could be provided in existing buildings at the Caneel Bay locality at the west end of the island; however, a ranger station should be provided at another location such as at Reef Bay on the south. It is estimated that such a station, in addition to trailside shelters, comfort stations, repair of docks, etc.	
<b>Sewage, light, water, and communications-----</b>	<b>20,000</b>
Power can probably be purchased at the west end of the island; however, some utilities would be required in other portions of the island, such as a gasoline powered electric generating system; wells or reservoirs and water system lines; septic tanks and sewage disposal fields; and some radio or telephone communication facilities.	

*Capital investments—Continued*

Archeological surveys and salvage----- \$15, 000

The island abounds in archaeological values, many of which should be salvaged before they are irreparably damaged or destroyed as a result of a large volume of public use. The salvaged artifacts would provide the primary features of a museum collection. It is estimated that surveys to determine and record archaeological sites and other data of scientific interest, and to salvage those materials most likely to be otherwise lost.

Total, initial capital investment needs----- 120, 000

Mr. WIRTH. I might say that we expect a big influx of travel at Mount McKinley as soon as the road is completed in to Mount McKinley. Of course, in the last few years down in Hawaii we have had a tremendous influx due to the eruptions, and that has really taxed our facilities to the limit.

Senator BIBLE. Do you recall what the travel was to Hawaii?

Mr. WIRTH. No.

Senator BIBLE. I would be very happy to have you do that.

Mr. WIRTH. I will do that.

Mr. EDWARDS. I want to make a correction on the total acreage. It is 85,120 in the 3 major islands.

Senator JACKSON. That is about one-ninth, roughly. The population is 27,000?

Mr. EDWARDS. It is between 26,000 and 27,000.

Senator JACKSON. I was going to ask Mr. Arnold now about the revenue situation in the islands under the new act.

Mr. ARNOLD. I might say that the Government comptroller certified to the collection of \$2,026,207 for the fiscal year 1954.

Senator JACKSON. Revenue that was taken in?

Mr. ARNOLD. Revenues from all sources.

Senator JACKSON. In the islands?

Mr. ARNOLD. In the islands.

Senator JACKSON. Under the new act?

Mr. ARNOLD. Well, sir, the new act provides that that money will be matched from Internal Revenue collections derived from products of the Virgin Islands, which is rum primarily. Each dollar of local revenue certified by the Comptroller will be matched from these collections.

Senator JACKSON. But the \$2 million is what they collected locally?

Mr. ARNOLD. That is correct.

Senator JACKSON. And that will be matched by the Federal Government from the other revenue sources, making a total of \$4 million?

Mr. ARNOLD. Yes, sir.

Senator JACKSON. What is their budget?

Mr. ARNOLD. That is a rather complicated thing at the present time because of the fact that we are going through a reorganization period. There are three budgets. The first two are for general administration, using local revenues and matching funds, and a third one for what we call special projects approved by the Secretary of the Interior. The general administration budget for next year will be approximately the same amount as this \$2,026,000 plus the matching Internal Revenue funds, which would bring your total to about \$4,050,000 for general administration.

Senator JACKSON. So the aggregate budget will about equal the income?

Mr. ARNOLD. Except for the fact that there is some money left over from the Internal Revenue funds which are also given them for the first 2 years for emergency and special projects, amounting to about \$2½ million.

Senator JOHNSON. We spent a little money in 1951. We made available funds for a new hospital and a new school right in the town of Charlotte Amalie on the island of St. Thomas.

Mr. ARNOLD. Yes. That is a Virgin Islands public-works program which has now come to an end and the Territorial government will now be responsible for such.

Senator JACKSON. We gave them a pretty heavy capital investment with which to carry on.

Mr. ARNOLD. About \$11 million.

Senator JACKSON. Taking care of this basic requirement. They had a boondoggling project on the harbor that was established. It was about as lush as anybody could ask for, whereas they had a health and a school problem that needed immediate attention, and I think we saved a lot of money on that trip.

Mr. ARNOLD. Eleven million dollars was the total of the program which ran for about 7 years. That includes hospitals and schools primarily.

Senator JACKSON. They are in pretty good shape now, are they not? As far as schools and hospitals are concerned?

Mr. ARNOLD. That is right.

Senator JACKSON. They have a housing problem, and so on, that may be rather difficult.

Mr. ARNOLD. In addition to that money, up until the present time, that is, up until the new organic act came into effect, Congress had to every year appropriate about three-quarters of a million dollars to make up the deficits down there in general administration.

Senator JACKSON. I am quite familiar with that. We were subsidizing it, and the rum business went flat, and that is what threw them out of balance as far as the economy is concerned, when the rum business terminated. I think the great future for those islands, from what little I have seen of them, would seem to be in the tourist business.

Mr. ARNOLD. That is what we think, too.

Senator JACKSON. That is their most valuable asset, and a pretty valuable asset in this day and age, I guess.

Mr. WIRTH. May I enter in the record here, sir, a matter which I neglected? The real property tax assessment for the land under consideration in the park would not exceed \$6,300 as compared with the total revenues of over \$2 million.

Senator JACKSON. How much is that?

Mr. WIRTH. \$6,277.36.

Senator JACKSON. That is the present tax rate on the land in question?

Mr. WIRTH. The land in question; yes. I daresay that, with the establishment of the park, the remaining land on the island would absorb that in very quick order.

Senator JACKSON. By increased valuation?

Mr. WIRTH. Yes, sir.



Senator JACKSON. Mr. Arnold, would you want to testify next, or should Mr. Boyer testify at this point?

Mr. ARNOLD. I would not have anything to add, Mr. Chairman.

Senator JACKSON. All right. Mr. Boyer, suppose you identify yourself again for the record.

### **STATEMENT OF ALLSTON BOYER, REPRESENTING LAURANCE ROCKEFELLER**

Mr. BOYER. Allston Boyer, vice president of Colonial Williamsburg, Inc., representative of Rockefeller interests in conservation and restoration projects for about 20 years.

Mr. Senator, I would like very much to supplement what Director Wirth has said about this area in answer to your question as to why should this be a national park. I know that these views reflect Mr. Rockefeller's own thinking, namely that the island of St. John is without any question the most beautiful island in the Caribbean.

Every winter for 6 years he has cruised around the area. It is his belief that the island of St. John has the most superb beaches and views of any place he has ever seen. That prompted his initial interest in it. I would like to show you some pictures of St. John. I do not think that you see beaches like that anywhere.

Senator JACKSON. I want to confirm that the beach at Caneel Bay is wonderful. I was in swimming one day there. It is indeed a beautiful beach. There is not any question about it. It is a beautiful harbor.

Mr. BOYER. The other side of the island which perhaps you did not see, Senator, is shown in these panoramic views, which are absolutely superb.

There is much to see on horseback trips on the paths which Director Wirth mentioned—old Indian rock inscriptions of which there are a number on the island, most interesting examples of the bygone age. There are old sugar mill ruins, forts, and old gun emplacements.

Senator JACKSON. Are they across from Caneel Bay?

Mr. BOYER. In Coral Bay. Speaking as someone who has been engaged in similar activity for a great many years in Williamsburg, I say that the whole island presents unique opportunities for restoration and exhibits of unusual public interest.

Senator JACKSON. I think it is important that we document the record on this question of unique features of the island because I think that is quite important as far as designation of this area as a national park. Do you agree, Senator Bible?

Senator BIBLE. Yes, I do.

Mr. BOYER. It is not only a most unique place, Senator, but it is inevitable that unless it is saved, it will be ruined, as I believe St. Thomas has been ruined.

Senator JACKSON. You mean by commercialization?

Mr. BOYER. By commercialism. These beautiful hills and countryside will be scarred by subdivisions and by hotels with neon signs, as has happened in the harbor of Charlotte Amalie.

Senator JACKSON. What will prevent commercialized interests from moving in, in the nonpark area of the island, the remaining one-third?

Mr. BOYER. Nothing, Senator, but by saving those significant areas that Director Wirth has mentioned, you will save the important and interesting parts.

In other words, the developments here in Cruz Bay and Coral Bay provide opportunities for commercial interests without ruining the heart of the land—the beaches and the mountains from which there are superb views such as from Bordeaux Mountain, of Coral Bay. It is a uniquely beautiful and interesting area. There are unique waterfalls with interesting Indian rock inscriptions particularly at Reef Bay.

Senator JACKSON. What is the forest situation on the island? What is the native, what is indigenous?

Mr. BOYER. Timber?

Senator JACKSON. You mentioned something about mahogany.

Mr. WIRTH. It has mahogany, bay trees, and many other species of tropical plants. I have a complete list of the material here.

Senator JACKSON. I think it would be helpful, Mr. Wirth—we do not have to do it right now—if we had a bill of particulars, a brief, setting out the basic considerations that are involved in this proposal and why it fits in the pattern of a national park. We ought to have that spelled out. I think the record should be made because we can run into a lot of difficulty on this thing. I do not think we want to start jumping off the deep end before we have a complete and adequate record.

(The information referred to follows:)

See Wirth letter of May 24, 1955, p. 17.

Mr. BOYER. I would also like to support your own views, Senator. Since tourism is the main industry of this area which is owned by the United States, a national park in this area can do more to focus the attention of the Nation on the tourism and vacation aspects of the area than any other single thing.

I would like to support that by mentioning the great interest by the press in this proposed national park. Not only did the story break on the front page of the New York Times, but the Saturday Evening Post is preparing an article on the proposed park. It is scheduled to come out later this year. The National Geographic is also preparing an article and Life magazine has expressed an interest.

In other words, it is something that is of national interest and focuses the attention of the people on the area.

Senator JACKSON. Could we have copies of those advance articles, together with an article that I read about 4 years ago—I think it was in Holiday magazine—on the Island of St. John, which was one of your best ones, if you could get that?

Mr. BOYER. Yes, sir.

Senator JACKSON. Holiday magazine dedicated a greater part of their issue in 1951 to the Virgin Islands. I think it would be helpful to have that available for the committee, together with the articles that you mentioned are coming out.

(The Holiday article is as follows:)

[From the February 1951 issue of *Holiday* magazine]

### THE HOPEFUL VIRGINS

*These tranquil, colorful isles in the expanding tourist paradise of the Caribbean offer bright new vistas of sun and pleasure to the visitor from the north*

By William A. Krauss

When you say island, you imply (and I infer) a lot of water. And the smaller the island, the larger the awareness, naturally, of the water. In the Virgin Islands of the United States of America, which are very small islands indeed, water—is the impressive and predominant fact. Not much land, plenty of water—the Atlantic Ocean on the north, Caribbean Sea on the south.

Christopher Columbus discovered these islands on his second westward venture. Because his line was gold and spices, he glanced briefly and hurried away. No evidences of the Great Khan here. So he assumed, rightly in his day, that the islands weren't worth much. But that was before the invention of tourism, which, like pirate-pants beachwear for girls, could not have been predicted in 1493.

They compare, these 68 pinpoint West Indian islands and cays, with the larger Caribbees—Cuba, say—as a 14-foot sailboat compares with the *Queen Elizabeth*. In Cuba or on the *Queen* you can escape the sea (if, peculiarly, you want to) by heading into the mountains or into the bar. But on St. Thomas, St. John, and St. Croix—the principal American Virgins, a thousand miles east of Havana, 1,400 miles southeast of New York—the sea is always somewhere in sight. And in the manner of marooned sailors looking for succor, the Virgins keep a constant watch for travelers on the horizon.

Travelers mean cash income. The Virgin Islands' homegrown specialties of sea and scenery can't be eaten or exported. The high hope is that some day, some day soon, so many tourists will arrive to regard the wonderful views in situ that dollars will flow all around, and everybody—all 30,000 of population—will be chockful of wheat-flour bread. That day is not quite yet. "But that day's coming," almost everybody says. They can make a good case for optimism.

Take Jack Jouett, retired colonel of the United States Army, onetime aviation adviser to the Republic of China. He's seen the world pretty much from one end to the other. Nothing pins him to any particular spot, he could live anywhere he pleased, this side of the Iron Curtain. It pleases him to live in St. Thomas. I'd met the colonel one place and another through the years, and when I heard he'd settled in St. Thomas, I wondered why. Recently I took occasion to find out.

"Mainly," the colonel said, "because here a man can belong. He can take pride. He can belong to the islands and the islands belong to him. Flag, soil, sea, and citizens—all American. Live out your lifetime in Cuba, Haiti, China, and you're still a foreigner. I'm tired of being a foreign devil. I've come home."

He owns a neat, small house on the very steep hillside overlooking the harbor of Charlotte Amalie. Grows flowers and keeps a boat and sails to out islands whenever the idea hits him. He's put a little money in a little business and belongs to the chamber of commerce and goes to his office in khaki shorts. Everybody says "Good morning, Colonel;" nobody throws rocks. The colonel's a member of the community.

So of course he, too, talks about tourists and shares in the optimism. "Twelve or thirteen thousand visitors last winter," he said. "That just about equals three-quarters of the permanent population of St. Thomas, but it's not enough. Cruise-ship tourists flit too fast. We need more accommodations for people who'll linger awhile. We're building those accommodations right now."

### THE SIMPLE LIFE

Not the colonel nor anybody else conceives of the Virgin Islands as competition for the plush resort of the earth. Gambling is rather generally disapproved, no swank casino is on the books to lure the late-night crowd. True, there's a law permitting divorce proceedings fast and easy, after 6 weeks of residence, which matches Reno; but to date the influx of disillusioned wives has been only a trickle. Solid elements of the community aren't sure they approve. For the long pull they prefer to attract average John Citizen and his wife, the middle-class couple

with a plain, unfauciful urge to relax in the sun and absorb the views. Hence St. Thomians mention most frequently and with main pride their unplowed and uncrowded scenery. It is, in point of fact, very good scenery. It is soft, peaceful, tractable, well-mannered *buena vista*, seducing the eye gently with bosomy hills and, in every direction, the multicolored sea. It is scenery out of a child's paint-box, sketched in miniature, gay; only by remote and forgotten geology is it related to the violence of Puerto Rico's unmanageable mountains, some 40 miles to the west.

There's a hilltop road on St. Thomas, second in size among the Virgins, that gives you the next best thing to a bird's-eye panorama. In the south, 40 miles off, pearl-gray St. Croix, largest Virgin, looks like a sleeping whale. In between repose a few chunks of expatriate Maine coast established unassailably in perpetual summer. Then if you step a piece along the road and peer eastward, you hit a whole jackpot of Virgins—American group first and, swimming away to the horizon, the British group. If you have with you a copy of the United States Coast and Geodetic Survey Sailing Chart No. 905 you can intone their somewhat singing names: Mingo, Congo, Grass, Lovango, Frenchman, Guano, Thatch, Tortola—and Tobago and Little Tobago, too, and, more prosaic, Jost Vandyke, Hans, Lollik, Little Hans, with St. John, which is larger than the Bermudas but smallest of the main American Virgins, dominating the scene.

Beautiful islands, gracious to look upon, airy; with a dozen superior beaches and at least another score sufficiently theatrical to fulfill an advertising executive's conception of tropical paradise; fair roster of coco palms, white smother of surf on a thousand coral reefs, year-round temperatures from 69 degrees to 91 degrees F. But paradise with (if you're a born islander) reservations. Uncertain rainfall. Almost no land that isn't tilted like a baby Alp. Almost no topsoil that an Iowa farmer would bother to turn.

The American islands, which if pushed together like the pieces of a seaborne jigsaw puzzle, would comprise 132.9 square miles, or about the area of Philadelphia, have been called a "poorhouse" (by Herbert Hoover, who will never be forgiven for the ugly word). The term is relative. Once, a long time back, Frenchmen, Dutchmen, Englishmen, and Danes planted a wealth of sugar to the very crests by use of slave labor and arduous, impermanent terracing, but that was when sugar prices flew higher than a kite in a hurricane and nobody had heard of the steam grinder. Today, stopped cold by the competition of larger and more productive Antillean regions, only a few thousand Virgin Island acres are devoted to cane. The latest survey reported that vegetables and field crops occupied exactly 465 acres in a total land area of 85,120 acres—one-half of 1 percent.

Terrific poorhouse, then, by Palm Beach standards, underprivileged by Miami standards, but the British Virgin Islander, sitting a few miles away on the other side of a highly artificial international boundary with an annual percapita income of \$65, thinks the St. Thomian, \$230 or thereabouts, is rich. He isn't, of course; yet the level of sanitation in St. Thomas is high, malaria is rare, education expenditure runs better than \$70 per pupil. Inhabitants of a number of Caribbean communities (say Guadeloupe and St. Lucia for a starter) would, if plumped down on the main street of the Virgins' capital city, consider themselves in a field of clover. Automobiles dashing busily; real glass windows; everybody sporting shoes and store clothes, slick plastic raincoats in pastel colors to guard the delicate people against a shower.

Still, the islands are poor. Père Labat, that peripatetic French priest who wrote *Neuveau Voyage aux Îles de l'Amérique*, visited St. Thomas in 1707 and noted: "Provisions are always dear, money being plentiful, and strangers generally arrive in affluence."

The strangers still arrive in fair affluence. Whisky, cigarettes, and Danish silver are cheap, no Federal tax, but most common necessities cost more than in the United States by reason of high freight rates and high wharfage fees. Yet there remain as assets the high-class vistas, the sweet climate, the sea, the beaches; and everybody talks about hotels, whether old, new, or remodeled.

#### BRIDEGROOM UNCLE SAM

Among the new hotels are the Virgin Isle and the Flamboyant. The former, built at a cost of around \$3 million, was deliberately planned to be plushy with per-day costs ranging from \$15 to \$50. In addition to a kidney-shaped swimming pool, the hotel has a Foolish Virgin Bar whose featured drink is the Frozen Virgin. The Flamboyant is less expensive and, of course, less spectacular.

None of the Virgins had oil in their lamps when the bridgeroom Uncle Sam arrived. An opulent era of coaling and provisioning ships had been knocked on the head by oil and refrigeration; there had been the old-time sugar prosperity and, even further back, handsome traffic with sea robbers. But all the great days had faded. In 1917 the United States, seeking more armor around the Panama Canal, bought St. Thomas, St. John, and St. Croix, plus a miscellany of cays and coral humps, from Denmark for \$25 million, the fanciest price ever paid by Washington for any Territorial acquisition—\$295 an acre, as against 2 cents for Alaska (Stalin should catch the lunthead who sold it), 27 cents for the Philippines, and \$35.83 an acre for the Canal Zone. Fifty years earlier the Danes had offered the islands for \$7,500,000, but the United States Senate wouldn't bite. Uncle Sam did not attempt to buy the British Virgin Islands which, poor, too, and just as pretty, are geographically and ethnically an integral part of the archipelago.

The whole lot of islands on both sides of the international line—they add up to about a hundred if you count them at low tide—were discovered by Columbus just after the holy day of St. Ursula and the 11,000 British maidens who, on the lower Rhine, met glorious death in defense of their virginity along about A. D. 238 or 283 or 451. This commemoration of the martyrs was but a perfunctory tipping of the hat. Hispaniola, Cuba, Puerto Rico, and Mexico occupied the attention of Spain. Then, in 1643, the English and Dutch colonized St. Croix; 28 years later Denmark, anxious to share in 17th century colonial and slave-trading boom, took possession of unoccupied St. Thomas.

The jockeying began. The history of the Virgin Islands adheres painstakingly to the Caribbean pattern of blood in the streets. At St. Croix the English ejected the Dutch, were themselves thrown out by the Spaniards, who were defeated by the French. Denmark bought the island from France, but twice thereafter the English seized it, and seized St. Thomas, too, and soon lost them both. In 1733 a slave insurrection put St. John—Denmark's by right of uncontested occupation—to the torch; at St. Croix, where in the heyday 350 planters owned 30,000 slaves, 3 bloody revolts spread destruction and ultimately, in 1848, won the Negroes their freedom in a ruined island. St. Thomas was, at one season and another, notorious as a hangout for the most sanguinary of freebooters. It is recorded that you could get murder done for the price of a modest dinner without wine.

Today violence is dead as Jack Spaniard, and the departed cutthroats of the Main have been gilded and haloed in the image of Errol Flynn. Hotels are quaintly named Blackbeard and Buccaneer; Drunk Bay, Ginmill Hill, and Jugbottom Point celebrate vanished thirsts; you can buy pants in a shop that advertises buried treasure. But behind the facade of this cherished piratical conceit the Virgins are, and for generations have been, peaceful to the point of somnolence. Tranquillity is one of the permissible generalizations about the group.

Though rising from the sea within plain sight of each other if the day is clear (and it usually is), the islands are in many ways quite astonishingly unlike. It follows that they must be looked at one by one.

Most travelers enter the Virgins at Charlotte Amalie, seat of government, chief commercial center, the only town on St. Thomas. Like many another West Indian community, this place of 15,000 people climbs up spectacular hills—hills dubbed Foretop, Maintop, and Mizzentop in sailing days, and a fourth called Bluebeard after a pretty legend that a wife murderer once occupied a tower at the top of it. Streets tumble in swift cascades down to a spacious bay which, in sunlight, makes a shining ruffled cloth of almost inadmissible colors and accounts in largest part for the capital's charm. Red roofs, meandering stairways, and a few fine old solid houses as heavy and honest as the Danish import-export barons who built them contribute additional flavor.

It must be remembered that the St. Thomian is an American citizen—and dresses accordingly. His best-read book is the mail-order catalog. Not for him the checkerboard breeches and flour-sack shirts of the Haitian peasant; not for his wife the bright scarves of Martinique's women. The residents of St. Thomas, 91 percent Negro, are an earnest, literate people, given to no picture-post-card foolishness. They subscribe to a bit of witchcraft called *obeah* and can read an evil omen in the eccentric behavior of a bat or domestic duck; but they wear watches on their wrists more often than flowers in their hair.

If this seems to sadden the casual traveler in search of the primitive, mention is quickly made of a neighboring island. St. John, 2 miles abeam the easternmost tip of St. Thomas, is a tall island of timbered wilderness, possessing

exquisite beaches and almost no population—maybe 700 Negroes and 9 or 10 white folks in an area of 19.2 square miles.

I first saw St. John in a chalky, windy dawn years ago from the deck of a small sailboat pitching in a bad sea. There was then no other transportation, nor any boardinghouse, good or bad. For want of a bed I slept in a blanket on a beach called Francis Bay and ate beef out of a tin. Today St. John, served by motor launches, an hour's travel from Charlotte Amalie, provides an attractive paradox—least developed of the American islands, still uncommercial as the angles, it nevertheless offers in Caneel Bay Plantation the kind of self-contained resort most travelers have in mind when they retreat from snow. Seven screened and furnished cottages, adequately separated for privacy, have been constructed on the seaside property of an 18th Century sugar estate, each staffed with a cook who is also a maid and, if you demands aren't too exotic, bartender. You rent the cottage, the cook is thrown in; you buy your food (and bottles) at a well-stocked central commissary—and that's it. No larger problems. No taxis to hire. You walk barefoot across the lawn and fall into the healing sea. If one beach palls, you try another; beaches unlimited.

#### THE TOURIST TOPIC

This Caneel Bay haven, which I stress because it has no duplicate in the Virgins, is not inexpensive. A cottage for two is \$125 weekly, for six \$200. The food, which is very good, costs accordingly. So the clientele tends to run to Saltonstalls and Cabots.

At this writing, Caneel Bay can minister to 23 guests at top, with more facilities being built. Around the shore at Trunk Bay, where the sand is as fine as it could be and the marine gardens astonishing and bright, Mrs. Paul Boulton's guest house makes room less lavishly for another 10. In addition to a small inn (8 people—outside plumbing), occasionally several of 6 or 7 cottages stand available at \$85 to \$150 a month or thereabouts in Cruz Bay, the sleeping hamlet which is St. John's administrative headquarters. And that's approximately the total of beds for rent on St. John; not many.

The tourist development of the island is inevitably a topic over the third rum-and-water on Lind Webber's gallery at Caneel, on Mrs. Boulton's eagle perch of a veranda at Trunk. The possibilities, everybody agrees, are enormous. Look: magnificent sea everywhere, sheltered beaches gentle as a sleeping babe, wide-open beaches where the combers will spin you like a pin wheel, Sir Francis Drake Channel for a sailing ground, Robinson Crusoe cays to visit for a day's picnicking, plus high hills to climb where no one's climbed in 50 years, almost virgin forest, photogenic 18th century ruins, fine woody lonely trails to ride. \* \* \*

"Picture a roulette casino, beau idéal, under the palms at Denis Bay. Fancy a 300-room Grand Hotel Ritz-Majestic along the sand at Hawk's Nest Bay, striped awning, room service, a la carte menu a mile long, fresh orchestra weekly from New York, beach cabafias, yacht basin, everything air conditioned, all the sun-browned ladies in their clothes from Saks Fifth Avenue." Mrs. Boulton says breathlessly, hitching up her dungarees. And grimacing horribly.

Everybody groans.

Nobody who lives there or often goes there wants St. John to change. They don't agree that the true native, the fisherman and farmer, the black man born in St. John, would be happier shining shoes in a Miami Beach economy. There's no juke box on St. John. Old hands will go behind the barricades with rifles the day somebody tries to introduce one.

Meanwhile, St. John dozes in the sun beside the very clean sea and there's nothing for the visitor to do. Except swim, walk in those hills, ride those trails. Maybe try a little fishing. Watch the sun go down like a slow explosion behind islands that march away westward. That's about all. Nothing much to do. Or everything to do. The nights are very quiet and the stars scrape the hilltops.

On St. Croix the pace is a notch swifter. More people, more intensive agriculture. But St. Croix falls far short of the commercial drive of Charlotte Amalie. This is a place of good roads, pretty trees, and old families, white and colored: of tame hills and long views across valleys with the distant appearance of well-tended gardens. The main town, Christiansted, hugs a shallow harbor caught behind beautiful and dangerous reefs. The streets are broad, clean, quiet. Dominating the business center is an admirable old Danish clock tower, now falling into disrepair, on which the four clock faces rarely agree—as if to underscore the point that on St. Croix, time doesn't matter. A few shops display a

modest freight of garments and gadgets from Guatemala, France, England, China, Siam, Haiti, Mexico, Denmark—several even show grass hats of local manufacture. But you have to ask; nothing is thrust at you.

Margaret, who is my wife, and I were met by an old friend at the ex-military airport on the flat south shore. "Lee," we said, "it's nice to see you. Tell us about St. Croix."

"It is comely and full of coco palms," Lee said. "There was some unrest a while back when a. c. electric power replaced d. c. power, because a good many people reasonably supposed that a. c. was American current, possibly inferior to d. c., or Danish current. Now that's straightened out and everything's serene again."

"What else?" we asked.

"Sometimes a yacht arrives," Lee said. "Then for a few days there are new faces at the cocktail parties. With or without the new faces there are the cocktail 'What else?' parties. The typical St. Croix Martini is very dry."

#### THE DANISH DREAM

"Christiansted's fort was built by the Danes in 1839. It is quaint, has notably thick walls, and would be as useful as a lard barrel for defense today. Aside from the fort, we have a leprosarium with 28 inmates. A private residence named Bjerget is representative of the good houses built before the American purchase: high ceilings, graceful rooms, and a generous garden. The palace of the Danish Governor-General is treasured as a souvenir of the dignity of empire."

"We were told in St. Thomas that there's a young woman here who was offered \$20,000 by another woman for her husband. Can this be true?"

"I have merely heard the rumor," Lee said.

"May we have a look at the husband? After we've seen the Governor-General's palace, of course."

St. Croix in colonial times created the richest sugar and cotton plantations in the Danish West Indies. Ruins of cane-grinding windmill towers squat sorrowfully on a hundred slopes, like mausoleums of dead planters, like untended monuments to the follies of slavery and sugar-profiteering. The names of the old estates are sometimes romantic and sometimes wry: Adventure, Prosperity, Paradise, Profit, and Wheel of Fortune. A man named Jacob Boffron called his place Betsy's Jewel, and there were also Judith's Fancy, Betty's Hope, and Whim. New Love estate, watered by Love Gut (gut means brook in the Virgins), came to be called, later on, Lower Love. Work and Rest says something about the character of General Kriegs-Commissair Lucas von Beverhoudt, who owned it. Barrenspot and Stonyground were presumably less happy holdings than Blessing. The estate name Slob of Laurence Bodkin is much cherished by today's residents, who have not pursued the etymology too far.

#### JOHN BULL'S ISLANDS

From St. Croix to St. Thomas is a 25-minute flight, with scheduled daily service. No such fancy connection is available for the lonely out islands that lie north and east of St. John—the British Virgins which Uncle Sam ignored. Unless you own a seaplane, or are improvident enough to charter one, you go to the British Virgins by sail or motorboat.

Tortola is the big island, 10 to 12 miles long, larger than St. John and only a narrow look away across the watery international boundary of Sir Francis Drake Channel, which the buccaneers called the Virgins Gangway. Thirty-five more islands and islets make up the total British land area of 67 square miles, inhabited by 6,500 colored subjects of the King and enough white settlers for 6 or 8 tables of bridge. With the exception of Anegada, which is all beach and a raised coral reef, the islands are steep and rugged, running up to 1,780 feet. The soil, where it's not sand, is among the stoniest in the world. Chief activity of the native inhabitants is cattle raising for the St. Thomas market; chief activity of the government is the issuance of postage stamps for collectors abroad. The postage stamps are dignified, subdued in their coloring, and rarely used by local people, not many of whom have anybody to write to. The prosperous distant past of sugar and slaves has left no evidence beyond a few ruins.

Road Town, on Tortola, capital of the British Islands, their single settlement bigger than a crossroads, is a place of casual and thoughtless composure, with a drowsy present and promised no future more glowing than survival if ever the great and noisy cities of the earth go up in smoke. It has tin roofs, 769

inhabitants, a prim white hospital, red-flowering hibiscus hedges, privies at the sea's edge, Government House, and a bar with cold beer. For the traveler's comfort there is a 3-room inn called Mrs. Jennings' Boardinghouse; the beds are parenthetical but immaculate, and the plumbing—most uncommon—is indoors.

Tortolians would like the United States to annex their island, but feel there's a better chance of collecting 25 million American dollars some day as indemnity for loss of the city of Philadelphia.

The claim is admittedly vague. But Mr. Howard R. Penn, a Negro leader of commerce close to Road Town's jetty, thinks it's high time the Tortola Penns hire a lawyer. Because, don't you remember that Quaker William Penn was, by the British Crown, granted a chunk of the Western World, including the land on which Philadelphia stands? Good; William died in 1718 and the title passed to several sons. The sons begot sons, and two of these—the local story goes—sailed south to Tortola, then an important Quaker settlement; lived there, and died there. Their sons and grandsons, according to the tale, married into substantial island families, and today there's a numerous clan of Tortola Penns, none of whose forebears cut in on cash settlements for hereditary rights to Pennsylvania. "I can exactly remember my grandfather," Mr. Howard R. Penn said to me. "He was almost white. He thought we really should take steps about Philadelphia."

I agreed with Mr. Penn that Philadelphia would be nice to own.

You can get to Road Town from Charlotte Amalie in 3 hours aboard a 50-foot launch named *Islander*, Capt. Austin Pickering. The captain is a fat and immensely cheerful dark brown man bred to the local sea; there's scarcely a reef in the Virgin Bank that he doesn't know blindfolded. The fare to Road Town is \$1, with a comfortable seat and no better traveler's bargain in the islands. Unless its Captain Pickering's run from Tortola to Virgin Gorda, about 12 miles farther east, twice a month. For this the charge is 30 cents.

We took off for Virgin Gorda—the Fat Virgin the island that approximately resembles a pneumatic young woman flat on her back on a couch of sea—one Saturday morning precisely at 5. It was raining. When the sun came up all the little islands north and south wore capes of cloud. We passed Dead Chest, shaped like a coffin, which Robert Louis Stevenson called Dead Man's Chest ("Yo-ho-ho and a bottle of rum"); passed Salt and Beef, Cooper and Ginger, and sighted the cays that are happily named George Dog, Great Dog, and West Dog, with Cockroach close beside. Then Virgin Gorda loomed, and Captain Pickering swung *Islander* through an invisible break in a boiling reef and we were inside a sheltered cove.

Oliver Leonard came out in a beaten-up rowboat and paddled us to the beach. I waded the last few feet; Margaret was carried up on the sand by Vanrhynne Edison O'Neal. Coleridge Waters came to shake hands and offer us the use of his private beach; Irving O'Neal, cousin to Vanrhynne, suggested we have coffee at his sister-in-law's house near by. If we'd been an official party from Downing Street there could not have been larger hospitality.

#### COLERIDGE CAVE

The island comprises 13 square miles of superb white beaches, sandy flatland, and angular high hills swept by Atlantic winds. Its population totals 500, as nearly as anyone can tell; no white man lives there now, but two centuries ago English plantations flourished briefly and once the Spaniards made a halfhearted settlement. Virgin (pronounced Wirgen) Gorda gets along without a resident doctor, but schooling is available for the children. No roads, of course—no automobiles—but cart tracks where they're needed; no town at all, but simple small houses scattered within shouting distance across the valleys; no inn, but a dozen gracious families who'll make you a bed; no electricity, but 3 kerosene refrigerators, in one of which American canned beer is maintained at near-freezing temperature by Howard O'Neal, a merchant with broad vision.

"We don't have it so bad," Vanrhynne Edison O'Neal said over the morning coffee. "Anyway, we're not crowded."

In Oliver Leonard's rowboat, we went with Vanhyne and Oliver to look at Coleridge Waters' private shore. This is the show place—the Niagara Falls, the Mont Blanc, the Pyramids—of Virgin Gorda. Nobody knows exactly what happened long ago at Coleridge Waters' beach, but certainly nobody would care to have been there when it happened. Enormous granite blocks bigger than houses are heaped inland and at water's edge in wildest confusion, tossed



there by some violent action of nature. Beneath 70-foot boulders propped one upon another, the sea finds its way to form beaches in great awesome caverns that seem sure to tumble if you speak aloud. So you do not speak aloud: you whisper, as in a cathedral. The light is dim blue and the water clear as glass above brilliant sand. I've seen nothing more impressive anywhere in the West Indies.

Though in a somewhat different way, Louis Bigelow's lizard's head on Guana Island gives you almost as big a jolt.

You do not accept the lizard. You sail around the western point of White Bay on Guana, just north of Tortola, and the lizard comes in sight against the sky and you deny it. Unless, you say to yourself, Gutzon Borglum once voyaged this way. The head, shaped massively in stone, projects above the sea from a lofty promontory; the cold reptilian eyes are on that instant, closed, but the beast seems about to breathe.

Louis Bigelow of Massachusetts found Guana—named in Spanish times for the lizard, the iguana—some 15 years ago. He'd been in Russia making movies for an educational foundation; he'd met, in Moscow, a girl named Beth Gillis, of Minneapolis, secretary to Walter Duranty of the New York Times. In the bleakness of Russian evenings Beth and Louis warmed themselves with talk of sun and sea and coral sand, of an uninhabited small island. That began it. The Bigelows, highly practical, studied maps. They made a trip into the South Pacific, discovered nothing that satisfied them. Then one day Louis sailed around the eastern end of Tortola and sighted Guana. Sun and sea and coral sand, and uninhabited.

Guana is small, perhaps only a mile and a half in greatest breadth, shaped rather like a sleeping turtle with a long tail pointing northwestward. White Bay makes a broad half moon of protected mooring ground caught between spurs of the green hills that lift steeply higher than 800 feet. Beth and Louis moved in with a tent. On an airy ridge they built with their own hands a thick-walled stone house on the foundations of a 1740 Quaker plantation house. Louis hammered a boat together. He brought in cattle and a few sheep and goats and turned them loose to multiply on the land. Beth made a garden. And then they added to the house, and Beth took time out to have two babies.

#### TREASURE TROVE

The Bigelows have constructed a self-contained small world, and made themselves a job to boot. Guana is operated today as a private club, for a few well-heeled northerners who sail down in winter to fish and swim.

You slip into the St. Thomas dream of pirate treasure if you stay awhile in the Virgins. One evening not long ago, as Louis composed a sunset tonic of rum and lime on his terrace, I asked about Norman Island, south of Tortola.

"There's a place called Treasure Point——"

"Yes," Louis said. "I've seen it. Story is that there was a treasure, but it's been lifted, long ago."

"Something could have been overlooked," I said.

"Not likely. Still, who knows? We might sail over and dig up a million dollars. After you've gone, of course."

I looked down on the quiet twilight sea funneling westward past all the verdant-seeming little islands, and I tasted the good daiquiri that Louis had made; peaceful end of an unhurried day; and so inevitably it occurred to me to ask, "What would you do with a million if you found it?"

"I don't know," Louis said.

"I know," Beth said. "We'd buy a pair of fancy cowboy boots for Bill to wear when he's riding his burro. And maybe a spangled shirt for Kim. And go right on living on Guana Island."

"Sure," Louis said. "That's it."

Except for the few windmill towers, the unobtrusive ruins decently overgrown by bush, souvenirs of heartbreak and the scarlet accumulations of history do not, in the Virgins, assault the traveler, as in so much of the world. There were never, of course, great battles or ineradicable scars; no eloquence in stone or glass recalls a time much before yesterday morning; the great names have not been many. Alexander Hamilton clerked in St. Croix. The impressionist painter Pissarro was born on St. Thomas. William Thornton left Tortola to design the Capitol in Washington. And from Little Jost Vandyke, John Coakley Lettsom went abroad 2 centuries ago to become the most distin-

guished London physician of his day. His monument, more enduring than the windmills, is four lines of doggerel:

*I, John Lettsom,  
Blisters, bleeds and sweats 'em.  
If, after that, they please to die;  
I, John Lettsom.*

Great men leave islands behind them. But there are always good men who stay. There are in Charlotte Amalie, today, men like Morris De Castro in government, like Antonio Jarvis, the writer and schoolmaster, working selflessly (and with very little praise) toward goals of dignity and education. Existing so precariously on the whim of tourists, the American Virgins may wish that there was some easier way of life; but they're not given up the struggle.

Senator JACKSON. Is it certain that all of the land involved in the proposed area of the park is of nonuse nature—that is, it cannot be used for farming or any other purpose in the island at the present time?

Mr. WIRTH. Within the park?

Senator JACKSON. Yes.

Mr. WIRTH. We are leaving out all the agricultural land. In 1 or 2 places there may be, in connection with a house, a little sidehill garden and also maybe a few little open places for grazing, but the commercial part of it is in the area being left out.

Senator JACKSON. What about mineral development?

Mr. WIRTH. There is no mineral development there that we know of or have heard of. I might add here—you asked about the plants—that there are more than 260 species of native woody plants in St. John, of which 154 are trees—this is in 1925—72 shrubs, 26 woody vines, and 8 cacti, and we could give you a partial list of just what they are.

Mr. BOYER. With the advent of jet transportation, Senator, it will be as though these islands were towed to the vicinity of Bermuda. I can leave New York, which I am going to do on Sunday, at 6:30 in the morning, and I will be swimming at Caneel Bay that afternoon. In other words, it is a very accessible place.

Senator JACKSON. You are not going by jet, though.

Mr. BOYER. No; but as soon as we go by jet, it will be even faster.

Mr. WIRTH. You are going by coach plane?

Mr. BOYER. Yes; to San Juan and then over Culebra to St. Thomas and to St. John by boat. The government runs a boat to Cruz Bay from St. Thomas.

Mr. EDWARDS. It is operated by the Virgin Islands government. It is an old Coast Guard boat.

Senator JACKSON. The Coast Guard took us over in 1951.

Mr. EDWARDS. They are specially arranged trips.

Mr. BOYER. They probably have more boats now than were there when you were there, and it is only 4 miles away, so it is very accessible to St. Thomas. The fact that it is an island does not mean that it is inaccessible.

Senator JACKSON. What is the power situation on the island? Is it all diesel-power stations?

Mr. BOYER. Power to date has always been provided on an individual basis.

Senator JACKSON. Local units?

Mr. BOYER. Caneel Bay Plantation, Inc., is in the process of negotiating a contract with VICORP—Mr. Edwards is handling the

details—whereby public power will be brought to St. John from St. Thomas. What is making it possible is the Caneel Bay Corp. guaranteed payments for power for 10 years.

In other words, we are committing ourselves to an expenditure of \$250,000 in order to bring power to the island. We will not be the sole beneficiary. The entire island will benefit.

Senator JACKSON. How many people will that take care of?

Mr. BOYER. It will take care of any foreseeable power demand of the island.

Senator JACKSON. Do you build transmission lines?

Mr. BOYER. An underwater transmission line, a submarine cable from St. Thomas.

Senator JACKSON. Then you have the problem of distribution lines over on the island. Your main power station will be, of course, in St. Thomas?

Mr. BOYER. Yes, sir.

Senator JACKSON. You will buy from existing establishments?

Mr. BOYER. Yes, sir.

Senator JACKSON. You will build your own distribution system?

Mr. BOYER. We will within the area, and VICORP—the Virgin Islands Corporation, which is a Federal corporation—will build its own distribution lines on the island for other customers.

Senator BIBLE. I was just wondering if you had any idea how many people visit the Virgin Islands at the present time.

Mr. BOYER. I really do not know, but I would say that 50,000 to 100,000 a year would be a fair estimate.

Senator BIBLE. As of now?

Mr. BOYER. I believe so. I really am not sure. However, I know it is growing and will continue to grow, because it is such a beautiful and interesting place.

Senator BIBLE. Thank you.

Senator JACKSON. Any further questions?

Senator BIBLE. That is all, Mr. Chairman. Thank you.

Mr. BOYER. To give you an indication of the traffic, I might say that 35 cruise boats which carry anywhere from 500 to 8,500 people stopped in St. Thomas last winter.

Senator JACKSON. One of the main problems in these islands is water; is that right?

Mr. BOYER. Yes, sir.

Senator JACKSON. And they have these catch basins all over the island?

Mr. BOYER. Yes, sir.

Senator JACKSON. What is the situation as to the water supply on St. John? Will you have an adequate supply for the projected needs?

Mr. BOYER. In order to provide adequate water for the Caneel Bay Plantation, which will be the largest hotel operation, we are in the process of building a water catchment basin at a cost of \$195,000.

Senator JACKSON. Could you supply for the record a statement of your projected development plans for the island or future development program? I mean, what do you contemplate building in the way of hotel facilities and other types of accommodations?

Mr. BOYER. I can only speak at the moment on the plans for Caneel Bay. We are so busy with that at the moment, Senator, that we have

not had a chance to think much about any expansion. However, the facilities at the Caneel Bay Plantation will take care of approximately 200 people a day. We will have 100 rooms. Now we are building 50 rooms, and we hope to expand it to 100.

Senator JACKSON. Building another unit?

Mr. BOYER. Yes; more cottages and more beach-front units.

Senator JACKSON. What will that investment amount to?

Mr. BOYER. That investment at Caneel Bay Plantation will be in excess of \$2½ million.

Senator JACKSON. \$2½ million?

Mr. BOYER. Yes.

Senator JACKSON. When do you expect to complete that program?

Mr. BOYER. January 1 of next year.

Senator JACKSON. You will?

Mr. BOYER. Yes, sir.

Senator JACKSON. That is amazing. How far along are you now? Is most of it being undertaken this year?

Mr. BOYER. Oh, yes, sir. We have a large construction outfit at work on the plantation at present. It has been closed for a year, and the construction is in its most active phase now.

Senator JACKSON. Will the rates be such that a variety of the American community can go there?

Mr. BOYER. Yes, sir; they will. It is not our desire at all to have the highest rates.

Senator JACKSON. Do you know approximately what you expect the rates to be?

Mr. BOYER. Yes, sir.

Senator JACKSON. I do not want to hold you to them. I mean a tentative estimate.

Mr. BOYER. They will be in the vicinity of \$15 to \$22 a day per person with all meals.

Senator JACKSON. That is the American plan?

Mr. BOYER. American plan.

Senator JACKSON. \$15 to \$22?

Mr. BOYER. Yes.

Senator JACKSON. What is it without the food?

Mr. BOYER. Since there are so few eating places on the island, it does not make much sense to provide a European plan, although I could break it down. You can figure that meals cost about \$10 a day.

Senator JACKSON. It did not occur to me that there might not be an alternative. The only alternative would be a lunch basket; would it not? Or K-rations, or something?

Mr. BOYER. We hope eventually to provide much lower cost facilities, such as fishing camps.

Senator BIBLE. Mr. Chairman, it occurs to me that Senator Butler's 1953 report, which I understand was drafted by our committee counsel, Stewart French, at Senator Butler's direction, is helpful on the point that I was asking Mr. Boyer I would to read a paragraph into the record. I think it will do quite a bit in clearing questions of tourism. This is on page 3 of the Virgin Islands Report:

The large part of this highly gratifying economic development is the result of increased tourist activity in the Virgin Islands. For 1952-53, the Virgin Islands Tourist Development Board reports that tourist revenues were \$6,440,446 as contrasted with \$1,989,046 in 1949-50, the year of my last previous visit (see

p. 127 below). This is a rise of well over 300 percent. During the 1952-53 season, some 126,284 persons visited the islands, contrasted with 36,280 4 years ago. Twenty large cruise ships visited St. Thomas in 1953 as against 12 in 1952 and 7 in 1951.

I think that is helpful.

Mr. BOYER. Yes. That is more than I thought.

Senator BIBLE. You underestimated.

Mr. BOYER. Yes.

Senator JACKSON. There is not any doubt but that the Virgin Islands offer a unique opportunity in the way of tourist development. I think it is about the main economic attraction of the islands. There is practically no industry there, and the main economic activity of the group is centered on the island of St. Croix.

With the decline of the rum business for one reason or another, if the island were to survive on the basis of its sugar production, it would be a pretty desperate operation. They are exporting a small amount of sugar now, I believe; are they not?

Mr. EDWARDS. The quota is 12,000 tons, and we are asking that it be increased to 15,000, and we just disposed of the rum factory.

Senator JACKSON. There is limitation as to the expansion?

Mr. EDWARDS. Very limited.

Mr. WIRTH. I might add to the report, in answer to the earlier question about agriculture in this same report, that Senator Bible referred to here. St. John has a total of 12,160 acres. 318 is cropland and 56 acres is land in cultivation, and clear pasture, 1,204. Then the rest is classified as wood and brush lands.

Senator JACKSON. You might either state briefly or supply for the record what you are going to do with these 50 acres over on the island of St. Thomas.

Mr. WIRTH. All right, sir. I could tell you briefly here. We have put on it a maximum of 50 acres. The purpose is to have what we might call our entrance to the park area from there and have a suitable dock and parking area and places for the buses or transportation to load and unload people on the boats going over to St. Croix.

Senator JACKSON. Is that a part of this \$120,000?

Mr. WIRTH. Yes, sir.

Senator JACKSON. It is not in addition to?

Mr. WIRTH. No. I think it is an addition to, but I do not think that will be exactly our total expenditure.

Senator JACKSON. I think it would be well if we would get a breakdown on the O. and M. and the projected construction program.

Mr. WIRTH. We have that.

Senator JACKSON. Supply it for the record. We do not need to go into it now.

Mr. WIRTH. All right, sir.

(The information referred to appears on p. 17.)

Senator JACKSON. Are there any other statements?

That will conclude the hearing this morning. The subcommittee will defer action on this until the other members have had an opportunity to go over it. I do not believe that it is wise to take hasty action. It is better to have a full and complete record before this subcommittee acts, and I would like to give the other members of the subcommittee an opportunity to go into this matter and to have their views and comments.

I will direct that certain other articles which have been supplied to the committee, and a letter from Fred Packard of the National Parks Association, also appear in the record.

(The articles and letter to which the chairman referred above are as follows:)

[Article to appear in the July-September 1955 issue of National Parks magazine]

#### PROPOSED VIRGIN ISLANDS NATIONAL PARK

(By Harold Hubler, Superintendent, San Juan National Historic Site, Puerto Rico)

Before World War II, the National Park Service was interested in the park potentialities of the American Virgin Islands. I was then stationed in the islands and I made a study and report. Particular attention was centered on the island of St. John, which is 50 miles east of Puerto Rico, some 1,442 miles southwest of New York City, and 900 miles southeast of Miami. There was no question in my mind as to the parklike qualities of St. John Island, but war had broken out in Europe and the idea was necessarily deferred.

In 1954, Mr. Laurance Rockefeller, who owns the Caneel Bay Estate on St. John Island, found the old report and became intensely interested in the possibilities of creating a Virgin Islands National Park. The next time he saw Director Conrad L. Wirth of the National Park Service, which was at Jackson Hole, Wyo., he discussed the Virgin Islands proposal with him, and it was decided that I should return to the island and make a second study to see whether the national park qualities which I had reported on before the war were still intact. As a consequence, it was my pleasure and privilege to return to St. John, after having been away for some 15 years, to look over familiar scenes. Mr. Rockefeller and some of his associates and Mr. Wirth came down to St. John Island and we spent several days of intensive reconnaissance and analysis of the proposed park project.

St. John Island is the most beautiful and undisturbed of the three United States-owned Virgin Islands. Its setting, in the colorful and calm channels of the island archipelago, its different and unusual scenic quality, plant life, and history are quite unlike any other reserve now included in our national park system. The plant and animal life of the area and the surrounding waters are of exceptional interest and educational value. It is a colorful, tropical island under the American flag, rich in historic, scientific, and recreation interests. Modern transportation methods have made it conveniently accessible. Opportunities exist for pleasant, year-round vacations.

The Carib Indians, originally from South America, left their marks on the island in the form of stone picture writings. Columbus sailed the waters in the region during his second voyage to the West Indies, and Sir Francis Drake piloted his ships close to its shores. Later, pirates found shelter in its many protected harbors. There are bush-covered remains of old 18th century forts and batteries that played important roles in the island's settlement. Extensive and rather elaborate estates were constructed in the early 18th century, when the island flourished on the production of sugar. Picturesque ruins of these estates are still in evidence.

St. John is a small island containing only 19.2 square miles of land. It is 9 miles long and nearly 5 miles wide at its widest point and rises abruptly from the sea to an elevation of 1,277 feet at the top of Bordeaux Mountain. At the present time, 85 percent or more of the acreage is covered with tropical vegetation and second-growth trees. The forest contains a large number of species not found on continental United States. It is also unique even in the Caribbean area.

Of scientific and educational interest are the Carib inscriptions or petroglyphs located at the water falls in the Reef Bay area. Here, archeological research was carried on by Theodore DeBooy, in 1916 and 1917. He states that the petroglyphs were made in pre-Columbian days and that many of the inscriptions have already been obliterated by weathering. Even so, there are, at the present time, distinct figures remaining on the rocks at the waterfalls and also on Congo Cay and Carvel Rock, off St. John, to the northwest.

Facts of scientific interest are offered not only to the archeologist, but to the biologist as well. Dr. Whitehouse of the University of Toronto found several rare species of dragonflies on the island. Ichthyologists have an unusual oppor-

tunity to study fish and other forms of marine life. Especially interesting are those forms inhabiting the coral reefs.

Botanists will find much of interest in the tropical and unusually rich, diversified plant life. According to the Scientific Survey of Puerto Rico and the Virgin Islands, by N. L. Britton, more than 260 species of native woody plants were specifically reported for St. John, of which 154 were trees, 72 shrubs, 26 woody species, and 8 cacti. Much of the colorful plant life is of interest to laymen, too, including orchids growing in their native habitat at the waterfalls area at Reef Bay. Camelburg Peak and the Bordeaux Mountain areas also are sites where many unusual species of plants grow. Since most of the island has been reverting to jungle for many decades, the flora shows considerable advancement in a natural succession toward its original condition.

Practically all of the St. John Island beaches abound in shells of many kinds, the most beautiful being the king and queen conch shells.

To become completely acquainted with the charm of the island, it is best to travel either by horseback or on foot. It is possible on most of the existing trails to plan a trip that will include both mountain scenery and seaside beauty, without retracing any of the route. Hikers and horseback riders do not find either of these activities uncomfortably hot under the tropical sun, because of the abundant shade and the constant blowing of the trade winds that give the island its equable climate. Perhaps the present park qualities and quiet atmosphere could best be preserved in the proposed park by confining auto traffic to Centerline Road and the more heavily traveled seashore drives along the east and northwest shores. Since there is no need for speed, roads should be kept as simple as possible. Trails should be maintained for horseback riding and hiking.

Boating possibilities appear to be unlimited. The many landlocked harbors and sheltered coves offer ample anchorage, and winds and tides are ideal for sailing most of the year.

Swimming from white sandy beaches is one of the most popular sports of the island, and there are ideal spots for picnicking along the roads and trails.

Aqua-lung enthusiasts find the sea around the island a treasure house for their underwater forays. The use of glass-bottomed boats would provide a means of introducing visitors to the marine world, hidden among the many reefs and rocks.

St. John possesses features and remains which tell the interesting and colorful story of the settlement of the Caribbean Islands and life as it existed from the time of the Carib Indian occupancy, throughout the second voyage of Columbus, down to the present time.

The proposed park would comprise a major part of the island of St. John, omitting the settled areas and arable land, and including certain nearby small islands and cays. Preservation of the Carib stone picture writings, the old forts, the estate ruins and other features of historic and scientific interest, as well as the uniquely scenic qualities, would be accomplished by establishment of the proposed Virgin Islands National Park.

NOTE.—Two bills, H. R. 5299 and S. 1604, to establish the Virgin Islands National Park, are being considered by Congress, and hearings already have been held.—*Editor*.

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[From the Daily News, Ada, Okla., November 28, 1954]

#### PRIMEVAL AREAS

Laurence S. Rockefeller has purchased and is offering to the United States Government half of an island in the Caribbean to be used as a national park and wildlife refuge. We presume the Government will accept the gift and keep the land for the enjoyment of the people when they can get to it.

More and more it seems areas, generally small, are being set aside to be kept in their primeval purity and beauty. Some areas have been set aside in this State to be used as State parks. If they are "developed" to any extent they will lose some of their attraction. We should like to see most of them left just as nature presents them.

We wish we could get one or more small areas within 15 or 20 miles of Ada to be owned by individuals and dedicated to public use or put in the ownership of the city. The areas need not be large: 75 or 100 acres. Wildlife would be left and protected. The only time a gun would be permitted would be to kill stray cats that happen to take up in the forests. Dogs should not be permitted in the area at any time. It would be nice to have water, but no manmade lake

should be constructed. It would be nice if some beavers would come and build dams, but man should not put an ax or hoe or bulldozer into use. Even the snakes should not be molested.

Such an area would be enjoyable for any person who likes nature as it used to be and will not be long hereabout unless action is taken soon.

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[From the Enquirer, Cincinnati, Ohio, November 28, 1954]

#### A PRINCELY OFFER

Laurance S. Rockefeller's proposal that his family interests buy something like 8,000 acres on the beautiful island of St. John in the Virgins is a measure of change in social thinking. Mr. Rockefeller believes St. John to be one of the loveliest of unspoiled scenic islands yet remaining. He wishes to make of it a national park, where all may enjoy themselves.

A generation ago, a multimillionaire, admiring such a location, would, no doubt, have acquired it for himself, or, at best, earmarked it for an exclusive club of his friends.

Today a Rockefeller wishes it forever dedicated to popular uses. That is the kind of social democracy, distinctly not Marxian, that is steadily on the march in this country. Congress would do well to accept Mr. Rockefeller's offer on behalf of all the people.

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[From the State Journal Lincoln, Nebr., November 24, 1954]

#### ON THE USES OF WEALTH

[From the Christian Science Monitor]

Laurance S. Rockefeller has purchased half of a particularly scenic island of the Virgin group in the Caribbean and is offering it to the United States for a national park and wildlife refuge.

This is not the first time Rockefeller philanthropy has taken the direction of helping to preserve an area of unspoiled wilderness or great natural beauty "as a public park or pleasuring ground for the benefit and enjoyment of the people"—to quote the quaint phraseology of the act of 1872 setting aside Yellowstone. Only last year the Rockefeller family let it be known that it was undertaking to aid in the expansion of Grant Teton National Park to the extent of \$6 million.

Add this to such things as the Rockefeller and Ford Foundations, the Carnegie Endowments and other similar funds, and it does not take much argument to establish the thesis that great concentrations of wealth in individual or family hands can be a blessing to society.

It would take enormous expense and effort to collect such sums from many small givers. And it can take a long time to educate the public to an active appreciation of some of the pioneering projects which a few wealthy men have made possible.

But such a thesis could be pushed too far, of course. It would lead to an assumption that a society which fostered great accumulations of wealth in a few hands would be the best society. History does not bear that out. So much depends on what kind of hands. It is probably sounder over the long run to have a nation's wealth widely distributed at a moderate level.

The American economy has been moving toward such broad distribution. So theorizing beyond a point becomes a bit academic. Which shouldn't prevent us, notwithstanding, from voicing appreciation when great private fortunes are used with so much enlightenment.

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[From the Courant, Hartford, Conn., November 26, 1954]

#### A DREAM ISLAND IN THE CARIBBEAN

One of the privileges of Americans is taking pleasure in the beauties of nature as preserved in our national parks. From Maine's Acadia National Park on Mount Desert Island, they stretch south and west across the country, with Yellowstone, Yosemite, and the Grand Canyon as what may seem the ultimate in curiosity and breathtaking grandeur.



Now there is the possibility that another national park, the gift of Laurance Rockefeller, may be developed on the island of St. John in the Virgin Islands. A trip to the Caribbean Sea with the prospect of visiting rock carvings made long ago by the Carib Indians, tropical plants, ancient sugar mills restored to bring back the primitive culture of slave-plantation days, would be what may seem to many an ideal vacation trip. Above all, there are the blue trade-wind skies, the green mountains and white sands, and the incredibly clear sea.

This is a project that has been in the minds of the national-park officials for nearly 15 years. The park would be a big one, as Mr. Rockefeller has obtained options on 12,700 acres. They include a 650-acre resort area with beach accommodations for tourists, a central dining hall, and vacation facilities for boating and fishing in the Caribbean.

If the plan goes through, Laurance Rockefeller will be offering his fellow Americans a vacation spot as well worth seeing as Williamsburg, Va., developed by his father, John D. Rockefeller, Jr. Although St. John Island is not so vitally linked to the tradition of historic America, yet in its way it will remind visitors of their seafaring ancestors, who roamed the Caribbean in their home-built vessels, trading tobacco and hides for the precious sugar and molasses that made more palatable the staple New England breakfast of the famous hasty pudding.

Laurance Rockefeller calls St. John's "a dream island." There are many Americans who will dream happily of an island vacation if the Government accepts the gift, and puts the project through.

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[From the *Virginian-Pilot*, Norfolk, Va., November 20, 1954]

#### CARIBBEAN PARADISE REGAINED?

President Hoover was returning from a Caribbean cruise aboard the battleship *Arizona* when he issued an ill-starred statement about the Virgin Islands. The time was April 11, 1931, and the Nation was in the grip of depression. The headlines quoted Mr. Hoover as saying that when the United States purchased the Virgin Islands from Denmark in 1917 \$25 million was paid for "an effective poorhouse."

The Nation was tired of "the depression" and weary of prohibition. In North America and in South America Mr. Hoover was criticized for his indiscreet faux pas. Latin Americans said the United States created the poorhouse in the islands it purchased from Denmark as a coaling station, when it enacted national prohibition. In North America it was pointed out that the President had chosen a poor time to say of any American-owned Territory that there seemed "no hope of economic rehabilitation."

There was hope. National prohibition was repealed. In 1939 Harold A. Hubler of the National Park Service visited the Virgin Islands. He was so impressed with their beauty that he wrote a report proposing that a national park be established on St. John, the smallest of the three islands of the group bought by the United States. The idea was filed in the archives of the National Park Service. Now Laurance S. Rockefeller, the third son of John D. Rockefeller, Jr., has acquired options to purchase about half of the scenic island. By donating an estate he already owns there, he may eventually be in possession of about two-thirds of the island, which he would like Congress to accept and dedicate as a national park.

Mr. Rockefeller, long interested in conservation, thinks a park in the Virgin Islands would be a national step in that direction. It really would be a hemisphere stride. St. John was described by early visitors as a "paradise." Once having discovered its beauty, many American tourists would journey on to South America. Time and fortune and vision may work some magic on the snow-white beaches of an old coaling station.

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[From the *Inquirer*, Philadelphia, Pa., November 21, 1954].

#### ANOTHER NATIONAL PARK

Laurance Rockefeller's efforts to acquire some two-thirds of St. John Island in the Virgin Islands which he proposes to turn over to the United States as a national park are in a fine American tradition and should receive whole-hearted

support. The island of St. John is one of the few unspoiled spots in the Caribbean and could be a priceless treasure if preserved in its natural state.

Unfortunately the National Park Service has been permitted to deteriorate over the past decade and a half to the point where it may have difficulty accepting the gift. Bernard DeVoto has repeatedly insisted in *Harpers* magazine that the only way to prevent complete despoilment of the natural beauties of Grand Canyon, Yellowstone National Park, and others is to close them to the public.

That seems an extreme view and undoubtedly is intolerable to most people. Yet if Congress persists in holding back even the equivalent of the small fees now charged visitors for the parks' upkeep something in this nature will have to be done. With private interests seeking constantly, on the one hand, to encroach on the public preserves and neglect taking a yearly toll on the other, our national park system apparently is headed for destruction. It must be saved.

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[From the Observer Dispatch, Utica, N. Y., November 22, 1954]

### TO KEEP ISLAND NATURAL

Laurance S. Rockefeller wants to give two-thirds of the Island of St. John in the Virgin Islands to the United States National Park Service.

The island is 9 miles long and 5 miles wide and speaking of it, Mr. Rockefeller said, "I found the combination of mountains, beaches, and the sea unique in the Caribbean. The unspoiled nature of the area appealed to me and I wish to preserve it against overdevelopment."

That is what the people of the State of New York sought when they put into the State's constitution the declaration their lands in the Adirondacks shall be kept forever wild. They have had a hard time keeping them that way and here's hoping it won't be so difficult for Mr. Rockefeller with St. John.

Whether his valuable offer will be accepted depends upon Interior Secretary McKay and Congress. The Virgin Islands were purchased in 1917 from Denmark for \$25 million.

The Rockefellers who have launched many sorts of projects beneficial to the Nation have rescued numbers of areas from despoilation, including the Grand Teton National Park, Wyo.; the Jackson Hole Preserve; Acadia, Maine; Great Smoky Mountains, Tenn.-N. C.; and Shenandoah, Va.

St. John is described as the most beautiful of the Virgin Islands—a paradise.

[From the Mirror, New York, N. Y., December 12, 1954]

### LAURANCE S. ROCKEFELLER: PLAN FOR A PARADISE

For the past 5 years Laurance Spelman Rockefeller has been spending his winter vacations cruising around the Caribbean islands. About 3 years ago, he and wife, Mary, and a few friends stopped for lunch at St. John, smallest of the three Virgin Islands which the United States bought from Denmark in 1917 for \$25,000,000. The place they stopped at is called Madam Boulon, a little resort with 40 "pillows," hotel language which means it can sleep 40 people.

"It looked very good and I couldn't forget it," Rockefeller said recently in his offices at Radio City. "We returned the following winter to the same place."

He bought about half the island after his second trip, and fell so in love with its beauty he now wants to share it with all of us. He hopes to get about two-thirds of the 9 by 5-mile island and give it to America for a national park.

"I just started out to preserve a limited area, as a business," he said, "and develop a unique resort for people who work hard and want peace and loveliness on their vacations. But it developed into a larger concept of a national park so all America could preserve it forever. The resort will be nonprofit now."

St. John is ideal in every respect: Unmatched loveliness. Beautiful beaches and mountains. Lush with its own fruit and vegetables. Little or no humidity. Temperatures that never go below 70 or above 90.

Plans, maps, and models of the area and project litter his office. In his excited efforts to make it a national park, Rockefeller learned that in 1939, a member of the National Park Service had written a glowing report of St. John recommending it for the same purpose. Last month he spent 5 days inspecting the island with Frank Stick, famous conservationist of Kitty Hawk, N. C., and Conrad Wirth, Director of the National Park Service.

"Bot of them were very impressed," Rockefeller said, "and now we hope to talk to the Secretary of the Interior about the whole plan, and we pray he'll approve the idea and recommend it to Congress."

## LESSONS OF WEALTH

He's 44, a lean, energetic man, square-jawed, and tenacious. Married to Mary French in 1934, they have three daughters and a son. The third son of John Davison Rockefeller, Jr., he had to learn early, just as his four brothers did, that wealth was not an invitation to indulgence but a deep responsibility. Business and philanthropy were matters of careful and considered judgment.

Early, even as a kid, Laurance Rockefeller developed a passion for machines, gadgets, and planes. His desk is crowded with plane models. All the Rockefeller boys never felt they had enough allowance, and did something about it. Laurance and Nelson ran errands, shined shoes, hoed gardens, raised rabbits to sell to laboratories, and killed flies at 10 cents a 100. Laurance went to Lincoln School at Columbia for his elementary and high-school work and then to Princeton.

"Where I majored in philosophy," he said, "I took every philosophy course the university gave. I'm the practical type."

He's far from impractical. He holds the family seat on the New York Stock Exchange. Always a bug on civil aviation, he and Eddie Rickenbacker started Eastern Air Lines, and he's still a director. He backed a skillful, but unorganized engineer named J. S. McDonnell, and the plane company they formed produced one of the first American jets, and the first to take off from a carrier.

## ALWAYS THE FUTURE

During the war he was a lieutenant commander in the Navy's Bureau of Aeronautics, serving in plane production. After the war he became president of Rockefeller Bros., Inc., an investment and research outfit which explores the needs for venture capital in such fields as housing, aviation, and electronics. And among other efforts he's now chairman of the board of Rockefeller Center. An astute, ambitious man, he once measured a business deal this way:

"Just commonsense, if you stop to think of it," and then added: "Maybe commonsense is so rare because so few people stop to think."

His plan for a paradise on St. John is commonsense, too. A construction team is already on the island with planners and engineers. To keep the noise and bustle away from the vacationists, fuel docks, warehouses, and power plants, the dynamics of a town, are being built over a hill at least a mile away from the resort. Sewers and even hot water are being installed. The old sugar mills and plantation once there are being restored to their original charm.

"And the hotel resort itself will be expanded from 40 to 90 pillows," Rockefeller said. "With a top limit of 100."

There are no phones. But there are fishing, bathing, sailing, cruising, mountain climbing, and skin-diving. And the rates are the same as any other Caribbean resort like St. Thomas or St. Croix. By hard work he hopes to get it opened by December 1955, and welcome the first group of tourists who like little noise, uncomplicated living and simple beauty.

"The whole idea is to keep its beauty simple and unspoiled," he said. "But you know simplicity can be a very expensive thing."

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[From the Herald Tribune, New York, N. Y., November 20, 1954]

## L. S. ROCKEFELLER GIVES DETAILS OF ISLAND OFFER

(By Robert S. Bird)

Poring over charts and photographs, Laurance S. Rockefeller explained in his office at Rockefeller Center yesterday why he wants to give to the Nation for a national park a sizable chunk of island paradise which he has acquired in the Caribbean Sea.

Mr. Rockefeller, the third son of John D. Rockefeller, Jr., is offering about one-half of the island of St. John in the Virgin Islands to the Government for a national park.

He returned from an inspection tour of the place a few days ago, and talked yesterday as a man who had fallen in love with a dream island of such incomparable beauty, climate, and many-sided interest that he felt the Nation should preserve it forever.

## 15-YEAR-OLD REPORT

He was not the first to feel that this particular island should be incorporated into the national-park system, however, for he had on his desk an enthusiastic 15-year-old report by a national-park official who had visited the place and studied it before World War II.

St. John, according to both Mr. Rockefeller and the earlier park recommendation report, is a mountainous island covered with exotic tropical trees and shrubs, rimmed by perfect beaches of whitest sand laved by turquoise seas, rich in early colonial ruins. It possesses valuable rock carvings of the little-known Carib Indian aborigines who occupied the island when Columbus discovered it, and is surrounded by nearly 100 small islands advantageous for fishing, skin-diving, boating, and water sports of all kinds.

## NINE MILES BY FIVE

One of the Leeward Islands of the Caribbean chain, it is separated from St. Thomas Island on the west by a rough but narrow body of water and from nearby British islands by Sir Francis Drake Channel. It is 9 miles long and about 5 miles wide. Mr. Rockefeller now has options on about one-half of its 12,700 acres, including a 650-acre resort area which would be the nucleus of a park development if Congress should accept the gift offer.

"Our hope is to restore some of the old sugar mills which still stand from the days of the great slave plantations, and to recreate some of that ancient plantation atmosphere," Mr. Rockefeller said. "We have an ideal site of about 9 acres where a fine planting could be made of sugarcane, bay trees, and other plants and shrubs which were of economic importance in those early days.

"I think tourists would be most interested in seeing these unusual trees and plants, and perhaps some of the processes that were used in the primitive mills of the slave area.

"The existing facilities for a beach colony—bungalows and dining-hall facilities—could be extended indefinitely to provide for the needs of tourists who might come here for fishing, boating, skin-diving, swimming, and all the recreations of a tropical island.

"St. John's is unique in its climate. It is so small that it escapes the humidity that makes all the larger islands uncomfortable. In fact, last week we measured the humidity and found it to be only 8 percent.

"The island will soon be only a few hours away from New York and other large cities on the mainland, and there are no better cruising waters in the Caribbean than around it and its tiny offshore islands."

## CLEAR WATERS

As a place for skin-diving, the waters of the island are almost perfect, according to Mr. Rockefeller, for even the deepest channels are so clear that coral bottoms and their rich marine life are clearly visible. The trails into the mountains offer vistas of breathtaking beauty, and the countryside is replete with exotic plants, many of them of rare botanical interest. There are no wild animals on the island and no poisonous snakes.

The history of the island, which is interesting enough in itself, becomes all the more so on a visit because much remains of ruins from its early settlement days.

It was first settled permanently by the Danish West India and Guinea Co. in 1717, when 20 planters and 5 soldiers landed at Coral Bay on the east end of the island. By 1721, 38 planters had taken up estates, and the place was gay and prosperous.

But in 1733, 2,500 slaves revolted against the white planters and overseers, and the island was plunged in bloody turmoil for months until French soldiers from the island of Martinique arrived and quelled the riot.

The place has historical pirate associations, and has a small native population. Many primitive customs survive to offer much interest to the tourist.

One of the persons who went on the inspection trip sponsored by Mr. Rockefeller last week was Conrad Wirth, director of the National Park Service, who was deeply impressed with the place, according to Mr. Rockefeller. Mr. Wirth will make a report to the Secretary of the Interior, who will decide whether or not to recommend acceptance of the Rockefeller gift by the Government.

[From the Herald Tribune, New York, N. Y., November 22, 1954]

### MR. ROCKEFELLER'S FINE OFFER

The island of St. John appears from every account to be an incomparable spot of bliss and beauty. This is the bit of paradise in the Virgin Islands that has won the heart of Mr. Laurance S. Rockefeller so completely that he wants to give a large part of St. John to the American people for a national park. Such magnanimity is inspiring; Mr. Rockefeller has made a splendid proposal. Having fallen in love with St. John, he wants the entire Nation to share in the delight.

It is easy to understand why this island excites ecstasy. There are green mountains, white beaches, and seas of the purest turquoise. The place is unspoiled; it has a history that goes back to Columbus. Once there were great plantations on St. John; the ruins of earlier civilization are fascinating. The island, 9 miles by 5, is covered with trees in tropical richness and ringed by beaches of extraordinary beauty. The climate is practically perfect; St. John offers everything that the tourist could wish for.

There is every reason that St. John should be preserved for the enjoyment of the Nation. Such regions of felicity, where nature's enchantments are so uniquely combined, are only too rare. It is to be hoped that the Department of the Interior will make an enthusiastic recommendation to Congress and that Mr. Rockefeller's offer will be quickly accepted with a vote of thanks from all the people.

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[From the Christian Science Monitor, Boston, Mass., November 20, 1954]

### THE USES OF WEALTH

Laurance S. Rockefeller has purchased half of a particularly scenic island of the Virgin group in the Caribbean and is offering it to the United States for a national park and wildlife refuge.

This is not the first time Rockefeller philanthropy has taken the direction of helping to preserve an area of unspoiled wilderness or great natural beauty "as a public park or pleasuring ground for the benefit and enjoyment of the people"—to quote the quaint phraseology of the act of 1872 setting aside Yellowstone. Only last year the Rockefeller family let it be known that it was undertaking to aid in the expansion of Grand Teton National Park to the extent of \$6 million.

Add this to such things as the Rockefeller and Ford Foundations, the Carnegie Endowments and other similar funds, and it does not take much argument to establish the thesis that great concentrations of wealth in individual or family hands can be a blessing to society.

It would take enormous expense and effort to collect such sums from many small givers. And it can take a long time to educate the public to an active appreciation of some of the pioneering projects which a few wealthy men have made possible.

But such a thesis could be pushed too far, of course. It would lead to an assumption that a society which fostered great accumulations of wealth in a few hands would be the best society. History does not bear that out. So much depends on what kind of hands. It is probably sounder over the long run to have a nation's wealth widely distributed at a moderate level.

The American economy has been moving toward such broad distribution. So theorizing beyond a point becomes a bit academic. Which shouldn't prevent us, notwithstanding, from voicing appreciation when great private fortunes are used with so much enlightenment.

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NATIONAL PARKS ASSOCIATION,  
Washington, D. C., April 28, 1955.

Senator JAMES E. MURRAY,

*Chairman, Senate Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

DEAR SENATOR MURRAY: The National Parks Association wholeheartedly endorses S. 1604, to establish the Virgin Islands National Park, and urges that it be enacted as promptly as possible.

We have had opportunity to investigate this project thoroughly and have studied photographs of the natural and historic features of St. John Island. We

are convinced that the area is fully qualified for national park status, and would be a valuable addition to the national park system. Not only is it beautiful and unusual, but it offers excellent opportunity for types of recreation not available elsewhere in the national park system, that can be enjoyed by the public without any impairment of the natural character of the park.

Mr. Rockefeller and the National Park Service have prepared plans that represent the ideal for development of a national park. While appropriate administrative and other buildings will be within the park, most of the accommodations and facilities for the public will be located in already developed areas outside the park boundaries. This will benefit both the park and local enterprise.

The intention to provide a marine museum on the island is admirable, because there are few such facilities in the United States. The opportunities for aqua-lung exploration of the vast underwater wilderness around the island should be an attraction to the public, and add to the significance of the museum.

It is to be noted that the local sentiment appears to be entirely in favor of the establishment of this national park.

We invite your attention to the desirability of your committee's action on this legislation as soon as possible, so we will not run the risk of being caught in the pressure of business that inevitably develops during the end of a session of Congress. If hearings are called, we should appreciate an opportunity to express our support of this legislation, and request this letter be made a part of the official record.

Yours sincerely,

FRED M. PACKARD,  
*Executive Secretary.*

Thank you very much.

(Whereupon, at 11:50 a. m., the subcommittee recessed.)

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# RELIEF OF DESERT LAND ENTRYMEN IN ARIZONA

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
IRRIGATION AND RECLAMATION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
**S. 1177**

A BILL FOR THE RELIEF OF DESERT LAND ENTRYMEN  
WHOSE ENTRIES ARE DEPENDENT UPON PERCO-  
LATING WATERS FOR RECLAMATION

---

MAY 27, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



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GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1955



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# RELIEF OF DESERT LAND ENTRYMEN IN ARIZONA

FRIDAY, MAY 27, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 224, Senate Office Building, Hon. Clinton P. Anderson (chairman of the subcommittee) presiding.

Present: Senator Anderson (presiding).

Present also: Senator Goldwater.

Present also: Goodrich W. Lineweaver, staff member for reclamation; Elmer K. Nelson, consulting engineer; and N. D. McSherry, assistant chief clerk.

Senator ANDERSON. The committee will be in order.

The bill we have under consideration is S. 1177.

(The bill referred to follows):

[S. 1177, 84th Cong., 1st sess.]

A BILL For the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377), that the right to the use of water by a desert land entryman "shall depend upon bona fide prior appropriation" shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this Act, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation*

Senator ANDERSON. We will put in the record, following the text of S. 1177, the letter of April 12 from Donald R. Belcher, Assistant Director of the Bureau of the Budget, the letter of April 15 from Orme Lewis, Acting Secretary of Interior to Senator Murray, and the opinion of the Acting Solicitor of the Department. There are a number of definitions in the opinion dealing with the validity of desert land application entries in Arizona which it seems to me ought all go in the record. Therefore, we will incorporate all of these documents in the record at this point.

## REPORTS OF BUDGET AND DEPARTMENT OF THE INTERIOR

(Reports of the Bureau of the Budget and the Department of the Interior are as follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., April 12, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Bureau of the Budget with respect to S. 1177, for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

The Desert Land Act of March 3, 1877 (43 U. S. C. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." S. 1177 would waive this requirement in the case of desert land entries which have heretofore been allowed and are subsisting on the date of enactment of the bill, which are dependent upon percolating waters for their reclamation, and which are situated in States where percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

Although the bill is written on a general basis, it is our understanding that the bill is directed at a problem which arose in Arizona as a result of a recent decision by the supreme court of that State. That decision has the effect of preventing certain desert land entries from going to patent. The circumstances are described in greater detail in the report which the Department of the Interior is making to your committee. Since the entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patent to the entries, it would appear fair to provide relief to these entrymen.

This Bureau would have no objection to the enactment of S. 1177.

Sincerely yours,

DONALD R. BELCHER,  
*Assistant Director.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., April 15, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington 25, D. C.*

MY DEAR SENATOR MURRAY: This is in reply to your request for the views of this Department on S. 1177, a bill for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation.

I recommend that S. 1177 be enacted.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." S. 1177, if enacted, would waive this requirement in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of the statute, which are dependent upon percolating waters for their reclamation, and which are situated in States under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation.

During the past year, a question has arisen in the Department with respect to the meaning of this provision of the Desert Land Act and its effect upon desert land entries in the State of Arizona which are dependent for irrigation upon percolating waters, i. e., underground water which does not flow in a well-defined channel with banks. The question arose primarily as a result of a recent decision by the Supreme Court of Arizona with respect to the law of the State governing percolating waters. In that decision, *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173), decided on March 14, 1953, the Arizona court held that percolating waters in that State are not subject to the doctrine of prior appropriation but are subject only to the doctrine of reasonable use.

The Bristor decision raised the question whether desert land entries for lands in Arizona could be allowed or patented where such entries are dependent on percolating waters for reclamation. The question was referred to the Acting Solicitor of the Department who has rendered an opinion holding that such entries cannot be allowed or patented under the Desert Land Act since the right of the entrymen or the applicants for entry to use percolating waters does not depend

upon prior appropriation. A copy of the Acting Solicitor's opinion, M-36263, dated February 23, 1955, is attached. It discusses the problem in detail.

According to the Bureau of Land Management of this Department, there are approximately 158 desert land entries in Arizona which have been allowed and are currently subsisting but which are dependent on percolating waters for reclamation. The entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patents to the entries. In many cases the expenditures have been substantial. However, under the law as set forth in the Acting Solicitor's opinion, the entries cannot go to patent so long as the percolating waters on which they are dependent are not subject to appropriation. This means that in time, as the statutory life of the entries expires, the entrymen will lose the fruits of their labor and expenditures. Immediately, because of this prospect, the entrymen are uncertain as to whether to proceed with their work on the entries.

In these circumstances, it seems only fair and equitable that the entrymen should be allowed to perfect their entries regardless of the requirement in the Desert Land Act that they have a water right dependent upon prior appropriation. S. 1177 would accomplish this purpose. It would simply waive in the case of these entries the requirement that the right to use of water depends on prior appropriation. In all other respects, such as reclamation and expenditures, the entrymen would remain subject to the requirements of the Desert Land Act.

The problem under consideration has so far arisen only in Arizona. S. 1177, however, has been drawn on a general basis and would thus take care of any similar problem in other States to which the Desert Land Act applies.

It should be noted that the bill applies only to existing entries which have been allowed. The bill will not permit future desert land entries to be made in Arizona which are dependent on percolating waters. Whether broader legislation should be enacted is a matter on which the Department takes no position at this time. The Department's immediate concern is in affording relief to existing entrymen who have an immediate problem on their hands, and the Department urges that such relief be granted without delay.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee.

Sincerely yours,

ORME LEWIS,  
*Acting Secretary of the Interior.*

#### ACTING SOLICITOR'S OPINION

(The opinion of the Acting Solicitor is as follows:)

M-36263

FEBRUARY 23, 1955.

#### VALIDITY OF DESERT LAND APPLICATIONS AND ENTRIES IN ARIZONA DEPENDENT ON PERCOLATING WATER FOR RECLAMATION

##### *Desert land entry: Water right*

When Congress provided in the Desert Land Act that the right to use of water by the entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having reference to the well-established doctrine of prior appropriation then obtaining in the Western States and Territories.

##### *Desert land entry: Water right*

Whether water is subject to prior appropriation as required in the Desert Land Act is a matter governed by State law.

##### *Water and water rights: State laws*

Under the second opinion of the Arizona Supreme Court in the case of *Bristol v. Cheatham*, percolating waters are not subject to the doctrine of prior appropriation but only to the doctrine of reasonable use.

##### *Desert land entry: Water right*

Applications for desert land entries in Arizona cannot be allowed, and allowed desert land entries in that State cannot be patented, where the entries are dependent upon percolating waters for reclamation.

M-36263

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington 25, D. C., February 23, 1955.

## Memorandum.

To: Director, Bureau of Land Management.

From: Acting Solicitor.

Subject: Validity of desert land applications and entries in Arizona dependent on percolating water for reclamation.

You have requested my opinion as to whether, in view of the decision by the Supreme Court of Arizona in the case of *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173 (1953)), applications for desert land entries in that State can be allowed or allowed desert land entries in that State can be patented where reclamation of the entry depends upon percolating water.

As the term "percolating water" is used in your request and this opinion, it means underground water which does not comprise or is not part of an underground stream which has a well-defined channel and banks and a current.

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), provides in part as follows:

"\* \* \* it shall be lawful for any citizen of the United States \* \* \* to file a declaration \* \* \* that he intends to reclaim a tract of desert land \* \* \* by conducting water upon the same \* \* \*: *Provided, however,* That the right to the use of water by the person so conducting the same \* \* \* shall depend upon bona fide prior appropriation: \* \* \* and all surplus water over and above such actual appropriation and use, together with the water of all, lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights" (19 Stat. 377).

The answer to your question depends upon the interpretation to be given to the specific portion of the quotation from the act which requires that "the right to the use of water by the person so conducting the same \* \* \* shall depend upon bona fide prior appropriation."

In *California-Oregon Power Co. v. Beaver Portland Cement Co.* (295 U. S. 142. (1935)), the United States Supreme Court held that a homestead patent issued in 1885 for land bordering on a stream did not carry with it the common law riparian right to have the stream flow by the land in its accustomed channel without substantial diminution. This holding was based on the Court's interpretation of the provision of section 1 of the Desert Land Act following the clause just quoted and beginning with "and all surplus water," etc. Although the Court was not directly concerned with the clause under consideration here, it discussed at length the background of the Desert Land Act and made a number of statements which are very illuminating with respect to the point at issue. The more significant statements follow:

"For many years prior to the passage of the act of July 26, 1866 \* \* \* the right to use of waters for mining and other beneficial purposes in California and the arid region generally was fixed and regulated by local rules and customs. The first appropriator of water for a beneficial use was uniformly recognized as having the better right to the extent of his actual use. The common law with respect to riparian rights was not considered applicable, or, if so, only to a limited degree. \* \* \* The rule generally recognized throughout the States and Territories of the arid region was that the acquisition of water by prior appropriation for a beneficial use was entitled to protection \* \* \*" (p. 154). [Emphasis added.]

"That body [the Congress] thoroughly understood that an enforcement of the common-law rule, by greatly retarding if not forbidding the diversion of waters from their accustomed channels, would disastrously affect the policy of dividing the public domain into small holdings and effecting their distribution among innumerable settlers. In respect of the area embraced by the desert-land States, with the exception of a comparatively narrow strip along the Pacific seaboard, it had become evident to Congress, as it had to the inhabitants, that the future growth and well-being of the entire region depended upon a complete adherence to the rule of appropriation for a beneficial use as the exclusive criterion of the right to the use of water" (p. 157). [Emphasis added.]

"In the light of the foregoing considerations, the Desert Land Act was passed, and in their light it must now be construed" (p. 158).

These extracts from the Power Co. case leave little doubt that the rule of prior appropriation was a well-established doctrine of water law in the Western States and Territories at the time the Desert Land Act was passed and that, when

Congress provided in the act that the right to use of water by a desert land entryman "shall depend upon bona fide prior appropriation," Congress used the words "prior appropriation" as words of art having a clear and precise meaning.

The question then presents itself whether the right to appropriate water for the reclaiming of a desert land entry is a matter governed by State law or Federal law. The *Power Co.* case provides the answer. The Court stated in that case:

"As the owner of the public domain, the Government possessed the power to dispose of land and water thereon together, or to dispose of them separately. \* \* \* The fair construction of the provision now under review<sup>1</sup> is that Congress intended to establish the rule that for the future the land should be patented separately; and that all nonnavigable waters thereon should be reserved for the use of the public under the laws of the States and Territories named" (p. 162). [Emphasis added.]

"Nothing we have said is meant to suggest that the [Desert Land] act, as we construe it, has the effect of curtaining the power of the States affected to legislate in respect of waters and water rights as they deem wise in the public interest. What we hold is that following the act of 1877, if not before, all nonnavigable waters then a part of the public domain became publicijuris, subject to the plenary control of the designated States, including those since created out of the Territories named, with the right in each to determine for itself, to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. \* \* \* The Desert Land Act does not bind or purport to bind the States to any policy. It simply recognizes and gives sanction, insofar as the United States and its future grantees are concerned, to the State and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation" (pp. 163-164). [Emphasis added.]

It is clear, then, that whether a desert land entry in Arizona can be based upon percolating water depends upon whether, under the law of Arizona, percolating water is subject to the doctrine of prior appropriation.

This question was settled only relatively recently in the case of *Bristor v. Cheatham*, supra. To appreciate the full significance of that case, a brief consideration of the history of the Arizona law on percolating water is necessary. The first pronouncement by the Arizona Supreme Court on the subject of percolating water apparently was in the case of *Howard v. Perrin* (76 Pac. 460 (1904), aff'd 200 U. S. 71 (1906)). In that case, the court stated that percolating water, as distinguished from water in an underground stream, belonged to the owner of the soil and was not subject to appropriation by another.

In *Maricopa County Municipal Water Conservation District No. 1 et al. v. Southwest Cotton Co. et al.* (4 P. 2d 369 (1931)), the Arizona court decided to treat the subject of underground water as a matter of first impression. In a lengthy opinion, the court concluded that "our holding in *Howard v. Perrin*, supra, that percolating subterranean waters were not subject to appropriation, was and still is the law of Arizona" (4 P. 2d, at p. 376).

Then came the case of *Bristor v. Cheatham*. This was an action by the plaintiffs to restrain the defendants from diverting water which the plaintiffs were pumping from domestic wells on their property. The plaintiffs alleged as a first count that the defendants had sunk a number of large wells on defendants' property to a common source of underground water underlying the lands of both and were pumping and conveying the water 3 miles distant to reclaim other land owned by the defendants, and that this withdrawal of water was drying plaintiffs' wells. In a second count, the plaintiffs alleged that the waters from which their wells were supplied were taken from an underground stream. The action was dismissed on both counts by the lower court.

When the case came before the Supreme Court of Arizona, the court first held on January 12, 1952, that its ruling in *Howard v. Perrin* was dictum and contrary to the Desert Land Act; it overruled that case and held that percolating waters are subject to the doctrine of prior appropriation (*Bristor v. Cheatham*, 240 P. 2d 185). A rehearing was granted, following which the court reversed itself on March 14, 1953 (255 P. 2d 173). The court said:

"The State of Arizona through its legislature has adopted its policy and local doctrine to the effect that ground waters are not subject to appropriation. It seems the only answer, therefore, is that a prior right to the use of ground waters cannot now be acquired and never could have been acquired under the law of prior appropriation. We hold, therefore, that such waters are not subject to any law of appropriation" (255 P. 2d, at p. 177). [Emphasis added.]

<sup>1</sup> The clause in sec. 1 of the act commencing with "and all surplus water," etc.



The court went on to hold that the owner of land overlying percolating water has a right to use the water subject to the doctrine of reasonable use, as distinguished from the doctrine of correlative rights. Under the latter doctrine, a landowner would be limited to his proportionate share of the percolating water underlying his land and the lands of his neighbors. Under the doctrine of reasonable use, a landowner may use, without any liability to an adjoining user, as much of the percolating water as he can reasonably put to a beneficial use on his land even though it exceeds his proportionate share of the water. See 55 A. L. R. 1385 and 109 A. L. R. 395.

It is plain from the two opinions in the *Bristor* case that the doctrine of prior appropriation is diametrically opposed to the doctrine of reasonable use. Under the first doctrine, a prior appropriator acquires a legal right to a definite quantity of water which cannot be diverted by any subsequent appropriator even though the latter could put the water to a beneficial use. Under the second doctrine, a prior user of water acquires no right to the quantity of water used. Any subsequent user of water, by drilling a larger well or installing a more powerful pump, can, without liability, drain him dry so long as the water is put to a beneficial use by the subsequent user.

I find it impossible therefore to interpret the clause in the Desert Land Act which requires that "the right to the use of water \* \* \* shall depend upon bona fide prior appropriation" as encompassing the doctrine of reasonable use as set forth in the second *Bristor* opinion.

The Department's regulations do not sanction the allowance or patenting of a desert land entry which depends upon percolating water which is subject only to the doctrine of reasonable use. The pertinent regulation currently in effect (43 CFR 232.13; 19 F. R. 9084), which has been unchanged since its adoption on May 18, 1916 (Circular 474, 45 L. D. 345, 351), provides in part as follows:

"Sec. 232.13 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. \* \* \* All applications not accompanied by the evidence above indicated will be rejected."

The requirement in the regulation is clear that an applicant must acquire, or take steps to acquire, a legal right to the permanent use of sufficient water to reclaim his entry. The same requirement is stated in the regulation dealing with the submission of final proof (43 CFR 232.32; 19 M. R. 9086).

As we have seen, a landowner has no legal assurance of a permanent supply of water under the doctrine of reasonable use. His "right" to use percolating water, unlike the right of a prior appropriator, is always subject to diminution or abrogation by a subsequent user of the water.

It is my opinion, therefore, upon the basis of the Desert Land Act and the second opinion of the Supreme Court of Arizona in *Bristor v. Cheatham*, that an application for a desert land entry on land in Arizona cannot be allowed, and that a patent cannot be issued for such an entry which has been allowed, where the entry is dependent upon percolating water for reclamation.

J. REVEL ARMSTRONG,  
*Acting Solicitor.*

Senator ANDERSON. I have a letter from Senator Hayden on this bill which I will insert in the record at this point:

UNITED STATES SENATE,  
COMMITTEE ON APPROPRIATIONS,  
May 27, 1955.

Hon. CLINTON P. ANDERSON,  
*Committee on Interior and Insular Affairs,*  
*United States Senate, Washington 25, D. C.*

DEAR SENATOR ANDERSON: This morning your subcommittee will have testimony on my bill (S. 1177) for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation. I appreciate your invitation to me to present testimony in favor of this measure, and regret that the necessity of presiding at an appropriation hearing prevents my appearance. I have asked my administrative assistant to attend in my stead.

As you know, S. 1177 will benefit a maximum of 158 desert land entrymen who have performed in good faith everything that is required of them to secure patents

to public land in Arizona under the Desert Land Act of 1877. Before patents could issue, however, the Solicitor of the Department of the Interior held that patents could not issue for the reason that a decision of the Supreme Court of Arizona in 1953 (*Bristor v. Cheatham*, 240 P. 2d 185) held that in Arizona percolating waters are not subject to the doctrine of prior appropriation. The Solicitor, on the basis of this court decision, and the provision of the Desert Land Act that the right to use of water by a desert land entryman "shall depend upon a bona fide prior appropriation," reached the conclusion set forth in his opinion.

The entrymen affected by this bill have expended sizable sums in perfecting their entries, and completed all requirements before issuance of the Solicitor's opinion. Therefore, it seems to me that fairness and equity dictate the issuance of patents to them. I sincerely urge your subcommittee and the full Committee on Interior and Insular Affairs to approve S. 1177.

With best regards, I am,  
Yours very sincerely,

CARL HAYDEN.

Senator ANDERSON. Senator Goldwater, do you wish to make a statement?

#### **STATEMENT OF HON. BARRY GOLDWATER, UNITED STATES SENATOR FROM THE STATE OF ARIZONA**

Senator GOLDWATER. This is Senator Hayden's bill. I am co-sponsor with him. Senator Hayden's administrative assistant, Paul Eaton, is here and would like to testify on the bill.

#### **STATEMENT OF PAUL EATON, ADMINISTRATIVE ASSISTANT TO SENATOR HAYDEN**

Mr. EATON. My name is Paul R. Eaton, administrative assistant to Senator Hayden. The Senator and Senator Goldwater introduced this bill as a relief bill. On February 23, the Solicitor of the Department of the Interior in a memorandum opinion, which is on governing the Bureau of Land Management and the Department, determined that desert land entries in Arizona under the Desert Land Act of 1877 could not be allowed if they were dependent upon percolating water because the Desert Land Act requires the bona fide prior appropriation of water which the Supreme Court of Arizona has said is not applicable to percolating water, water not in defined underground channels.

There are a maximum of about 158 desert land entries affected by this bill. They are all land entries which had been approved right up to the point of patenting at the time the Solicitor's opinion was rendered and before the land entrymen knew that this opinion would be given or would be effective. So the purpose of the bill is merely to take care of those people who have complied with all the requirements of the desert land law, and the Department at that time felt they had complied. It will not effect any entry which had not proceeded to the point of allowance at the time of the Solicitor's opinion. The act says "at the time of enactment," which is really synonymous because none are being allowed now. Actually, no further action has been taken on any desert land entries that are dependent upon percolating water for their reclamation.

Senator ANDERSON. They would have to divert water from a stream or drill a well of some kind?

Mr. EATON. That is correct.

Senator ANDERSON. Are these people doing either one of those things?

Mr. EATON. All are affected, as I understand it, are lands that are dependent upon well water.

Senator ANDERSON. There is no question about the right of a person to have a desert entry when he himself develops well water?

Mr. EATON. Yes; apparently if that water is not taken from a defined underground channel. If it is what they describe as percolating water, not within a defined channel, the supreme court in Arizona—now, I am getting where I should not be in a legal matter—has determined in the famous Arizona case of *Bristor v. Cheatham* that you cannot acquire a bona fide right to underground percolating water.

Senator ANDERSON. Can anyone tell me the difference between percolating water and ditch water?

Senator GOLDWATER. There is quite a difference.

Senator ANDERSON. There must be.

Senator GOLDWATER. All of our underground waters are considered percolating waters. The only difference is that it comes up instead of flowing horizontally. That is one of the confusing acts of 1877, because when the act was passed underground water was considered to be a stream and had the same rights as a surface stream. In Arizona, while our hydrographers tell us there is no such a thing as percolating water, the supreme court says it is percolating water. The case mentioned by Mr. Eaton is the case that created this confusion out there.

Senator ANDERSON. There are how many of these?

Mr. EATON. A maximum of 158, Mr. Chairman. There may be a few less than that. The State office of the Bureau of Land Management has furnished that number and has qualified it by saying that there may be a few which they were not able to tell us about at the time we requested information that will be dependent upon surface water. I do not know where it would be.

Senator ANDERSON. How much land is involved in this?

Mr. EATON. It is usually 320 acres per entry, so it would be 158 times that as a maximum.

Senator ANDERSON. Fifty thousand acres at the most?

Mr. EATON. I believe that is right, sir.

Senator ANDERSON. What will they pay the Government for that land?

Mr. EATON. A total of \$1.25 per acre when patent issues. In addition there is an improvement requirement of a minimum of \$1 per year per acre from the time they make their entry and begin improving upon it until it is allowed. I believe it is 4 years, but I am not certain about that figure.

Senator ANDERSON. Where is that land located?

Mr. EATON. It is not in any one area, sir; it is scattered in the valleys in central and southern Arizona.

Senator ANDERSON. In other words, will it be worth \$500 an acre when they get through with it?

Mr. EATON. I do not know. It will be worth quite a bit per acre if their underground water holds out so that they have what would be a permanent supply.

Senator ANDERSON. I am trying to find out what type of land that is. A lot of that Arizona land has been selling as high as \$1,000 an acre and a great deal at \$500 an acre. I am trying to find out whether

we are dealing with 50,000 acres worth \$500 or \$1,000 an acre, or \$100 an acre.

Senator GOLDWATER. Mr. Chairman, this is just an estimate. As an overall average, after the improvement costs have been paid and the deep well has been put in, this land should be worth something between four and five hundred dollars an acre. The land could go to \$1,000 an acre today only with high productivity of cotton, which we have no chance of out there as you know under the existing law. I would say four to five hundred dollars would be a pretty fair price for this. That would probably give the developer, if he wanted to sell it for speculative purposes, a profit of \$100 to \$150 an acre.

Senator ANDERSON. But we are dealing with something in the neighborhood \$25 million in this.

Senator GOLDWATER. Not that high.

Senator ANDERSON. Fifty thousand acres at \$500 an acre is \$25 million.

Senator GOLDWATER. Yes, if it all could be developed. There is a lot of that desert entry land that is not developed and probably will not be developed because the people that have it do not have the money to put down wells. It costs today from twenty to fifty thousand dollars, and employing grading and other equipment to improve it.

Senator ANDERSON. The original purpose of the desert entry was by flowing water or by diverting water from some place and putting it upon land. I know, I had a desert entry. I would have loved to have pumped it, but I lost mine because we were not able to take the water from the stream we thought we could take it out of. We had 10,000 acres to develop, and we lost whatever we put in the project because it was not regarded as proper to pump it.

Mr. EATON. That is somewhat the situation these people are going to find themselves in, except that before allowance of these land entries the Geological Survey and other hydrographers have been there and have determined that there is water available at least for the irrigable acreage within the entry. All the 320 acres on each entry is not necessarily irrigable, and usually a portion of it is not.

Senator ANDERSON. Anyway, the matter here has been carefully briefed and can be studied. I assume the staff will give it some study.

Do you have any further statements, Senator Goldwater?

Senator GOLDWATER. No, sir. I have a statement I would like to submit for the record and also the memorandum from the Solicitor to the Director of the Bureau of Land Management on this subject. I would like that to be made a part of the record.

(The memorandum referred to appears on p. 4.)

(The statement referred to by Senator Goldwater follows:)

#### FACTUAL DATA

Section 1 of the Desert Land Act of March 3, 1877 (43 U. S. C., 1952 ed., sec. 321), requires that the right of desert land entrymen to the use of water for reclaiming their entries "shall depend upon bona fide prior appropriation." During the past year, a question has arisen in the Department with respect to the meaning of this provision and its effect upon desert land entries in the State of Arizona which are dependent for irrigation upon percolating waters; i. e., underground water which does not flow in a well-defined channel with banks. The question arose primarily as a result of a recent decision by the Supreme Court of Arizona with respect to the law of the State governing percolating waters. In that decision, *Bristor v. Cheatham* (75 Ariz. 227, 255 P. 2d 173), decided on March 14,

1953, the Arizona court held that percolating waters in that State are not subject to the doctrine of prior appropriation but are subject only to the doctrine of reasonable use.

The *Bristor* decision raised the question whether desert land entries for lands in Arizona could be allowed or patented where such entries are dependent on percolating waters for reclamation. The question was referred to the Acting Solicitor of the Department who has rendered an opinion holding that such entries cannot be allowed or patented under the Desert Land Act since the right of the entrymen or the applicants for entry to use percolating waters does not depend upon prior appropriation. A copy of the Acting Solicitor's opinion M-36263, February 23, 1955, is attached. It discusses the problem in detail.

According to the Bureau of Land Management of this Department, there are approximately 160 desert land entries in Arizona which have been allowed and are currently subsisting but which are dependent on percolating waters for reclamation. The entries were applied for in good faith and the entrymen have apparently made expenditures and performed work with a view to securing patents to the entries. In many cases the expenditures have been substantial. However, under the law as set forth in the Acting Solicitor's opinion, the entries cannot go to patent so long as the percolating waters on which they are dependent are not subject to appropriation. This means that in time, as the statutory life of the entries expires, the entrymen will lose the fruits of their labor and expenditures. Immediately, because of this prospect, the entrymen are uncertain as to whether to proceed with their work on the entries.

In these circumstances, it seems only fair and equitable that the entrymen should be allowed to perfect their entries regardless of the requirement in the Desert Land Act that they have a water right dependent upon prior appropriation. The proposed bill would accomplish this purpose. It would simply waive in the case of these entries the requirement that the right to use of water depend on prior appropriation. In all other respects, such as reclamation and expenditures, the entrymen would remain subject to the requirements of the Desert Land Act.

Although the problem under consideration has arisen only in Arizona, the proposed bill has been drawn on a general basis to take care of any similar problem in other States to which the Desert Land Act applies.

It should be noted that the proposed bill applies only to existing entries which have been allowed. The bill will not permit future desert land entries to be made in Arizona which are dependent on percolating waters. Whether broader legislation should be enacted is a matter on which the Department takes no position at this time. The Department's immediate concern is in affording relief to existing entrymen who have an immediate problem on their hands. The Department, therefore, suggests that changes toward broadening the bill should not be made if they will have the effect of delaying or impeding the passage of the legislation.

Senator GOLDWATER. I would like to call the chairman's attention to the fact that several States might ultimately be affected by this decision. In North and South Dakota, the question is moot in these States because there have been no applications. They do not have the prior appropriation doctrine on underground percolating water. In Montana there is no prior appropriation doctrine. In Colorado the presumption is that all underground water is stream. The prior appropriation applies to underground streams, and this applies to Arizona.

In California the question is presently before the legislature. Two thousand applications are being held up. In Oregon, west of the Cascades, there is no prior appropriation. East of the Cascades, prior appropriation is recognized.

That is all I have, Mr. Chairman.

Mr. Chairman, I might say Mr. Wooley is here with some of his staff if you have some questions on this.

Senator ANDERSON. What is the attitude of Land Management? ]

**STATEMENT OF EDWARD WOOLEY, DIRECTOR, BUREAU OF  
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. WOOLEY. We are in favor of this bill, Senator. We have been issuing patents out there where people have qualified for patents, and these 158 desert land entries have been allowed with the assumption they would be able to qualify. With this decision it is doubtful that they could. It is almost a foregone conclusion that they could not.

Senator ANDERSON. Then why would you issue a patent?

Mr. WOOLEY. We have assumed up until the time of the Supreme Court decision and the Solicitor's opinion was made that Arizona was the same as other States. Appropriation of water was permitted and that they were given the proper length of time to develop that water.

Senator ANDERSON. But you would not allow a desert entry in New Mexico for pumping?

Mr. WOOLEY. Yes, sir; we allow desert entries for pumping.

Senator ANDERSON. When?

Mr. WOOLEY. I might ask Mr. Hochmuth if we have allowed some.

**STATEMENT OF HAROLD D. HOCHMUTH**

Mr. HOCHMUTH. Yes, sir; in areas that are noncritical.

Senator ANDERSON. What are noncritical?

Mr. WOOLEY. The State engineer tells us in New Mexico which are the areas and issues the necessary permits, and we then act.

Senator ANDERSON. What is a critical area?

Mr. WOOLEY. That is an area declared by the State engineer that the ground water is fully appropriated already or is being overpumped.

Senator GOLDWATER. I might say we follow that same practice in Arizona.

Mr. HOCHMUTH. But the New Mexico law is quite clear as to a doctrine of prior appropriation, as I understand it. The Arizona law we thought was until the supreme court decision.

Senator ANDERSON. Then do I understand that in the area around Deming, N. Mex., you are granting desert entries?

Mr. HOCHMUTH. I am trying to search my memory, Senator. I might say it is declared by critical ground water by the State engineer of New Mexico, in which case we cannot allow desert entries because the State engineer will not give those people a permit to drill.

Senator ANDERSON. The Rio Grande is also critical?

Mr. HOCHMUTH. I cannot answer that.

Mr. WOOLEY. I would like to point out that in my own State of Idaho in the last 4 years there has been approximately half a million acres developed from ground water irrigation. It is not a problem up there because percolating waters are allowed for desert entries. This law is particularly slanted toward Arizona and not to other States, as far as we can determine.

Senator ANDERSON. But it is your testimony that the same situation that stops the desert entryman from getting his land in Arizona permits him to have it in Idaho. The law of Idaho is such that he can do exactly the same thing in Idaho and get his land that he is seeking to do in Arizona where he cannot get it?

Mr. WOOLEY. Yes, sir. The difference is in the State law.

Mr. HOCHMUTH. May I say something, Mr. Chairman?

Senator ANDERSON. Yes.

Mr. HOCHMUTH. This bill here only takes care of the persons who have been permitted to go on the land and exercise the right of desert-land entry. It does not take care of those 700 applications we have before the Bureau now that we have not allowed to go on the land yet. They will have to be rejected because the State law of Arizona does not permit us to allow those. But these people have made extensive improvements. I understand that some have gone as high as \$50,000 or \$100,000 for one tract. The bill only takes care of those which we have already permitted to enter.

Senator ANDERSON. Do I understand, then, that if this law is passed it will be limited to 158 and you will not issue any more?

Mr. HOCHMUTH. We are rejecting the others right now because the law does not permit us to do so.

Senator ANDERSON. Then you can answer my question directly. You will not grant any more than this 158?

Mr. HOCHMUTH. That is correct. We will not grant any more until either other legislation is passed or the State law is changed.

Senator ANDERSON. These people who are involved in this have been permitted by you to go on the land?

Mr. HOCHMUTH. Yes, sir.

Senator ANDERSON. Then having been permitted to go on the land, they have made improvements?

Mr. HOCHMUTH. Yes, sir.

Senator ANDERSON. In some cases, substantial improvements?

Mr. HOCHMUTH. Yes, sir.

Senator ANDERSON. Therefore, it is a hardship matter and not just a matter of granting somebody a right that might not otherwise have any interest in this at all?

Mr. HOCHMUTH. That is correct. I will go on to add to that that they still must meet with the other requirements of the Desert Land Act which means the expenditure of certain sums.

Senator ANDERSON. You do not mind spending \$4 an acre to get something worth \$500. That is fairly evident. If they have made an application in good faith and you allowed them to go on there, they could not anticipate the decision of the Arizona Supreme Court.

Mr. HOCHMUTH. That is a correct statement.

Mr. EATON. As a matter of fact, this decision is a reversal of the decision that the supreme court in the same case had given 1 year before.

Senator ANDERSON. When was this decision handed down?

Mr. EATON. In 1953 is the last one. There are two decisions; the first one was in 1952 and the second one on a rehearing was in 1953. It is exactly opposite from the 1952 decision. So they actually had something to go on for that period, at least as of 1952.

Senator GOLDWATER. I have an additional statement in the form of a letter from Mr. Armstrong to Senator Hayden explaining some of the western laws regarding the situation, which should go in the record, please.

Senator ANDERSON. Very well.

(The material referred to follows):

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C. May 24, 1955.

HON. CARL HAYDEN,  
United States Senate, Washington, D. C.

MY DEAR SENATOR HAYDEN: Further reference is made to your letter of April 5 requesting our comments on Mr. Coker's letter to you of March 30, concerning the water rights showing required for an entry of public lands in Arizona under the desert land law (43 U. S. C., sec. 321, et seq.).

Solicitor's opinion M-36263, a copy of which is enclosed, stated that where such entry would be dependent upon percolating water for reclamation, an application for entry or patent under the desert land law cannot be allowed. Under the desert land law, the right to use water on public land depends upon bona fide prior appropriation under the state law. The applicant must show he has acquired or will acquire by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim the public lands (43 CFR 232.13 and 232.32). The recent decision of the Supreme Court of Arizona in *Bristor v. Cheatham* (255 P. (2d) 173 (1953)) held that rights to percolating waters in Arizona cannot be acquired under the law of prior appropriation. That decision declares the law of the State with respect to this question. The applicant clearly cannot meet the requirements of the desert land law, therefore, if his entry depends on percolating water in Arizona.

Mr. Coker states in his letter that this Department has in the past interpreted the desert land law as permitting the showing of a water right dependent upon percolating waters. He finds evidence of such an interpretation from a Government annual proof form which gives credit toward meeting the requirements of the desert land law for expenditures made to construct windmills, pumps, and irrigation wells. The annual proof form does indicate acceptable types of improvement expenditures, but does not show what an applicant must prove with respect to his legal right to a definite quantity of water. No decision of this Department has been found holding that a desert land entry dependent on percolating waters may be allowed in a State which does not recognize appropriation of such waters. Our opinion M-36263, it should be noted, did not state that ground water obtained from wells in Arizona could never be used as the basis for an acceptable water right showing. Ground water is defined as including water in the ground, that is, under the surface (Selected Problems in the Law of Water Rights in the West, U. S. Department of Agriculture, Miscellaneous Publication No. 418, 1942, at p. 24). In Arizona, as in almost every other Western State, water in defined channels of underground streams is subject to prior appropriation and therefore can be used to establish a showing of the water right needed under the desert land laws.

There is little doubt that at the time of the enactment of the Desert Land Act on March 3, 1877, the doctrine of appropriation was well recognized. See *California Oregon Power Co. v. Beaver Portland Co.* (295 U. S. 142, 154 (1935)). The recognition of "prior appropriation" in the Desert Land Act, moreover, does not limit the doctrine to surface water.

Mr. Coker's statement that the "laws in the Western States in 1916 or thereabouts, will disclose that none of them had any provisions in their code for the appropriation of ground or percolating water" is not entirely accurate. Section 4169, Revised Statutes 1901, Arizona authorized prior appropriation of "any of the unappropriated waters" in the territory. This section was carried over into Revised Statutes 1913, section 5337. In 1919, it was definitely provided that ground water in definite underground channel was subject to appropriation (Arizona Code Annotated 1939, 75-101). The 1919 act confirmed the law of Arizona recognized prior to and after 1916, as indicated by the case cited by Mr. Coker of *Howard v. Perrin* (76 Pac. 460, 462 (1904)) upheld by the United States Supreme Court (200 U. S. 71 (1905)), and reaffirmed by *Maricopa County Municipal Water Conservation District No. 1 v. Southwest Cotton Co.*, (39 Arizona 65, 4 P. (2d) 369, 376 (1931)). The decisions of the State courts, of course, are declarative of the law of the State, (*Bristor v. Cheatham*, 255 P. (2d) 173, 175 (1953)).

In 1899, Idaho enacted a law providing that the right to the use of subterranean waters may be acquired by appropriation, (Idaho Code, 1948, sec. 42-103). In 1913, the Nevada statute provided that "all sources of water supply within the boundaries of the State, whether above or beneath the surface of the grounds" may be appropriated as provided in the act, (Nev. Comp. Laws, 1929, secs. 7890 and 7891). In 1915 a statute provided that "all underground waters, save and except percolating water" were subject to appropriation, (Nev. Sess. Laws



1915, sec. 1, ch. 210, p. 323). A Utah statute in 1903 (Utah Comp. Laws, 1907, sec. 1288-18) made water flowing above or under the ground in known or defined channels public property. The appropriation doctrine was held applicable in Utah to such water, (*Whitmore v. Utah Fuel Co.* 73 Pac. 764, 767 (1903)).

Mr. Coker also suggests amending the Desert Land Act to "settle the question as to the use of irrigation well or percolating waters for the reclamation of desert lands, whether the States have passed any ground-water legislation or not." Whether Federal legislation, even as to percolating water, is necessary or desirable is an important consideration. The State of Arizona can make such provision as it thinks wise for the acquisition of rights to percolating water on public or other lands in the State. There are decided advantages to the present provisions of the desert land law which assure the acquisition by the applicant of the supply of water necessary for desert land entry, and leave up to the State the method of such acquisition. This letter, of course, attempts only to clarify the problem raised, and is not intended to indicate what views this Department might express on a specific bill if the Department were called upon to report on such legislation.

Sincerely yours,

J. REUEL ARMSTRONG, *Solicitor.*

Mr. EATON. Senator Hayden said that he is sorry he could not be here today. He had four subcommittee hearings today. He could get out of three of them but not the fourth, so he sent to you the letter you have incorporated in the record.

Senator ANDERSON. Thank you.

(Whereupon the committee adjourned.)

X

# HEADWATER BENEFITS

OF MICHIGAN  
AUG 2

MAIN  
READING ROOM

HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON  
IRRIGATION AND RECLAMATION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION

ON

**S. 1574**

A BILL TO PROVIDE FOR PAYMENTS BY THE SECRETARY  
OF THE INTERIOR TO OWNERS OF NON-FEDERAL WATER-  
USE FACILITIES FOR HYDROELECTRIC POWER BENEFITS  
REALIZED BY THE UNITED STATES THEREFROM, AND  
FOR OTHER PURPOSES

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MAY 27, JUNE 29, AND JULY 13, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



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# HEADWATER BENEFITS

FRIDAY, MAY 27, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON  
IRRIGATION AND RECLAMATION OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 224, Senate Office Building, Hon. Clinton P. Anderson (chairman of the subcommittee) presiding.

Present: Senator Anderson.

Present also: Senator Goldwater.

Present also: Goodrich W. Lineweaver, committee assistant for reclamation; Elmer K. Nelson, consulting engineer; and N. D. McSherry, assistant chief clerk.

Senator ANDERSON. The committee will be in order.

The bill we have under consideration is S. 1574.

(The bill referred to follows:)

[S. 1574, 84th Cong., 1st sess.]

**A BILL** To provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, for the purposes of aiding in the development for beneficial use of the water resources of streams of the United States for irrigation, hydroelectric power development incidental to the Federal reclamation program, and to aid in the repayment of irrigation costs beyond the ability of water users to repay, the Secretary of the Interior shall, with respect to any hydroelectric power facility owned by the United States—

(i) which is or will be benefited by the construction, operation, and maintenance of any reservoir or other water-use facility owned by a party other than the United States; and

(ii) the marketing of power from which is within his administrative jurisdiction,

report annually to the Congress the value of the hydroelectric power benefits which he finds have been or will be realized by the Federal facility during the year in question, the portion of the costs of the non-Federal facility which he finds to be properly chargeable to the furnishing of those benefits, and his recommendation with respect to the reasonable and equitable amount that should be paid by the United States to the owner of the non-Federal facility in the circumstances, which amount shall not exceed the value of the benefits found to be realized or the costs found to be properly chargeable, whichever is the smaller.

(b) A like report shall be made by the head of any other department or agency of the United States with respect to any hydroelectric power project the marketing of power from which is within the administrative jurisdiction of that department or agency.

(c) It is the intent of the Congress that there shall be paid annually to the owners of reservoirs and other water-use facilities the construction, operation, or maintenance of which benefit Federal hydroelectric power projects a reasonable and equitable amount for the hydroelectric power benefits so realized, and there are authorized to be appropriated such sums as may be required to make pay-

ments to the owners of non-Federal facilities in the amounts found, as the case may be, by the Secretary of the Interior or by the head of any other Department or agency to be reasonable and equitable and reported, as hereinbefore provided, to the Congress.

SEC. 2. The Secretary of the Interior shall, with respect to any hydroelectric power project owned by the United States—

(i) which is or will be benefited by the construction, operation, and maintenance of any reservoir or other water-use facility owned by the United States which is within his administrative jurisdiction; and

(ii) the marketing of power from which is within his administrative jurisdiction,

report annually to the Congress the value of the hydroelectric power benefits which have been or will be realized by the first such facility from the second during the year in question and the portion of the costs of the second facility which is properly chargeable to the furnishing of those benefits, and there shall be credited on the books of the Treasury to the accounts of the second facility and debited from the accounts of the first facility that amount which the Secretary finds to be reasonable and equitable in the circumstances, which amount shall not exceed the value of the hydroelectric power benefits found to be realized or the costs found to be properly chargeable, whichever is smaller.

(b) Like findings shall be made by the head of any other Department or agency of the United States with respect to any two projects which are within its administrative jurisdiction as aforesaid, and a like credit and debit shall be made on the books of the Treasury in each such case.

(c) Whenever one hydroelectric power project which is owned by the United States is or will be benefited by the construction, operation, and maintenance of another reservoir or water-use facility which is owned by the United States but administrative jurisdiction over the marketing of power from the first is in a different Department or agency of the United States than that which has administrative jurisdiction over the second, the heads of the two Departments or agencies shall make the finding with respect to benefits realized, costs incurred, and amounts reasonably and equitably to be credited and debited to the accounts of the two projects, and their joint conclusion with respect to the amounts to be credited and debited shall, upon being reported to the Congress, have the same effect as a conclusion of the Secretary of the Interior under subsection (a) of this section.

SEC. 3. (a) Whenever the Secretary of the Interior has reason to believe that a hydroelectric power project owned by a party other than the United States is or will be benefited by the construction, operation, or maintenance of any reservoir or water-use facility which is owned by the United States and which is within his administrative jurisdiction, he shall determine and fix a reasonable and equitable charge to be paid annually by the owner of the facility benefited to the United States. The annual charge hereunder shall be not more than—

(i) such part of the fixed costs of the Federal facility furnishing the benefit plus such part of its operation and maintenance costs as the Secretary shall find proper; or

(ii) the value of the benefits realized, whichever is less.

All charges collected hereunder shall constitute revenues of the Federal project providing the benefit, and such revenues shall be disposed of in accordance with the provisions of law applicable thereto.

(b) Like notification shall be given by the head of any other department or agency of the United States in the case of benefits which he has reason to believe are or will be realized by a non-Federal hydroelectric power project from a Federal reservoir or water-use facility which is within his administrative jurisdiction.

SEC. 4. Whenever any hydroelectric power project owned by a party other than the United States is or will be benefited by the construction, operation, or maintenance of a reservoir or water-use facility which is owned by another party, said party being other than the United States, the Secretary of the Interior shall, upon request of the owner of the second facility or on its own motion, after notice and opportunity for hearing, determine and fix a reasonable and equitable charge to be paid annually by the owner of the facility benefited to the owner of the benefiting facility. The annual charge hereunder shall be not more than—

(i) such part of the fixed costs of the facility furnishing the benefit plus such part of its operation and maintenance costs as the Secretary shall find proper; or

(ii) the value of the benefits received, whichever is less.

SEC. 5. (a) Annual charges assessed under the provisions of sections 3 and 4 of this Act may be readjusted by the Secretary, after notice and opportunity for

hearing, at periods of not less than five years or at any time that changed conditions may warrant.

(b) The Secretary of the Interior is authorized, with respect to projects which are within his administrative jurisdiction, to enter into contracts with the owner of any hydroelectric power project, reservoir, or other water-use facility whereby, in consideration of hydroelectric power benefits to be realized by the United States from the construction, operation, or maintenance of any non-Federal reservoir or water-use facility or in consideration of the benefits to be realized by any non-Federal hydroelectric project from the construction, operation, or maintenance of any Federal reservoir or water-use facility, the owner thereof or the United States, as the case may be, agrees to pay to the other party each year a sum certain or fixed by formula. No such contract shall obligate the United States to pay an amount greater than—

(i) the hydroelectric power benefits expected to be realized by the United States from the construction, operation, or maintenance of the non-Federal facility; or

(ii) the portion of the expected costs of the non-Federal facility which are properly chargeable to the furnishing of those benefits, whichever is less.

The head or any other department or agency of the United States is authorized, with respect to projects which are within its administrative jurisdiction and subject to the conditions hereinbefore set out, to enter into like contracts. Each such contract shall be reported to the Congress and shall, during the period during which it is in force, obviate any other reporting requirements set forth in this Act.

SEC. 6. All parties affected by any determination made under sections 2, 3, 4, or 5 of this Act (except an agency of the United States in an instance where the cost of operating the Federal facility involved is financed by direct appropriations) shall bear a reasonable share of the cost to the Secretary of making the determination, and all such parties shall pay their share of such cost, as fixed by the Secretary, into the Treasury of the United States for credit to miscellaneous receipts.

SEC. 7. This Act shall be effective six months after the date of its enactment or at the beginning of the fiscal year immediately following its enactment, whichever occurs later.

SEC. 8. Appropriations necessary to discharge the obligations of the United States in accordance with the Secretary's reports are hereby authorized.

SEC. 9. All Acts or parts of Acts inconsistent herewith are hereby repealed or modified as the case may be.

Senator ANDERSON. Senator Jackson said he would like to have the committee meeting postponed on this. We will go on with the witnesses we have and then adjourn, and any witness he may desire to bring in we will bring in subsequently.

I thought that Mr. Gatchell, of the Federal Power Commission, could testify, but Senator Goldwater, do you have a statement?

## STATEMENT OF HON. BARRY M. GOLDWATER, UNITED STATES SENATOR FROM THE STATE OF ARIZONA

Senator GOLDWATER. I have a very brief statement on this, Mr. Chairman.

S. 1574 introduced by me by request is designed to carry out a twofold purpose:

(1) To standardize the payments for headwater benefits to downstream power facilities; and

(2) To promote a more efficient and coordinated maximum use of a watershed for power and related purposes, which is in the interest of sound conservation.

The present law recognizes the principle of payments for headwater benefits, in requiring payments for any stored water which is beneficially used by a power facility lower down on the stream. The sole exception in the present law is that the Federal Government does



not pay for benefits in increased power generation which it receives from non-Federal storage, public or private, although it requires such payments to be made for any benefits received from a Federal installation.

S. 1574 would merely correct what appears to me to be an inequity in existing law and would remedy this inequity and provide that the Federal Government would make payments for benefits received from stored water on the same basis as the law now requires non-Federal projects, public or private, to do.

If all projects on a river recognize the principle of headwater benefits and pay on an equal basis, it will promote wisest use of this most important natural resource. The use of stored water will be coordinated so that maximum integrated utilization of the water is achieved.

The principle embodied in S. 1574 was recognized as sound by President Truman's Water Policy Committee in its report and has been recommended by the Federal Power Commission for several years.

President Eisenhower has recommended the legislation both in his 1955 and 1956 budget message. In 1956 the President said as follows:

In order to establish equity between the Federal Government and other interests, I recommended in my 1955 budget message enactment of legislation to provide that the Federal Government make payments to non-Federal owners of water resources projects when Federal hydroelectric power developments benefit from these projects. Payments are now required from other licensees deriving such benefits and I see no reason why the Federal Government should be exempted. I hope the Congress will amend the Federal Power Act during the session to require such Federal payments.

I am advised that the Federal Power Commission and the Department of the Interior have recommended to this committee certain amendatory language. I am certainly not against anything that will get this job done. My interest is in effecting a change in the law to carry out the objectives above enumerated, and any approach which this committee may feel is the best way to correct the present shortcoming of the law meets with my approval.

Senator ANDERSON. Thank you, Senator.

Mr. Gatchell.

#### **STATEMENT OF WILLARD W. GATCHELL, GENERAL COUNSEL, FEDERAL POWER COMMISSION**

MR. GATCHELL. Mr. Chairman and members of the committee, in response to your request, the Federal Power Commission has sent over this morning Messrs. W. R. Farley, Chief of the Commission's Division of Licensed Projects; John C. Mason, Assistant General Counsel; and myself. My name is Willard W. Gatchell, and I am General Counsel for the Commission.

The bill S. 1574 would provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom. A report of the Federal Power Commission on the bill was sent to Senator Murray, chairman of the committee, under date of May 5, 1955, and recommended that in lieu of the proposal in the bill a new section 31 be added to the Federal Power Act in lieu of the present section 10 (f) of the act.

Mr. Chairman, would it be appropriate to ask that the report be incorporated in the record at this place?

Senator ANDERSON. Yes, the report will be incorporated in the record at this point.

(The report referred to together with the reports of the Department of the Interior and the Bureau of the Budget follow:)

**FEDERAL POWER COMMISSION REPORT ON S. 1574, 84TH CONGRESS, A BILL TO PROVIDE FOR PAYMENTS BY THE SECRETARY OF THE INTERIOR TO OWNERS OF NON-FEDERAL WATER-USE FACILITIES FOR HYDROELECTRIC POWER BENEFITS REALIZED BY THE UNITED STATES THEREFROM, AND FOR OTHER PURPOSES**

This bill provides that in those cases where any hydroelectric power facility owned by the United States is benefited by the construction and operation of any reservoir by another party (State, municipality, person or private corporation), the United States shall pay to the other party an annual charge not to exceed the value of the benefits realized or a portion of the costs of the non-Federal facility furnishing the benefits. Recommendation as to the amount of such charge is to be made to the Congress by the Secretary of the Interior, or other agency head having administrative jurisdiction of the marketing of the power from the Federal hydroelectric facility.

Section 3 of the bill provides for similar annual payments with respect to payments to the United States by another party where any water-use facility owned by the United States benefits a hydroelectric power project owned by another party. The Secretary of the Interior, or other agency head having administrative jurisdiction over the Federal water-use facility, is directed to fix the charge. Provision is also made for debits and credits on the books of the Treasury Department between different Federal agencies on account of the benefits realized by a federally owned hydroelectric power project from the construction or operation of a federally owned water-use facility.

Section 4 of the bill provides that the Secretary of the Interior shall fix annual payments to be made between parties other than the United States where the water-use facility of one party benefits a hydroelectric power project of the other party.

Section 10 (f) of the Federal Power Act (16 U. S. C. 803 (f)) provides that when licensees are benefited by reservoirs or other headwater improvements constructed by other parties, including the United States, they shall reimburse the owner of the improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. By the third paragraph of section 10 (f) (which was added in 1935) the requirement for payments for headwater benefits was imposed upon nonlicensees under certain circumstances.

It thus appears that the bill would attempt to provide for the same sharing of headwater improvement costs as provided by Congress in section 10 (f) of the Federal Power Act. However, the bill would not accomplish this objective by amending the Federal Power Act but, in effect would repeal section 10 (f) of the Federal Power Act and transfer to the Secretary of the Interior the authority to determine charges to be paid and to assess them against the proper parties, instead of working through the Federal Power Commission as at present.

This arrangement would be extremely awkward, with the Commission having jurisdiction over new licensees for other purposes and over existing licensees for this and all other purposes, and the Secretary of the Interior having jurisdiction for this limited purpose over some licensees but not having a basis for making the jurisdictional determinations inherent in the proposal or for determining the benefits received. Also the bill could not apply even in this respect to outstanding licenses under the Federal Power Act for those licenses may be amended only with the mutual consent of each licensee and the Commission.

Moreover the bill raises some procedural questions which have already been settled by Congress in the Federal Power Act; namely, the manner in which parties may apply for and secure and have reviewed a determination of the headwater benefits received and the costs to be shared. In order to provide a fully effective means of administering this bill, corresponding provisions would have to be enacted providing for notices, hearings, rehearings, court review, and enforcement of determination orders.

The Commission is in complete agreement with the substantive proposal of the bill to provide for annual payments for headwater benefits received by non-

Federal power developments and for similar annual payments by the United States which in like manner receives benefits at federally owned power projects. The Commission has so recommended and again urges that section 10 (f) of the Federal Power Act be amended accordingly. It does not recommend passage of this bill but recommends in lieu thereof that the entire bill be stricken after the enacting clause and that language somewhat along the lines of the attached substitute be enacted in lieu thereof.

FEDERAL POWER COMMISSION,  
By JEROME K. KUYKENDALL, *Chairman*.

#### SUBSTITUTE SECTION 31 OF FEDERAL POWER ACT

The Federal Power Commission recommends that the bill S. 1574 be stricken after the enacting clause and that the following be substituted in lieu thereof:

That subsection (f) of Section 10 of the Federal Power Act (16 U. S. C., sec. 803 (f)) is hereby repealed.

SEC. 2. That the following new section be added to the Federal Power Act:

"SEC. 31. (a) Whenever any hydroelectric power project owned by non-Federal interests is or will be benefited by the construction, operation, or maintenance of any reservoir or other water-use facility, the Commission, after notice to the owner or owners of any project so benefited, and after opportunity for hearing, shall determine and fix a reasonable and equitable annual charge to be paid to the owner of such facility furnishing such benefits, including the United States if it be the owner of the facility providing the benefit. The annual charges hereunder shall be such part of the fixed costs of the facility furnishing the benefit plus such part of the annual operating and maintenance costs of such facility, including land rentals and similar charges, as the Commission may deem equitable: *Provided*, That such annual charges shall not exceed the value of the benefits realized or received.

"(b) Whenever any hydroelectric power project owned by the United States is or will be benefited by the construction, operation, or maintenance of any reservoir or other water-use facility, the Commission, after notice to the Federal agency operating the project so benefited and the Federal agency or owner of the facility furnishing the benefit, and after opportunity for hearing, shall determine and fix a reasonable and equitable annual charge to be paid to the owner of such facility furnishing such benefits, such charge to be determined as provided in the preceding paragraph: *Provided*, That payments shall be required for benefits furnished by one Federal facility to another only if the cost of operating one of said facilities is payable from a revolving fund, and the cost of operating the other is payable from some other fund or direct appropriation: *Provided further*, That where no payment is required, the charges determined shall nevertheless be considered as an expense of the facility receiving the benefit and as accrued revenue of the other facility, with an appropriate equal adjustment in the repayable Government capital invested in each such facility.

"(c) Annual charges assessed hereunder may be readjusted by the Commission at periods of not less than five years after notice and opportunity for hearing or readjusted at any time by the Commission as changed conditions may warrant after notice and opportunity for hearing.

"(d) All charges collected for the benefits provided by any facility owned by the United States shall constitute revenues of the facility providing the benefit and such revenues shall be disposed of in accordance with any provisions of law applicable thereto.

"(e) All parties affected by any determination hereunder (except any agency of the United States in each instance where the cost of operating the facility involved is financed by direct appropriations) shall bear a reasonable share of the cost to the Commission of making the determination, and all such parties shall pay their share of such cost, as fixed by the Commission, into the Treasury of the United States for credit to miscellaneous receipts: *Provided*, That for those Federal facilities where payment into the Treasury is not required by this paragraph, the reasonable share of the cost as fixed by the Commission shall nevertheless be considered as an expense of the facility involved.

"(f) Appropriations or other funds available for operation of the facility concerned shall be available to pay the annual or other charges that may be assessed against the United States pursuant to the provisions of this section.

"(g) No party receiving a notice under subsections (a) or (b) of this section shall be required to pay annual charges under this section for benefits received prior to the enactment of this section or be required to pay annual charges under

this section for benefits received more than five years prior to the date on which the Commission gives notice to such party as provided in subsections (a) and (b) hereof; nor shall any party receiving a notice under subsection (a) of this section be required to pay to any non-Federal interest annual charges under this section if it is paying or is required to pay similar annual charges under State law."

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., May 17, 1955.

Hon. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington 25, D. C.*

MY DEAR SENATOR MURRAY: A report from this Department has been requested on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes.

This bill, if enacted, would provide for compensation to be made by owners of hydroelectric facilities to the owners of other water-use facilities by the construction, operation, or maintenance of which the hydroelectric facilities are benefited. Sections 1, 2, 3, 4, and 5 of the bill spell out the procedure and standards to be followed in four classes of cases:

(1) Those in which a Federal hydroelectric facility is benefited by a non-Federal water-use facility (secs. 1 and 5);

(2) Those in which one Federal hydroelectric facility is benefited by another Federal water-use facility (sec. 2);

(3) Those in which a non-Federal hydroelectric facility is benefited by a Federal water-use facility (secs. 3 and 5); and

(4) Those in which one non-Federal hydroelectric facility is benefited by another non-Federal water-use facility (sec. 4).

The bill, in effect, apparently intends to elaborate on and, in some respects, to modify and expand section 10, subsection (f), of the Federal Power Act (16 U. S. C. 803 (f)). This subsection reads, in pertinent part, thus:

"\* \* \* whenever any licensee \* \* \* is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the [Federal Power] Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owners of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. \* \* \*

"Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements \* \* \*.

"Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission \* \* \* shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement."

The Department of the Interior agrees in principle with the purposes of S. 1574. It recommends, however, that for its text there be substituted the text of S. 3434, 83d Congress. A copy of our report of June 2, 1954, to the Committee on Interstate and Foreign Commerce recommending enactment of that bill is attached for your information.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*

## HEADWATER BENEFITS

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., June 2, 1954.

HON. JOHN W. BRICKER,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*United States Senate, Washington 25, D. C.*

MY DEAR SENATOR BRICKER: This is in response to your letter of May 24, 1954, requesting the comments of this Department on S. 3434, a bill to amend section 10 (f) of the Federal Power Act to provide that charges shall be paid by Federal power projects which are benefited by stream improvements constructed by other parties, the payment to be determined in the same manner as for charges to be paid by non-Federal interests, and for other purposes.

The Department favors enactment of this bill.

Careful consideration has been given by the Department to the provisions of this bill and to the general problem of computing and assessing benefit charges as among water resources projects. The Department is currently cooperating with the Federal Power Commission in its investigations to determine headwater benefits accruing to licensed projects from the Grand Coulee, Albeni Falls, and Hungry Horse projects in the Columbia Basin and the Canyon Ferry project in the Missouri River Basin.

One of the principal objectives of the bill is to provide that benefit charges be assessed on Federal power projects which are benefited by other stream improvements owned by non-Federal interests. The Department fully agrees with this objective. As the President stated in his 1955 budget message it is only equitable that this be done. If non-Federal interests are assessed for payment of benefits received from federally owned projects, they should be compensated when their projects in turn provide benefits to federally owned projects.

An earlier version of this bill in draft form has been reviewed by the Department which suggested certain perfecting amendments. The language of S. 3434 adequately takes account of the suggestions of this Department and we have no further comments or suggestions.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee.

Sincerely yours,

RALPH A. TUDOR,  
*Acting Secretary of the Interior,*

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., May 12, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,*  
*United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your request of March 29, 1955, for the views of the Bureau of the Budget on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes.

The President has recommended in his budget messages both this year and last year that legislation be enacted to provide that the Federal Government make payments to non-Federal owners of water resources projects when Federal hydroelectric power developments benefit from these projects. The Federal Power Commission has reported on S. 1574 to your committee, recommending that such legislation take the form of a substitute draft bill submitted with its report rather than S. 1574 as introduced. The Bureau of the Budget concurs in this recommendation.

Accordingly, you are advised that enactment of S. 1574, if amended as recommended by the Federal Power Commission, would be in accord with the program of the President.

Sincerely yours,

DONALD R. BELCHER *Assistant Director.*

Mr. GATCHELL. On May 12, Assistant Budget Director Donald R. Belcher stated the concurrence of the Budget Bureau in the recommendations of the Commission and advised that the enactment of the

bill, if amended as proposed by the Federal Power Commission, would be in accord with the program of the President.

In his budget message for the fiscal year ending June 30, 1956, President Eisenhower recommended the enactment of legislation along these lines. He said:

In order to establish equity between the Federal Government and other interests, I recommended in my 1955 budget message enactment of legislation to provide that the Federal Government make payments to non-Federal owners of water resources projects when Federal hydroelectric power developments benefit from these projects. Payments are now required from other licensees deriving such benefits and I see no reason why the Federal Government should be exempted. I hope the Congress will amend the Federal Power Act during this session to require such Federal payments (p. M67).

A similar recommendation was made by President Eisenhower in his budget message submitted in January of last year for the fiscal year ending June 30, 1955.

The essential purpose of the bill is sound, and the recommendation of the Federal Power Commission for amendment of the bill is only to enable its real purpose to be more effectively carried out under the framework of existing legislation. The payment for river improvements is always a problem. Congress has followed the policy heretofore of requiring that those consumers served by federally constructed powerplants shall bear all of the power costs. The only exception to this policy is the subject of this bill, and that exception involves the sharing of costs of headwater improvements which benefit lower powerplants.

When a Federal powerplant receives water that has been stored at an upstream development and the Federal plant can utilize that water for generating power, there is no provision at present for the reimbursement of the owner of the upper storage reservoir for any of the costs of his reservoir, notwithstanding the benefits derived by the lower powerplant. If the benefits are received by a powerplant owned by a State, municipality, or privately owned power company, section 10 (f) of the Federal Power Act requires reimbursement of a party of the costs of the upper storage reservoir. This bill would remove the exception, thereby placing all power consumers on an equal footing. In other words, the bill merely provides that all power consumers, whether served by Federal or by non-Federal powerplants, are to share in the headwater reservoir costs where power benefits are received from storage so provided.

It will be seen that this is not a charge for the water but a sharing of the costs of facilities which make the water available when it can be utilized.

Senator ANDERSON. Thank you.

Did you want to have some statement by Mr. Farley and Mr. Mason?

Mr. GATCHELL. No, sir. They are here if you have some questions. Mr. Farley is an engineer and Mr. Mason is a lawyer.

Senator ANDERSON. How does it change the present law?

Mr. GATCHELL. It changes the present law in one respect only, and that is, it makes it possible for those private power sources, States, and municipalities who develop headwater reservoirs, to be reimbursed for a part of their cost where a benefit is conferred upon a Federal powerplant. The benefits, of course, would be received by the

Federal powerplant in any event. But if it is possible to share these costs, it makes headwater storage reservoirs that might not otherwise be economically feasible, feasible, by sharing the cost.

Senator ANDERSON. And the Federal Power Commission has been in favor of this for quite a while?

Mr. GATCHELL. Yes, sir.

Senator ANDERSON. And the Office of the President?

Mr. GATCHELL. Yes, sir. President Truman's Water Resources Committee so recommended, as Senator Goldwater remarked.

Senator ANDERSON. Are there other witnesses?

**STATEMENT OF IRVIN HOFF, ADMINISTRATIVE ASSISTANT TO  
SENATOR MAGNUSON**

Mr. HOFF. Senator, Senator Magnuson would like to testify on this and suggests, if possible, for him to appear when you resume.

Senator ANDERSON. We will recess this hearing and resume and ask Senator Magnuson and Senator Jackson to testify at a later date.

(Thereupon, the subcommittee recessed the hearing on S. 1574 subject to call of the chairman.)

## HEADWATER BENEFITS

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WEDNESDAY, JUNE 29, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met at 11:15 a. m., pursuant to call, in room 224, Senate Office Building, Hon. W. Kerr Scott presiding.

Present: Senators W. Kerr Scott, North Carolina; Alan Bible, Nevada; Henry Dworshak, Idaho.

Also present: Senator Wayne Morse.

Present also: Goodrich W. Lineweaver, professional staff, and N. D. McSherry, assistant chief clerk.

Senator Scott. The subcommittee will come to order. The hearing today is on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water use facilities for hydro-electric power benefits realized by the United States therefrom, and for other purposes, is a continuation of hearings opened on May 27, at which time reports from the Department of the Interior, the Federal Power Commission, and the Bureau of the Budget were presented.

The three reports agreed on an amendment to the bill, which would place the responsibility for carrying out the provisions of the measure under the Federal Power Commission instead of the Secretary of the Interior.

Mr. Gatchell, general counsel for the Federal Power Commission, testified on the bill, as did Senator Goldwater, the sponsor, by request, of the measure. The amendment proposed by the Federal Power Commission and concurred in by the Secretary of the Interior and the Bureau of the Budget, was agreeable to Senator Goldwater.

Senator Anderson, chairman of the Subcommittee on Irrigation and Reclamation, is compelled to be in New York today, and I have been designated to hold the adjourned hearing in his absence.

I understand that additional testimony may be taken from Mr. Gatchell and other officials of the Federal Power Commission as to the workings or operations of the proposed law in the event it is passed by the Congress.

There will also be testimony from witnesses who represent interests opposed to the bill. The major purpose of this hearing today is to complete the record so that it may be submitted to the Subcommittee on Irrigation and Reclamation for consideration, along with the proposed amendment.

Senator Gore of Tennessee has requested an opportunity to appear, but he was called out of the city today to attend a funeral. He had been advised that the record will be held open for him to make a statement in person or to submit his views in writing.



The record, therefore, will be kept open in order to give Senator Gore or other witnesses opportunities to present their views. (See p. 71.)

Because of his familiarity with this measure, I am requesting Mr. Lineweaver to assist me in the examination of witnesses.

The bill S. 1574 was inserted in the record of the hearing on May 27 together with the recommended amendment by the Federal Power Commission, and the reports of the Department of the Interior and the Bureau of the Budget.

Mr. LINEWEAVER. Mr. Chairman, the first witness is W. W. Gatchell. Mr. Gatchell, do you have any further statement that you would like to make before we ask you questions?

#### STATEMENT OF W. W. GATCHELL, GENERAL COUNSEL, FEDERAL POWER COMMISSION

Mr. GATCHELL. Mr. Chairman and members of the committee, we have received several inquiries with respect to certain features of this proposed amendment which the Commission suggests, which have been brought to the attention of the committee, and if I may just comment upon those briefly, it may be of assistance, and that is our only hope.

We want to answer any inquiries that you may have.

Mr. Farley, who is in our Bureau of Power in charge of the Division of Licensed Projects, having to do with hydroelectric projects, is here and Mr. Mason, assistant general counsel, is with me as well.

So if we can answer any of your questions, we will be glad to do so.

Now, it has been suggested that there have been no benefits paid to the Federal Government under the present section 10 (f) of the Federal Power Act; that is not quite so. In the first place, the Federal reservoir projects which have conferred benefits are those projects which have been constructed fairly recently.

The Grand Coulee project, which is one of the largest in the country and on the Columbia River, was completed in 1941 and no non-Federal projects could receive benefits from that reservoir until the Rock Island project was enlarged, and that was not enlarged until 1953. Promptly upon its enlargement, we undertook the investigation to determine what headwater benefits had been received at Rock Island from the storage at Grand Coulee.

In due time there will be an assessment of those benefits, of the charges due under the Federal Power Act and would be due under this bill as it would be amended.

In addition, the Government's Allatoona project went into operation in 1950 and the Federal Power Commission in 1952 started an investigation of this project and some downstream powerplants owned by the Alabama Power Co. These plants are the Lay, Mitchell, and Jordan Dam projects on the Coosa River. This was a rather complex case and the Commission did assess benefits for the years 1950, 1951, and 1952 and those charges were paid to the United States. The Commission is in process of assessing similar benefit charges for the years 1953 and 1954. As those charges are ascertained and the amount is determined by the Commission, they will also be paid by the Alabama Power Co. to the Federal Government for the benefits received from the Allatoona project.

So that actually there have been benefits that have been paid. Now, the changes will increase in dollar amount as these reservoir projects, principally in the Columbia River area, come into operation and confer greater benefits upon the present and future constructed projects owned by non-Federal interests.

Under the Federal Power Act, these payments must be made by a State or municipal or private power company developer holding a license under the Federal Power Act, whether the benefits are conferred by a Federal project or a non-Federal interest. In that connection, Mr. Chairman, if I might just mention this fact: At no time that I am aware of have the general taxpayers been called upon to make payments for Federal power projects or of Federal power operations, nor would this bill provide for any payment by the general taxpayer.

All Federal power costs are presumed to be paid under the criteria laid down by Congress, are presumed to be paid by the consumers who receive power from Federal projects—that is, those who buy the power are supposed to pay the power costs.

This bill, under the amendment proposed by the Commission, would simply say that those who receive power from Federal power projects and pay for that power shall pay all of the power costs for the power which they receive. Exactly the same formula, the same criteria, the same standard would be applied as are applied to non-Federal power consumers who, of course, must pay for all of their power project costs and that is the only way they operate.

Further, I might point out that the Federal Power Commission has been most zealous in its regulation of utilities to see that they do not earn excessive profits; that the licensee is not permitted to earn an excessive profit.

Furthermore, under the Federal Power Act, any excessive profit that might accidentally be earned by a power company must be used to reduce the net investment in that power project so that in the event that the United States should seek to acquire the licensed project at the end of the license period, the acquisition price to which the licensee must agree when he first takes the license, the acquisition price will be determined under a formula which takes into account the profit that that plant has earned. Therefore, the United States would receive the benefit from paying a reduced cost at the time that it acquired any privately owned dam under license.

Now, if I might mention one dam which has been referred to, and that is the proposed Libby Dam, which is a very large storage and flood-control project and a multipurpose power project. That dam would only be feasible if the power produced at lower projects is taken into account and I do not care whether it is built by the Federal Government or by a State or municipal agency, or by a privately owned power company. It is only feasible if the power costs are prorated throughout the area where the benefits are received.

The at-site power output at the Libby project would not support the investment that would be desirable at that place and yet it should be constructed on a comprehensive basis.

One of the keynotes to the Federal Power Act is that the water resources of the United States which belong to the people and are the property of the people should be developed in the most comprehensive

manner. It makes no difference under the Federal Power Act whether the construction is by the Federal Government or State or municipal group or private power company. The criteria is that those benefits are to be received from the way that will give the greatest benefit to the widest number of people.

If the stream is not developed in a most comprehensive manner, it is a loss to the Government and the Federal Power Act looks to comprehensive development. So that I suggest, in considering the Libby project it should be considered in the same way that other developments are considered by Congress and by the Commission, namely, to utilize those water resources for the widest public good.

If I might mention another project that has been referred to, and that is the John Day project. There are already in existence and in operation storage reservoirs which will benefit the John Day project far in excess of the headwater benefits which might be conferred if additional projects proposed in that Columbia River system are constructed.

There are no storage reservoir projects that I know of that are proposed for the Salmon River but there are some proposed for the Snake and the Clearwater Rivers, and if they are constructed, the benefits which they will confer upon the John Day project will not be as large as the benefits which would be conferred by the existing reservoir facilities. Therefore, I suggest that the John Day project is one in which the headwater benefits do play a fairly important part.

I do not mean to cover all of the points that have been raised with me by different members of the committee and Members of the Senate, but these points that I have referred to seem to me to cover some of the things that have been raised.

If you have some further questions, I will be glad to do whatever we can.

Mr. LINEWEAVER. Mr. Chairman, several questions have been handled to me to clarify section 31 (g) of the proposed amendment which reads:

No party receiving a notice under subsection (a) or (b) of this section shall be required to pay annual charges under this section for benefits received prior to the enactment of this section or be required to pay annual charges under this section for benefits received more than 5 years prior to the date on which the Commission gives notice to such party as provided in subsections (a) and (b) hereof; nor shall any party receiving a notice under subsection (a) of this section be required to pay to any non-Federal interest annual charges under this section if it is paying or is required to pay similar annual charges under State law.

Now, the question with respect to that, Mr. Gatchell, is this: First, does this mean that moneys due the Government from utilities for past upstream storage are forgiven by this proposed legislation?

Mr. GATCHELL. It does not relate in any respect to the forgiveness of payments that would be due to the Federal Government. No State can and no State has assessed benefit charges against a Federal power development, but, where there is a non-Federal project that would be subject to payment to the United States of headwater benefits under the Federal Power Act or under this amendment, paragraph (g), those payments would be made to the Federal Government. They would be made under paragraph (g) as they would be made under section 10 (f) of the Federal Power Act.

However, in the State of Wisconsin, the State does assess headwater benefit charges on the Flambeau and Wisconsin Rivers where there

are two series of very effective reservoir storage projects. Those projects are made feasible only by the payments from power development down below. It is to avoid the duplication that would arise from assessing similar benefit charges under the Federal Power Act that we put in this paragraph (g).

Mr. LINEWEAVER. I assume that your explanation there obviates the necessity for these questions, but I will read them into the record since they were handed to me.

If so, if the first question had been answered in the affirmative, how long have these benefits been accruing and unassessed and owing to the Government?

Mr. GATCHELL. In the first place, Mr. Lineweaver, the first question could not be answered in the affirmative because this amendment, or paragraph (g) particularly, does not call for any waiver of the charges due to the Federal Government.

Secondly, as I said before, the benefits received by non-Federal interests from Federal reservoirs are of fairly recent origin. The Commission's appropriations have been severely limited in recent years and we do not have as large a staff to put on this work as we would like to have, so we have had to proceed very slowly in doing the work.

We have, however, already assessed some benefits which have been paid to the Federal Government and have nearly concluded our studies on others and will proceed to do that as rapidly as we can.

The payments to the Federal Government will be made completely in accordance with the statute, even if this bill is passed.

Mr. LINEWEAVER. Let me ask you this: Have you any assurance that you will be better financed in the future than you have in the past?

Mr. GATCHELL. The present appropriation gives us some additional funds for licensed project work and one of the things on which we are spending that additional money is to provide additional staff to take care of headwater benefit work.

Mr. LINEWEAVER. Another question. Can you estimate how many millions of dollars now due the United States from utilities under the present law would thus be forgiven or "given away"?

Mr. GATCHELL. The answer is none.

Mr. LINEWEAVER. The other question I wanted to ask, Mr. Gatchell, in the original bill as introduced and referred to this committee, there was reference in that bill to this, that one of the purposes is to aid the repayment of cost beyond the ability of water users to repay.

Undoubtedly, when the committee goes to considering this amendment, that question will come up as to whether or not the Federal Power Commission or the Department of Interior gave any consideration, or the Bureau of the Budget, to that phase of the original bill which has been eliminated by this proposed amendment.

Mr. GATCHELL. Yes. The answer to your question is that we did give consideration to rendering assistance to irrigation development in connection with Federal projects, multipurpose projects, and that is something which must be taken into account.

Congress has followed the practice in the past, however, of limiting Federal power costs and Federal power reimbursement strictly to the power phases, and in deciding that you want to use some of the power revenues for the purposes of reimbursing your irrigation costs is a matter for Congress to decide. That policy is one that calls for many considerations and the Federal Power Commission in its report deals

manner. It makes no difference under the Federal Power Act whether the construction is by the Federal Government or State or municipal group or private power company. The criteria is that those benefits are to be received from the way that will give the greatest benefit to the widest number of people.

If the stream is not developed in a most comprehensive manner, it is a loss to the Government and the Federal Power Act looks to comprehensive development. So that I suggest, in considering the Libby project it should be considered in the same way that other developments are considered by Congress and by the Commission, namely, to utilize those water resources for the widest public good.

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Mr. LINEWEAVER. Let me ask you this: Have you any assurance that you will be better financed in the future than you have in the past?

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Congress has followed the practice in the past, however, of limiting Federal power costs and Federal power reimbursement strictly to the power phases, and in deciding that you want to use some of the power revenues for the purposes of reimbursing your irrigation costs is a matter for Congress to decide. That policy is one that calls for many considerations and the Federal Power Commission in its report deals

strictly with the power cost and does not deal with the subsidization of irrigation in any respect.

Mr. LINEWEAVER. In other words, the Federal Power Commission is sticking to its knitting?

Mr. GATCHELL. Yes, sir; that is what seemed to us to be desirable. Section 17 of the Federal Power Act calls for an allocation of the receipts received from licensees. There are certain charges that the Commission is required to make and when these charges are paid into the Commission, section 17 of the Federal Power Act calls for the allocation of those receipts to various purposes. I might call your attention to the fact that "50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests shall be paid in to, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902."

So that Congress itself has set up what shall go into the reclamation fund from payments made under licenses.

Mr. LINEWEAVER. Mr. Gatchell, will you please explain the purpose and effect of the provision in section 31 (g) which reads as follows:

No party receiving a notice under subsections (a) or (b) of this section shall be required to pay annual charges under this section for benefits received prior to the enactment of this section or be required to pay annual charges under this section for benefits received more than five years prior to the date on which the Commission gives notice to such party as provided in subsections in (a) and (b) hereof;

Mr. GATCHELL. The first part of the provision you have just read is inserted to insure that headwater benefit determinations for the years preceding enactment of the proposed amendment would continue to be made under the provisions of the present statute, namely section 10 (f) of the Federal Power Act. The purpose of the second part of the quoted provision providing that annual charges shall not be required for benefits received more than 5 years prior to the date the Commission gives its notice is to insure that headwater benefit payments will be determined within a reasonable time after the benefits are actually received. This would be desirable from an accounting and tax standpoint since a headwater benefit payment should be included in the operating expenses during the year in which the benefit is received and a licensee paying such a charge would probably have difficulty in claiming the amount of the charge on a year-to-year basis prior to the time the determination of such charge is made by the Commission. In the absence of such a provision it would be possible to delay the making of the determination with respect to a particular project for 10 or 15 years after which time the Commission could retroactively fix the charge for the entire period.

The Commission does not believe that there should be undue delay in making the determination with respect to any project. However, after the determination is made with respect to the initial period of operation the charges would be paid on a year-to-year basis without a further determination until such time as the annual charge is adjusted as provided in section 31 (c).

Mr. LINEWEAVER. Will you tell me the purpose of the provision in section 31 (g) which reads:

nor shall any party receiving a notice under subsection (a) of this section be required to pay to any non-Federal interest annual charges under this section if it is paying or is required to pay similar annual charges under State law.

Mr. GATCHELL. The purpose of that provision is to permit the States to fix headwater benefit charges due between non-Federal developers in those States having laws similar to the Federal law requiring headwater benefit payments. Whether the payments are fixed under State law or under Federal law such payments encourage comprehensive development of the Nation's water resources. However, I would like to point out that the provision in question would not permit any State to fix any payments where a Federal hydroelectric project is receiving benefits, and the Commission would be the only agency to determine what payments are to be made by any Federal agency to any non-Federal interest providing the benefits.

An example of a situation where this provision would be applicable involves the Chippewa, Flambeau, and Wisconsin Rivers where for years about 20 reservoirs have been releasing water for the benefit of about 25 powerplants located downstream. The State of Wisconsin has, since about 1907, fixed semiannually the charges to be paid for those benefits. This provision would prevent duplication of effort and possible conflicts between the State agencies involved and the Federal Power Commission with respect to headwater benefit charges, and would not adversely affect any Federal interest.

Mr. GATCHELL. I would like to have the Commission's report on S. 1574 made a part of the record this hearing, Mr. Chairman, if that has not been done.

Senator SCOTT. Without objection, that will be done.

(The report referred to has been previously included.)

Senator SCOTT. Senator MORSE, since you want to get away, we will be glad to hear from you at this time.

#### STATEMENT OF HON. WAYNE MORSE, UNITED STATES SENATOR FROM THE STATE OF OREGON

Senator MORSE. You are very kind, Mr. Chairman.

Mr. Chairman and gentlemen of the committee, S. 1574, the so-called downstream benefit bill, would have the taxpayers foot the bill for the "partnership" dams proposed by the administration and the private utilities.

Supposedly, partnership is designed to relieve the Federal Government and the taxpayers of great portions of the cost of multipurpose dams. That is the major argument for turning over the revenue-producing power features of multipurpose projects. Yet this bill would shift the burden, or an appreciable part of it, back upon the taxpayers while the revenues from power would be handed over to the private utilities.

A measure of this type was first proposed by President Eisenhower in his 1955 budget message. He said:

Under the Federal Power Act, licensees of hydroelectric projects which benefit from headwater impoundments of other projects, either public or private, must make annual payments to the upstream developer in accordance with benefits received. The Federal Government is not required to make similar payments when Federal projects derive such benefits. In simple equity, this should be done. I recommend enactment of legislation which would require such Federal payment.

Since its enactment in 1920 the Federal Power Act has provided that non-Federal dam owners would pay the United States for downstream benefits conferred by the orderly release of waters from Federal dams.



What the President did not say in his budget message is that not 1 cent of revenue has been received by the United States Treasury under this 35-year-old law. What, then, is the "equity" which he advocates? What is the inequality that must be balanced off? It is nonexistent.

Early attempts to apply the law were abandoned because the cost of administration would have been greater than revenues. But in recent years downstream benefits from Government dams has been greatly increased.

As an example, water stored and released from Hungry Horse has increased the power output of Washington Water Power's Cabinet Gorge Dam. It has yet to pay anything for the substantial benefits received.

The policy of the 1920 law is sound. Private utilities should pay for the increased power capacity conferred by upstream Government dams. They sell that additional power at a profit. I am advised that they sell it at a greater profit than power they generate themselves because it costs the utilities less to produce.

As I said in a statement on a similar bill last year:

The philosophy of this proposal is certainly novel. Our streams are the common heritage of all the people. When a license is issued to a non-Federal agency or a private utility it is conferred because it is deemed that the public convenience and necessity will be served and because the utility desires to invest funds and make a profit. It should be borne in mind that the utility is using community property for which it does not pay and often has the benefit of the Government's power to condemn property for a public use.

It makes sense that when the United States builds and operates a dam that increases the efficiency of downstream non-Federal dams the downstream beneficiary should compensate the Federal Government if it is feasible to compute the payment.

The reverse does not follow. The non-Federal user is, in the first instances, employing water in streams that belong to the citizenry at large. Private utility power dams are not designed to improve the streams in order to create downstream benefits. That is an incidental byproduct of their operation.

It would be strange to exact payment from the taxpayers to compensate utilities for such incidental improvements of resources that belong to all of the people.

The purpose of this bill is clearly revealed in an article in the Wall Street Journal. Now listen to the report of the Wall Street Journal on August 24, 1954, on the views of the president of the Pacific Northwest Power Corp., the combine that proposes almost all of the partnership projects in the Columbia River Basin. This is what the Wall Street Journal reports that he said:

\* \* \* two fundamental questions must be settled before the company could proceed to build the dam, a downstream benefit act of Congress, to standardize assessments of costs to downstream dams for benefits from upstream water storage, and a decision whether the Federal Government is willing to advance funds for flood-control features of the dams.

This proposal would have the taxpayers pay for incidental downstream benefits from so-called partnership dams. In that fashion the taxpayers would foot the bill for the partnership scheme which is supposed to save the taxpayers money.

The sad thing is that some of the partnership projects which are proposed and conditioned upon this scheme are poor substitutes for more effective storage projects like the high Hells Canyon Dam.

Under this proposal Libby Dam, a multipurpose power and storage for flood control project, would be made feasible as a partnership project, at higher power costs to consumers.

As further indication of the interrelationship of this bill and partnership, I would cite the John Day Dam partnership bill, H. R. 5789.

In the section on computation of costs, it is provided that the net of downstream benefits received and conferred would be paid or received. The fact is that at the John Day project at this time and until there is upstream storage on the Snake, Salmon, or Clearwater Rivers, downstream benefits received or conferred would be negligible. Yet, the John Day partnership bill seeks to establish a downstream benefit payment precedent.

This is a bad bill. It is the cornerstone of the so-called partnership scheme under which the private utilities would be permitted, no, paid, for taking over multipurpose storage dam sites. It is a double giveaway. The private utilities would not only receive the revenue potential of the dam sites which should be developed in the public interest; they would be paid to enable them to do so.

I close by saying, Mr. Chairman and members of the committee, that I think in those instances where a license to a private utility is justified to build a dam on the people's streams that the private utilities should be limited to that dam site and that the private utility should not expect to collect tribute from the Federal Government for any so-called downstream benefit that may flow from the storage of the people's water behind a dam built by a private utility when that dam was built in order to provide power to serve the customers of the private utility, and when they get that license from the Federal Government they get, in my judgment, all they are entitled to out of the people's water.

I yield for questions.

Senator SCOTT. Thank you very much, Senator.

Senator MORSE. Thank you, gentlemen.

Senator SCOTT. Senator Dworshak?

Senator DWORSHAK. Mr. Chairman, I just wanted to make the observation that Senator Goldwater is the author of S. 1574 and is out of the city today, but is represented at the hearing by a member of his staff.

I presume that he might have testified were he present.

Mr. LINEWEAVER. At the hearing on May 27, Senator Dworshak, Senator Goldwater expressed himself as in favor of the amendment proposed by the Federal Power Commission and concurred in by the Department of Interior and the Bureau of the Budget.

Senator DWORSHAK. Mr. Gatchell. I was wondering whether you had followed the proposals inherent in the proposed partnership plan which has been advocated by the Department of Interior.

Mr. GATCHELL. Senator Dworshak, our proposals here are in line with the basic principles upon which the Federal Power Act is established, namely, the licensing of non-Federal interests to construct those water resources which can be constructed within the comprehensive plans which are suitable. The partnership proposal is merely an adaptation of the plan and it seems to me that this amendment is in harmony with it only in the fact that it would equalize the payment of power costs so that all power consumers would bear their fair share of it.

This is not one where the Commission is opposing Federal development because that Commission has recommended Federal power development at many sites.

Senator DWORSHAK. Jointly with Federal agencies?

Mr. GATCHELL. Yes, sir; some jointly and some where the United States—it was recommending that the United States undertake the development alone. It supported the Coosa River development in the last Congress. It also supported the Priest Rapids bill, under which Grant County is constructing under a Federal license.

Those partnership proposals where the Federal Government does have some interest seem to me to be essentially sound in that they utilize non-Federal agencies to accomplish the full and complete utilization of water.

Senator DWORSHAK. You prefer to have a general formula outlined by a specific law to govern all of these joint developments or do you think it is feasible to have the specific details affecting a particular partnership development contained in the authorization of that project?

Mr. GATCHELL. Senator, I was not authorized by the Federal Power Commission to pass on that question because we had not had it before. Heretofore Congress has dealt with the projects on a system basis, river-system basis.

Senator DWORSHAK. Individual basis?

Mr. GATCHELL. Individual basis.

Senator DWORSHAK. Those have been quite limited?

Mr. GATCHELL. They have been except that you have, for example, in the 1944 Flood Control Act laid down certain principles which were followed in subsequent bills.

I think the Coosa River bill is a good example of the partnership approach where the full resources can be utilized for the benefit of all the public.

Senator DWORSHAK. Who participated in that?

Mr. GATCHELL. The Coosa River bill was supported by all but 1 member of the House delegation from Alabama and by the 2 Senators.

Senator DWORSHAK. Who participated in the venture?

Mr. GATCHELL. The Alabama Power Co. Certain navigation works will be constructed by them and navigation benefits will be borne by the power costs in that. The Federal Government is engaging in navigation improvement downstream from the power development.

Senator DWORSHAK. Have they arrived at a mutually satisfactory distribution of the costs and benefits in that particular instance?

Mr. GATCHELL. No dispute at all, Senator. The costs the power company should assume have been assumed by them and the Federal costs likewise have been assumed by the United States without any question.

Senator DWORSHAK. You think that we should have a basic law that would apply equally to developments under the Bureau of Reclamation and under the Army Engineer Corps or under other Federal agencies?

Mr. GATCHELL. Senator, I do not mean to encroach on the responsibilities the Commission has assigned to me. That is a policy question.

Senator DWORSHAK. I should not have asked it.

Mr. LINEWEAVER. Thank you, Mr. Gatchell.

Mr. GATCHELL. Thank you, gentlemen.

(Senator Goldwater subsequently submitted the following supplemental statement for the record:)

## ADDITIONAL STATEMENT OF SENATOR BARRY GOLDWATER ON S. 1574

Because I was in my home State of Arizona on June 29, I was unable to attend the hearings on S. 1574, but I would like to answer a few of the misconceptions brought out in some of the testimony at that hearing.

No taxpayer will have to pay anything in taxes to anyone as a result of this proposed legislation. The only purpose of this bill is to equalize the costs of improving the stream for greater output of electricity among all who receive benefits from such improvements. Certainly, if it is a recognized principle that is sound, the Federal Government should be willing to abide by that principle. To do otherwise would mean that one segment of our people is paying a part of the power bill for another segment. People buying electricity from a non-Federal agency, either public or private, should not be required to subsidize the power bill of someone buying electricity from the Federal Government. The Federal Government should treat all of its citizens alike and not shower favors on one group merely because it buys power from the Federal Government. They should be required to pay at least the cost of producing the power they buy, and a part of that cost is the benefit derived from headwater storage by non-Federal projects.

If the payments for such benefits are not recognized, it will be impossible to coordinate the release of storage among various projects on a river to fully utilize the maximum flow.

The Federal Government has not undertaken to furnish power to all of its citizens, nor do I think it should. Power which it does have for sale is incidental to its primary functions of flood control, navigation, and reclamation; and, as such, any power benefits received by non-Federal construction should be paid for by the users of such power. To do so will not increase the cost of Federal power materially. I have been advised that the application of my legislation in the Columbia River Basin will change the cost of federally generated power in that area less than one-hundredth of 1 mill per kilowatt-hour, which is a very insignificant amount.

Some criticism has been leveled at the fact that the private power companies of the United States make a profit. Is that bad? The greatness of our country and its economic ability has been due to our incentive system of capitalism. All utilities are subject to one form or another of regulation of their rates by either some State or Federal agency, and any payments received for headwater benefits would have to be reflected in their rate structures. This legislation only proposes to take the "windfall" subsidies now enjoyed by special groups receiving Federal power and to equalize them so that all United States citizens pay, but pay only for what they receive—no more and no less. No windfall profits will accrue to anyone by reason of the principle embodied in my legislation, but rather the consumers of one area will not be able to pass off to the consumers of another area a part of their electric bill.

Mr. LINEWEAVER. Mr. Chairman, next we have Mr. Angus McDonald. Mr. McDonald has an engagement and I agreed to put him on at this time. He said it would take about 5 minutes.

Senator SCOTT. Proceed.

**STATEMENT OF ANGUS McDONALD, ASSISTANT LEGISLATIVE SECRETARY, NATIONAL FARMERS UNION**

Mr. McDONALD. Mr. Chairman and members of the committee, my name is Angus McDonald. I am assistant legislative secretary of the National Farmers Union. I have a brief summary statement here which I believe I will be able to read in less than 5 minutes.

We are appearing here in opposition to S. 1574, which would authorize the Secretary of the Interior to report annually to the Congress the value of hydroelectric power benefits which he finds have been realized by a Federal facility because of an asset, non-Federal facility.

The Secretary is further authorized to cause the amount of the benefits to be credited on the books of the United States Treasury to the accounts of the non-federal facility.

This proposal, it seems to us, is a roundabout method of getting the hands of the private power groups into the Federal Treasury. We see no reason why the Federal Government which has generously awarded dam sites to private groups should have to pay for benefits it receives indirectly from the private installation.

Private power companies have found the building of hydroelectric dams and the sale of electricity a highly profitable business. That is the reason that they generally oppose the authorization of Federal power projects and the distribution of resulting power to consumers at low cost. The only exception, as far as we know, to the opposition of private power groups to Federal power programs or projects is in areas where the cost of the dam is relatively high.

Private power groups have been generously subsidized by the United States Government, according to the Rural Electric Co-operative Association which has made a study of the Federal tax amortization program. These benefits amount to a total of about \$3 billion.

Now it appears the private utilities want additional subsidies and benefits at the expense of the people of the United States who own the navigable rivers of the United States.

I refer to a statement of Kinsey M. Robinson, president of the Pacific Northwest Power Co., published in the Wall Street Journal, August 24, 1954.

The Pacific Northwest Power Co. is a joint enterprise of Washington Water Power Co., which Mr. Robinson also heads; Montana Power Co., Pacific Power & Light Co., and Portland General Electric Co.

In the article Mr. Robinson disclosed the reasons for delay in the private power development of Bruces Eddy on the North Fork and Penny Cliffs on the Middle Fork of the Clearwater River. He apparently referred to S. 3434, which was not acted on by the 83d Congress. Although this bill varies somewhat from the legislation considered here, the principle of requiring the Federal Government to subsidize private power development also applies.

Mr. Robinson said that before his company built these 2 projects that 2 fundamental questions must be settled before the company could proceed to build the dams, "a downstream benefit act of Congress," and I quote:

\* \* \* to standardize assessment of costs to downstream dams for benefits from upstream water storage, and a decision whether the Federal Government is willing to advance funds for flood control features of the dams.

Much has been said in the press, in the Congress, and other places regarding the subsidies received by rural electric cooperatives and consumers of power distributed by Federal power projects and programs.

We believe that the elimination of subsidies in the rural electrification program and in other programs amounts to little or nothing. It certainly is insignificant compared to the vast benefits which farmers, distributors of electric appliances, and manufacturers of other equipment have received because of the program.

We do not object to private power companies being in the business of selling electric power. We do not object to their making a fair return of profit, but we do object to their reaching their hands into the United States Treasury and levying a tax on every American citizen to the extent that they would be subsidized by this legislation.

We oppose this bill not only because it is an unnecessary subsidy which would be paid to those who are already reaping profits as a result of privileges granted by State and Federal authorities but because it would encourage others to come to Washington for hand-outs, in addition to subsidies ensuing from the rapid tax amortization program.

We, therefore, respectfully urge this committee to turn down the proposal whether it is in the form of this bill or in the form of S. 3434, 83d Congress.

Mr. LINEWEAVER. Mr. Chairman, for your information I should say that a similar bill to the substitute amendment offered by the Federal Power Commission was before the Senate Committee on Interstate and Foreign Commerce last year and was not reported out. Hearings were held before a subcommittee.

Senator SCOTT. Thank you very much.

Mr. McDONALD. Thank you, gentlemen.

Mr. LINEWEAVER. Next we have Mr. Irvin Hoff, representing Senators Magnuson and Jackson.

**STATEMENT OF HON. WARREN G. MAGNUSON, A UNITED STATES SENATOR FROM THE STATE OF WASHINGTON, AND HON. HENRY M. JACKSON, A UNITED STATES SENATOR FROM THE STATE OF WASHINGTON, BY IRVIN HOFF, ADMINISTRATIVE ASSISTANT TO SENATOR MAGNUSON**

Mr. HOFF. Mr. Chairman, Senator Magnuson and Senator Jackson both have conflicting engagements this morning and could not be here. They asked me to read into the record, if I may, a joint statement from them.

On March 28 Senator Goldwater introduced S. 1574, the so-called headwaters benefits bill. In essence, the bill proposes that the Federal Government make payments to non-Federal licensees who, in building improvements upstream, may create benefits to downstream plants constructed by the Federal Government.

The bill is identical in intent to S. 3434 of the 83d Congress, introduced on May 11, 1954, by Senator Bricker. The 1954 version of the headwater benefits legislation proposed to amend section 10 (f) of the Federal Power Act to accomplish the objective. In consequence, that bill was referred to the Committee on Interstate and Foreign Commerce, which, under the Reorganization Act, has jurisdiction over the Federal Power Commission and the statutes under which it operates.

S. 1574 was referred to this committee, the Committee on Interior and Insular Affairs, because it proposed to transfer to the Secretary of the Interior the administration of the headwater benefits problems, determinations and payments.

I call the committee's attention to the several reports you have received from the departments and agencies who have an interest in this legislation. You have reports from the Department of Interior, Bureau of Budget, and the Federal Power Commission. All of these reports recommend that S. 1574 be amended to bring it into conformity with S. 3434 of the 83d Congress.

The report of the Federal Power Commission suggests the precise language which should be used as a substitute for the present content of S. 1574. An examination of the language recommended by the Federal Power Commission discloses that the amendment suggested is identical, word for word, with S. 3434 which, I remind you again, was an amendment to section 10 (f) of the Federal Power Act and in the 83d Congress was referred to the Interstate and Foreign Commerce Committee.

Before I get into the merits of the legislation itself, I call the committee's attention to a further fact which may be of substantial importance.

Section 10 (f) of the Federal Power Act, as now written, stipulates that if a licensee is benefited by headwater improvements constructed by another licensee or the United States, and I quote:

The Commission shall require as a condition of the license, that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable.

In computing the annual payments under present law therefore, the Commission is directed to take into account interest, maintenance and depreciation on the headwater improvement. The act states:

The proportion of such charges to be paid by any licensee shall be determined by the Commission.

In S. 3434 of the 83d Congress and in the identical language the Federal Power Commission recommends in its report on S. 1574, there is a change in the provision I have just quoted, a change in the enumeration of the items which the Commission may take into account in determining the payments for headwater benefits. The new language reads, and I quote:

The annual charge, hereunder shall be such part of the fixed cost or the facility furnishing the benefit, plus such part of the annual operating and maintenance cost of such facility, including land rental and similar charges, as the Commission may deem equitable.

Thus we see that section 10 (f), as it stands today, authorizes the computation of annual charges for interest, maintenance and depreciation. The new language includes fixed costs of the facility, annual operating costs, maintenance cost, land rentals and similar charges.

There has been no testimony, Mr. Chairman, as to what effect this new language would have on the annual payments for headwater benefits. The old language says nothing about land rentals and, instead of "fixed costs," speaks of interest and depreciation.

I think this committee and the Congress and all parties at interest should know precisely what this new language means and how it would affect annual payments by beneficiaries of headwater benefits. Let me explain why this may be important and why it should be clarified.

The Federal Power Commission has estimated what the headwater benefit payments would be on the Columbia River under certain circumstances which will prevail in 1959. It is my understanding that these computations were made pursuant to the language now contained in section 10 (f).

Here is a schedule of payments four licensees would make to the Federal Government under conditions prevailing in 1959, payments

for benefits received from upstream storage constructed by the United States:

Montana Power Co. would pay \$220,000.

Washington Water Power Co. would pay \$100,000.

Puget Sound Power & Light Co. and the Chelan County PUD would pay \$75,000.

Pend Oreille County PUD would pay \$40,000.

The total payment to the United States would be \$435,000; that is an estimated figure.

Section 10 (f) of the Federal Power Act, as it stands today, obligates the four licensees I have mentioned to pay these estimated sums. Now, if the proposed amendment to section 10 (f) is enacted, the one you have under consideration, the Federal Government would be required to make payments to these or any other licenses for benefits the United States projects may receive from headwater improvements.

The Commission estimates that the United States would pay approximately \$300,000, \$141,000 to Washington Water Power and \$159,000 to Montana Power Co.

Under the present law these two companies are obligated to pay \$320,000 to the Federal Government. If this amendment is approved, the United States would pay back to the companies approximately \$300,000. The question is whether these computations will be raised and, if so, how much, by the language, I have already referred to.

How much would the payments be increased if you take into account the annual operating charges, land rentals, and fixed costs?

Perhaps, Mr. Chairman, the changes would not be significant. Certainly, however, this committee and the Congress ought to know before any legislation is passed.

In order to understand this legislation more fully, Senator Jackson and I addressed a letter to the chairman of the Federal Power Commission on June 8 in which we asked 20 questions.

On Friday, June 10, we received from the Commission responses to our inquiry.

I think it would be helpful to the record of these proceedings if our letter and the material we obtained were made a part of these hearings. I submit for the record, Mr. Chairman, a copy of our June 8 letter and the response, with the request that the data be inserted immediately following our remarks.

A part of the information the 2 Senators requested, if I may interpolate, Mr. Chairman, includes the exact computations the Federal Power Commission made in determining the headwater costs and payments that the 2 Senators have just mentioned. Both thought it would be helpful to have that material in the record as a part of the legislative history.

Mr. LINEWEAVER. This additional information, is that applied under the proposed bill?

Mr. HOFF. It is applied under section 10 (f) as it now stands. Neither in the hearings last year nor, to the best of my knowledge, in the hearings to date is there any legislative history as to how these computations were made and, recognizing that members of the Commission change, it might be helpful to have in the record of these hearings the history.

Mr. LINEWEAVER. Is it the view of Senator Magnuson and Senator Jackson that the Federal Power Commission should be asked to make a new estimate?



Mr. HOFF. That is right, under this new language that is proposed.

Mr. LINEWEAVER. Did you ask him?

Mr. HOFF. No; I did not.

Now I turn to the merits of the bill itself, with the reminder to the committee that we are not talking about the text of S. 1574, but rather about the amendment which the agencies at interest have submitted as a substitute.

Section 10 (f) of the Federal Power Act was approved June 10, 1920. It was amended August 26, 1935, but the 1953 amendment did not alter the basic principle of the section.

Thirty-three years later, in its 33d annual report, the annual report for fiscal 1953, the Federal Power Commission first recommended the amendment we are now considering.

The new administration took office on January 29, 1953. A new Chairman of the Federal Power Commission assumed duties on May 18, 1953, and the report proposing that the Federal Government pay headwaters benefits was issued January 6, 1954.

This brief summary of the history of the section and the action of the Federal Power Commission is important. For 33 years the Congress and the Commission had adhered to the principle that private or non-Federal public entities, who receive permission to construct a project on a public stream should make payments to the public for any benefits they might receive from an investment upstream by the Federal Government.

Neither the Commission nor the Congress, during that 33 years, considered it fair or equitable that the people pay private or non-Federal licensees for benefits the United States might receive from headwater improvement. This is understandable because in most cases a private company or a non-Federal public body pays nothing or practically nothing, for the use of a public resource. It was considered proper, however, that a private company should make payments for benefits it might receive from Federal development of a public resource.

Proponents of this bill argue that if it is fair for the Federal Government to require payments for benefits it confers upon downstream licensees, the converse should likewise be true. I submit, however, that the cases are not on all fours.

The rivers of this Nation are public property, the people own these resources. A non-Federal licensee obtains permission through the Federal Power Commission to use a public resource. The licensee does not own the resource. His project is on the stream or on the river by permission of the people, by permission of the owners.

A license to use a public resource, a license to construct a dam on a public stream, is a valuable asset. The license gives a private company or the non-Federal public agency an opportunity to develop hydroelectric power, to sell that power, and, in the case of a private company, to make substantial profits on it.

In most cases, the only thing the people get from the use of their resource are the benefits they might receive at downstream plants from the headwater improvements constructed by such licensee.

Let me demonstrate with a specific example which I draw from my own section of the country. In 1930, the Montana Power Co. obtained a license to construct Kerr Dam. As a condition of the license, and pursuant to the requirements of the Federal Power Act,

the company provided 1,100,000 acre-feet of storage in the project. It is important to remember that the Federal Power Act stipulates that the licensee must submit plans for its project that will get the maximum potential from the resource.

The Federal Power Commission has stated to Senator Jackson and me that the 1,100,000 feet of storage was necessary and was required from the Montana Power Co. to the end that Kerr Dam would operate efficiently, effectively and would obtain the maximum potential from the stream.

Had the company refused to construct a project with this storage feature in it, the Federal Power Commission would have refused a license, likewise the company itself would not have had the most efficient plant from its own self-interest point of view.

As I said before, the company obtained its license in 1930 and constructed a powerplant with 1,100,000 acre-feet of storage behind it. At that time there was no Grand Coulee Dam downstream, there was no Bonneville Dam, there was no the Dalles Dam, there was no McNary Dam, there was no Chief Joseph Dam downstream. Likewise, there was no Albeni Falls and no Hungry Horse Dam upstream.

All these Federal projects I have mentioned were merely gleams in the eyes of a few farsighted pioneers in the field of public resource development.

At that time the company made its investment, it did so with the knowledge that section 10 (f) was on the books. It knew that it would have to pay the Federal Government a reasonable charge for any benefits that might subsequently be developed through Federal investment upstream from the site of Kerr Dam.

It knew also that it, the Montana Power Co., would not receive payments from the Federal Government from any benefits its 1,100,000 acre-feet of storage might subsequently confer upon Federal projects that might be built downstream. In other words, the company knew what it was doing.

It made its investment under conditions and in accordance with statutes then prevailing. The company and its stockholders must have considered it a "good deal"; otherwise, Kerr Dam would never have been built.

As events unfolded, it now develops that the company is obligated under section 10 (f) to make payments to the Federal Government for benefits it receives from upstream storage constructed by the people.

As I said earlier, the Federal Power Commission calculates that by 1959 the annual charge to the company will be \$220,000. This company, and others in like circumstances, now come to the Congress requesting a change in rules. I do not blame them, but neither am I convinced that a change in rules is warranted.

If the rules are changed, the Federal Government will pay to the company in 1959 \$159,000, on an estimated basis.

This \$159,000 constitutes a windfall to the company. It is a yearly payment that was never included in the company's calculations back in 1930. If the payment is authorized through this amendment, it means that the people are giving the company \$159,000 a year that the company never expected to get at the time it constructed Kerr Dam. In a way, it is like paying rent on your own house.

The company is using a public resource. It is making a profit on that use. Its million acre-feet of storage will benefit downstream plants but those benefits are incidental to the main operation of the company's plant. Those benefits constitute practically the only payment the people will receive for the use of their resource.

In 1951 the Washington Power Co. obtained a license to build a dam at Cabinet Gorge, received a license to use a public resource at that point. The dam was completed in 1952, thus the company applied for its license and completed the dam long before the Federal Power Commission recommended the change in ground rules we now have before us.

The company made its investment subject to the conditions on headwater benefits contained in section 10 (f). The company went into the deal with its eyes open, it knew it would receive benefits from upstream storage constructed by the Federal Government. It knew it would have to pay something for those benefits. Nonetheless, the company considered Cabinet Gorge a sound business proposition.

The Federal Power Commission estimates that the Washington Water Power Co. will pay in the year 1959 an annual charge of \$100,000 to Uncle Sam.

If this legislation is enacted the company will receive back from Uncle Sam \$141,000 as an annual payment in that same year. This, too, would become a windfall, which the company could not have foreseen at the time it constructed its plant.

That \$141,000 was not included in the company's calculations. It would constitute a payment by the people to the company for benefits conferred on downstream Federal plants that are created as incidental to the operation at Cabinet Gorge.

Now, Mr. Chairman, proponents argue that Uncle Sam should make payments to upstream licensees in order to be fair to all consumers. Before we accept this argument in toto, let us examine the value of the headwaters benefits, to the two companies I have mentioned, in relation to the payments they will make.

The release of water from Hungry Horse and Albeni Falls Dams will create additional kilowatts at downstream plants owned by the Montana Power Co. and Washington Water Power Co.

According to the figures supplied me by the Federal Power Commission, 377 million kilowatt-hours will be added to the Montana Power Co.'s project and 176 million kilowatt-hours to the Washington Water Power Co.'s plants. These kilowatts will cost the 2 companies, respectively, 0.58 mill and 0.57 mill per kilowatt-hour, based on the \$220,000 payment and the \$100,000 payment I have already mentioned. Those are cheap kilowatts.

By way of comparison, let us see what the kilowatts created at their own plants cost these companies.

On this I have two sets of figures: First, the cost per kilowatt-hour to the companies in terms of the value of the dollar at the time they made their investment, and, second, the cost per kilowatt in terms of the 1955 dollar.

The cost per kilowatt-hour at Kerr Dam, in terms of the 1930 dollar, is 2.11 mills and, in terms of 1955 dollars, 3.57 mills. The cost of the new kilowatts that will be added by the Federal upstream improvements, you will remember, was 0.58 mill. Thus the original cost to

the company was approximately 350 percent more than the added kilowatts will cost. In terms of 1955 dollars, the original cost of kilowatts to the company would be approximately 600 percent more.

The company sells its power at about 8.2 mills per kilowatt-hour. This is 1,500 percent more than the new kilowatts will cost the company at site.

For the Washington Water Power Co., the kilowatts added by the headwaters improvements will cost 0.57 mills per kilowatt-hour, based on \$100,000 payment, estimated as the annual charge in 1959.

The cost per kilowatt-hour of energy created by the company's own investment in terms of 1951 dollars is 5.92 mills. The cost adjusted to 1955 dollars would be 6.33 mills.

Thus the kilowatts created by the company's own investment are approximately 1,000 percent higher than the cost of them of the added kilowatts, in terms of 1951 dollars, and about 1,100 percent higher in terms of 1955 dollars.

The company sells its power for approximately 9 mills, which is about 1,600 percent more than the new kilowatts will cost.

I mention these figures, Mr. Chairman, to indicate that the two companies and their customers will benefit substantially from the headwater improvement, even though collectively they make annual payments of \$320,000. The companies and their customers will benefit substantially without any change in the ground rules.

Obviously they will benefit more if the ground rules were changed to require \$300,000 payment to them from Uncle Sam. The new kilowatts they are getting, however, are costing them far, far less than would be the case if they had to install new capacity starting from scratch.

There is another aspect I want to discuss under this general heading of "Treating the Customers Alike."

It is obvious from the figures I have just cited that the two companies will make ample profits on the sale of the power created from Uncle Sam's headwater improvements. It is obvious, too, that the company could sell these new kilowatts for far less than they are charging for those they develop at their own plants, and still make a profit.

Now, let us assume that this bill were enacted and Uncle Sam makes to these companies an annual payment of \$300,000. What would happen to the \$300,000? Would that be passed on to the consumer in terms of lower rates, or would it go to the stockholders, or would it be utilized to improve the service the companies are rendering?

My guess is that it would go to the stockholders, at least until such time as the public service commissions of the three States involved might have an opportunity to consider this additional income in a rate case.

It is possible, of course, that the public service commission might deny an application for an increase of rates after taking into consideration this additional income. I doubt very much, however, that either the Montana, the Washington, or the Idaho Public Service Commission would require the company to reduce their rates sufficiently to pass this windfall on to the customers.

In summary S. 1574, as introduced, does not have the support of the departments and agencies at interest. They have recommended

that the language of S. 3434 of the 83d Congress be substituted. S. 3434 was referred to the Interstate and Foreign Commerce Committee because it amends section 10 (f) of the Federal Power Act.

In my judgment, there is little or no substance to the argument that the people should be required to pay for headwater benefits, merely because the present act requires that non-Federal licensees make annual payments to the people for headwater benefits created by Federal investments.

It is the people's resource that constitutes the basic asset. It is the use of the people's resource that provides the opportunity for profit. You do not pay rent on your own house.

The kilowatts created at the plants of non-Federal licensees in the Columbia River system will cost less than 0.6 mills per kilowatt-hour. The kilowatts created at the 2 privately owned plants I have mentioned cost from 350 to 1,000 percent more than those created by Federal headwaters improvements. This difference constitutes a substantial contribution to the licensees involved and to their customers.

An additional contribution to them of \$300,000 per year is a windfall that they did not expect at the time they made their investment. It is improbable that that windfall would be passed on to the customers in terms of lower rates.

Mr. Chairman, I have used examples from the Pacific Northwest to illustrate the point, but I think the weight of my argument applies countrywide.

Senator SCOTT. Thank you very much.

Mr. HOFF. Thank you, gentlemen.

(The information previously referred to follows:)

JUNE 8, 1955.

Re Headwaters Benefits Bill (S. 1574) (S. 3434, 83d Cong.)

Mr. JEROME K. KUYKENDALL,  
*Chairman, Federal Power Commission,*  
*Washington, D. C.*

DEAR MR. CHAIRMAN: We are seeking some additional information relative to the so-called headquarters benefits bill. It appears likely, as of this writing, that further hearings will be held on S. 1574 early next week. In consequence we will deeply appreciate your getting to us the information requested herein by Friday afternoon of this week—either on a formal or informal basis.

At our request the General Counsel of the Commission, Mr. Gatchell, was good enough to come up to the office to discuss S. 1574 with members of the staff. He left with us certain data which we would like to recount as a basis for making this additional request readily understandable.

Mr. Gatchell stated that as of 1959, when most of the Federal dams now under construction on the Columbia will be completed, the following annual charges against licensees for benefits from Federal headwater improvements will be assessable:

From Montana Power Co.....	\$220, 000
From Washington Water Power Co.....	100, 000
From Puget Sound Power & Light Co. and Chelan County PUD.....	75, 000
From Pend Oreille County PUD.....	40, 000
<b>Total.....</b>	<b>435, 000</b>

In addition Mr. Gatchell stated that during this same year (1959)—if S. 1574 or similar legislation were enacted, the average annual charges to be paid by the Federal Government would approximate \$300,000 to the licensees above mentioned.

With these facts before you, we come to the additional information we feel we need to understand fully the implications of the headwaters benefits bill.

We would like the following information for each of the licensees in the above schedule: Montana Power Co., Washington Water Power Co., Puget Sound Power & Light Co., and Chelan County PUD, and Pend Oreille County PUD:

1. On what date was license issued?
  2. On what date was the dam completed?
  3. What was the total cost of the project?
  4. What would the total cost have been in 1955 dollars?
  5. What was the installed capacity?
  6. How many generators and of what size went into each of the dams?
  7. How much firm power is generated? How much secondary or peaking power?
  8. Approximately what was the capital cost in 1955 dollars per kilowatt from installed capacity?
  9. Approximately what is the average rate per kilowatt-year received by these licensees for sale of power on a kilowatt-year basis and on a kilowatt-hour basis?
  10. How many additional kilowatts will the Federal headwater improvements produce at the dam or dams of each of the licensees above mentioned?
  11. What will be the cost to the licensee of these kilowatts, assuming annual charges listed earlier?
  12. How does the cost of the additional kilowatts produced by Federal headwater benefits compare with the original cost of kilowatts produced at the dams for each of the licensees? (Give us this figure, both in terms of the dollars prevailing at the time the dam was constructed and in terms of 1955 dollars.)
  13. What Federal dams downstream had been completed or were under construction at the time each of the licensees obtained its license?
  14. What Federal dams upstream, with storage capacity, were completed or under construction at the time each licensee obtained its license?
  15. How much storage capacity, if any, did the Federal Power Commission require the licensee to install at its dam or dams?
  16. Was this storage capacity required by the Federal Power Commission of the licensee in order to get the maximum out of this site and for the efficient operation of the licensee's own at site powerplant?
  17. Would you supply us with the computations you made in determining the downstream benefits that would accrue to each of the licensees from the storage at Hungry Horse and Albeni Falls? (We want to see the actual interest, depreciation and reservoir maintenance costs you used as the basis for determining the annual charge each licensee was to make and we want to know what portion these costs are of the total cost of Albeni Falls and Hungry Horse.)
  18. How much of the \$300,000 annual charges against the United States for benefits for headwater improvements would be paid to Washington Water Power Co.? How much to Montana Power & Light?
  19. In which of its annual reports did the Commission first recommend that section 10F of the act be amended to provide for payment by the United States for benefits received from headwater improvements? Who was chairman at the time?
  20. Will you list for us each subsequent annual report of the Commission containing this recommendation and who was chairman in each case?
- As we said earlier, hearings will probably be reopened on S. 1574 by the middle of next week at the latest. We therefore need the above information by Friday if possible, in order that we may analyze the data and work them into our testimony as judgment dictates.

Thanks and kindest personal regards.

Sincerely,

WARREN G. MAGNUSON,  
United States Senator.  
HENRY M. JACKSON,  
United States Senator.

## HEADWATER BENEFITS

FEDERAL POWER COMMISSION,  
*Washington 25, June 10, 1955.*

Re Headwater Benefit Bill (S 1574, 84th Cong.) (S. 3434, 83d Cong.)

HON. WARREN G. MAGNUSON,

HON. HENRY M. JACKSON,

*United States Senate,*

*Washington 25, D. C.*

DEAR SENATORS MAGNUSON AND JACKSON: I am inclosing herewith 7 attachments containing data and information in answer to the 20 questions contained in your letter of June 8, 1955, concerning the so-called headwater benefit bills designated above.

The amounts (\$435,000 and \$300,000) previously furnished to you by Mr. Gatchell and mentioned in your letter are necessarily based on preliminary data, studies, and estimates. These amounts will be subject to change, either up or down, after further study and investigation is made, based upon actual operations over a period of time of all the projects involved, some of which are not now in operation.

The data supplied in answer to questions 10 through 12, as well as 17 and 18, are likewise of a preliminary nature subject to change upon further study after all the projects are completed.

The attachments have of necessity been assembled rather hurriedly but we have attempted to answer fully the questions presented. However, should you find that additional information is needed, we will be glad to furnish it to you.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

Columbia River Basin non-Federal plants benefiting from existing Federal headwater improvements

Question No.		1		2	3	4	5	6		
		Project No.	Date license was issued	Date of amendment to enlarge project	Date dam completed	Total cost of project <sup>1</sup>	Total cost adjusted to 1955 dollars <sup>2</sup>	Installed capacity (kilowatts)	Number of main generating units	Size of generating units (kilowatts)
Montana Power Co.:	Kerr	5	May 23, 1930	Sept. 15, 1948 <sup>8</sup>	Sept. 30, 1938	\$16,958,000	\$30,400,000	168,000	3	56,000
	Thompson Falls	1869	Aug. 20, 1951		Nov. 1, 1916	3,937,891	15,950,000	30,000	6	5,000
	Total									
Washington Water Power Co.:	Cabinet Gorge	2058	Jan. 10, 1951		Sept. 30, 1952	48,128,395	51,500,000	200,000	4	50,000
	Spokane plants <sup>11</sup>							144,550	23	(12)
	Lake Chelan	637	May 8, 1926		Nov. 16, 1927	9,634,327	25,300,000	48,000	2	24,000
Total										
Puget Sound Power & Light Co., Chelan County Public Utility District: Rock Island		943	Jan. 21, 1930	Aug. 7, 1952 <sup>13</sup>	Jan. 21, 1933 <sup>16</sup>	48,369,685	77,250,000	195,000	4	15,000
Pend Oreille County Public Utility District: Box Canyon.		2042	Feb. 7, 1952		( <sup>19</sup> )	16,000,000	17,100,000	60,000	6	22,500
									4	15,000

Footnotes at end of table, p. 34.



Columbia River Basin non-Federal plants benefiting from existing Federal headwater improvements—Continued

Question No.	Project name	Project No.	7 Average annual energy output (kilowatt-hours) <sup>1</sup>	8 Adjusted 1955 dollar cost per kilowatt installed capacity	9 Average rate from sale of power <sup>2</sup>		10		11		12 Original cost of energy in terms of 1955 dollars <sup>3</sup> (mills per kilowatt-hour)
					Dollars per kilowatt-year	Mills per kilowatt-hour	Additional kilowatt-hours resulting from Federal headwater improvement, 1958-59 conditions <sup>4</sup>	Storage capacity kilowatt-hour (acre-feet)	Appropriations paid to United States for headwater improvement, 1958-59 conditions <sup>5</sup>	Original cost of energy (mills per kilowatt-hour)	
Montana Power Co.: Kerr..... Thompson Falls..... Total.....		5 1869	1,110,000,000	\$181			301,000,000	1,100,000		2.11	2.57
			292,000,000	532			76,000,000	*15,000		1.99	6.92
					\$42.04	8.2	377,000,000		220,000		
Washington Water Power Co.: Cabinet Gorge..... Spokane plants <sup>11</sup> ..... Lake Chelan..... Total.....		2058 637	991,000,000	258			176,000,000	( <sup>10</sup> )		5.92	6.33
			*1,012,000,000	527				*676,120		2.75	6.77
							176,000,000		100,000		
Puget Sound Power & Light Co., Chelan County Public Utilities District: Rock Island..... Total.....		943			37.63	9.2	176,000,000				
			2,068,000,000	366	*59.22	12.2	253,000,000	( <sup>10</sup> )		2.08	3.70
					*2.96	2.3	253,000,000		75,000		
Pend Oreille County Public Utility District: Box Canyon..... Total.....		2042	435,000,000	285	45.80	8.6	79,000,000	( <sup>10</sup> )		2.94	3.12
							79,000,000		40,000		

<sup>1</sup> Certain costs are estimated.<sup>2</sup> Adjusted by Engineering News Record to January 1955.<sup>3</sup> Firm and secondary power not available.<sup>4</sup> Rate to ultimate consumers.<sup>5</sup> Additional energy (kilowatt-hours) is obtained. (These figures are preliminary, being studied in field.)<sup>6</sup> From letter dated June 8, 1955, from Senators Magnuson and Jackson.<sup>7</sup> Compare these columns with col. 11. Note that cost in col. 11 is incremental cost to the licensee and does not include fixed and operating costs to the plant receiving the benefits.<sup>8</sup> 2d generating unit of 77,000 horsepower.<sup>9</sup> Poundage.<sup>10</sup> Pounds only.<sup>11</sup> Not licensed.<sup>12</sup> Varying in size from 1,600 to 17,500 kilowatts.<sup>13</sup> From Form 12-1950.<sup>14</sup> Usable.<sup>15</sup> 6 additional units of 34,000 horsepower each.<sup>16</sup> Powerhouse enlarged, 1953.<sup>17</sup> Puget.<sup>18</sup> Chelan.<sup>19</sup> 94.7 percent complete on Mar. 31, 1955.

REPLIES TO QUESTIONS 13 AND 14 IN LETTER OF SENATORS MAGNUSON AND JACKSON, DATED JUNE 8, 1955

No. 13. Downstream Federal dams completed or under construction at time license was issued.

Kerr: None.

Thompson Falls: Albeni Falls, Grand Coulee, Chief Joseph, McNary, and Bonneville.

Cabinet Gorge: Albeni Falls, Grand Coulee, Chief Joseph, McNary, and Bonneville.

Box Canyon: Grand Coulee, Chief Joseph, McNary, and Bonneville.

Rock Island: None.

No. 14. Upstream Federal Dams (with storage capacity) completed or under construction at time license was issued.

Kerr: None.

Thompson Falls: Hungry Horse.

Cabinet Gorge: Hungry Horse.

Box Canyon: Hungry Horse and Albeni Falls.

Rock Island: None.

REPLIES TO QUESTIONS 15 AND 16 IN LETTER OF SENATORS MAGNUSON AND JACKSON, DATED 6/8/55

No. 15. Storage capacity which the Federal Power Commission required the licensee to install at its dams.

The licenses require storage capacities as follows:

	<i>Acres-feet</i>
Kerr (Project No. 5).....	1, 100, 000
Lake Chelan (Project No. 637).....	676, 000

Others have essentially pondage only.

No. 16. Was above storage required to get maximum out of sites and for the efficient operation of licensee's own plants. Yes.

No. 17. See attached study dated November 5, 1954, and in particular (1) pages 13 and 14 for interest, maintenance, and depreciation costs for Hungry Horse, Albeni Falls, and Grand Coulee Reservoirs; (2) pages 17 and 18 for downstream benefits received and headwater benefits costs assessed resulting from headwater benefits received from Hungry Horse, Albeni Falls, and Grand Coulee Reservoirs; and (3) page 22 (last page) for a summary of headwater benefits costs.

SAN FRANCISCO REGIONAL OFFICE, FEDERAL POWER COMMISSION HEADWATER BENEFIT STUDY IN THE MATTER OF DOCKET E-6384

ENERGY METHOD

*Résumé of method*

In this method of apportioning the annual costs of headwater improvements providing benefits to downstream plants,  $J_s$ , the at site percent of total annual cost is obtained by taking the total annual energy at site (12 months) less the energy at site from upstream storage releases in the storage control period, and dividing by this same difference, plus the energy at all downstream plants due to the storage releases at the upstream storage project in the storage control period.  $J_D$ , the downstream percent of the total annual cost is distributed to the downstream plants on the basis of the energy produced at the downstream plants from the storage releases at the upstream storage project during the storage control period.

In terms of nomenclature being used by the task force,  $J_s$  and  $J_D$  are expressed as follows:

$$J_s = \frac{(E_s - E_{su})}{(E_s - E_{su}) + E_{SD}}$$

$$J_D = J - J_s$$

$E_s$  is the total "at site" energy at a storage project plant from natural flow and from storage releases at site and upstream during the year (12 months).

$E_{su}$  is the "at site" energy at a storage project plant from upstream storage releases during the storage control period.

$E_{sd}$  is the energy at all downstream plants from storage releases at an upstream storage project during the storage control period.

#### *Details of method*

In this method the apportionment of the Federal Power Act section 10 (f) annual costs of storage is based on energy, without any specific allocation to capacity at site. The hydroelectric energy figures used are taken from studies by the Bonneville Power Administration furnished to the task force on headwater benefits with Mr. Steven's letters of December 15 and 30, 1953, and a subsequent modification affecting the Spokane River plants furnished with Mr. Steven's letter of January 27, 1954. The energy studies supplied by Bonneville Power Administration include a dry, a median, and a wet year. Long-term averages were computed for this study on the basis of a 47-year period of stream-flow measurements having 12 dry, 25 median, and 10 wet years, and are given in table 1.

The average energy at the storage sites includes energy from natural flow for a 12-month period and from stored water for the storage control period. At downstream run-of-river plants the energy produced by storage releases from each upstream reservoir is shown separately, and is for the storage control period only.

To avoid a double charge at storage reservoirs which derive energy from natural flow, from at site stored water, and from upstream stored water it was considered necessary to deduct the energy from upstream stored water before making the cost apportionment. This deduction is made in table 4, column 3. The remaining energy at site and at downstream plants, table 4, column 4, establishes the basis for prorating the annual cost of the storage reservoir. Two studies are presented, one for 1954-55 system conditions and one for 1958-59 system conditions and the results may be averaged to obtain estimated yearly payments for the period 1955-59.

The capital costs used for Grand Coulee, Hungry Horse, and Albeni Falls are shown in table 2. These Federal costs are based on data supplied by the Army and Bureau of Reclamation and on decisions made by the task force on headwater benefits. Costs for the privately owned plants are based on data supplied by the companies for costs included in accounts 320 and 322. Members of the task force have pointed out that these accounts do not include access roads, general purpose facilities, or facilities for visitors, and these items have been eliminated, as far as possible, from the costs of Federal projects. It is realized of course, that these costs are not final and will have to be revised, and agreed upon later.

Annual costs of storage reservoirs are computed on the following assumptions:

- (1) Interest rates are 6 percent for private projects and 2.5 percent for Federal projects.
- (2) Life of projects for computing depreciation, will not be over 100 years.
- (3) Depreciation is computed on a sinking-fund basis.

Maintenance costs are estimated by the operating agencies and are shown in tables 2 and 3.

Total annual costs under section 10 (f) of the Federal Power Act (interest, depreciation, and maintenance) are shown in table 3, at line 7. Line 8 of this table includes the annual payment made by Montana Power Co. to an Indian tribe for use of reservoir lands flooded by Flathead Lake. It also includes certain annual costs at Coeur d'Alene Lake which are incurred by the Washington Water Power Co., largely for crop damage and drainage. Line 9 gives the total annual costs including "other" costs in line 8. Both interested companies claim that these other costs are proper charges under section 10 (f) of the Federal Power Act, however the present position of our Washington office is that these costs should not be included in the annual costs.

The apportionment of the annual costs in accordance with the column 4 energy figures of table 4 is given in that table at columns 5 and 5a. Computations for Coeur d'Alene and Flathead are given with and without "other" costs (cols. 5a and 5 respectively). Tables 5 and 6 summarize these costs. Inspection of table 6 shows that the "other" costs at non-Federal plants do not affect the estimated gross payment to the Federal Government. The average payment to the Federal Government over the 5-year period January 1, 1955, through December 31, 1959, is estimated at \$456,584, say \$457,000, from table 6.

TABLE 1. — ENERGY PRODUCED FROM STORAGE RESERVOIRS

*Preliminary study (1954-55 conditions)*

## HUNGRY HORSE

[Megawatt-months]

(1)	Actual			Weighted			
	Dry (2)	Median (3)	Wet (4)	Dry (5)	Median (6)	Wet (7)	Average (8)
Hungry Horse.....	1,492	1,063	1,711	390.9	565.4	364.0	1,310.3
Kerr.....	631.5	361	227	161.2	192.0	48.3	401.5
Thompson Falls.....	116.5	64	0	29.7	34.0	0	63.7
Cabinet Gorge.....	353.5	191	216	90.3	101.6	46.0	237.9
Albani Falls.....	0	0	0	0	0	0	0
Box Canyon.....	51.5	27	0	13.1	14.4	0	27.5
Grand Coulee.....	1,218	668	288	311.0	355.3	61.3	727.6
Chief Joseph.....							
Rock Island.....	188.5	86	-20	48.1	45.7	-4.3	89.5
McNary.....	127	0	0	32.4	0	0	32.4
The Dalles.....							
Bonneville.....	248.5	114	7	63.4	60.6	1.5	125.5
Total.....	4,427.0	2,574	2,429	1,130.1	1,369.0	516.8	3,015.9

## FLATHEAD LAKE

Hungry Horse.....							
Kerr.....	1,547.5	1,475	1,918	395.1	784.6	408.1	1,587.8
Thompson Falls.....	52	52	11	13.3	27.7	2.3	43.3
Cabinet Gorge.....	145	144	88	37.0	76.6	18.7	132.3
Albani Falls.....	0	0	0	0	0	0	0
Box Canyon.....	21	16	0	5.4	8.5	0	13.9
Grand Coulee.....	500.5	503	110	127.8	267.6	23.4	418.8
Chief Joseph.....							
Rock Island.....	73	39	-6	18.6	20.7	-1.3	38.0
McNary.....	48	0	0	12.3	0	0	12.3
The Dalles.....							
Bonneville.....	98.5	77	14	25.1	41.0	3.0	69.1
Total.....	2,485.5	2,306	2,135	634.6	1,226.7	454.2	2,315.5

## PRIEST LAKE

Albani Falls.....	0	0	0	0	0	0	0
Box Canyon.....	1	1	0	0.3	0.5	0	0.8
Grand Coulee.....	35	31	25	8.9	16.5	5.3	30.7
Chief Joseph.....							
Rock Island.....	5	3	0	1.3	1.6	0	2.9
McNary.....	0	0	0	0	0	0	0
The Dalles.....							
Bonneville.....	7	5	1	1.8	2.7	.2	4.7
Total.....	48	40	26	12.3	21.3	5.5	39.1

## ALBANI FALLS

Albani Falls.....	58	57	103	14.8	30.3	21.9	67.0
Box Canyon.....	10	12	0	2.6	6.4	0	9.0
Grand Coulee.....	493.5	491	175	126.0	261.2	37.2	424.4
Chief Joseph.....							
Rock Island.....	69	56	3	17.6	29.8	.6	48.0
McNary.....	45	0	0	11.5	0	0	11.5
The Dalles.....							
Bonneville.....	93	83	11	23.7	44.1	2.3	70.1
Total.....	768.5	699	292	196.2	371.8	62.0	630.0

## HEADWATER BENEFITS

*Preliminary study (1954-55 conditions)—Continued*

## COEUR D' ALENE

[Megawatt-months]

(1)	Actual			Weighted			
	Dry (2)	Median (3)	Wet (4)	Dry (5)	Median (6)	Wet (7)	Average (8)
Post Falls.....	78.5	105	122	20.0	55.8	26.0	101.8
Upper Falls.....	15	5	3	3.8	2.7	.6	7.1
Monroe St.....	11	3	2	2.8	1.6	.4	4.8
Nine Mile.....	17	13	12	4.3	6.9	2.6	13.8
Long Lake.....	47	35	40	12.0	18.6	8.5	39.1
Little Falls.....	19	15	17	4.9	8.0	3.6	16.5
Grand Coulee.....	92	71	4	23.5	37.8	.9	62.2
Chief Joseph.....							
Rock Island.....	14	8	-2	3.6	4.3	-0.4	7.5
McNary.....	7	0	0	1.8	0	0	1.8
The Dalles.....							
Bonneville.....	19	12	9	4.9	6.4	1.9	13.2
Total.....	319.5	267	207	81.6	142.1	44.1	267.8

## LONG LAKE

Post Falls.....							
Upper Falls.....							
Monroe St.....							
Nine Mile.....							
Long Lake.....	510.5	596	733	130.3	317.0	166	603.3
Little Falls.....	11	5	9	2.8	2.7	1.9	7.4
Grand Coulee.....	44	44	41	11.2	23.4	8.7	43.3
Chief Joseph.....							
Rock Island.....	7	6	0	1.8	3.2	0	5.0
McNary.....	5	0	0	1.3	0	0	1.3
The Dalles.....							
Bonneville.....	9	7	3	2.3	3.7	.6	6.6
Total.....	586.5	658	786	149.7	350.0	167.2	666.9

## GRAND COULEE

Grand Coulee.....	19,005	21,071	25,667	4,852.4	11,207.9	5,461.2	21,521.5
Chief Joseph.....							
Rock Island.....	315	234	0	80.4	124.5	0	204.9
Chelan.....							
McNary.....	273	0	0	69.7	0	0	69.7
The Dalles.....							
Bonneville.....	411	251	-2	104.9	133.5	-.4	238.0
Total.....	20,004	21,556	25,665	5,107.4	11,465.9	5,460.8	22,034.1

## CHELAN LAKE

Grand Coulee.....							
Chief Joseph.....							
Rock Island.....	38	29	-1	9.7	15.4	-2	24.9
Chelan.....	474	527	682	121.0	280.3	145.1	546.4
McNary.....	23	0	0	5.9	0	0	5.9
The Dalles.....							
Bonneville.....	5	41	3	1.3	21.8	.6	23.7
Total.....	540	597	684	137.9	317.5	145.5	600.9

*Preliminary study (1958-59 conditions)*

## HUNGRY HORSE

[Megawatt-months]

(1)	Actual			Weighted			
	Dry (2)	Median (3)	Wet (4)	Dry (5)	Median (6)	Wet (7)	Average (8)
Hungry Horse.....	1,492.0	1,063	1,711	380.9	565.4	364.0	1,310.3
Kerr.....	648.0	360	260	165.4	191.5	55.3	412.2
Thompson Falls.....	178.0	98	32	45.4	52.1	6.8	104.3
Cabinet Gorge.....	351.5	192	234	89.7	102.1	49.8	241.6
Albeni Falls.....	63.5	18	-13	16.2	9.6	-2.8	23.0
Box Canyon.....	132.5	73	2	33.8	38.8	.4	73.0
Grand Coulee.....	1,203.0	650	292	307.1	345.7	62.1	714.9
Chief Joseph.....	634.0	337	57	161.9	179.3	12.1	353.3
Rock Island.....	187.5	84	-19	47.9	44.7	-4.0	88.6
McNary.....	313.5	165	102	80.0	87.8	21.7	189.5
The Dalles.....	199.0	0	0	50.8	0	0	50.8
Bonneville.....	203.0	102	5	51.8	54.3	1.1	107.2
Total.....	5,605.5	3,142	2,663	1,430.9	1,671.3	566.5	3,668.7

## FLATHEAD LAKE

Hungry Horse.....							
Kerr.....	1,565.5	1,476	2,038	399.7	785.1	433.6	1,618.4
Thompson Falls.....	72.5	72	54	18.5	38.3	11.5	68.3
Cabinet Gorge.....	145.5	143	116	37.1	76.1	24.7	137.9
Albeni Falls.....	28.0	22	20	7.1	11.7	4.3	23.1
Box Canyon.....	57.5	56	29	14.7	29.8	6.2	50.7
Grand Coulee.....	490.5	491	157	125.2	261.2	33.4	419.8
Chief Joseph.....	260.5	226	38	66.5	120.2	8.1	194.8
Rock Island.....	71.5	39	-9	18.3	20.7	-1.9	37.1
McNary.....	127.5	122	108	32.6	64.9	23.0	120.5
The Dalles.....	69.0	0	0	17.6	0	0	17.6
Bonneville.....	81.5	75	25	20.8	39.9	5.3	66.0
Total.....	2,969.5	2,722	2,576	758.1	1,447.9	548.2	2,754.2

## PRIEST LAKE

Albeni Falls.....	2	1	0	0.5	0.5	0	1.0
Box Canyon.....	3	2	1	.8	1.1	.2	2.1
Grand Coulee.....	34	30	17	8.7	16.0	3.6	28.3
Chief Joseph.....	16	15	2	4.1	8.0	.4	12.5
Rock Island.....	5	3	-1	1.3	1.6	-.2	2.7
McNary.....	9	8	7	2.3	4.3	1.5	8.1
The Dalles.....	1	0	0	.3	0	0	.3
Bonneville.....	6	6	3	1.3	3.2	.6	5.1
Total.....	75	65	29	19.3	34.7	6.1	60.1

## ALBENI FALLS

Albeni Falls.....	303.5	282	438	77.5	150.0	93.2	320.7
Box Canyon.....	42	42	11	10.7	22.3	2.3	35.3
Grand Coulee.....	462	473	181	118.0	251.6	38.5	408.1
Chief Joseph.....	243	238	25	62.0	126.6	5.3	193.9
Rock Island.....	72	50	2	18.4	26.6	.4	45.4
McNary.....	119	116	81	30.4	61.7	17.2	109.3
The Dalles.....	87	0	0	22.2	0	0	22.2
Bonneville.....	77	73	39	19.7	38.8	8.3	66.8
Total.....	1,405.5	1,274	777	358.9	677.6	165.2	1,201.7

## HEADWATER BENEFITS

*Preliminary study (1958-59 conditions)*—Continued

## COEUR D'ALENE LAKE

[Megawatt-months]

(1)	Actual			Weighted			
	Dry (2)	Median (3)	Wet (4)	Dry (5)	Median (6)	Wet (7)	Average (8)
Post Falls.....	78.5	105	122	20.0	55.8	26.0	101.8
Upper Falls.....	15	5	3	3.8	2.7	.6	7.1
Monroe St.....	11	3	2	2.8	1.6	.4	4.8
Nine Mile.....	17	13	12	4.3	6.9	2.6	13.8
Long Lake.....	47	35	40	12.0	18.6	8.5	39.1
Little Falls.....	19	15	17	4.9	8.0	3.6	16.5
Grand Coulee.....	91	69	3	23.2	36.7	.6	60.5
Chief Joseph.....	47	33	0	12.0	17.6	0	29.6
Rock Island.....	14	7	-2	3.6	3.7	-.4	6.9
McNary.....	23	17	18	5.9	9.0	3.8	18.7
The Dalles.....	13	0	0	3.3	0	0	3.3
Bonneville.....	16	11	4	4.1	5.9	.9	10.9
Total.....	391.5	313	219	99.9	166.5	46.6	313.0

## LONG LAKE

Post Falls.....							
Upper Falls.....							
Monroe St.....							
Nine Mile.....							
Long Lake.....	510.5	596	733	130.3	317	156	603.3
Little Falls.....	11	5	9	2.6	2.7	1.9	7.2
Grand Coulee.....	42	42	24	10.7	22.3	5.1	38.1
Chief Joseph.....	24	23	3	6.1	12.2	.6	18.9
Rock Island.....	7	6	0	1.8	3.2	0	5
McNary.....	12	11	10	3.1	5.9	2.1	11.1
The Dalles.....	11	0	0	2.8	0	0	2.8
Bonneville.....	7	7	5	1.8	3.7	1.1	6.6
Total.....	624.5	690	784	159.2	367.0	166.8	693.0

## GRAND COULEE

Grand Coulee.....	18,445.5	20,602	25,571	4,709.5	10,958.4	5,440.7	21,108.6
Chief Joseph.....	1,062.5	1,041	25	271.3	553.7	5.3	830.3
Rock Island.....	314	249	2	80.2	132.4	.4	213.0
Chelan.....							
McNary.....	521	508	40	133	270.2	8.5	411.7
The Dalles.....	347	0	0	88.6	0	0	88.6
Bonneville.....	331	299	15	84.5	159	3.2	246.7
Total.....	21,021.0	22,699	25,653	5,367.1	12,073.7	5,458.1	22,898.9

## CHELAN LAKE

Grand Coulee.....							
Chief Joseph.....							
Rock Island.....	38.5	29	-2	9.8	15.4	-0.4	24.8
Chelan.....	474	527	682	121.0	280.3	145.1	546.4
McNary.....	63	68	13	16.1	36.2	2.8	55.1
The Dalles.....	39	0	0	10.0	0	0	10.0
Bonneville.....	39.5	41	3	10.1	21.8	.6	32.5
Total.....	654.0	665	696	167.0	353.7	148.1	668.8

TABLE 2

*Grand Coulee project (1954-55)—Capital and maintenance costs<sup>1</sup> of dam and reservoir for use in preliminary studies by task force on headwater benefits in matter of docket No. E-6384*

Item  (1)	Dam and reservoir costs		Costs designated as "Other" by task force  (4)	Total costs  (5)
	Depreciable cost  (2)	Nondepreciable cost  (3)		
<b>Capital costs:</b>				
1. Land and land rights.....		\$3,790,000		\$3,790,000
2. Relocation of existing property.....		10,110,000		10,110,000
3. Structures and improvements.....	\$4,691,000			4,691,000
4. Clearing lands.....		3,691,000		3,691,000
5. Reservoirs.....		964,000		964,000
6. Dams.....	108,938,000			108,938,000
7. Waterways-river channel.....			<sup>2</sup> \$8,058,000	<sup>2</sup> 8,058,000
8. Miscellaneous equipment.....	303,000			303,000
9. Subtotal.....	113,932,000	18,555,000	8,058,000	140,545,000
10. Construction cost of general plant.....			18,870,000	18,870,000
11. Total construction cost.....	113,932,000	18,555,000	26,928,000	159,415,000
12. Less flood control and navigation allocation.....	715,000	116,000	169,000	1,000,000
13. Remainder to be allocated.....	113,217,000	18,439,000	26,759,000	158,415,000
14. Power allocation at 56 percent.....	63,401,000	10,326,000	14,985,000	88,712,000
15. Interest during construction:				
(a) Grand Coulee Dam and Reservoir.....	5,096,000	830,000	<sup>3</sup> 0	5,926,000
(b) General plant.....			87,000	87,000
16. Total power allocation.....	68,497,000	11,156,000	15,072,000	94,725,000
<b>Maintenance costs:<sup>4</sup></b>				

<sup>1</sup> Source: U. S. Bureau of Reclamation letters of Dec. 23 and 14, 1953 (by James K. Cummings).

<sup>2</sup> Assumes all cost to complete is chargeable to this item.

<sup>3</sup> Assumes no interest during construction on waterways-river channel.

<sup>4</sup> Allocation of maintenance costs in proportion to construction costs (line 11):

	Construction costs	Maintenance costs
1. Total.....	\$159,415,000	\$352,000
2. Flood control and navigation.....	1,000,000	2,208
3. Power (sum of cols. 2 and 3, line 16).....	79,653,000	175,880
4. Other (by subtraction).....	78,762,000	173,912



## HEADWATER BENEFITS

*Preliminary study (1958-59 conditions)*—Continued

## COEUR D'ALENE LAKE

[Megawatt-months]

(1)	Actual			Weighted			
	Dry (2)	Median (3)	Wet (4)	Dry (5)	Median (6)	Wet (7)	Average (8)
Post Falls.....	78.5	105	122	20.0	55.8	26.0	101.8
Upper Falls.....	15	5	3	3.8	2.7	.6	7.1
Monroe St.....	11	3	2	2.8	1.6	.4	4.8
Nine Mile.....	17	13	12	4.3	6.9	2.6	13.8
Long Lake.....	47	35	40	12.0	18.6	8.5	39.1
Little Falls.....	19	15	17	4.9	8.0	3.6	16.5
Grand Coulee.....	91	69	3	23.2	36.7	.6	60.5
Chief Joseph.....	47	33	0	12.0	17.6	0	29.6
Rock Island.....	14	7	-2	3.6	3.7	-4	6.9
McNary.....	23	17	18	5.9	9.0	3.8	18.7
The Dalles.....	13	0	0	3.3	0	0	3.3
Bonneville.....	16	11	4	4.1	5.9	.9	10.9
Total.....	391.5	313	219	99.9	166.5	46.6	313.0

## LONG LAKE

Post Falls.....							
Upper Falls.....							
Monroe St.....							
Nine Mile.....							
Long Lake.....	510.5	596	733	130.3	317	156	603.3
Little Falls.....	11	5	9	2.6	2.7	1.9	7.2
Grand Coulee.....	42	42	24	10.7	22.3	5.1	38.1
Chief Joseph.....	24	23	3	6.1	12.2	.6	18.9
Rock Island.....	7	6	0	1.8	3.2	0	5
McNary.....	12	11	10	3.1	5.9	2.1	11.1
The Dalles.....	11	0	0	2.8	0	0	2.8
Bonneville.....	7	7	5	1.8	3.7	1.1	6.6
Total.....	624.5	690	784	159.2	367.0	166.8	693.0

## GRAND COULEE

Grand Coulee.....	18,445.5	20,602	25,571	4,709.5	10,958.4	5,440.7	21,108.6
Chief Joseph.....	1,062.5	1,041	25	271.3	553.7	5.3	830.3
Rock Island.....	314	249	2	80.2	132.4	.4	213.0
Chelan.....							
McNary.....	521	508	40	133	270.2	8.5	411.7
The Dalles.....	347	0	0	88.6	0	0	88.6
Bonneville.....	331	299	15	84.5	159	3.2	246.7
Total.....	21,021.0	22,699	25,653	5,367.1	12,073.7	5,458.1	22,898.9

## CHELAN LAKE

Grand Coulee.....							
Chief Joseph.....							
Rock Island.....	38.5	29	-2	9.8	15.4	-0.4	24.8
Chelan.....	474	527	682	121.0	280.3	145.1	546.4
McNary.....	63	68	13	16.1	36.2	2.8	55.1
The Dalles.....	39	0	0	10.0	0	0	10.0
Bonneville.....	39.5	41	3	10.1	21.8	.6	32.5
Total.....	654.0	665	696	167.0	353.7	148.1	668.8

TABLE 2

*Grand Coulee project (1954-55)—Capital and maintenance costs<sup>1</sup> of dam and reservoir for use in preliminary studies by task force on headwater benefits in matter of docket No. E-6384*

Item (1)	Dam and reservoir costs		Costs designated as "Other" by task force (4)	Total costs (5)
	Depreciable cost (2)	Nondepreciable cost (3)		
Capital costs:				
1. Land and land rights.....		\$3,790,000		\$3,790,000
2. Relocation of existing property.....		10,110,000		10,110,000
3. Structures and improvements.....	\$4,691,000			4,691,000
4. Clearing lands.....		3,691,000		3,691,000
5. Reservoirs.....		964,000		964,000
6. Dams.....	108,938,000			108,938,000
7. Waterways-river channel.....			<sup>2</sup> \$8,058,000	<sup>2</sup> 8,058,000
8. Miscellaneous equipment.....	303,000			303,000
9. Subtotal.....	113,932,000	18,555,000	8,058,000	140,545,000
10. Construction cost of general plant.....			18,870,000	18,870,000
11. Total construction cost.....	113,932,000	18,555,000	26,928,000	159,415,000
12. Less flood control and navigation allocation.....	715,000	116,000	169,000	1,000,000
13. Remainder to be allocated.....	113,217,000	18,439,000	26,759,000	158,415,000
14. Power allocation at 56 percent.....	63,401,000	10,326,000	14,985,000	88,712,000
15. Interest during construction:				
(a) Grand Coulee Dam and Reservoir.....	5,096,000	830,000	<sup>3</sup> 0	5,926,000
(b) General plant.....			87,000	87,000
16. Total power allocation.....	68,497,000	11,156,000	15,072,000	94,725,000
Maintenance costs: <sup>4</sup>				

<sup>1</sup> Source: U. S. Bureau of Reclamation letters of Dec. 23 and 14, 1953 (by James K. Cummings).

<sup>2</sup> Assumes all cost to complete is chargeable to this item.

<sup>3</sup> Assumes no interest during construction on waterways-river channel.

<sup>4</sup> Allocation of maintenance costs in proportion to construction costs (line 11):

	Construction costs	Maintenance costs
1. Total.....	\$159,415,000	\$352,000
2. Flood control and navigation.....	1,000,000	2,208
3. Power (sum of cols. 2 and 3, line 16).....	79,653,000	175,880
4. Other (by subtraction).....	78,762,000	173,912

TABLE 2—Continued

*Grand Coulee project (1958-59)—Capital and maintenance costs<sup>1</sup> of dam and reservoir for use in preliminary studies by task force on headwater benefits in matter of Docket No. E-6384*

Item  (1)	Dam and reservoir costs		Costs designated as "Other" by task force (4)	Total costs  (5)
	Depreciable cost (2)	Nondepreci- able cost (3)		
Capital costs:				
1. Land and land rights.....		\$3, 790, 000		\$3, 790, 000
2. Relocation of existing property.....		10, 110, 000		10, 110, 000
3. Structures and improvements.....	\$4, 691, 000			4, 691, 000
4. Clearing lands.....		3, 691, 000		3, 691, 000
5. Reservoirs.....		964, 000		964, 000
6. Dams.....	108, 938, 000			108, 938, 000
7. Waterways-river channel.....			\$ 8, 078, 000	\$ 8, 078, 000
8. Miscellaneous equipment.....	303, 000			303, 000
9. Subtotal.....	113, 932, 000	18, 555, 000	8, 078, 000	140, 565, 000
10. Construction cost of general plant.....			19, 573, 000	19, 573, 000
11. Total construction cost.....	113, 932, 000	18, 555, 000	27, 651, 000	160, 138, 000
12. Less flood control and navigation allocation.....	711, 000	116, 000	173, 000	1, 000, 000
13. Remainder to be allocated.....	113, 221, 000	18, 439, 000	27, 478, 000	159, 138, 000
14. Power allocation at 56 percent.....	63, 404, 000	10, 326, 000	15, 387, 000	89, 117, 000
15. Interest during construction:				
(a) Grand Coulee Dam and Reser- voir.....	5, 096, 000	830, 000	( <sup>2</sup> )	5, 926, 000
(b) General plant.....			87, 000	87, 000
16. Total power allocation.....	68, 500, 000	11, 156, 000	15, 474, 000	95, 130, 000
Maintenance costs <sup>4</sup> .....				

<sup>1</sup> Source: U. S. Bureau of Reclamation letters of Dec. 23, 1953 and Dec. 14, 1953 (by James K. Cummings).

<sup>2</sup> Assumes all cost-to-complete is chargeable to this item.

<sup>3</sup> Assumes no interest during construction on waterways-river channel.

<sup>4</sup> Allocation of maintenance costs in proportion to construction costs (line 11):

	Construction costs	Maintenance costs
1. Total.....	\$160,138,000	\$330,000
2. Flood control and navigation.....	1,000,000	2,061
3. Power of (sum of cols. 2 and 3, line 16).....	79,656,000	164,149
4. Other (by subtraction).....	79,482,000	163,790

TABLE 2—Continued

*Albeni Falls project—Capital and maintenance costs<sup>1</sup> of dam and reservoir for use in preliminary studies by task force on headwater benefits in matter of Docket No. E-6384*

Item (1)	Dam and reservoir costs		Costs designated as "Other" by task force (4)	Total costs (5)
	Depreciable cost (2)	Nondepreciable cost (3)		
Capital costs:				
1. Reservoir clearing.....		\$848,500		\$848,500
2. Land and land rights.....		2,974,000		2,974,000
3. Protection and restoration of existing facilities.....		1,059,952		1,059,952
4. Housing and service structures.....			\$61,759	61,759
5. Public use facilities.....			38,924	38,924
6. Dam and spillway.....	\$3,915,883			3,915,883
7. Spillway gates and crane.....	1,850,895			1,850,895
8. Log passage facilities.....	63,703			63,703
9. Total.....	5,830,481	4,882,452	100,683	10,813,616
10. Joint cost per Col. J. U. Moorhead's letter of Nov. 27, 1953.....	\$ 6,362,319	\$ 5,327,814	\$ 109,867	\$ 11,800,000
Maintenance costs: Power storage.....				\$ 40,000

<sup>1</sup> Source: U. S. Corps of Engineers letters of Jan. 20, 1953, and Nov. 27, 1953 (by Col. L. W. Correll and Col. J. U. Moorhead).

<sup>2</sup> In proportion to amounts on line 9.

<sup>3</sup> Includes \$380,000 in interest during construction.

<sup>4</sup> See Col. J. U. Moorhead's letter, Corps of Engineers, dated Nov. 27, 1953, and teletype by division engineer, Corps of Engineers, dated Dec. 2, 1953.

*Hungry Horse Project—Capital and maintenance costs<sup>1</sup> of dam and reservoir for use in preliminary studies by task force on headwater benefits in matter of docket No. E-6384*

Item (1)	Dam and reservoir costs		Costs designated as "Other" by task force (4)	Total costs (5)
	Depreciable cost (2)	Nondepreciable cost (3)		
Capital costs:				
1. Water and water rights.....		\$10,155		\$10,155
2. Relocation of F. S. facilities.....		4,787,000		4,787,000
3. Seismograph station.....	\$8,369			8,369
4. Reservoir clearing.....		8,298,398		8,298,398
5. Reservoir log boom.....	36,000			36,000
6. Dam.....	59,080,078			59,080,078
7. Access highway.....			\$1,217,000	1,217,000
8. Total.....	59,124,447	13,095,553	1,217,000	73,437,000
9. Hungry Horse village.....			2,107,000	2,107,000
10. General Service facilities.....			901,000	901,000
11. Total.....	59,124,447	13,095,553	4,225,000	76,445,000
12. Plus interest during construction.....	\$ 2,930,342	\$ 649,045	\$ 209,401	3,788,788
13. Less flood control allocation.....	\$ 15,212,489	\$ 3,369,435	\$ 1,087,076	19,669,000
14. Total.....	46,842,300	10,375,163	3,347,325	60,564,788
Maintenance costs:				
Estimated amount for year 1959.....				17,000
Power storage $\left\{ \begin{array}{l} \$ 57,217,463 \\ \$ 75,799,387 \end{array} \right\} \times 17,000$ .....				12,833
Flood control $\left\{ \begin{array}{l} \$ 18,581,924 \\ \$ 75,799,387 \end{array} \right\} \times 17,000$ .....				4,167

<sup>1</sup> Source: U. S. Bureau of Reclamation letters of Dec. 23, 1953, and Dec. 14, 1953 (by James K. Cummings).

<sup>2</sup> In proportion to totals above (line 11).

<sup>3</sup> \$46,842,300 + \$10,375,163 = \$57,217,463.

<sup>4</sup> \$79,124,447 + \$13,095,533 + \$2,930,342 + \$649,045 = \$75,799,387.

<sup>5</sup> \$15,212,489 + \$3,369,435 = \$18,581,924.

TABLE 3.—*Interest, maintenance, and depreciation costs—Columbia Basin storage reservoirs—1954-55 and 1958-59 conditions*

[For use in preliminary studies by task force on headwater benefits in matter of Docket No. E-6384]

Item (1)	Unit (2)	Hungry Horse (3)	Flathead Lake (4)	Priest Lake (5)	Albeni Falls (6)
1. Capital cost of power storage.....	Dollar.....	\$ 57,217,463	\$ 4,374,815	\$ 109,568	\$ 11,690,133
(a) Depreciable items.....	do.....	46,842,300	3,609,420	109,568	6,362,319
(b) Nondepreciable items.....	do.....	10,375,163	765,395	0	5,327,814
2. Interest rate.....	Percent.....	2.50	6.00	6.00	2.50
3. Annual interest.....	Dollar.....	1,430,437	262,489	6,574	292,253
4. Depreciation rate—100-year sinking fund.....	Percent.....	.231188	.017736	*1.822672	.231188
5. Annual depreciation (line 4 × line 1a).....	Dollar.....	108,294	640	1,997	14,709
6. Maintenance.....	do.....	12,833	4,400	1,336	40,000
7. Annual costs for distribution (line 3+5+6) without "Other" costs.....	do.....	1,551,564	267,529	9,907	346,962
8. "Other" annual costs.....	do.....		\$ 175,000		
9. Annual costs for distribution, including "Other" costs.....	do.....	1,551,564	442,529	9,907	346,962

Item (1)	Unit (2)	Coeur d'Alene (7)	Long Lake (8)	Grand Coulee		Chelan Lake (11)
				1954-55 (9)	1958-59 (10)	
1. Capital cost of power storage.....	Dollars.....	\$ 1,417,534	\$ 4,095,341	\$ 79,653,000	\$ 73,656,000	\$ 3,656,568
(a) Depreciable items.....	do.....	470,134	2,631,287	68,497,000	68,500,000	805,007
(b) Nondepreciable items.....	do.....	977,400	1,464,054	11,156,000	11,156,000	2,851,561
2. Interest rate.....	Percent.....	6.00	6.00	2.50	2.50	6.00
3. Annual interest.....	Dollars.....	86,852	245,720	1,991,325	1,991,400	219,394
4. Depreciation rate, 100-year sinking fund.....	Percent.....	0.017736	0.017736	0.231188	0.231188	0.017736
5. Annual depreciation (line 4 × line 1a).....	Dollars.....	83	467	158,357	158,364	143
6. Maintenance.....	do.....	3,636	14,000	175,880	164,149	9,838
7. Annual costs for distribution (line 3+5+6) without "Other" costs.....	do.....	90,571	260,187	2,325,562	2,313,913	229,375
8. "Other" annual costs.....	do.....	\$ 82,334				
9. Annual costs for distribution, including "Other" costs.....	do.....	172,905	260,187	2,325,562	2,313,913	229,375

<sup>1</sup> See table 2.<sup>2</sup> Mr. A. B. Martin's letter of Feb. 13, 1952.<sup>3</sup> Mr. M. L. Blair's letter of Dec. 23, 1953.<sup>4</sup> Based on 25-year life.<sup>5</sup> Annual payment to Indian tribes.<sup>6</sup> Additional costs such as drainage, crop damages, etc.

TABLE 4.—ENERGY AND HEADWATER BENEFIT PAYMENT AFTER ALLOWANCE FOR GENERATION AT STORAGE SITES FROM UPSTREAM STORAGE

*Preliminary study (1954-55 conditions)*

## HUNGRY HORSE RESERVOIR

Hydroplants	Average	Energy at storage site from United States storage	Energy for headwater benefit payment	Headwater benefit	Headwater benefit
(1)	(2)	(3)	(4)	(5)	(5a)
	<i>Megawatt-months</i>	<i>Megawatt-months</i>	<i>Megawatt-months</i>	<i>Dollars</i>	<i>Dollars</i>
Hungry Horse.....	1,310.3	.....	1,310.3	674,099	.....
Kerr.....	401.5	.....	401.5	206,556	.....
Thompson Falls.....	63.7	.....	63.7	32,771	.....
Cabinet Gorge.....	237.9	.....	237.9	122,390	.....
Albani Falls.....	.....	.....	.....	.....	.....
Box Canyon.....	27.5	.....	27.5	14,148	.....
Grand Coulee.....	727.6	.....	727.6	374,322	.....
Chief Joseph.....	.....	.....	.....	.....	.....
Rock Island.....	89.5	.....	89.5	46,044	.....
McNary.....	32.4	.....	32.4	16,669	.....
The Dalles.....	.....	.....	.....	.....	.....
Bonneville.....	125.5	.....	125.5	64,565	.....
<b>Total.....</b>	<b>3,015.9</b>	.....	<b>3,015.9</b>	<b>1,551,564</b>	.....

## FLATHEAD LAKE RESERVOIR

Hungry Horse.....	.....	.....	.....	.....	.....
Kerr.....	1,587.8	401.5	1,186.3	165,815	274,280
Thompson Falls.....	43.3	.....	43.3	6,052	10,011
Cabinet Gorge.....	132.3	.....	132.3	18,492	30,589
Albani Falls.....	.....	.....	.....	.....	.....
Box Canyon.....	13.9	.....	13.9	1,943	3,214
Grand Coulee.....	418.8	.....	418.8	58,538	96,829
Chief Joseph.....	.....	.....	.....	.....	.....
Rock Island.....	38.0	.....	38.0	5,312	8,786
McNary.....	12.3	.....	12.3	1,719	2,844
The Dalles.....	.....	.....	.....	.....	.....
Bonneville.....	69.1	.....	69.1	9,658	15,976
<b>Total.....</b>	<b>2,315.5</b>	<b>401.5</b>	<b>1,914.0</b>	<b>267,529</b>	<b>442,529</b>

## PRIEST LAKE RESERVOIR

Albani Falls.....	.....	.....	.....	.....	.....
Box Canyon.....	0.8	.....	0.8	203	.....
Grand Coulee.....	30.7	.....	30.7	7,778	.....
Chief Joseph.....	.....	.....	.....	.....	.....
Rock Island.....	2.9	.....	2.9	735	.....
McNary.....	.....	.....	.....	.....	.....
The Dalles.....	.....	.....	.....	.....	.....
Bonneville.....	4.7	.....	4.7	1,191	.....
<b>Total.....</b>	<b>39.1</b>	.....	<b>39.1</b>	<b>9,907</b>	.....

## ALBANI FALLS RESERVOIR

Albani Falls.....	67.0	.....	67.0	36,899	.....
Box Canyon.....	9.0	.....	9.0	4,957	.....
Grand Coulee.....	424.4	.....	424.4	233,731	.....
Chief Joseph.....	.....	.....	.....	.....	.....
Rock Island.....	48.0	.....	48.0	26,435	.....
McNary.....	11.5	.....	11.5	6,333	.....
The Dalles.....	.....	.....	.....	.....	.....
Bonneville.....	70.1	.....	70.1	38,607	.....
<b>Total.....</b>	<b>630.0</b>	.....	<b>630.0</b>	<b>346,962</b>	.....

<sup>1</sup> Including annual payment to Indian Tribes.

## HEADWATER BENEFITS

TABLE 4.—ENERGY AND HEADWATER BENEFIT PAYMENT AFTER ALLOWANCE FOR GENERATION AT STORAGE SITES FROM UPSTREAM STORAGE—Continued

*Preliminary study (1954-55 conditions)—Continued*

## COEUR D'ALENE RESERVOIR

Hydroplants	Average	Energy at storage site from United States storage	Energy for headwater benefit payment	Headwater benefit	Headwater benefit
(1)	(2)	(3)	(4)	(5)	(5a)
	Megawatt-months	Megawatt-months	Megawatt-months	Dollars	Dollars
Post Falls .....	101.8		101.8	34,429	65,727
Upper Falls .....	7.1		7.1	2,401	4,584
Monroe Street .....	4.8		4.8	1,623	3,099
Nine Mile .....	13.8		13.8	4,667	8,910
Long Lake .....	39.1		39.1	13,224	25,245
Little Falls .....	16.5		16.5	5,581	10,653
Grand Coulee .....	62.2		62.2	21,036	40,159
Chief Joseph .....					
Rock Island .....	7.5		7.5	2,537	4,843
McNary .....	1.8		1.8	609	1,162
The Dalles .....					
Bonneville .....	13.2		13.2	4,464	523
Total .....	267.8		267.8	90,571	* 172,905

## LONG LAKE RESERVOIR

Post Falls .....					
Upper Falls .....					
Monroe Street .....					
Nine Mile .....					
Long Lake .....	603.3	39.1	564.2	233,829	
Little Falls .....	7.4		7.4	3,067	
Grand Coulee .....	43.3		43.3	17,945	
Chief Joseph .....					
Rock Island .....	5.0		5.0	2,072	
McNary .....	1.3		1.3	539	
The Dalles .....					
Bonneville .....	6.6		6.6	2,735	
Total .....	666.9	39.1	627.8	260,187	

## GRAND COULEE RESERVOIR

Grand Coulee .....	21,521.5	1,707.0	19,814.5	2,266,917	
Chief Joseph .....					
Rock Island .....	204.9		204.9	23,442	
Chelan .....					
McNary .....	69.7		69.7	7,974	
The Dalles .....					
Bonneville .....	238.0		238.0	27,229	
Total .....	22,034.1	1,707.0	20,327.1	2,325,562	

## CHELAN LAKE RESERVOIR

Grand Coulee .....					
Chief Joseph .....					
Rock Island .....	24.9		24.9	9,505	
Chelan .....	546.4		546.4	208,571	
McNary .....	5.9		5.9	2,252	
The Dalles .....					
Bonneville .....	23.7		23.7	9,047	
Total .....	600.9		600.9	229,375	

\* Includes "other" annual costs.

*Preliminary study (1958-59 conditions)***HUNGRY HORSE RESERVOIR**

Hydro plants	Average	Energy at storage site from United States storage	Energy for headwater benefit payment	Headwater benefit	Headwater benefit
(1)	(2)	(3)	(4)	(5)	(5a)
	<i>Megawatt- months</i>	<i>Megawatt- months</i>	<i>Megawatt- months</i>	<i>Dollars</i>	<i>Dollars</i>
Hungry Horse.....	1,310.3		1,310.3	554,151	
Kerr.....	412.2		412.2	174,327	
Thompson Falls.....	104.3		104.3	44,111	
Cabinet Gorge.....	241.6		241.6	102,177	
Albani Falls.....	23.0		23.0	9,727	
Box Canyon.....	73.0		73.0	30,873	
Grand Coulee.....	714.9		714.9	302,345	
Chief Joseph.....	353.3		353.3	149,418	
Rock Island.....	88.6		88.6	37,471	
McNary.....	189.5		189.5	80,143	
The Dalles.....	50.8		50.8	21,484	
Bonneville.....	107.2		107.2	45,337	
<b>Total.....</b>	<b>3,668.7</b>		<b>3,668.7</b>	<b>1,551,564</b>	

**FLATHEAD LAKE RESERVOIR**

Hungry Horse.....					
Kerr.....	1,618.4	412.2	1,206.2	137,785	227,916
Thompson Falls.....	68.3		68.3	7,802	12,905
Cabinet Gorge.....	137.9		137.9	15,752	26,057
Albani Falls.....	23.1		23.1	2,639	4,305
Box Canyon.....	50.7		50.7	5,792	9,580
Grand Coulee.....	419.8		419.8	47,954	79,322
Chief Joseph.....	194.8		194.8	22,252	36,808
Rock Island.....	37.1		37.1	4,238	7,010
McNary.....	121.5		121.5	13,765	22,769
The Dalles.....	17.6		17.6	2,011	3,326
Bonneville.....	66.0		66.0	7,539	12,471
<b>Total.....</b>	<b>2,754.2</b>	<b>412.2</b>	<b>2,342.0</b>	<b>267,529</b>	<b>442,529</b>

**PRIEST LAKE RESERVOIR**

Albani Falls.....	1.0		1.0	165	
Box Canyon.....	2.1		2.1	346	
Grand Coulee.....	28.3		28.3	4,665	
Chief Joseph.....	12.5		12.5	2,061	
Rock Island.....	2.7		2.7	445	
McNary.....	8.1		8.1	1,335	
The Dalles.....	.3		.3	49	
Bonneville.....	5.1		5.1	841	
<b>Total.....</b>	<b>60.1</b>		<b>60.1</b>	<b>9,907</b>	

**ALBANI FALLS RESERVOIR**

Albani Falls.....	320.7	47.1	273.6	82,218	
Box Canyon.....	35.3		35.3	10,608	
Grand Coulee.....	408.1		408.1	122,635	
Chief Joseph.....	193.9		193.9	58,268	
Rock Island.....	45.4		45.4	13,643	
McNary.....	109.3		109.3	32,845	
The Dalles.....	22.2		22.2	6,671	
Bonneville.....	66.8		66.8	20,074	
<b>Total.....</b>	<b>1,201.7</b>	<b>47.1</b>	<b>1,154.6</b>	<b>346,962</b>	

<sup>1</sup> Including annual payment to Indian tribes.



## HEADWATER BENEFITS

*Preliminary study (1958-59 conditions)*—Continued

## COEUR D'ALENE LAKE RESERVOIR

Hydroplants	Average	Energy at storage site from United States storage	Energy for headwater benefit payment	Headwater benefit	Headwater benefit
(1)	(2)	(3)	(4)	(5)	(5a)
Post Falls.....	101.8	-----	101.8	29,457	56,236
Upper Falls.....	7.1	-----	7.1	2,054	3,922
Monroe Street.....	4.8	-----	4.8	1,389	2,652
Nine Mile.....	13.8	-----	13.8	3,993	7,623
Long Lake.....	39.1	-----	39.1	11,314	21,599
Little Falls.....	16.5	-----	16.5	4,775	9,115
Grand Coulee.....	60.5	-----	60.5	17,507	33,421
Chief Joseph.....	29.6	-----	29.6	8,565	16,351
Rock Island.....	6.9	-----	6.9	1,997	3,812
McNary.....	18.7	-----	18.7	5,411	10,330
The Dalles.....	3.3	-----	3.3	955	1,823
Bonneville.....	10.9	-----	10.9	3,154	6,021
Total.....	313.0	-----	313.0	90,571	* 172,905

## LONG LAKE RESERVOIR

Post Falls.....	-----	-----	-----	-----	-----
Upper Falls.....	-----	-----	-----	-----	-----
Monroe Street.....	-----	-----	-----	-----	-----
Nine Mile.....	-----	-----	-----	-----	-----
Long Lake.....	603.3	39.1	564.2	224,495	-----
Little Falls.....	7.2	-----	7.2	2,865	-----
Grand Coulee.....	38.1	-----	38.1	15,160	-----
Chief Joseph.....	18.9	-----	18.9	7,520	-----
Rock Island.....	5.0	-----	5.0	1,990	-----
McNary.....	11.1	-----	11.1	4,417	-----
The Dalles.....	2.8	-----	2.8	1,114	-----
Bonneville.....	6.6	-----	6.6	2,626	-----
Total.....	693.0	39.1	653.9	260,187	-----

## GRAND COULEE RESERVOIR

Grand Coulee.....	21,108.6	1,669.7	19,438.9	2,118,776	-----
Chief Joseph.....	830.3	-----	830.3	90,500	-----
Rock Island.....	213.0	-----	213.0	23,216	-----
Chelan.....	-----	-----	-----	-----	-----
McNary.....	411.7	-----	411.7	44,874	-----
The Dalles.....	88.6	-----	88.6	9,657	-----
Bonneville.....	246.7	-----	246.7	26,890	-----
Total.....	22,896.9	1,669.7	21,229.2	2,313,913	-----

## CHELAN LAKE RESERVOIR

Grand Coulee.....	-----	-----	-----	-----	-----
Chief Joseph.....	-----	-----	-----	-----	-----
Rock Island.....	24.8	-----	24.8	8,506	-----
Chelan.....	546.4	-----	546.4	187,396	-----
McNary.....	55.1	-----	55.1	18,897	-----
The Dalles.....	10.0	-----	10.0	3,430	-----
Bonneville.....	32.5	-----	32.5	11,146	-----
Total.....	668.8	-----	668.8	229,375	-----

\* Including "other" annual costs.

TABLE 5.—Summary by project and agency of average annual headwater payments based on benefits received 1954-55 CONDITIONS

## HEADWATER BENEFITS

Agency and project making payment		Agency and project receiving payment											
		Federal reservoirs				Montana Power Co., Flathead Lake		Washington Water Power Co.					
		Hungry Horse	Albion Falls	Grand Coulee	Total(2) + (3)+(4)	(6a)	(6b)	Priest Lake	Coeur d'Alene	Long Lake	Chelan Lake	Total (7)+(8)+(9)+(10)	
(1)	(2)	(3)	(4)	(5)	(6a)	(6b)	(7)	(8a)	(8b)	(9)	(10)	(11a)	(11b)
Federal projects:													
Hungry Horse	\$674,099			\$674,099									
Albion Falls	36,899	36,899		36,899	0	0	0					0	0
Grand Coulee	374,322	233,731	\$2,266,917	2,874,970	\$58,538	\$98,829	\$7,778	\$21,036	\$40,159	\$17,945		\$46,759	\$68,882
Chief Joseph													
McNary	16,669	6,333	7,974	30,976	1,719	2,844	0	649	1,102	539	\$2,252	3,400	3,953
The Dalles													
Bonneville	64,565	38,607	27,229	130,401	9,638	15,976	1,191	4,464	8,523	2,735	9,047	17,437	21,496
Total	1,120,655	315,570	2,302,120	3,747,345	69,915	115,649	8,969	26,109	49,844	21,219	11,269	67,596	91,331
Montana Power Co.:													
K.T.T.	206,556			206,556	165,815	274,280							
Thompson Falls	32,771			32,771	6,052	10,011							
Total	239,327			239,327	171,867	284,291							
Washington Water Power Co.:													
Caldwell Forge	122,390			122,390	18,492	30,589		61,925	118,218	236,896		298,821	355,114
Spokane plant											298,571	298,571	298,571
Chelan plant													
Total	122,390			122,390	18,492	30,589		61,925	118,218	236,896	298,571	507,392	563,685
Puget Sound and Chelan Public Utilities District: Rock Island	46,044	26,435	23,442	95,921	5,312	8,786	735	2,537	4,843	2,072	9,505	14,849	17,155
Pond Oreille County Public Utilities District: Box Canyon	14,146	4,957		19,105	1,943	3,214	243					293	293
Grand total	1,551,564	346,962	2,325,562	4,224,088	267,529	442,529	9,907	90,571	172,905	280,187	229,375	590,040	672,374

TABLE 5.—Summary by project and agency of average annual headwater payments based on benefits received—Continued  
1938-59 CONDITIONS

Agency and project making payment				Agency and project receiving payment								
Federal reservoirs				Montana Power Co., Flathead Lake		Washington Water Power Co.						
Hungry Horse	Albion Falls	Grand Coulee	Total(2)+(3)+(4)	(6a)	(6b)	Priest Lake	Coeur d'Alene	Long Lake	Chelan Lake	Total (7)+(8)+(9)+(10)		
(2)	(3)	(4)	(5)			(7)	(8a)	(9)	(10)	(11a) (11b)		
Federal projects:												
\$554,151			\$554,151									
9,727	\$82,218		91,945	\$2,639	\$4,365	\$165				\$165		
302,345	122,635	\$2,118,776	2,543,736	47,954	79,322	4,945	\$33,421	\$15,160		37,332		
143,418	58,298	90,500	2,981,186	22,252	36,808	2,061	16,351	7,520		18,116		
80,143	32,845	44,874	157,862	13,765	22,769	1,335	5,411	4,417	\$18,897	30,060		
21,484	6,671	9,657	37,812	2,011	3,326	49	1,823	1,114	3,430	5,548		
45,337	23,074	26,880	92,301	7,539	12,471	841	3,154	2,626	11,146	17,767		
										20,634		
Total	1,162,605	322,711	2,230,697	3,776,013	96,160	159,061	9,116	35,592	67,946	30,837	109,018	141,372
Montana Power Co.:												
174,327			174,327	137,785	227,916							
44,111			44,111	7,802	12,905							
Total	218,438		218,438	145,587	240,821							
Washington Water Power Co.:												
102,177			102,177	15,752	26,057							

<sup>1</sup> Includes annual payment to Indian tribes.

TABLE 6.—Summary of headwater benefit payments

1954-55 CONDITIONS

Agency making payment  (1)	Agency receiving payment ("other" costs excluded)			Agency receiving payment ("other" costs included)		
	Federal Government  (2)	Montana Power Co. (3)	Washington Water Power Co. (4)	Federal Government  (5)	Montana Power Co. (6)	Washington Water Power Co. (7)
Federal Government.....	\$3,747,345	\$69,915	\$67,596	\$3,747,345	\$115,649	\$91,331
Montana Power Co.....	239,327	171,867	239,327	239,327	284,291	563,685
Washington Water Power Co.....	122,390	18,492	507,392	122,390	30,589	
Puget Sound Power & Light and Chelan County Public Utility Dis- trict.....	95,921	5,312	14,849	95,921	8,786	17,155
Pend Oreille County Public Utility District.....	19,105	1,943	203	19,105	3,214	203
Total payments.....	4,224,088	267,592	590,040	4,224,088	442,529	672,374
Total, excluding intraagency pay- ments.....	476,743	95,662	82,648	476,743	158,238	108,689
Total, excluding intraagency pay- ments, and payments not provided in sec. 10 (f).....	476,743	25,747	0	476,743	42,589	0

1958-59 CONDITIONS

Federal Government.....	\$3,776,013	\$96,160	\$109,018	\$3,776,013	\$159,061	\$141,372
Montana Power Co.....	218,438	145,587	218,438	218,438	210,821	515,903
Washington Water Power Co.....	102,177	15,752	467,738	102,177	26,057	
Puget Sound Power & Light and Chelan County Public Utility Dis- trict.....	74,330	4,238	12,938	74,330	7,010	14,753
Pend Oreille County Public Utility District.....	41,481	5,792	346	41,481	9,580	346
Total payments.....	4,212,439	267,529	590,040	4,212,439	442,529	672,374
Total, excluding intraagency pay- ments.....	436,426	121,942	122,302	436,426	201,708	156,471
Total, excluding intraagency pay- ments, and payments not provided in sec. 10 (f).....	436,426	25,782	0	436,426	42,647	0

No. 18. The answer to this question is shown on the last page of the study (answer to question No. 17) and the results are as follows:

Headwater benefits paid by United States to—

(1) Washington Water Power Co.....	\$141,372
(2) Montana Power Co.....	159,061

ANSWERS TO QUESTIONS 19 AND 20 CONTAINED IN THE LETTER OF JUNE 8, 1955, FROM SENATORS WARREN G. MAGNUSON AND HENRY M. JACKSON RE HEADWATER BENEFITS BILL (S. 1574, 84TH CONG.) (S. 3434, 83D CONG.)

Question 19. In which of its annual reports did the Commission first recommend that section 10 (f) of the act be amended to provide for payment by the United States for benefits received from headwater improvements? Who was Chairman at the time?

Answer. The Commission's 33d annual report, covering the fiscal year ended June 30, 1953, was the first such report in which the Commission recommended that section 10 (f) of the Federal Power Act be amended to provide for payment by the United States for benefits received from headwater improvements. With respect to this matter the Commission said at page 156, paragraph 19, of the report:

"19. *Federal Power Act—Headwater benefits.*—That section 10 (f) of the Federal Power Act be amended so as to require not only reimbursement by non-Federal power developers for benefits accruing to them from upstream facilities constructed by another but also to require reimbursement by the United States for

improvements constructed by non-Federal interests. These amendments have been submitted to the Bureau of the Budget in connection with the Commission's comments upon the recommendations of the Interagency Water Policy Review Committee on reimbursement, Committee Paper 27."

Mr. Thomas C. Buchanan was Chairman of the Federal Power Commission from July 8, 1952, through the close of business on May 15, 1953. Mr. Jerome K. Kuykendall assumed the duties of Chairman of the Commission on May 18, 1953, and was Chairman during the remainder of fiscal year 1953.

Question 20. Will you list for us each subsequent annual report of the Commission containing this recommendation and who was Chairman in each case?

Answer. Thirty-fourth Annual Report of the Federal Power Commission covering the fiscal year ended June 30, 1954.

Mr. Jerome K. Kuykendall was Chairman of the Federal Power Commission during fiscal year 1954.

(A subsequent letter from Mr. Gatchell is as follows:)

FEDERAL POWER COMMISSION.

Washington 25, July 8, 1955.

Re S. 1574, 84th Congress.

HON. CLINTON P. ANDERSON,

*Chairman, Subcommittee on Irrigation and Reclamation,*

*Committee on Interior and Insular Affairs,*

*United States Senate, Washington 25, D. C.*

DEAR SENATOR ANDERSON: As requested I have corrected the stenographic transcript of my testimony before your subcommittee on the bill S. 1574 which would provide for headwater benefit payments by hydroelectric power projects. It had been my purpose in testifying to give a full explanation of the effect of the amendment proposed by the Federal Power Commission by which a new section 31 would be added to the Federal Power Act. Apparently, however, two questions were subsequently raised which I should have discussed.

One question concerned the possibility of imposing headwater benefit charges under the new section 31 against irrigation benefits when upstream stored water is subsequently utilized at a downstream multiple-purpose project not only for developing power but for irrigation. However, such a possibility is not present in the new section 31. The language of the Commission's proposed amendment is clear, for it limits the benefits to be considered to benefits to "any hydroelectric project" whether owned by a non-Federal interest (par. (a)) or by the United States (par. (b)). The Commission has no intention of suggesting to Congress that if water should be used for irrigation purposes after being released from upstream storage headwater benefit charges should be imposed for the irrigation benefit, and the expressed language of section 31 effectively precludes such imposition. The only benefits which can be considered under the proposed section 31 would be benefits received at a hydroelectric project. An illustration could be given by considering the Grand Coulee multiple-purpose development for irrigation, navigation, and power. All of these purposes might be benefited by having flood flows stored upstream and low flows augmented from the upstream storage. But the only benefit which could be considered under section 31 would be the power benefit at the hydroelectric power project.

The other point was raised more as an inquiry by Mr. Irvin Hoff, who was representing Senators Magnuson and Jackson. He called attention to the fact that section 10 (f) now calls upon the Commission to fix an equitable proportion of the annual charges for interest, maintenance, and depreciation on the upstream storage reservoir, whereas the proposed section 31 prescribes that the annual charges shall be "such part of the fixed cost of the facility furnishing the benefit, plus such part of the annual operating and maintenance cost of such facility, including land rental and similar charges, as the Commission may deem equitable."

I had not discussed this change because it does not appear to me to be significant, although it should have been explained. The new language adds operating costs to the elements of the cost of headwater facilities being considered in fixing the annual charges.

This was proposed because the operating costs are as much a part of the expense of making the benefit available from the upstream reservoir as the interest, maintenance, and depreciation. The land rentals were expressly mentioned because question has been raised as to the inclusion of land rentals in operating expenses and it was considered desirable to remove all doubt on this particular point. The cost of land owned in fee simple is covered by the interest charge and there did

not appear to be any valid reason for excluding land rentals if the costs of the upstream reservoir are to be covered, as presumably are intended to be.

Actually, the annual charges which the United States would be called upon to pay at any project could not be substantial and by way of illustration our engineering staff has roughly estimated the charges against the United States in the Columbia River system for the year 1959 when the Dalles powerplant will be 50 percent in operation and the other Federal powerplants will be in operation. For that year it is estimated that headwater benefit charges payable for benefits received by the Federal hydroelectric power projects would be approximately \$300,000; the Bonneville Power Administration will sell approximately 32.3 billion kilowatt-hours of electric energy for which it will receive around \$72,400,000. The headwater benefit charges under the proposed section 31 would amount to about 0.4 percent of the revenues or about 0.01 mill per kilowatt-hour.

Finally, whatever charges are paid to a privately owned power company under section 10 (f) or under the proposed section 31 would be accountable as other income and where regulated by a State agency or by the Federal Power Commission would be considered in fixing the rates. The Federal Power Act looks to a limitation of the profits of such licensees to a reasonable return and a part of any excess earnings of licensees must be set aside in an amortization reserve to reduce the net investment in the project.

Respectfully submitted.

WILLARD W. GATCHELL, *General Counsel.*

Mr. LINEWEAVER. We have one more witness, Mr. Chairman.

Senator SCOTT. All right.

Mr. LINEWEAVER. Mr. Fain?

**STATEMENT OF CHARLES J. FAIN, ASSISTANT GENERAL MANAGER,  
ACCOMPANIED BY CHARLES ROBINSON, STAFF ENGINEER,  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Mr. FAIN. My name is Charles J. Fain, assistant general manager of the National Rural Electric Cooperative Association. The membership of the association is composed of rural electric cooperatives of the United States and Alaska.

We are appearing here today in opposition to Senate bill 1574 and also in opposition to the recommended substitute as given to the committee by the Federal Power Commission. We appeared last year before a subcommittee of the Interstate and Foreign Commerce Committee against Senate bill 3434, which is in the identical language as is found in the recommended substitute of the Federal Power Commission, with the exception of paragraph (g) in the proposal this year which has been added since last year.

We will endeavor to summarize very briefly the statement we have made, Mr. Chairman, which we would like to file for the record.

Our interest in this bill comes about because of the power derived by our rural electric system members from the Federal Government.

Specifically, in 1954 our rural electric cooperatives purchased over 15.1 billion kilowatts of energy and 46 percent of that came from private companies, but, important to this situation here, 36 percent of that 15 billion kilowatt-hours came from the Federal Government.

In the Northwest, where there are 36 cooperatives and public utility districts receiving power from the Federal Government, there was a total of 758 million kilowatt-hours furnished to these cooperatives and public utility districts by the Federal Government.

In the States involved, in Washington there was 385 million, Oregon, 285 million; Montana, 28 million; and Idaho, 60 million. We feel that this bill has been specifically tailor-made for the Northwest area, Mr. Chairman; that is where we have called these figures

to the attention of the committee to show the amount of power that is involved and what it will mean to these rural electric cooperatives if a bill is passed which will drive up the cost of Federal power to those cooperatives.

Before coming to these substantive objections which our association has to both the Senate bill and the recommended substitute, I would like to go into one phase of it that evidently has not been touched on, to my knowledge here this morning, and which might be of interest to this committee especially.

To do so, I would like to very briefly go into the legislative history involved.

Last year when we appeared against Senate bill 3434, one of the objections which we raised was to the possible interpretation of that bill. As the bill was drawn, we felt that it was entirely possible under the bill that not only hydroelectric benefits would come under this specific bill but also it might be possible, under the wording of the bill, that irrigation benefits downstream from private developments could be made to pay a private owner upstream for incidental irrigation benefits.

We raised that question before the committee. It is because of the wording of the old S. 3434 which has now been supplanted by the substitute.

Under section 2 of this bill, it is proposed that whenever there is a hydroelectric power project owned by the United States and that it will be benefited by the construction, operation, or maintenance of a reservoir or any water-use facility, then it will pay for the benefits thus received.

The chairman will undoubtedly know that the benefits as such are not limited. They are stated in the plural and it does not say that it would be limited to hydroelectric benefits. The limitation, so far as hydroelectric is concerned, is in the first sentence which says "hydroelectric power project."

Now, there are many hydroelectric power projects which are multiple-purpose projects, having not only power but irrigation involved. Consequently, we feel that it is possible under the language as it is written to interpret benefits more broadly than just hydro benefits.

Evidently there were members of the subcommittee last year who felt this should be clarified. The record will show that the question was brought up and members of the committee last year felt that that language should be clarified so that there would be no possibility of a tremendous payoff to private owners for reclamation benefits that might be supplied downstream.

At that time it was stated by officials from the Federal Power Commission that they thought that language should be written into the bill that would clarify that and not make that possible. But the bill, the substitute, as it has been recommended, is identically the same and that point has not been clarified at all.

So we feel that in order that the intent which officials of the Federal Power Commission say is not to go to reclamation benefits, in order that that intent might be carried out, that the committee might wish to consider amending this substitute if that is the one considered by the committee so that such an interpretation would not be gained from the specific language used.

There is one other point that I think bears on that question, Mr. Chairman.

When S. 1574 was introduced by the Senator from Arizona this year, it was specifically spelled out in the bill that these benefits would not go to the question of reclamation benefits. They were specifically limited to hydroelectric power benefits. So that would be the first thing we would like to call the attention of the committee to; that if the Federal Power Commission substitute is adopted, we feel it is an open question as to just what benefits are concerned. We feel that should be clarified.

Now, as to the substantive reasons why our association is opposed, not only to the Senate bill but to the Federal Power Commission substitute, there are about 4 or 5 main points I would like to very briefly touch.

First of all, we have the problem of assessing these incidental benefits from multiple-purpose projects. The chairman is familiar with the John Kerr project in Virginia and undoubtedly the testimony that was taken before the Federal Power Commission as to the incidental benefits that would be afforded downstream to the Virginia Electric & Power Co. if it built the Roanoke project.

This estimate of incidental benefits ranged all the way from \$250,000 to the sum of \$1,955,000.

In other words, the experts themselves could not agree within a range of approximately \$1.5 million as to what the benefits are. Now, that would be annually.

Consequently, if these incidental benefits are taken into consideration when they are so nebulous as is proven by the record in the John Kerr project, we feel that practically any answer from the Federal Power Commission as to the incidental benefits that would be assessed against Federal projects would not be too precise.

We feel certainly that the bill should spell out some criterion for determining how these incidental benefits are to be arrived at.

I think the Hungry Horse project has been referred to, and it illustrates what can happen to a downstream project if such a bill as this is passed. The Hungry Horse project, which was developed by the Federal Government, is such that it affords a great deal of downstream benefits to other projects lower on the river.

In fact, about 37 percent of the cost of the Hungry Horse project goes against benefits downstream. Now, if that dam were built by private interests, this would mean that 37 percent of the total cost of that project would be paid by the Federal Government for the benefits downstream.

There is another question, too, involved here and that is as to how this will affect the economic feasibility of proposed Federal projects.

A specific example of this is the proposed Ice Harbor project on the Snake River. The Corps of Engineers stated in congressional testimony that the Ice Harbor project was not feasible unless the benefits incurred to it by the proposed Hells Canyon Dam were considered.

Now, if this bill were passed, it would mean that Ice Harbor could no longer be developed because the upstream benefits would be charged against Ice Harbor; that means that many projects that are a part of the comprehensive plan, especially in the northwest area, can be knocked out if this bill is passed.

Now, this will have the result of destroying comprehensive development of a river system so we feel that the committee should think long



and hard on this question of how this will affect the economic feasibility of specific projects as proposed and how it will affect the economic feasibility of an entire river system.

Another point is how will this affect the cost of power which has already been set at Federal projects?

The cost of power has been set at these Federal projects upon the basis that they will pay out within a certain period of time.

Now, if the Federal Power Commission comes along and assesses additional charges against these projects, it can only mean one thing, they will not be able to pay out in the period as proposed or they will have to raise the rates to consumers in that area; that is why we are strongly opposed to this bill.

In summarizing, Mr. Chairman, we would like to just briefly state that the National Rural Electric Cooperative Association is opposed to Senate bill 1574; it is opposed to the recommended substitute as proposed to the committee by the Federal Power Commission.

The basis of our opposition is largely because we feel that the rivers of the land belong to the people as the people express themselves through the Government.

As the Government has granted licenses to many private companies to build specific projects on these rivers, then these companies surely considered when the licenses were granted that they might be called upon to pay for benefits received and yet, surely they did not consider that at a later time, possibly 15 or 20 years later, that they would be able to come back and assess against the Federal Government downstream benefits.

We also feel that the passage of this bill will inevitably result in higher costs of power, especially in the northwest area, and as our rural electric cooperatives are certainly greatly affected by any increase in rates in that area, we ask the committee that it not approve S. 1574 or the substitute as proposed by the Federal Power Commission.

Mr. LINEWEAVER. Thank you, Mr. Fain.

Your statement will be put in the record as if you read it.

(The statement referred to follows:)

**STATEMENT OF CHARLES J. FAIN, ASSISTANT GENERAL MANAGER,  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, IN  
OPPOSITION TO S. 1574**

Mr. Chairman and gentlemen of the committee, my name is Charles J. Fain. I am assistant general manager of the National Rural Electric Cooperative Association, which is the national service organization representing some 92 percent of all REA-financed rural electric systems operating in 42 States and the Territory of Alaska. First, I would like to explain to the committee why it is that our member systems have such a stake in the disposition of Senate bill 1574, which is being considered by you today.

During the fiscal year 1954, the rural electric systems throughout the United States used 15.1 billion kilowatt-hours of energy. This represents an increase of 15.4 percent over the same figure for fiscal 1953, and indicates that the electrical loads of the rural areas are growing rapidly and have not ceased to grow even though in most areas about 90 percent of the farms are now electrified. It is inter-

esting to note that total wholesale power requirements cost the rural electric systems \$109 million during fiscal 1954. During that year, 6.96 billion kilowatt-hours, or 46 percent of our total power requirements was purchased from private companies. We purchased 4.63 billion kilowatt-hours, or 30.7 percent of our total needs, from Federal power marketing agencies. We generated 2.30 billion kilowatt-hours, 15.2 percent of the total, ourselves, and the remaining 8.1 percent we purchased from other miscellaneous sources. Thus, it is readily apparent that any measure which significantly affects the cost or availability of Federal power will, in turn, have a direct effect upon our member systems.

It is our understanding, Mr. Chairman, that spokesmen for both the Federal Power Commission and the Department of the Interior have stated that in their opinion, enactment of S. 1574, as originally proposed, would prove awkward of administration. They have, we are told, recommended, with the concurrence of the Assistant Director of the Budget, Mr. Donald R. Belcher, that the original bill be amended so that the authority contained in the proposal be delegated not to the Secretary of the Interior as originally proposed, but to the Federal Power Commission.

The substitute bill proposed by the Federal Power Commission is, except for section 2 (g), identical to Senate bill S. 3434, proposed during the 2d session of the 83d Congress. During hearings on S. 3434, held last year by the Subcommittee on Business and Consumer Interests of the Senate Interstate and Foreign Commerce Committee, I appeared in opposition to S. 3434. The position of the National Rural Electric Cooperative Association has not changed during the intervening months, and we, therefore, are opposed to S. 1574.

As we feel Senate bill 1574, like S. 3434 proposed last year, will inevitably drive up the cost of power generated at Federal projects and make it less likely that additional Federal multiple-purpose projects will be constructed in the future, it is essential that Senate bill 1574 not be approved by the Congress. With your permission, I would like to set out in the remainder of this statement, in detail, why we feel Senate bill 1574 is not in the best interests of the rural electric systems throughout the United States; and also why it is not in the best interests of our Government in the comprehensive form by which it is drawn.

As the subcommittee is well aware, the Federal Power Commission has long been vested with the authority to assess annual charges against privately owned water resource developments for benefits which accrue to them by reason of the existence of Federal multiple-purpose dams upstream. S. 1574 retains this feature of the Federal Power Act. It would make two net substantive changes in the law. The FPC would be empowered to assess charges against Federal multiple-purpose projects for benefits conferred on them by privately owned projects on the same stream. The Commission would also be empowered to charge one Federal project for benefits conferred on it by another Federal project.

To the best of our knowledge, the Commission has exercised its existing authority to fix and collect such charges from private utility companies only to a very limited extent, and the Federal Government has, up to the present time, received very few payments for benefits

accruing to privately owned projects. For instance, Interior Department figures indicate that the Hungry Horse project on the South Fork of the Flathead River in Montana will benefit privately owned downstream plants owned by the Washington Water Power Co. and Montana Power Co. in the amount of some 163,000 kilowatts of firm capability. The Hungry Horse project has been on the line for almost 2 years now, yet the Federal Power Commission, to our knowledge, has entered no final order establishing payments by the private companies to the Federal Government for the benefits. A similar situation exists in the Southeast United States where the Federal Government has constructed the 208,000-kilowatt John H. Kerr Dam on the Roanoke River in Virginia.

The Virginia Electric & Power Co. has been granted an FPC license to build the Roanoke Rapids site downstream from the John H. Kerr Dam. Roanoke Rapids is under construction. Estimates of benefits accruing to the Roanoke Rapids site from the construction of the John H. Kerr Federal Dam upstream have been estimated at from \$250,000 per year to \$1,955,000 per year. The Federal Power Commission has entered no final order assessing these benefits, but has indicated in a statement of findings and order, relative to the operating height of the Roanoke Rapids pool, dated May 29, 1953, that the Commission then considered in favorable light the lowest estimate of \$250,000 per year rather than any of the higher estimates. The Commission found that the benefits accruing to the Roanoke Rapids site consisted exclusively of incremental energy increases, and that no additional firm capability was made available by the existence of the upstream Federal project. The Commission apparently did not consider the fact that were the Federal Government to operate on an integrated basis both the John H. Kerr Dam and the Roanoke Rapids project, as was originally contemplated, additional firm power would, in all probability, be made available by the integrated operation of these two projects. In other words, here the Federal Government is deprived of the right to develop and operate one of the most feasible projects in the comprehensive plan for the Roanoke Basin by the granting of the Roanoke Rapids license to Vepco. Estimates indicate that the withdrawal of Roanoke Rapids reduces the feasibility of the comprehensive plan from 1.47 to 1.34. Yet, in discussing the benefits accruing to the power company, the Commission did not consider these facts. And it should be emphasized that this is a very substantial consideration in nearly all cases where the Federal Government is deprived of operating two or more projects on a given stream on an integrated basis by the granting of a Federal Power Commission license to a private utility company to construct and operate a project previously reserved for integrated operation by the Federal Government.

It is also interesting to note, especially with respect to the Roanoke Rapids project, that the Virginia Electric & Power Co. was granted by the Defense Electric Power Administration a certificate entitling the company to depreciate over a period of 5 years \$21,511,750 of the total \$33 million estimated cost of the project. Assuming a project life of 40 years, the certificate would benefit the Virginia Electric & Power Co. in the amount of \$53,653,014, more than over 1.6 times the entire cost of the project.

Mr. Chairman, because of the wide diversity of opinion existing among the experts themselves as to how the benefits referred to in the bill should be evaluated, and the consequent paucity of precedent and administrative procedure to act as a guide governing the assignment of such downstream values, we feel that the proposed legislation in Senate bill 1574 is entirely too broad and all inclusive, and jeopardizing the interests of the Federal Government.

There is no specific direction provided by the legislation to govern the Federal Power Commission in assigning charges against the Federal Government, and there is no body of existing precedent on which to predict what the Commission may do.

In view of the almost unlimited authority contained in the bill, and in the substitute recommended by the FPC, the Interior Department, and the Bureau of the Budget, we feel that this legislation could well result in an exploitation of the people's investment in water-resource developments for the enrichment of private utility companies. It is our contention that the natural resources of the Nation belong to the people and to the Government of the people, and that the licensing of private companies to construct hydroelectric projects on navigable streams is a privilege granted by the people and not a right of the licensee. We, therefore, contend that there is no justification for the people to be liable for payment without limit to private utility companies for incidental benefits which may accrue from private construction of resource development projects for corporate profit purposes.

Moreover, the recommended substitute for the present bill contains no limitation on whether benefits accruing to the Federal Government will be confined to upstream storage benefits, downstream reregulation benefits, or any other type of benefit that may be conceived in future years. Will companies which built dams 50 years ago, without any thought of downstream benefits, now receive a windfall of taxpayers' money—even after the rate payers have amortized the project? Will the benefits surrendered by the United States from comprehensive development plans be taken into account?

We feel that the present legislation is especially dangerous as regards its application to the assessment of cost to downstream Federal projects for privately owned upstream reservoir projects. Downstream benefits, with respect to hydroelectric development, accrue only from those upstream projects which involve appreciable reservoirs to contain seasonal variations of flow in the stream. Frequently, in the case of a large reservoir project operating in the headwaters of a given stream, the benefits attributable to the project accrue largely, not at the site itself, but at downstream hydroelectric plants already existing or planned for future construction. The Federal power developments in the Pacific Northwest are an excellent example of this.

Referring to our earlier example of the Hungry Horse project on the South Fork of the Flathead River in Montana, Bureau of Reclamation figures indicate that the firm power available from the installed capacity at the Hungry Horse site is 220,000 kilowatts. On the other hand, the existence of this project and its large storage reservoir, makes available to downstream projects, an additional 830,000 kilowatts of dependable power. These downstream benefits accrue not only to the privately owned hydroelectric facilities already mentioned,

but also to projects owned and operated by the Federal Government, both existing and under construction.

The total cost of the Hungry Horse project is \$102 million, of which \$82 million is allocated to power. Of this \$82 million allocated to power, \$57 million is the joint cost of facilities allocated to power. Of this \$57 million, only \$19 million of the joint cost of facilities allocated to at-site power, and twice that amount, or \$38 million, is allocated to power facilities at downstream projects benefited by the Hungry Horse construction. Thus, about 37.5 percent of the total cost of the project is charged to downstream hydroelectric benefits. In addition, by building and operating the Hungry Horse project, the Federal Government not only secures operating control over the 220,000 kilowatts at the site, but more important, it controls the additional 890,000 kilowatts of downstream power and can operate the integrated system as a unit, thereby securing the maximum benefits from the whole. In order to accomplish such coordinated operation of a system, it is necessary that all parts be interconnected by high-voltage transmission network which provides for the free flow of power between the various interconnected generating units. In the case of the Hungry Horse project, it will be operated at high production during the critical winter months, and production will be reduced at the site during the high runoff months in the spring and summer.

Had a private utility company constructed the Hungry Horse project, it would be reasonable to assume that under the proposed legislation, a goodly portion of its construction cost would have been paid by the Federal Government in the form of annual payments for benefits received at downstream projects. The Government would thereby, over a period of years, pay a percentage of the total cost of the project, but would be denied title to it. And these payments by the United States would apparently continue to perpetuity. Conceivably the Federal payments could repay to the private company the entire cost of its project. By contrast, the Federal Government having constructed the project itself, holds title to it and will continue to accrue benefits from the project in the form of power sales revenue, not only during the amortization period, but thereafter during the entire remaining useful life of the project.

Moreover, it is very doubtful that any private utility company, operating for profit purposes, would be able to as fully integrate a project such as Hungry Horse to provide maximum benefits to the area grid as does the Federal Government. Any utility company would have to maximize production at a project such as Hungry Horse during the entire year, reserving for only secondary consideration the benefits it made available to other generating plants downstream.

The private company undertaking these upstream storage projects, would secure operating control not only of the at-site power, but of the far greater quantities of power made available downstream by water released from the project, and although the Federal Government paid for downstream benefits, it would have no control over their availability.

On August 24, 1954, an article appeared in the Wall Street Journal directly bearing on this legislation. A combination of four major private utility companies in the Northwest, doing business as the

Pacific Northwest Power Co., stated, through Mr. Kinsey Robinson, its president, that although the Federal Power Commission had granted Pacific Northwest an 18-month preliminary permit to build 2 upstream reservoir storage projects on the Clearwater River, construction of these projects by his company depended on 2 conditions. One was enactment by the Congress of a downstream benefits bill to provide assessment on downstream dams for benefits from upstream water storage. Mr. Robinson's other condition for building was a decision by the Federal Government to advance funds for flood control features of the dam. The following is a copy of the excerpt from the Wall Street Journal to which I refer.

#### PACIFIC NORTHWEST POWER TO EXPLORE TWO SITES FOR IDAHO POWER DAMS

SPOKANE.—Pacific Northwest Power Co. will do exploratory work this fall at the sites of two proposed power dams in Idaho, according to Kinsey M. Robinson, president. The Federal Power Commission has granted the company an 18-month preliminary permit for study of the proposed hydroelectric developments.

The locations are at Bruce's Eddy on the North Fork of the Clearwater River, with power capability estimated at 244,000 kilowatts, and Penny Cliffs on the Middle Fork of the Clearwater, rated at 292,000 kilowatts.

Mr. Robinson said Pacific Northwest Power had asked for more time, as the 18-month limit is "terribly short." He also said two fundamental questions must be settled before the company could proceed to build the dams—a downstream benefit act of Congress, to standardize assessment of costs to downstream dams for benefits from upstream water storage, and a decision whether the Federal Government is willing to advance funds for flood-control features of the dams.

Pacific Northwest Power is a joint enterprise of Washington Water Power Co., which Mr. Robinson also heads; Montana Power Co., Pacific Power & Light Co., and Portland General Electric Co.

Mr. Robinson apparently feels that the Federal Government should finance, as flood-control features, a major portion of the project for which he has applied for a license, and in addition, should help pay for construction by his company of the power features of the project by assessing downstream Federal plants for the incidental benefits provided by the joint Federal-company project. Mr. Robinson is also president of the Washington Water Power Co. of Spokane, Wash., which has received a certificate authorizing accelerated depreciation on \$29,970,000 of the total cost of its 200,000 kilowatt Cabinet Gorge hydroelectric plant.

Federal power construction agencies in securing congressional authorizations and appropriations for development of comprehensive river basin development plans must now design with two criteria in mind. Each individual project of the plan must show a benefit-to-cost ratio better than 1 to 1, and the overall comprehensive plan must also show a benefit-to-cost ratio better than 1 to 1. If the private utility companies are allowed to develop the more desirable sites with the aid of subsidies in the form of Federal payments for downstream benefits, lucrative "partnership" proposals, and accelerated depreciation certificates, the Government will be left to develop the less desirable sites and the overall economy of the comprehensive plan will be reduced.

Furthermore, the cost of developing a given hydroelectric site would generally be higher to a private corporation than to the Federal Government because of the fact that the private group must pay a higher rate of interest on its capital investment, and must pay income taxes on the revenue accruing from the project. Thus, it can be

assumed that the private group may not always develop the entire potential of a given site, but the development undertaken by it may nonetheless, preclude full development by the Federal Government.

The pending application of the Idaho Power Co. for a license to build three relatively low head dams on the Snake River is a good example. The Bureau of Reclamation has rather complete plans for the construction of a high head Hells Canyon Dam on the Snake River which would develop virtually the entire potential of the river at that point. The single Idaho Power Co. Brownlee Dam recommended for licensing by FPC Presiding Examiner William J. Costello would develop only a portion of the benefits. Therefore, if the Federal Power Commission grants this license, it means that the Federal Hells Canyon Dam, including 3.9-million acre-feet of reservoir storage and approximately 1-million kilowatts of firm power, would be superseded by the private development plan which includes only 1-million acre-feet of reservoir storage and 230,000 kilowatts of firm power development.

In other words, the Government and the people it represents in the Northwest would be forever deprived of 2.9 million acre-feet of reservoir storage and 770,000 kilowatts of firm power. It seems to us perfectly absurd that although the Government, in this instance, would surrender 770,000 kilowatts of firm power and accompanying reservoir storage, it should nonetheless be ordered to pay such benefits as may accrue to downstream projects from the limited development by the Idaho Power Co. of the Snake River. The Idaho Power Co. also has pending with the Office of Defense Mobilization an application for a certificate entitling it to depreciate in 5 years for tax purposes \$67,138,000 of the \$90,433,000 cost of the Brownlee project.

We feel, Mr. Chairman, in addition, that S. 1574 and similar legislation would have an extremely detrimental effect on Federal comprehensive multiple-purpose river basin development plans. Again this is especially true with respect to the Columbia River Basin system in the Northwest where the Federal Government has already built many of the downstream plants. There are many upstream reservoir projects yet to be undertaken as part of the Federal plan. Two portions of the legislation presently under consideration would strike very hard at these comprehensive river basin development programs.

There are usually several hydroelectric projects in any multiple-purpose river basin plan. Each of them depends on the others for its feasibility. Thus, the feasibility of the 180,000-kilowatt Ice Harbor project on the Snake River which is authorized for Federal construction and on which the Corps of Engineers has already spent over a million dollars in planning funds, is based on the availability of upstream storage benefits from the Hells Canyon project.

If, under section 2 of the proposed legislation, S. 1574, downstream benefits accruing to the Ice Harbor site from upstream storage from Hells Canyon, when and if it becomes available, are charged against the Ice Harbor project, it immediately becomes infeasible and impossible of construction by the Federal Government. If, under section 1 of the proposed legislation a private utility company were to construct the Hells Canyon project, the benefits so accruing to Ice Harbor would be charged against it. The project would then also become infeasible under this portion of the bill. Thus, we see that both sections 1 and 2 of the bill could conceivably revise the whole economic feasibility

study of a comprehensive river basin development program either by authorizing transfer of benefits accredited to downstream Federal projects to privately owned upstream reservoir storage sites, or by allowing shuffling allocation among several federally owned projects of the benefits conferred upon each of them by all of the others. Thus, the bill effectively authorizes whatever agency is delegated authority under it to effectively review and pass upon the feasibility of the entire Federal power program in the Pacific Northwest and in other areas where comprehensive plans have been approved. Comprehensive basin plans must be viewed as an integrated concept. They cannot be considered as a series of discrete units. If the legislation now proposed as S. 1574 is passed, the Federal agency responsible for developing comprehensive river basin plans will have to not only design systems which are feasible as a whole and in which each project is separately feasible, but will have the additional burden of proving each project separately feasible when charged with all benefits accruing from other projects in the plan. Such criteria would present a serious threat to future development plans. Although it may not be the intent of the Congress to convey, in the proposed legislation, power to review and redetermine the feasibility of Federal water-resource development programs, nonetheless we feel such authority will be the effective result of the bill.

The rural electric systems of the country have a tremendous stake in the Federal power construction and marketing program. In the Pacific Northwest and in the Tennessee Valley area, our systems have requirements contracts with the Government under which the Federal agency agrees to supply the entire requirements of a particular system. Under these circumstances, we must oppose any legislation which provides for payments by the Federal Government to a private utility company for downstream benefits, thereby making feasible sites out of otherwise infeasible ones for private companies, and which would destroy or reduce the feasibility of Federal development.

We feel that the legislation proposed in Senate bill 1574 is entirely too broad and imposes no limits to the charges that may be made against the Federal power program by private utility companies which may construct stream improvement facilities under license by the Federal Power Commission. There is little existing precedent upon which to forecast the action of the Commission as regards the assignment of benefits from future stream improvements undertaken by private utility companies. As regards existing projects owned and operated by private groups, I would like to say that to now assess against downstream Federal projects a portion of the capital and operating costs of the privately owned upstream projects would be nothing short of a windfall or giveaway of the peoples resources to the private corporation.

Feasibility of existing private projects was not based upon the payment to the Federal Government of downstream benefits, and we contend that the people, as owners of the Federal resources of the Nation, are, in licensing for private development of these projects, adequately compensating the companies for such downstream benefits as may normally accrue. In addition to this, we feel that the virtually unlimited authority contained in the proposed legislation could very appreciably raise the cost of power to the Federal Government at



existing and proposed projects, and thereby destroy the value of Federal power to the rural electric systems. As you know, our systems rely on the availability of increased amounts of Federal power, not only because of the fact that they are able to buy such power at lower than average rates, but because the Federal power construction and marketing program has provided a standard against which to measure the rates and operating practices of adjacent private utility companies. We further feel that the virtually unlimited authority contained in this bill would, by subsidizing development by private utility companies of the most desirable units of an extensive basinwide development program, lower the overall economy of such a plan, and could, as in the Hells Canyon case, lead to less than full development of the potentialities of various sites throughout the country.

Mr. LINEWEAVER. I have some inserts for the record.

First is a telegram to Hon. Clinton Anderson from Mr. B. Boydstun, acting general manager, Grand River Dam Authority in Oklahoma, favoring the bill.

(The telegram follows:)

VINITA, OKLA., June 27, 1955.

HON. CLINTON ANDERSON,  
*United States Senator, Washington, D. C.:*

Re Senate bill 1574: It is my understanding that your committee will consider this proposed legislation within the next few days. The Grand River Dam Authority is a public power agency of the State of Oklahoma. It owns and operates the Pensacola Dam and Reservoir project on Grand River in Oklahoma. This project provides the headwater improvement and storage for the Government-owned Fort Gibson Dam downstream from the Pensacola Dam. The Authority is a licensee of the Federal Power Commission. We urge favorable consideration to require the Government to compensate the Authority for the benefits that it receives from the headwater improvements and storage.

Q. B. BOYDSTUN,  
*Acting General Manager, Grand River Dam Authority.*

Mr. LINEWEAVER. Next is a letter from the National Association of Railroad and Utilities Commissioners to Senator Murray, chairman of the Senate Committee on Interior and Insular Affairs, also endorsing S. 1574.

(The letter referred to follows:)

NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS,  
*Washington 4, D. C., May 26, 1955.*

HON. JAMES E. MURRAY,  
*Chairman, Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.*

DEAR CHAIRMAN MURRAY: I am advised that your committee plans to hold hearings on May 27 on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom and for other purposes.

The membership of this association embraces the members of the public utility regulatory commissions and boards of all of the 48 States of the United States and the District of Columbia. The executive committee of this association at a regular meeting held in Washington, D. C., in June 14, 1954, adopted a resolution favoring enactment of S. 3434, 83d Congress, which resolution reads as follows:

"RESOLUTION FAVORING ENACTMENT OF S. 3434, 83D CONGRESS

"Resolved, That this association favors enactment of S. 3434, 83d Congress, a bill to amend section 10 (f) of the Federal Power Act to provide that charges shall be paid by Federal power projects which are benefited by stream improvements constructed by other parties, the payments to be determined in the same manner as for charges paid by non-Federal interests; and

*"Resolved further, That the committee on legislation and the legal representatives of this association be and they are hereby authorized to support said bill, or any similar bill which will accomplish the same objectives, on behalf of this association at any hearing upon such bill or bills before any committee in either House of Congress."*

S. 1574 provides that the Secretary of the Interior shall fix the annual payments. S. 3434, 83d Congress, would have amended section 10 (f) of the Federal Power Act adding a new section 31 to that act. I am advised that the Federal Power Commission report on S. 1574 recommends that the bill be amended to repeal 10 (f) of the Federal Power Act and by adding a new section 31 to the act. On behalf of this association I recommend that S. 1574 be amended in the manner recommended by the Federal Power Commission.

It would be sincerely appreciated if you would incorporate this letter and resolution in the record of the hearings held by your committee in regard to S. 1574.

Sincerely yours,

AUSTIN L. ROBERTS, Jr.,  
*General Solicitor.*

Mr. LINEWEAVER. Next are two letters from Gus Norwood, executive secretary of the Northwest Public Power Association, Inc., opposing the bill; also a letter from Ken Billington, of the Washington Public Utilities District Association; and a statement from C. Emerson Duncan II, of counsel for the American Public Power Association.

NORTHWEST PUBLIC POWER ASSOCIATION, INC.,  
*Vancouver, Wash., June 4, 1955.*

HON. JAMES E. MURRAY,  
*Chairman, Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.*

DEAR SENATOR MURRAY: By resolution of its member electric systems which serve almost 2 million people in Montana, Idaho, Oregon, Washington, and Alaska, the Northwest Public Power Association opposes Senate bill 1574 and urges the retention of the policy of section 10 (f) of the Federal Power Act in its present form.

Senate bill 1574 is objectionable on the same grounds as were developed in the opposition testimony against Senate bill 3434 of the 83d Congress. What Senate bill 3434 attempted to do by direct amendment of the Federal Power Act, the new Senate bill 1574 would attempt to do by indirection by granting the equivalent authority to the Secretary of Interior.

For over three decades private electric corporations have been granted 50-year leases on tremendously valuable Federal waterpower sites under FPC license with the understanding that under section 10 (f) any downstream Federal dam, present or future, will not be required to pay rent, toll, or tribute to any privately owned upstream storage reservoir. This provision has been sound in law and fair in equity because the sovereign people of the United States own the waterpowers of the great rivers. Free storage benefits to downstream Federal dams is part of the bargain, part of the quid pro quo, for the FPC license. It is part of the inherent characteristic of the site, as a part of the river system, which has not been licensed away.

An FPC license does not confer ownership. It merely grants a lease which in itself is most valuable even though the title to the waterpower resource remains in the name of the public. The Federal Government continues to own every site for which a license has been granted.

It is inconceivable that the people of the United States as the owners of Bonneville Dam should pay tribute to an upstream private utility merely because that utility was granted use of a valuable upstream waterpower privilege which also belongs to the people. This would be like paying rent on your own property.

Accordingly, we respectfully urge your rejection of Senate bill 1574.

The principles and objectives of Senate bill 1574 and of Senate bill 3434 of the previous Congress are also opposed in the testimony and resolutions of region 9 of the National Rural Electric Cooperative Association, the American Public Power Association, the Washington Public Utility Districts Association, the Oregon Rural Electric Cooperative Association, and the Montana State Rural Electric Cooperative Association.

Respectfully yours,

GUS NORWOOD,  
*Executive Secretary.*

NORTHWEST PUBLIC POWER ASSOCIATION,  
Vancouver, Wash., June 28, 1955.

Re Opposition to S. 1574, Upstream Storage Charges

Hon. JAMES E. MURRAY,  
Chairman, Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.

DEAR SENATOR MURRAY: This supplements our testimony of June 4 which was submitted in the form of a letter in opposition to Senate bill 1574. We would like to list two additional objections to the bill.

We are now advised that S. 1574 would require the Federal Government to pay downstream benefits not only at future private utility dams but at projects which have already been constructed; for example, the Federal Government as the owner of the Bonneville Dam on the Columbia River would be required to pay tribute to the Montana Power Co. which happens to own the Kerr Dam and regulates the level of Flathead Lake. The ideal storage from Flathead Lake was achieved at very little additional cost but results in appreciable downstream benefits. However, it was clearly understood when the company received its FPC license for the Kerr project that these downstream benefits constituted a part of the consideration, a part of the quid pro quo for the license. Thus Senate bill 1574 would provide for a duplication of benefits or create new windfall profits for the Montana Power Co. These profits would accrue only to the stockholders and they would be exacted only from the electric consumers. The result would be higher electric rates. Aside from the obvious injustice of Senate bill 1574, this proposal is contrary to good public policy.

#### IS THIS GOOD BUSINESS?

May I strongly urge upon the committee that the committee staff be requested to apply S. 1574 to a number of actual cases such as the Hungry Horse Dam or the Brucers Eddy Dam. As a guide to such study may I submit the following hypothetical illustration. Let it be supposed that a \$100 million project is to be constructed by a private utility as an upstream storage dam and that all downstream dams are federally owned. Let it be supposed that the costs of this dam are allocated entirely to power, half of which is for power generated at the site and half for downstream power. Under S. 1574 the Federal Government must pay to the private utility a 12 percent rate of return, before Federal income taxes, upon \$50 million or \$6 million per annum on this account. This does not include the cost of operation, maintenance, and administration. However, if the Federal Government constructed the entire project, the rate of interest would be 2½ percent on the entire \$100 million or \$2.5 million per annum. Thus the \$6 million charge under S. 1574 is 140 percent greater than would be the case if the entire project were federally financed, yet the Federal Government under S. 1574 would obtain only half the benefits, namely the downstream benefits.

This case study, however, illustrates only the direct economic cost which would result from S. 1574. The analysis should be continued to show how the long range development of an entire river basin would be hampered.

For example in the Columbia River Basin our preliminary study indicates that under a ceiling price of 6 mills for power that about 80 to 90 percent of the power potential of the Columbia River Basin can be developed if the interest rate is 2½ percent, but that under typical private utility financing that far less than half of the Columbia River Basin would be developed. Thus Senate bill 1574 may operate as a form of birth control for the development of river basins.

This analysis should then be continued further to show that as projects like Hungry Horse Dam are not built, because they are not feasible under private utility financing, the region suffers vast economic losses because of industrial developments and other economic opportunities which are prevented from coming into being.

The first full year of operation of the Hungry Horse project has just been reported in the 1954 Annual Report of the Bonneville Power Administration which shows a cost of \$2.93 million of which some 60 percent was required for interest. Interest is the key cost. With interest at 2½ percent it is readily seen that for each 1 percent of interest there is a 24 percent power cost. Thus to increase the rate of interest from 2½ percent to 3½ percent would increase the cost of Hungry Horse power by 24 percent. If the 2½ percent were increased under private utility financing to a 12 percent rate of return before Federal income taxes the cost of power from Hungry Horse Dam would be more than tripled. The result

would be that there would be no phosphate plant at Silver Bow, Mont., that there would be no aluminum plant at Columbia Falls, Mont., that there would be no dam at the Hungry Horse Dam site; the economy of western Montana would not be good.

I most strongly urge your rejection of S. 1574 and also the rejection of its predecessor, S. 3434 of the last Congress. I urge the retention of section 10 (f) of the Federal Power Act. Every organization of public and cooperative electric systems in the Pacific Northwest is on record against these bills.

I can only add an observation which must be described as strictly personal: It is my personal opinion that Senate bill 1574 represents the thief at the gate. It proposes not only to establish a tollgate upon our presently developed water resources and upon such future projects as may be built, but by its effect will serve to throttle a large proportion of our potential river development.

Most respectfully submitted.

GUS NORWOOD,  
*Executive Secretary.*

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WASHINGTON PUBLIC UTILITY DISTRICTS' ASSOCIATION,

*Seattle 1, Wash., July 1, 1955.*

HON. JAMES E. MURRAY,  
*Chairman, Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington 25, D. C.*

(Attention of Subcommittee on S. 1574, upstream storage charge legislation.)

DEAR SENATOR MURRAY: We understand that hearings were held on S. 1574 on June 29, 1955.

Since we desire to be of record on this legislation but were unable to be present for a verbal presentation, may we respectfully request approval for inclusion in the record of our written statement in opposition to S. 1574.

The statement is attached.

Sincerely yours,

KEN BILLINGTON.

STATEMENT IN OPPOSITION TO S. 1574 ON BEHALF OF THE WASHINGTON PUBLIC  
UTILITY DISTRICT'S ASSOCIATION, SEATTLE, WASH.

This association comprised in membership of 23 public-utility districts serving in excess of 216,000 electric customers in the State of Washington, adopted the following resolution in opposition to S. 1574 on June 10, 1955:

"UPSTREAM STORAGE CHARGES

"Whereas the Senate Committee on Interior and Insular Affairs is conducting hearings on Senate bill 1574 which would require downstream Federal dams such as Bonneville Dam to pay upstream storage charges to future private utility upstream dams; and "Whereas such reimbursement would not only provide a heavy subsidy to private utilities but would also artificially increase our cost power: now, therefore, be it

"Resolved, That we urge Washington Senators and Representatives to oppose Senate bill 1574."

Our opposition to this legislation is based on the principle that the navigable water resources of this Nation are a Federal public domain. Non-Federal water users are permitted to develop this public resource under FPC licenses. The licenses provide the right of use but not ownership of such public resource. The non-Federal developer evaluates any water-resource development on the basis of his own individual project's production. He makes use of only his own financial resources. An in return, he gets the benefits accruing from such project. When the production or benefits of his facility are increased or augmented by a public Government investment (i. e., upstream storage) it is only right that such non-Federal developer should be required to pay for these additional benefits which come, not from his own investment, but rather from the investment of the people as a whole. This is the reasoning which supports section 10 (f) of the Federal Water Power Act, and which has been the rule in river development for over 30 years.

Preliminary studies as regards the amount of payments on the part of non-Federal owners to the Federal Government for benefits which came to them from Government investment in headwater developments, have tended toward the

establishment of a very reasonable charge for the increased kilowatt-hour production.

Certainly, the incremental cost to the non-Federal water users of the additional energy production due to such Federal investments is only a fraction of the cost of the power produced at these plants as a result of the at-site facilities installed by such non-Federal water users themselves.

To alter present procedures and make the Federal Government pay upstream storage charges to non-Federal users would doubly benefit such developers. We feel it is proper, as our FPC licensing procedures provide, that a non-Federal user be told, "So long as you make full use of this site as provided for in the Federal Power Act, you may have the right to this site and its water to develop to the extent of your own finances and for your own special interest."

We do not think that such non-Federal developer should also be told, "In addition, we will pledge and loan to you the Government's investment and earning power of downstream plants to make your investment a much better one for your own special interest." This is what S. 1574 would do if enacted into law.

In short, we feel that special local interests should pay for the special "windfall" benefits which they may enjoy by virtue of public investment by all the people in upstream storage. But we do not think that all the people should be required to pay non-Federal upstream developers for storage benefits, in addition to granting them the right to the use of the public domain for their own individual purposes and benefit.

We respectfully urge rejection of this legislation.

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STATEMENT OF C. EMERSON DUNCAN II OF COUNSEL FOR THE AMERICAN PUBLIC POWER ASSOCIATION, ON S. 1574

My name is C. Emerson Duncan II. I am an attorney associated with the firm of Ely, McCarty & Duncan, Tower Building, Washington, D. C. We are general counsel for the American Public Power Association, and this statement is submitted on behalf of that association. The American Public Power Association is a national trade organization representing more than 800 local publicly owned electric utilities in 40 States and Puerto Rico.

The local publicly owned electric utilities which comprise our membership are substantial purchasers of federally produced hydroelectric power. In the fiscal year ending July 1, 1953, all local public agencies purchased 19,667 million kilowatt-hours from various Federal power-marketing agencies. This represented some 36.69 percent of all power sold by the Federal Government.

We are therefore concerned about S. 1574 not only because of the effect it might have upon the price at which such power would be sold, but also because of its possible effects on the economic feasibility of construction of dams in the future by the Federal Government.

S. 1574, introduced by Senator Goldwater, is entitled "A bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes."

For all practical purposes S. 1574 is identical in intent to S. 3434 which was introduced in the 83d Congress and referred to the Committee on Interstate and Foreign Commerce, except that the functions assigned to the Federal Power Commission under S. 3434 would be assigned to the Department of the Interior under S. 1574. S. 3434, in effect, would have repealed section 10 (f) of the Federal Power Act (16 U. S. C. 803 (f)) and would have substituted a new section which was recommended by the Federal Power Commission.

This new section would have provided for payments by the Federal Government for benefits received by Federal power projects from upstream non-Federal storage reservoirs.

The Federal Power Commission, in its report on S. 1574, recommended against the passage of the bill, and proposed again that language similar to that contained in S. 3434 of the 83d Congress be adopted instead. The chief objections raised by the Commission to the bill before the committee were, among others, that the arrangement contemplated under S. 1574 would give to the Secretary of the Interior the authority to determine charges for benefits received, with the additional authority to assess these charges against the proper parties—functions presently performed by the Commission. An equally serious matter would be the procedural questions raised by the bill, involving the manner in which parties may apply for, secure, and have reviewed determinations of headwater benefits

received and the costs to be shared. The Commission considered that before the bill could be effectively administered, provisions for providing notices, hearings, rehearings, and court review would have to be enacted. A method of enforcing determinations would also appear to be necessary. The Bureau of the Budget concurred in the recommendations of the Commission.

While the adverse recommendations of the Federal Power Commission and the Bureau of the Budget constitute a serious bar to favorable consideration of this legislation, there are equally compelling reasons why the legislation proposed as a substitute by the Commission (which is for all purposes the same legislation that was considered in the last Congress) should not be enacted.

The present language of section 10 (f) of the Federal Power Act (16 U. S. C. 803 (f)) provides that when licensees are benefited by reservoir or other headwater improvements constructed by other parties, including the United States, they shall reimburse the owner of the improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Federal Power Commission may deem equitable. In 1935, section 10 (f) was amended to provide for the reimbursement for headwater benefits by nonlicensees under certain circumstances.

Attempts have been made to justify the proposals of the Commission on the basis that the Federal Government should be required to make payments similar to those made by other licensees of hydroelectric projects when Federal projects derive benefits from an upstream developer. Proponents of the measure, however, have chosen to ignore the fundamental distinctions between the types of operations involved.

The present provisions of section 10 (f) of the Federal Power Act have been in force since 1920, when Congress enacted the Federal Power Act. The authority granted to the Federal Power Commission under that act to issue licenses to States, municipalities, cooperatives, private power companies and others, stems from the principle that ownership of the water resources of navigable streams rests with the people of the United States, and that those resources, therefore, are subject to the jurisdiction of the Congress under the commerce clause of the Constitution.

When private groups or individuals are granted licenses permitting them to utilize these resources, it is with the understanding that conditions which may be imposed by the terms of the license are imposed in the public interest and for the benefit of the people generally.

Under the terms of the amendment proposed by the Federal Power Commission, Federal projects which are to be constructed, as well as those already in existence, would be required to pay annual charges to the owner of a headwater facility, where the construction, operation, or maintenance of that facility benefits the Federal project. These annual charges would be determined by the Federal Power Commission, after a hearing, in accordance with a formula set forth in section 31 (a) of the FPC's proposed amendment.

Private licensees, whose operations have included the construction of upstream facilities which have benefited or will benefit Federal downstream projects, have in the past 30 years regarded the furnishing of any such benefit as a condition upon which the license was granted. To now provide that the private licensee shall be reimbursed for these benefits will mean nothing more than granting a windfall which was never anticipated, and which was never taken into account when costs of operations and rate schedules were determined. It would also mean an increase in the cost of generating power at existing federally owned projects and a decrease in the cost of generating power at privately owned projects. This may well have the effect of increasing the rates for publicly generated power, but there is no assurance that a corresponding reduction in the rates charged by private power producers will be forthcoming.

As to the possible effect of the proposed legislation upon Federal projects to be constructed in the future, the General Counsel of the Federal Power Commission testified:

"Under this bill, the power costs of a few Federal projects would include the headwater benefit charges which are now borne by other power consumers. In thus spreading the cost of headwater improvements, the bill would assist at least, to this limited extent, in securing comprehensive development of water resources."

The language of the Commission's proposed amendment, set forth in section 31 (b) in the annex to the Commission's report, obligates the United States to reimburse upstream developers for any benefits accruing to Federal hydroelectric power projects which will be constructed in the future as well as those already in operation. Just how the comprehensive development of water resources can be secured by the existence of this obligation on the part of Federal projects to reim-

burse upstream developers for benefits which must later be determined is not made clear. Certainly any projected plans for comprehensive Federal development of potential power sites would have to include possible increases in the cost of generating power at those sites as a result of subsequent construction, operation, and maintenance of upstream projects.

There has been, since section 10 (f) of the Federal Power Act was enacted, only one instance, according to the testimony of the General Counsel of the Federal Power Commission (Hearings, S: 3434), in which the Commission has made a final determination of annual payments which should be made by a licensee to an upstream developer for headwater improvements, but according to the testimony of Senator Morse before this committee, the United States has yet to receive 1 cent of revenue under the present law. How the formula set forth in the bill would apply, in the event that many Federal and non-Federal up-river projects were involved, each providing upstream benefits for at least one other, and possibly several, was not spelled out, and there was no testimony given before the committee on this point. It would be fair to anticipate, however, that the cost of making these determinations each 5 years, as provided in the legislation, might result in a very sizable increase in the Federal Power Commission's costs of administering the Federal Power Act.

The American Public Power Association takes the position that at the present time there is no vital need for changing the provisions of the Federal Power Act which apply to reimbursement for upstream benefits. Those licensees presently operating reservoirs or water-use facilities which directly or indirectly benefit a federally operated project are providing such benefits as a condition which was present or contemplated when licensed, and fully taken into account when costs of operations were determined. These costs are, of course, reflected in the rates to consumers, and in the profits retained by the operator. There is no question of equity involved here which would justify the adoption of the Commission's proposed amendment on the ground that only the Federal Government at present is not required to make similar payments. To the best of our knowledge, little if any income has been received by the Federal Treasury as a result of charges assessed against public or private licensees under presently existing regulations.

Further, the proposed amendment would thrust upon the Federal Power Commission a myriad of additional duties, in line with administrative requirements for carrying out the provisions of the law, which could only increase the present costs of operation. This factor should certainly be fully considered prior to any change in the existing law.

In addition, it should be pointed out that existing procedures, authorizing the accelerated amortization of costs of construction, have allowed private utility operators to benefit by many millions of dollars, and the cost of these benefits has been borne by the taxpayer generally. A further subsidy, such as that contemplated by the amendment which would seemingly help to defray not only the cost of construction, but of operation as well, is impossible of justification.

Mr. LINEWEAVER. Thank you, gentlemen, for appearing.

(Whereupon, at 12:30 p. m., the subcommittee recessed, subject to the call of the Chair.)

## HEADWATER BENEFITS

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WEDNESDAY, JULY 13, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met at 10:30 a. m., pursuant to notice, in room 224, Senate Office Building, Hon. Clinton P. Anderson presiding.

Present: Senator Clinton P. Anderson, New Mexico.

Senator ANDERSON. The subcommittee will be in order.

In view of the fact that Senator Gore was unable to be present on May 27 when hearings were held on S. 1574, a bill to provide for payments by the Secretary of the Interior to owners of non-Federal water-use facilities for hydroelectric power benefits realized by the United States therefrom, and for other purposes, the subcommittee is glad to give Senator Gore an opportunity to make a statement in opposition to this bill.

We will be glad to hear from you, Senator.

### STATEMENT OF HON. ALBERT GORE, A UNITED STATES SENATOR FROM THE STATE OF TENNESSEE

Senator GORE. I am grateful to you and to the members of this committee for the special effort that has been made to arrange an opportunity for me to present my views with respect to Senate bill 1574, nor under consideration by your committee.

Simply stated, the purpose of the bill is to provide for payment by the Federal Government to private concerns for any so-called headwater benefits accruing to a federally constructed facility on a navigable stream as a result of the construction upstream therefrom of some facility by a private concern operating under license.

The bill is unsound as a matter of public policy. It is based upon a philosophy which ignores the fundamental fact that the resources of our navigable streams are a part of the public domain belonging to all the people. When a private company is permitted to make use of these resources for private profit, it does so by sufferance rather than as a matter of right.

It is true that existing law contains a provision under which a private concern may be required to make certain payments to the Federal Government for benefits received from an upstream facility owned by the people.

It is argued that, in view of this fact, it is only fair and equitable to require similar payments by the Federal Government when the circumstances are reversed. This argument may appear plausible on the surface; however, as I have already indicated, it ignores the fact



that a private concern making use of these resources does so by virtue of a grant from the people.

In bestowing such a privilege, the representatives of the people have not only the right but the duty to issue such a license upon such conditions as may be necessary to protect the public interest.

It is interesting to note that this bill would be retroactive in this respect. The payments would be required not only with respect to Federal projects constructed in the future, but also to those already constructed.

As the members of this committee know, prior to the construction of any Federal facility, studies are conducted to determine its economic feasibility and the ratio of benefits to costs. The imposition of an additional burden, after the project has been constructed, would serve to alter the basis of economic justification. It would tend to disrupt the planned schedule for amortization of the Government's investment.

Then, too, the benefits of the bill would be made available not only to private facilities to be constructed in the future, but those already constructed as well.

Private concerns which have applied for a license to construct a given project have done so on the basis of existing law. Presumably, they did not expect any gratuity of this nature from the Federal Government. To grant such to them now would be nothing more than providing them with an unexpected and undeserved windfall profit.

S. 1574 is identical in purpose with the provisions of S. 3434, introduced during the 83d Congress and considered by the Interstate and Foreign Commerce Committee. I appeared before that committee in opposition to that bill last year.

All the arguments against S. 3434 are equally applicable to S. 1574. As a matter of fact, it is my understanding that this committee has received from certain agencies of the United States Government a recommendation that the language of S. 1574 be amended so as to conform word-for-word with the provisions of S. 3434.

The major difference in the two bills is one of administration. S. 1574 bestows upon the Secretary of the Interior, or such other agency as may have administrative control over a Federal facility, responsibility for administration.

As the committee knows, under the provisions of S. 3434, it was contemplated that the Federal Power Commission would exercise this responsibility.

The bill now before the committee is, in many respects, unclear in its details.

The Secretary of the Interior is given authority to fix and determine the amount of the payments due the owner of any upstream project said to benefit a Federal facility. He is also given authority to fix the amount of any payment that might be due the United States from a private concern. But nowhere is there any provision or direction as to how the charge due the Government is to be collected. The authority given to department heads who administer Federal projects is very broad, indeed.

I would like to call specifically to the attention of the committee the authority granted to these department and agency heads to negotiate privately contracts obligating the Government to make payment

to private owners for upstream improvements. Though the bill requires that such contracts be reported to Congress, specific legislation would be required to negate any of them.

S. 3434 was basically unsound; S. 1574 is equally unsound. In addition, the language of the latter bill would be even more difficult to administer.

I urge this committee to reject S. 1574 or any other bill designed to accomplish a similar objective.

Senator ANDERSON. Thank you very much, Senator, for your statement.

Is there anything further?

If not, the committee will stand adjourned with permission for additional statements to be filed for the record.

(Whereupon, at 10:40 a. m., the hearing was adjourned.)

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# ALASKA COAL LANDS

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OF MICHIGAN  
AUG 2 1955  
MAIN  
READING ROOM

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
TERRITORIES AND INSULAR AFFAIRS  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
RELATING TO  
SECRETARY OF THE INTERIOR'S ALLEGED FAILURE TO  
BUILD THE ALASKAN RAILROAD SPUR

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JUNE 1, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1955

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## ALASKA COAL LANDS

WEDNESDAY, JUNE 1, 1955

UNITED STATES SENATE

SUBCOMMITTEE ON TERRITORIES AND INSULAR AFFAIRS OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS.

*Washington, D. C.*

The subcommittee met at 10 a. m., pursuant to call, in room 224, Senate Office Building, Senator Alan Bible, acting chairman of the Subcommittee, presiding.

Present: Senators Alan Bible, Nevada; Barry Goldwater, Arizona.

Present also: Stewart French, General counsel, and N. D. McSherry, assistant chief clerk.

Senator BIBLE. The meeting will come to order, please.

At the outset, I want the record to show that the distinguished chairman of the Subcommittee on Territories, Senator Jackson of Washington, regrets his inability to be here to conduct this hearing personally, but he is unavoidably away from Washington. Accordingly, with the concurrence of the ranking majority member of the subcommittee, Senator Long of Louisiana, Senator Jackson has asked me to serve as chairman in this matter.

This hearing is somewhat unusual in that there is no bill or resolution concerning its subject before the Congress. Rather it is a hearing based on that historic "right of petition" which the Founding Fathers wrote into the Constitution.

A petition for a congressional hearing was filed on March 30, 1935, with the Congress by Max Barash, a Washington lawyer, on behalf of A. Ben Shallit, a mining engineer of Fairbanks, Alaska, who operates the Cripple Creek Co. on leased Federal coal lands in the Healy River Valley about 100 miles southwest of Fairbanks.

Mr. Shallit in his petition alleges that the Secretary of the Interior has both a statutory and an equitable duty to provide adequate rail facilities, in circumstances such as are present here, to develop the mineral deposits on the public lands of which he, Shallit, is lessee. He further alleges that up to the time of the filing of the petition, every governmental operating agency that looked into the matter, including agencies of the Department of the Interior and of the Department of Defense, as well as those of the Territory of Alaska, has recommended construction of a railroad spur, about 5 miles in length, from Suntrana, Alaska, through the Shallit leasehold to the Roth reserve, a coal lands area withdrawn by the Army.

The Shallit petition asserts that, upon the unanimous recommendation of the operating agencies, the Department of the Interior made a survey of route of the proposed spur, and developed working plans for building it.



However, although, according to the petition, no change took place in the basic facts which are briefly sketched in broad outline above, the Department of the Interior abruptly reversed its position, canceled its plans, and abandoned the project entirely.

Mr. Shallit charges that such a reversal of policy and action is highly detrimental to the national interest, and to his own interests. He asserts that if the spur is not built, costs of coal to the Federal Government and the economy of the Fairbanks area will continue to be upward to \$1 a ton higher than if it is built—that the lower costs of coal will rapidly amortize the cost; that because of the present necessity of delivery to the military 12 months a year, unless the spur is built, he will be forced out of business, an event which he asserts will greatly foster monopoly in central Alaska, leaving coal consumers at the mercy, for practical purposes, of a single producer.

Implicit and explicit in the petition is the allegation that the Secretary of Interior is failing to do his clear duty with respect to the development of Alaskan resources which are an important part of our natural resources, his duty with respect to the protection of the public and governmental agencies, and his duty to a Federal coal lands lessee, namely to Shallit himself.

Also, implicit and explicit, is the allegation that the Secretary, or his aides, may have been subjected to undue influence and pressures to the extent that he reversed his previous position and abandoned the projected building of the spur.

That such an allegation is a basic part of the petition is recognized in an answer filed on behalf of an adjoining downstream lessee, Usibelli Coal Mine, Inc., by the Washington law firm of Ely, McCarty & Duncan. The Usibelli answer, filed on May 12, states that part of its purpose is "to comment on the scandalous and unwarranted innuendo throughout the petition."

These charges and allegations, if true, constitute a serious indictment of the administration of the Department of the Interior.

Senator Jackson, upon having the petition referred to the Territories Subcommittee by Senator Murray, chairman of the full committee, immediately sent copies to the Secretary of the Interior, the Assistant Secretary of Defense, and other interested officials and persons. That was on April 1. Subsequently, after analyzing the petition, he wrote Secretary McKay at some length under date of April 13, raising specific points and asking specific questions.

I will read a copy of Senator Jackson's letter to the Secretary at this point.

HON. DOUGLAS MCKAY,

*Secretary of the Interior, Department of the Interior, Washington, D. C.*

DEAR MR. SECRETARY: Senator Murray has asked me, as chairman of the Territories Subcommittee, to look into the grave issues raised by the petition of A. Ben Shallit, Cripple Creek Coal Co., Fairbanks, Alaska, for an investigation of your alleged refusal to permit the Alaska Railroad to extend its lines a matter of 6 miles or so to serve the operating mines in the Healy River Valley, despite strong recommendations to do so from Federal and Territorial operating agencies. A copy of Mr. Shallit's petition is enclosed for convenient reference, although I note that his Washington attorney, Mr. Max Barash, already has forwarded copies to you and to the Secretary of Defense.

While of course Mr. Shallit's petition probably presents only one side of the situation, the case appears to warrant a public hearing and inquiry in view of this committee's responsibilities for the development of Alaska. However, before setting up such a hearing, it would be helpful to have your comments.

In particular, I would appreciate a report on the following specific points in the petition which commend themselves to my attention:

1. According to the petition (see exhibit CC) your Subcommittee on Coal of the Alaska Field Committee of the Department of the Interior unanimously passed resolutions on April 30, 1953, in pertinent part, as follows:

"(a) That the extension of the Healy River spur to the Roth property is vital to the security of military installations this coming fiscal year of 1954, and in the future, and to the development and prosperity of the coal industry as a whole in Alaska.

"(b) That by the extension of the Healy River spur to the Roth property would mean a substantial savings to the Government in the price of coal and this savings to the Government should amortize the cost of construction within 3 or 4 years."

2. In filing for a railroad right-of-way along the route of the proposed extension of the Alaska Railroad under date of April 29, 1953 (see exhibit X), acting general manager of the Alaska Railroad John E. Manley stated that:

"It is estimated that the construction of this line will result in the reduction of coal costs to the territory of \$200,000 annually."

In addition, Mr. Manley pointed out the line is necessary in order that Usibelli Coal Co., Cripple Creek Mining Co., and any future producers may have access to the Alaska Railroad, thereby reducing the costs of operations which are then passed on to the Government and private industry.

3. Both Mr. Ludlow G. Anderson, Chief of the Coal Mining Branch of the Bureau of Mines at Anchorage, Alaska, and Mr. L. H. Saarela, mining supervisor of the Geological Survey in charge of coal mining operations in Alaska, have recommended the extension of the Alaska Railroad to the operating coal mines, including the Cripple Creek Coal Co. mine, in the Healy River Valley. See pages 23, 42, and 43 of the petition.

4. Your special Committee to investigate the coal resources of Alaska, headed by Charles W. Connor, recommended the extension of the Alaska Railroad to the operating coal mines, including the Cripple Creek Coal Co. mine, in the Healy River Valley. See page 47 of the petition. See also pages 96 to 101 of the Connor Committee report which Mr. Strand was good enough to make available to the committee upon request, and in particular the following statement on page 101:

"Prompt construction of spur is urgent: The prompt construction of the spur, beginning no later than the summer of 1954, is of salient importance. By the beginning of fiscal year 1956 (the summer of 1955), the military coal requirements will create a need for increased production by both the Usibelli and Cripple Creek mines. Unless a railroad spur is available for use during fiscal year 1956, the ability of these mines to deliver coal in the required tonnages would be in doubt."

Again at page 100, the Connor Committee states that:

"The responsibility for constructing the spur would appear to rest upon the Alaska Railroad as the Department of the Interior agency charged with providing the rail transport facilities needed to further the development of the Territory. A corresponding responsibility to assist in financing the spur rests upon the military agencies which will be the principal beneficiaries of the project. Not only will the military agencies stand to profit directly from reduced coal costs, but the construction of the spur is clearly of major significance to the defense mission in Alaska."

The foregoing reports and recommendations of representatives of your department seem to clearly establish the fact that the extension of the Alaska Railroad to serve the operating coal mines in the Healy River Valley is necessary to develop the coal resources and to provide an adequate supply of coal for military and civilian consumption at the lowest possible cost. Although it appears from the petition that the Alaska Railroad had previously filed its railroad right-of-way and had made a survey of the route of proposed construction, the Alaska Railroad recently withdrew its right-of-way and abandoned the proposed construction.

With the idea of saving your time and that of the subcommittee, permit me, with all deference and courtesy, to observe that the mere assertion that no funds were available for the construction of either the railroad spur or the all-weather truckload will not be an adequate answer to the issues. We have a most impressive record of official findings and recommendations by your own field experts and by Territorial officials, that the construction of the spur or

the road will result in very substantial savings to the military, to the Territory, and to civilian users, and that it will contribute to the security and to rapid economic development of the area.

While I am aware of your probably justifiable pride in Mr. Kalbaugh's achievements in turning a deficit into a profit in his short term operation of the railroad, I am certain you will agree that his and your achievement in this respect should not be made at the expense of the basic purposes of the legislation establishing the railroad, namely, the economic development of Alaska. Nor should such achievement have been made at the expense of proper maintenance and development of the Federal property involved.

From the record, a number of spurs similar to that recommended for the Healy River Valley has been constructed without specific appropriation (see p. 75 of the petition). But more important, there does not appear to have been any effort whatever on the part of the Department to obtain funds to carry out the unequivocal recommendations of its experts.

I regret both the length of this letter and the perhaps unnecessary observations on the catchall answer of lack of funds, but I sincerely believe that time will be saved in the long run by my endeavor to come to grips with the issues at once.

That is signed by Senator Jackson.

Only yesterday the committee received a reply from the Department of the Interior, and I will also read this letter, which is dated May 27, 1955, and addressed to Senator Jackson.

MY DEAR SENATOR JACKSON: Reference is made to your letter of April 13, regarding the desire of the Cripple Creek Coal Co. to have the Alaska Railroad build a 6-mile extension of its Healy River branch, so as to provide better transportation for the Company and certain other coal properties in the Healy River Valley. You ask for the comments of this Department on Mr. Shallit's petition, and particularly with respect to certain specific points in it. The Department is more than willing to answer all your questions on the matter.

Certainly I agree with your statement that the basic purpose of the railroad is the economic development of Alaska, subject, of course, to the desirability of holding down railroad operating expenses and thus perhaps giving the public the benefit of freight rate reductions wherever possible. I may add that we do not consider there is any conflict between these two goals. That is, any justified extension or improvement of the railroad which will further the economy of the Territory may likewise be expected to be good business for the railroad.

In analyzing this proposal, therefore, the question is whether it will foster the development of the coal industry of Alaska. In other words, is there a need and a market for the coal which would be shipped over this extension?

We have studied these questions with considerable care and in the greatest detail over the past 2 years. On the basis of this study, we have found that there is no need for an expanded production capacity for coal north of the Alaska range for the next few years, so far as we can foresee. In fact, the capacity of existing mines north of the range is larger than the predicted demand. The sole effect of building the extension would be to improve the competitive position of one coal producer as against his competitors.

Furthermore, the terrain of the area is such that any railroad construction from the present railroad to the Roth Coal Reserve would be excessively costly, perhaps too much so to justify the construction even if the prospective tonnage were far greater than it is. A study of the construction cost of the proposed extension, largely prepared prior to Mr. F. E. Kalbaugh's period of service as general manager, arrived at an estimate of \$1,453,251.50. Mr. Kalbaugh feels that this figure was on the extremely conservative side.

In passing, I should like to mention that there are a number of coal mines being operated in the Territory without the benefit of special branches of the railroad to their properties, but none of them with the exception of the Cripple Creek Coal Co. is asking for construction of special rail connections for the benefit of the particular company. For example, the Arctic Coal Co. on Lignite Creek (north of the Healy River), the Usibelli mine adjacent to Cripple Creek, and several of the smaller mines in the Matanuska area are operating or have operated without expecting a Government subsidy in the form of a special branch of the railroad.

To understand the overexpanded condition of the coal industry of Alaska north of the range, it is necessary to be familiar with the changing picture of

coal needs in Alaska during the last few years. You will note that all of the citations in the Cripple Creek petition dealing with the alleged need for additional coal are dated in 1953 or prior thereto. As you correctly point out, as late as 1953 the Connor Committee felt that there might be a continuing need for expansion of coal production in the Territory. That conclusion, however, was subject to confirmation of the figures on anticipated defense requirements for the ensuing years. During recent years, military needs have constituted the greater part of the total demand for Alaskan coal. When the Connor Committee report was prepared, we refrained from publicizing it precisely because we were unable to "firm up" those figures on estimated defense needs.

Since then, defense requirements for coal in Alaska have been scrutinized with the greatest care by the Defense Department. The abrupt cessation of hostilities in Korea, considerable changes in the defense construction program in Alaska, plus the more careful scrutiny referred to above, have shown conclusively that the estimates of future need by the Connor Committee were far overstated.

Thus, you will note that the estimated deliveries required for defense establishments north of the range for the fiscal years 1955, 1956, 1957, and 1958 were given in 1953 by the Connor committee was 443,000, 895,000, 847,000, and 816,000 tons, respectively. By contrast, early in 1954 when the Defense Department made its determination of coal procurements requirements for fiscal year 1955, it found it needed only 142,000 tons—a reduction of more than two-thirds from the tentative Connor committee figure which had been prepared less than a year before. Although these figures relate to deliveries rather than consumption, and consumption has in fact been more stable, nevertheless the discrepancy is apparent.

This proposed sharp reduction in procurement promised to have disastrous effects on the financial situation of the coal producers in the Healy River Valley. The reduction was due in part to plans by the military to use stockpiles up fairly rapidly. For this reason, this Department and the Department of Defense jointly reached the conclusion that additional tonnage should be procured to replace in part the stockpiles being used. An additional 90,000 tones were purchased in this area, the tonnage being equally divided between the two unsuccessful bidders in the Healy River Valley.

For the next 3 fiscal years, the Defense Department has just issued its preliminary call for bids in amounts as follows: Fiscal year 1956, 149,800; fiscal year 1957 (estimate only) 286,000; and fiscal year 1958 (again estimate only), 392,500. Again you will note that these figures are from a third to a half of those estimated in 1953. Furthermore, although they appear to indicate a rising trend of need, that appearance is deceptive. The figures for fiscal years 1955, 1956, and 1957 are probably lower than consumption by reason of using accumulated stockpiles. With the expected attainment of a level of purchases somewhere near actual consumption in fiscal year 1958, we have no particular reason to expect that purchases will go any higher.

In short, our present problem is not one of stimulating the growth of the Alaskan coal industry north of the range through improving transportation facilities. Rather, it is one of helping the existing industry to stabilize. So far as we can see, that will be the principal problem for these coal producers for the next few years.

The above discussion represents our comments on Mr. Anderson's recommendations on page 23 and Mr. Saarela's comments on page 43 of the petition (item 3 of your letter) and on the quotation on page 101 of the Connor committee report (item 4 of your letter).

With respect to the several points in your letter dealing with the alleged need for the railroad extension from the standpoint of military security, that phase of the picture likewise hinges on the assumption that there will be a shortage, rather than a surplus of coal producing capacity. Your item (1 (a) and both quotations from the Connor committee report under your item 4 appear to stress that point. As noted above, the assumption of anticipated shortage is completely erroneous at the present time. To deal more directly with the security aspect of the question, however, I will state that at no time has the Department of Defense ever indicated to this Department that extension of the existing branch was essential from a security standpoint. No doubt the Department of Defense could tell you in more detail why it does not consider that the proposed extension is essential from a security standpoint.

The third major point mentioned in your letter has to do with alleged savings to coal consumers, sometimes given as amounting to \$200,000 annually. These al-

leged savings are estimated or touched on in items 1 (b) 2, 3 and the second quotation under item 4 of your letter.

This Department is convinced that, based on present-day conditions and those in the foreseeable future, no such savings would result but, on the contrary, the extension would fall far short of carrying sufficient tonnage to justify its construction. Further, we have no proof that any savings which, under certain conceivable conditions, might result, would accrue to the consumer rather than to a particular producer.

During the spring of 1953, at a meeting in Alaska attended by representatives of this Department and of the Cripple Creek Coal Co., it was tentatively estimated that savings of approximately \$200,000 per year, either to producer or consumer, might result from construction of the proposed extension, but that tentative estimate was based upon several assumptions which could not be confirmed at the time and have since failed to materialize.

First of all, the estimated saving assumed that the rather heavy output of the fiscal years 1953 and 1954 would continue for an indefinite period. As noted above, that assumption has already been proved unjustified.

Second, the figure assumed that Usibelli Coal Mine, Inc., would make the necessary investment in changed facilities required to use the proposed railroad transportation and would ship its entire output over the extension. This assumption was of key importance because the Usibelli mine has at all times been a far greater producer than the Cripple Creek property, generally producing several times the volume of Cripple Creek. Yet at no time has the Usibelli firm been very enthusiastic in support of the proposed extension, and at present we understand does not intend to use it, if constructed. The Usibelli firm contends that conversion to use the branch would require an additional investment of several hundred thousand dollars for construction of a new tipples and other needs, which would not be justified in view of the present discouraging outlook for volume sales.

Even under optimistic assumptions as to the future of the coal industry north of the range, the proposed extension cannot possibly be justified without firm assurance that the major producer to be served (Usibelli) would use it.

Thirdly, the justification depends upon the accuracy of estimated savings of \$0.84 per ton to Cripple Creek, and of \$0.42 per ton to Usibelli, and upon the willingness of both firms to pay off the construction costs at those rates for each ton of coal shipped. Elsewhere, Mr. Shallit (of Cripple Creek Coal Co.) has estimated his savings at only \$0.70 per ton (in the material supplied by Healy River Spur, Inc., in connection with its loan application to the RFC). More important, the Usibelli firm has never, so far as I know, accepted the hypothetical figure of \$0.42 per ton as its savings. To the contrary, Mr. Usibelli has insisted that conversion of his operations to use the railroad extension would put him to considerable expense which would require several years to amortize before any savings would accrue to his operations at all.

Fourthly, even under the optimistic estimates as to future coal requirements upon which this \$200,000 figure was based in 1953, it would have required 14 years to amortize the extension. During this 14-year period, no savings to either consumer or producer would accrue, since all such savings would have to be devoted to paying off the extension. Whether any savings would accrue following the conclusion of the 14-year period would of course depend on whether the demand for coal was sustained.

Fifth and finally, no showing has ever been made to this Department that the savings, if any, would accrue to the buyer rather than the producer of the coal. Clearly, the proposed extension would alter the competitive relationship among the three firms to the advantage of Cripple Creek. The Suntrana Mining Co., Inc. has largely exhausted its reserves of strippable coal, and Usibelli Coal Mine, Inc. likewise has used its strip reserves heavily. Both have made large investments in underground development. It is questionable whether either could compete against a third firm engaged entirely in a stripping operation, if that third firm were given the additional advantage of a special rail extension constructed primarily for its benefit.

I hope the above discussion has made clear the intimate linkage between coal production in the Healy River Valley and defense requirements north of the range. The Defense Department is almost entirely dependent upon these three mines for the coal supply for Ladd and Eielson Fields. The mines are almost entirely dependent upon military requirements for the business that keeps them alive. Obviously, defense requirements and the Alaskan coal industry will go up and down together.

For several years this Department has been engaged in endeavoring to maintain an even balance between these two factors—defense needs and Alaskan coal capacity. During periods when coal requirements appeared to be mounting, we have endeavored to develop additional capacity in advance of the need, through assistance with defense loans, provision of adequate rolling stock, etc. During periods of declining demand, such as at present, we believe we should try to keep all existing producers in business, through help in securing additional orders (such as the 90,000 tons of procurement for stockpiling made last year for fiscal year 1955), through encouraging a fair division of the existing market among the various producers, etc. Even during the present period of decline, we do not believe it would be desirable to permit any 1 of the 3 firms to fail by the wayside, since expanded needs for coal which we cannot now foresee may occur again in the future. We cannot justify a heavy investment in a rail extension at a time when the need clearly does not exist, the principal effect of which would be to subsidize one producer and disturb the present competitive relationship.

I hope the above rather lengthy explanation answers your questions. If you should desire further elaboration on any of the above points, please do not hesitate to call further on me or any of my staff for additional information.

Sincerely yours,

CLARENCE A. DAVIS,  
*Acting Secretary of the Interior.*

Senator BIBLE. The subcommittee also has received a reply from the Department of Defense and I will direct that this correspondence also appear in the record at this point.

(The letters referred to are as follows:)

APRIL 13, 1955.

HON. THOMAS P. PIKE,  
*Assistant Secretary of Defense,  
Department of Defense, Washington, D. C.*

DEAR MR. SECRETARY: Senator Murray has asked me, as chairman of the Subcommittee on Territories, to look into the petition of A. Ben Shallit, Cripple Creek Coal Co., Fairbanks, Alaska, for a public hearing on the alleged refusal of the Secretary of the Interior to permit construction of a railroad spur to permit development of the Healy River Valley coal reserves in Alaska.

A copy of Mr. Shallit's petition is enclosed for your convenient reference, although I note that his Washington attorney, Mr. Max Barash, has submitted a copy to Secretary Wilson.

The petition seems clearly to establish the fact that if the 5-mile spur were constructed, the military would be able to obtain coal at considerably less expense than at present, resulting in savings which would more than pay for the cost of the spur within a very short time. It is stated that at conferences held in the office of the Under Secretary of the Interior last spring, representatives of the Department of Defense (Colonel Vissering, chief of transportation, Mr. George A. Grimm, Utilities and Fuels Adviser, Commander Webster and Lieutenant Fogel of the Navy Fuel Supply Office) concurred in a finding that "construction of the railroad spur was in the public interest and in the interest of national defense to assure an uninterrupted supply of coal to meet military and civilian demand in Alaska for years ahead." P. 67 of the petition.)

Before setting a date for a public hearing, the subcommittee would appreciate the comments of the Defense Department on the situation set forth in the petition. Specifically, would the development of the Healy River Valley coal reserves be in the interests of national defense? Would construction of the 5-mile rail spur on an all-weather truck road result in cheaper prices and a more assured supply of coal to the military and to civilian users to the extent that the cost of the spur would be speedily amortized.

If the answer to either of the foregoing questions is in the affirmative, it would appear that either the spur or the road should be built.

Any additional facts or comments you would care to submit will, I am certain, be helpful to the committee.

Sincerely yours,

HENRY M. JACKSON,  
*Chairman, Subcommittee on Territories and Insular Affairs.*

ASSISTANT SECRETARY OF DEFENSE,  
Washington, D. C., May 4, 1955.

The Honorable HENRY M. JACKSON,  
United States Senate.

DEAR SENATOR JACKSON: Mr. Grimm and Commander Webster have returned from investigating the coal problems in Alaska. As I mentioned to you in my letter of April 20, their first-hand information enables me to more completely answer the questions you asked in your letter of April 13.

At the time of the meeting held in Under Secretary Tudor's office, the future status of the Military Establishments in Alaska was not clear. Considerable new construction was underway, especially large new heating and power plants. The best figures that were obtainable at the time indicated a large increase in the demand for coal. The magnitude of the requirements, as seen at that time, was such that all mines north of the range would be needed. To insure an uninterrupted supply of these requirements made it essential to provide either an all-weather road or a railroad spur. However, subsequently, with the operations of the military installations being more stabilized, the requirements for coal have been greatly reduced. As it appears now the present development of the Healy River Valley reserves are capable of supplying the current military requirements.

It is not possible for us to determine with any exactness the amount of saving to the Government that would be accomplished by an all-weather road or railroad spur. However, it appears that if the Crippled Creek Coal Co. could eliminate a 5-mile truck haul and deliver directly into cars at the rail head, a considerable saving in operating cost should result. An additional saving could be made by this means if production could be established on an all-year-around basis instead of seasonal. A still further saving should be reflected in doing away with the necessity of building new temporary roads at the beginning of each producing period. Upkeep on the railroad spur or the all-weather road should be much less than the above replacement expense.

We are not in a position to determine the rate of amortization or, for that matter, the total cost of building the road or the spur but we presume that this information will be made available from other sources.

We are glad to furnish you with any information we have and offer any assistance we can in this matter.

Sincerely yours,

T. P. PIKE.

Senator BIBLE. Certainly we do not want to foreclose the presentation of any information that will be helpful to the committee. The petition itself is in great detail running to 100 pages or so with appended exhibits. Then we have a fairly detailed answer filed by the counsel for the Usibelli Mine, Inc., and the responses from the Acting Secretary of Interior and the Assistant Secretary of Defense. All together the record is fairly voluminous already, and therefore I will ask the witnesses to try not to repeat detailed material that is already in the record. Rather, I think, as in a court case, they should limit their oral presentations to developing the main portions of their case pro and con. The Under Secretary of the Interior, Hon. Clarence Davis, will be with us at 2 o'clock this afternoon, and I believe we will hear him immediately upon our taking up after the noon recess.

Since Mr. Shallit is the petitioner here, the moving party, so to speak, I believe at this time it would be well to hear from him. Will you identify yourself for the record?

**TESTIMONY OF A. BEN SHALLIT, CRIPPLE CREEK COAL CO., ACCOMPANIED BY MAX BARASH, ATTORNEY, WASHINGTON, D. C.**

Mr. SHALLIT. Yes, sir. Before I start my testimony, would it be possible for me to be sworn in so that my testimony would be under oath?

Senator BIBLE. The committee counsel advises me there is precedent for a witness to be sworn at his own request. We certainly have no objection to your being sworn.

Will you please raise your right hand. Do you hereby swear the testimony you give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHALLIT. I do.

Senator BIBLE. I note your prepared statement is some 23 pages in length, and I think it might be well if you would just develop the highlights of your testimony, Mr. Shallit. But I want to emphasize that there is no desire nor intent to preclude you from a full presentation of your case.

Will you identify yourself for the purpose of the record?

Mr. SHALLIT. Mr. Chairman and gentlemen, I am Ben Shallit. I am owner and operator of the Cripple Creek Coal Co. of Fairbanks, Alaska. I am a professional mining engineer. With the exception of 2 years in the Navy, I have spent all of my working time since I entered the Alaska School of Mines in 1929 in some phases of mining.

Senator BIBLE. Mr. Shallit, before you proceed with your presentation, I think it might be well to have your counsel identify himself for the purpose of the record.

Mr. BARASH. My name is Max Barash. I am at 710 Sheraton Building, Washington 5, D. C. I am counsel for the Cripple Creek Coal Co. and have been for the last 5 years.

Senator BIBLE. You may proceed, Mr. Shallit.

Mr. SHALLIT. Thank you. I would like at this time first to take the opportunity to formally thank the committee for taking time for this hearing. I realize that with world tensions the way they are and with our country taking such an important part in it a Senator's time is of national and international importance. I am greatly appreciative of the opportunity afforded me and that our American way of life allows such an action as this hearing before a unit of the United States Senate.

Believe me, I never would have imposed upon your time in this manner if during the past 5 years I had not exhausted every other possible means. I would also at this time like to take the opportunity to formally thank the witnesses who have come here and the Secretary of the Interior for having made them available.

I fully realize the reluctance with which some of the witnesses may appear. They are in the unhappy position of having expressed professional opinions on which the Department has not seen fit to act. Some witnesses will be understandably hostile.

The Usibelli Coal Mine, Inc., have made themselves a part of these proceedings by their letter of May 12 to this committee. I think their 28-page report can be summarized in one phase: Fear of competition. Certainly adequate year-around transportation facilities to the mining areas above the Usibelli leasehold will take a portion of the present and future markets from Usibelli. A reduction will be made possible in the operating costs there, but this reduction in cost is of a necessity passed on to the consumer in accordance with the laws of supply and demand that are always effective in a consumer's market.

Senator GOLDWATER. May I interrupt just a moment? You said that Usibelli has joined. Do you mean they have joined you in this action or they are against you?

Mr. SHALLIT. They are against us, sir. They submitted a 28-page report in answer to our petition to the Secretary. I do not know whether it has been made a part of this record or not.



Senator BIBLE. It has been made a part of the record.

(See appendix B.)

Senator GOLDWATER. The reason I wanted to clear that up, Mr. Chairman, is that in your opening statement on page 2, you say:

Also implicit and explicit is the allegation that the Secretary or his aides may have been subjected to undue influence and pressure to the extent that he reversed his previous position and abandoned the projected building of the spur. Such an allegation is a basic part of the petition is recognized in an answer filed on behalf of the adjoining downstream lessee, Usibelli Coal Mine.

I was a little confused there because I did not know whether Usibelli agreed with your contentions or whether they were against your contentions.

Mr. SHALLITT. I hope that during my presentation I will be able to make the situation clear.

Senator GOLDWATER. I wanted to understand that at the outset.

Mr. SHALLIT. Thank you, sir. The cost of the construction of the branch line making available year around transportation to the entire area above the Usibelli Mine will be rapidly amortized and the military and civilian consumers will be benefited by the lower cost of coal. The entire area served by the Alaska Railroad will be benefited and the development of the territory served.

Before reading my prepared statement, I believe it might be advisable if I point out on these exhibits I have attached to the wall some of the geographic and geologic features.

Senator BIBLE. I think it would be well if you would designate for the purpose of the record.

Mr. SHALLIT. I did not bring a map of the whole territory of Alaska. I assume that you gentlemen are all more or less aware of the geographic shape of it. Fairbanks is about in the geographic heart of Alaska. It is 470 miles north of Fairbanks. Healy Station, which is the shipping point on the main line of Alaska Railroad for the coal field, is 112 miles south of Fairbanks. This map is kind of nice in that it shows apparent relationships of the hills and valleys and so forth.

Senator BIBLE. What map are you referring to?

Mr. SHALLIT. This is a map of the Fairbanks area. It is on a scale of about 4 miles to the inch.

Senator GOLDWATER. That is the topographic map. That should have a number on it.

Mr. SHALLIT. Yes, sir. It is NQ5615. This merely shows the area. The red line is the Alaska Railroad, and it is not particularly pertinent except that it does give you more or less an idea of the location of the railroad in relation to Fairbanks.

Senator BIBLE. I think we might identify that as Exhibit No. 1, which will be incorporated into the record of this hearing by reference.

(Exhibit No. 1 is on file with the committee, as are the other exhibits.)

Mr. SHALLIT. May I present the Healy map as exhibit 2?

Senator BIBLE. You might read the same number identification.

Mr. SHALLIT. The number is NN563. It is on the same scale. It shows the Alaska Railroad continuing from the point where I left off down to Honolulu on the Alaska Railroad, which does not mean a great deal except that I wanted to point out the present Healy branch,

the Suntrana branch of the Alaska spur, so that it can be seen relative to the Alaskan Railroad as a whole.

Senator BIBLE. What is the significance of the Healy spur?

Mr. SHALLIT. It connects the main line of the Alaska Railroad with the Healy River area of the Nenana coal field.

Senator GOLDWATER. Where are you in relation to that?

Mr. SHALLIT. I would like to show Healy Creek, which is this stream, to give you an idea of the general length. This is about 4 miles to the inch. On this side is Cripple Creek. Here is Suntrana. Here is Moody Creek, which is as large a stream as the Healy Creek itself. It comes in above Suntrana.

Senator BIBLE. How long is the Healy spur from the main line?

Mr. SHALLIT. The Healy spur is 4.4 miles from the main line.

Senator GOLDWATER. Where is your mine?

Mr. SHALLIT. It is rather difficult to show. It is at this red dot here.

Senator GOLDWATER. That is 5 miles?

Mr. SHALLIT. That is 5 miles from the end of the spur.

Senator GOLDWATER. When did they build the Healy spur?

Mr. SHALLIT. The Healy spur was built in 1922. At that time the Alaska Railroad was under construction and it was believed advisable to open up the coal fields of Alaska in order that the military could have coal. At that time the wood situation around Fairbanks was bad. At that time they were burning wood and they felt it was very necessary to open up the coal field.

The Healy River Coal Co. at that time owned the property at Healy. They made an offer to donate \$20,000 toward the cost of this road. Actually, when the negotiations were completed, the Healy River Coal Mine, Inc., put up \$10,000 in cash and sold the military \$20,000 worth of coal. The actual cost of building that branch at that time was considerably in excess of \$200,000. So the amount of money that Healy River put in was rather small.

In addition, I think it might be pertinent at this time to state that all of the spurs, all of the branches of the Alaska Railroad that have been built to any of the coal fields—and they have been built to all of the coal fields—have been built directly by the Alaska Railroad. The funds have come out of direct appropriations rather than specific appropriations for particular spurs.

In the basic act that set up the Alaska Railroad, one of the main purposes was to develop the territory of Alaska and develop it in such a manner that it would also develop the coal resources.

I think possibly this map is better than any.

Senator BIBLE. I think that may be introduced for purposes of the record as exhibit 2—that is, the second topographic map.

(Exhibit 2 marked for identification.)

Mr. SHALLIT. This is a map prepared by the United States Geological Survey. Incidentally, as a professional engineer I would like at this time to compliment the Survey on an exceptionally well-done job, not that the rest of their work is not also good. This is a map that I have had to work with professionally, and it is a very excellent and very good job. It is probably a little difficult to see, but I set it up more or less to show the relative relationship of the existing leases and the Healy River coal area.

The green is the tertiary coal-bearing series in which all of the coal is found. The brown on both sides are Precambrian, which is too old

a rock to have any coal. The known coal area is all confined to the green. The red that you see here are the outcrops of the coal. On this particular map I have shown Leasing Block No. 28 which is sometimes called the Roth property, sometimes the Army Reserve. I have shown that in green. Cripple Creek is shown in pink.

Senator BIBLE. Cripple Creek is the property held by yourself?

Mr. SHALLIT. Yes.

Senator BIBLE. For the purposes of the record, the Cripple Creek Corporation is an Alaskan corporation?

Mr. SHALLIT. It is a sole proprietorship.

Senator BIBLE. Operating as a corporation?

Mr. SHALLIT. No, sir; operating as a company only. It is the Cripple Creek Coal Co. Actually, you might say it is A. Ben Shallit doing business as Cripple Creek.

Senator BIBLE. You are the sole owner of Cripple Creek Co.?

Mr. SHALLIT. Yes, sir. I have Usibelli shown in red and Suntrana in blue.

Senator BIBLE. Might you develop the size of the lease?

Mr. SHALLIT. Yes, sir. This lease is 1,120 acres. It is one full section and three-quarters of another section. The Nsibelli lease is 2 full sections, or 1,240 acres. I am not sure how large the Suntrana lease is, but it is somewhat the same, or possibly a little larger.

Senator BIBLE. Will you point out the terminal of the Healy spur?

Mr. SHALLIT. Yes, sir. The terminal of the Healy spur is shown at this point [indicating]. This is the underground operation of the Suntrana mine. This is the end of the spur which is 4.4 miles from the main line at Healy.

Senator BIBLE. It is my understanding that was constructed in 1922.

Mr. SHALLIT. Yes, sir.

Senator BIBLE. There was no extension of the spur from 1922 to this date?

Mr. SHALLIT. That is right. This was the original terminal and it is still that.

The boundary line of the Suntrana line runs to this section line at Alaska Creek, which is probably immaterial at this point. This is the Usibelli mine with their operation consisting of an underground mine that has just been opened up on the north side of the river [indicating]. Incidentally, this is the Healy River. We call it Healy River, but the official name is Healy Creek.

Usibelli has an underground mine started here [indicating]. They have a washing plant which has been built and is located over here. The main strip operation is on the south side of the river in approximately this area and there is a certain amount of small stripping that is going along on the north side of the area. Our entire operation is now confined to stripping and developing the No. 1 bed, which is 57 feet thick at this point. We have also mined from the No. 2 and No. 3 bed, and we have started a small underground operation on No. 6 which we abandoned when it became evident that a railroad would not be built.

Senator BIBLE. Approximately how much coal do you mine per year at the present time?

Mr. SHALLIT. The amount of coal that we mine has varied entirely with the contracts that we have had. The greatest amount that we have ever mined is 135,000 tons in 1 fiscal year.

Senator BIBLE. What fiscal year was that?

Mr. SHALLIT. That was the 1953-54 fiscal year.

Senator GOLDWATER. How much coal do you have blocked out there, do you think?

Mr. SHALLIT. I have the amount set out in my petition. However, just roughly on the west side of Cripple Creek I have a block under strip in which I am developing 1,200,000 tons of coal. On the east side of Cripple Creek on the high bench I have in the last 3 years just fooled around because I have so much coal here that I have no market for. But I am in that area developing a block consisting of approximately 3 million tons of strippable coal.

In addition to the strippable coal here and on the east and west side of Cripple Creek, which we are developing, there is a potential for additional strippable coal depending upon the price of the coal in the first place, the ratio of overburden to coal, the topography of the ground, the ease of stripping it and especially marketing conditions. The coal beds in the Healy River area occur in what is technically known as a syncline which dips in the Healy River area to the north and pitches to the west. This gives you an indication of what it looks like.

The beds are all on this side dipping to the north, which means that in mining it—and I am mentioning this because I will tell you more about coal—any coal that is developed on the south side of the river is either dip slope coal; whereas, the amount of overburden is either the same or less as you go down on the dip of the coal, or on the bench area here where, because the coal dips at 30 degrees, one goes 2 feet horizontally for every 1 foot of depth. Therefore, you finally get to a place in stripping a dipping bed of coal where it is more expensive to mine by strip methods than it is by going underground.

In my particular case I feel that the ratio of stripping to underground coal that I can continue to operate at is approximately  $4\frac{1}{4}$  yards of overburden to 1 ton of coal developed. That factor will vary depending on market conditions, price of coal, ease of operation, and so forth. When I reach that ratio, it is going to be cheaper for me to go underground and develop coal than stay on the surface.

There are approximately 6 million tons of strippable coal that I believe I can mine today at a ratio of less than  $4\frac{1}{4}$  yards to 1 ton of coal.

Senator GOLDWATER. That would be in addition to the four?

Mr. SHALLIT. No, sir; that is the total.

Senator GOLDWATER. A total of 6 million?

Mr. SHALLIT. Roughly; yes, sir.

Senator GOLDWATER. What have you been getting for coal up there?

Mr. SHALLIT. Last year it was \$7.40 a ton for all of the operators. Everybody had the same price last year.

Senator GOLDWATER. What is your cost per ton to haul it down to Healy?

Mr. SHALLIT. The cost of hauling it down to Healy has varied a certain amount, but it is about \$1.24 a ton.

Senator GOLDWATER. The purchaser would save that money?

Mr. SHALLIT. He would save about a dollar, because if the railroad went up to the mouth of Cripple Creek, you would still have to truck roughly 1 mile. But there would be a good dollar that could be saved.

Incidentally, it might be interesting to point out that not only Cripple Creek would save about this dollar a ton, but I believe Usibelli would probably save the same amount. That might seem a rather unusual statement to make in view of the fact that he has only 3 miles to haul, whereas I have 6 miles, but at one time when we were negotiating for the possibility of their doing some of their hauling for us, I discussed the matter very thoroughly with their bookkeeper, and he showed me costs that were considerably higher for hauling than mine. When I tried to get an explanation on it, he told me that the reason for it was that whereas Cripple Creek hauled only during the wintertime when our roads are frozen and maintenance on equipment and roads is very little, Usibelli hauled 12 months a year and during the summer months when the rains and the roads get soft, it is a constant job of maintenance, and the trucks take a great deal of pounding and spend a great deal of time in the shops. From the figures he showed me, I think it is reasonable to believe that the costs on both operations on a 12-month basis are about the same. He could effect the same savings.

Senator BIBLE. What size truck do you use?

Mr. SHALLIT. We use a truck that hauls 14 tons.

Senator BIBLE. How long does it take you to make the round trip?

Mr. SHALLIT. It takes us roughly 40 minutes.

Senator BIBLE. You may proceed.

Mr. SHALLIT. Thank you. The thing that is important possibly, and Dr. Reed or Mr. Saarela might bring out something about the geology of these structures in relation to strip mining; whereas in the flat-lying strip mines that most of us are familiar with in the States, an operation uses the entire surface by first removing the overburden and casting it to one side, and takes the coal from under it, and through concentric roads or circles they mine the entire area and utilize the entire area, taking the overburden from the coal strip and spoiling it on the other area.

Here where you have a dipping bed, obviously only a small portion of the surface is necessary in stripping. One of the other factors affecting the depth to which one strips, of course, is the drainage, because one is not allowed to strip below the drainage level. That is to protect the beds in depth in the future.

Senator BIBLE. How many men do you have in the operation?

Mr. SHALLIT. It varies with the size of contracts. At the present time we have 17 men. In the winter we usually operate with about 25 when we are hauling.

We are producing coal when our roads are in shape, that is, we can haul coal to the railroad and put it out at the rate of 1,000 tons per shift. That is what we consistently do. That is per shift in which we can operate when our roads are usable.

If it were possible in any way for Cripple Creek Coal Co. to put all of its coal out during the wintertime, then we could do so, and we would not need a road or railroad or any summer access to the area. However, that would pose a tremendous problem to the railroad; for efficiency in handling the coal, the railroad and the military in burning it, it is much more advisable that coal is shipped only as it is burned.

Senator GOLDWATER. What are the military requirements in Alaska for coal?

Mr. SHALLIT. The military requirements in Alaska this year at the north end, 149,800 tons of new coal. However, the actual consumption is between 400,000 and 450,000 tons.

Senator BIBLE. May I interrupt to ask what you mean by 149,000 tons?

Mr. SHALLIT. I am sorry. The coal in Alaska is usually supplied to the Air Force base from the Nenana coal field. That is north of the Alaska Range. South of the Alaska Range the coal is usually supplied by the coal producers in the Matanuska area of which there is only one fairly large one, the Evans-Jones plant.

With a reduction in either railroad rates which the operators would like to see, or with the reduction of the price of coal, and it won't take too much—this \$1 per ton reduction in the price of coal will probably make it possible for the coal operators in the fields north of the Alaska Range to compete with the coal supplied from producers south of the range. At present there is practically no competition. So, in addition to the savings that would be effected at the north end, there is a potential saving that could be effected in the south.

I hope that the relationship of the various properties is shown here. Suntrana, Usibelli, Cripple Creek, and the Roth property all lie contiguous to each other and all lie along the bed of the Healy Creek. It is necessary in order to go from Suntrana to any of these other properties to cross in some part the leases of all of them. Cripple Creek has to cross the Suntrana and the Usibelli leases. If leasing block 28 is opened up, it will be necessary for anyone transporting coal out of the valley to cross all of the leases.

Senator BIBLE. Lease block 28, as I understand it, is also called the Roth property.

Mr. SHALLIT. Yes, sir.

Senator BIBLE. Is that operating now?

Mr. SHALLIT. No, sir. It has been held in reserve pending such time as the supply of coal from the other operations will be insufficient to meet the current demands or in the event of a military emergency of some kind, coal can be taken from leasing block 28, because there is a relatively little amount of overburden over the coal. That is one of the reasons it has been held out. It is felt that the coal from that particular area is so easy to mine that if anyone opened it up, it would be terrible competition to the rest of the properties. As such it constitutes a military emergency stockpile of coal, provided you can get it out of the country.

Senator BIBLE. Has it ever been opened up?

Mr. SHALLIT. No, sir. It has been thoroughly explored. It was one of the purposes for the Geological Survey making this map.

Senator BIBLE. Have they actually been a producer at any time?

Mr. SHALLIT. Back in 1924, Mr. Roth and a Mr. Manley took a matter of something less than 150 tons out with horse sleds but nothing more has been done. At that time Mr. Roth was attempting to get a railroad through. However, he didn't last long enough.

Senator BIBLE. Is there any road connecting the Roth property and your property?

Mr. SHALLIT. Yes, sir; we have a small road of our own. It shows up on this map. From the mouth of Cripple Creek we have a road built that goes to this point within a matter of a few hundred yards

of the boundary of the leasing block right here. It is just a wagon road. It would be usable to haul coal in an emergency.

The topography is flat. There is a low bench here. If a railroad were extended to the mouth of Cripple Creek, it would not be a great job to extend it the rest of the way. It is a mile from this point to this point. So it would be a mile and a quarter to the Roth property.

Senator BIBLE. What is the nature of the road from your property to the rail head?

Mr. SHALLIT. I think possibly it will show better on this map if I might digress for just a moment.

Senator BIBLE. We might for purposes of reference identify this as exhibit 3.

(Exhibit 3 marked for identification.)

Mr. SHALLIT. It is plate 18 from 963, United States Geological Survey, Geologic Map and sections of part of the Valley of Healy Creek, Alaska.

Senator BIBLE. The next map we might designate for purposes of reference as exhibit 4.

(Exhibit 4 marked for identification.)

Mr. SHALLIT. Exhibit 4 is the definite location between Suntrana and the Usibelli mine prepared by the Alaska Railroad for the purpose of estimating the costs of building a branch line from Suntrana to the Roth property, which would pass Cripple Creek.

Senator BIBLE. When you say Suntrana, that is synonymous with the end of the Healy spur?

Mr. SHALLIT. Yes, sir. Actually Suntrana is the group of buildings in which the people from the Suntrana mine are living now. Suntrana is the terminal of the Alaska Railroad at present.

The Healy River Coal Co. originally, and their successors, the Suntrana Coal Co., have their operation at this point. Their properties extend both east and west. This is north. Their beds are developed entirely by underground methods. They had a small amount of stripping coal which has now been exhausted. Their mine to the west of the main portal caught on fire about 3 years ago, and has been completely sealed off. It is mined out to the west.

To the east the Suntrana mine now has completed the development of all of the beds, and mined out all of the beds except portions of the 1 and the 2. This last year about December 20, 1954, the No. 2 bed, or it could have been the No. 1 on the far east end of the Healy mine, caught on fire and it, too, has been sealed off now. The only work being done on the Suntrana mine as I understand it is work constituting a retreat on the present beds of coal, so that the future of that mine now is limited to tonnages which could possibly be brought out better by Dr. Reed or Mr. Saarela. These tonnages are definitely very limited.

Unless the mine is developed in depth when they complete the exhaustion of the resources above drainage level, the chances are that that mine will be closed down.

Senator BIBLE. We will have witnesses testify later with respect to that.

Mr. SHALLIT. Thank you. The Usibelli mine has a tippie here at the end of the track of the Healy River spur. This map is on a scale of 1 inch to 100 feet, so you can get some idea of relative size. This is

Usibelli's camp. His coal is hauled from across the river at this point, and some strip areas here; from underground here; from a washing plant here. His road is shown in dark green. The distance from this point to the tippie, I believe, is about 3 miles.

Senator BIBLE. What is the nature of that road?

Mr. SHALLIT. That is a good road that has been built on the north bench of the Healy Creek. It is close to the edge of the water where a road would normally be built because that is the easiest place to build it.

Senator BIBLE. How wide is the road?

Mr. SHALLIT. The road is probably not less than 25 feet at any place, possibly a little wider, 35 feet elsewhere.

Senator BIBLE. Gravel or well surfaced?

Mr. SHALLIT. The tertiary gravels are composed of gravel and sand and all that is necessary to build a road is to take a dozer and dress it down and take a road grader and scrape the top.

Senator BIBLE. No oil surface?

Mr. SHALLIT. No oil surface. It is an ordinary gravel road built on the surface with adequate provisions for drainage.

Senator BIBLE. What is the nature of the road from the end of the Usibelli property to the Cripple Creek property?

Mr. SHALLIT. That is an entirely different road. Cripple Creek is not allowed to use the Usibelli road. That is their private road.

Senator BIBLE. Which road do you use?

Mr. SHALLIT. We use the road that is shown in light green to a loading point on the spur about three-quarters of a mile downstream from Suntrana. We cross the Healy River at this point. Incidentally, the dark blue is the main bed of the stream, but the stream is subject to flash floods as shown in light blue over a considerable area. Back of Suntrana we have to cross a canyon area with another bridge that is where the river is confined to a canyon. Here it goes like a mill race. It is very difficult to maintain a road on the side of it.

We skirt on the very edge in the only place possible, and around the edge here. The road from this point and from this point down to here, and from this point to our loading site is washed out every time high waters come up.

In this particular area the Healy River is in pretty much of a canyon, and the stream is confined to a narrow channel, and it is possible for us to bring our road up on the side, and hold it at that particular point.

Senator GOLDWATER. How big a stream is the Healy Creek? How many cubic second-feet average, do you know?

Mr. SHALLIT. It varies so much I would say it would vary from probably 40,000 to 150,000 gallons per minute.

Senator GOLDWATER. Is it that big a river?

Mr. SHALLIT. Yes, sir. Just to give you an idea, it runs on a grade of approximately  $1\frac{1}{2}$  percent. Here it is 100 feet across. I would say it would average in the deepest portions 3 or 4 feet deep.

Senator GOLDWATER. You call that a creek in Alaska?

Mr. SHALLIT. Yes, sir.

Senator GOLDWATER. That would be a river in Arizona.

Mr. SHALLIT. We have some little low hills that are six or seven thousand feet high that people here call mountains. I would like to



point out that as soon as you get away from the narrow confines of the valley, the stream does stretch out. From this point up here through this point up here, the Cripple Creek road is built in the flood plain of the river. It is impossible to maintain it during flood seasons. Any time after the middle of May—we have trucked up to the 11th of May before our roads went out—one is liable to have a flash flood every week. Normally you stop having these flash floods about the first of September, but last year we were a little unlucky. We had one on the 17th of September after our roads had been completely rebuilt, and one again on the 30th of September. That, however, is unusual.

Actually in this place our road is probably 50 or 60 feet from the Usibelli road. Here it is 100 to 150 feet away from it. Most places it is very close and parallels it all the way. This is our road and this is the Usibelli road. It is almost like a train track running down there. But because the Usibelli road is built on the edge of the bench, and because we have not been allowed to get in back of it in any way, since we would have to keep crossing his road in order to do so, we have been forced to put our road in the stream bed.

Senator BIBLE. What is the nature of your road? How wide is it?

Mr. SHALLIT. My road is also about 25 feet wide. We rebuild it every year as necessary with cats and cans.

Senator BIBLE. Is there any particular reason why you cannot use the Usibelli road?

Mr. SHALLIT. Yes, sir.

Senator BIBLE. They will not permit you to do it?

Mr. SHALLIT. That is correct. Things were rather rough in the valley when I first started in mining, Senator.

Senator BIBLE. How do you get through their property, by virtue of their giving you a right-of-way?

Mr. SHALLIT. By virtue of being allowed to use the right-of-way which the Bureau of Land Management has seen fit to grant us in the stream of the river only.

Senator GOLDWATER. Have you ever discussed with them the possibility of the joint use of the road so that you could reduce costs?

Mr. SHALLIT. Yes, sir; we have discussed that very often. We have never been able to arrive at any satisfactory conclusion. The nearest I ever arrived at was an offer which he made me which would have cost me 50 cents a ton for every ton of coal I put out. We have not been able to get together because this whole thing is very competitive. If Cripple Creek can deliver coal 12 months a year, we will constitute considerable competition to any other mines in the field. Whereas, if we are kept from hauling our coal 5 or 6 months of the year, then all of the contracts that we can bid on are only those in which we are allowed to schedule deliveries in the winter months which we are allowed to schedule deliveries in the winter months only.

This has not been too serious a problem up to now because the military have been kind enough to allow us to deliver during winter months only. However, because I can't deliver during the summer months, I am precluded from bidding on any other domestic contracts to the U. S. Smelting, city of Fairbanks, or furnishing coal to any other sources.

I have tried at times to bid on such coal with the expectation of purchasing coal from my competitors during the summertime, or

letting them bid on the summer quantity as required, and I would bid on the winter. However, under those conditions, the price given by these other people for the coal during the summer was so high that when it averaged with the lower price I gave during the winter, it still didn't come out. So I have never been able to enter a bid under those conditions.

The military, starting in 1957, I have been informed, are going to require deliveries on a 12 months' basis. That puts Cripple Creek in a very precarious position. In discussing the matter with the Fuel Supply Office, they said that they considered it very carefully, but that they thought probably I could buy coal from my competitors, or possibly I could stockpile the coal in the wintertime for use during the summer. It would be very nice if I could buy coal from my competitors during the summertime at such a price that would allow me to bid in competition with them in the wintertime. It also would be very nice if I could afford to stockpile approximately 125,000 tons which would be required under the present bids that we have just submitted yesterday for the 1958 delivery.

In order for you to visualize what 125,000 tons of coal are, I would like to point out that at 40 cubic feet to the ton, and assuming we would only stockpile to a height of 10 feet, because beyond that the coal is subject to spontaneous combustion, and we would have to tamp it down so that the cost would be prohibitive. A stockpile that size would be 10 feet high, 100 feet wide, and a mile long. That is an awful lot of coal to put in one pile at a cost of half a million dollars, subject to spontaneous combustion, and the additional cost of stockpiling and rehandling would be passed on to the consumer, and would make it impossible to compete with any other outfit.

I have digressed from my prepared statement. I had better skip over it as rapidly as possible.

Senator BIBLE. I am not clear how you hold this right-of-way through Usibelli.

Mr. SHALLIT. All of the lessees here in Alaska are on Federal coal lands. The Federal Government reserves the right of a road or right-of-way over, through, or on any of the leases. Therefore, with proper showing, Usibelli should be forced to give me a right-of-way. I have the right-of-way now, but it is right in the streambed which is the only one I have and has taken us 3 years to get it. We have hauled over that road. They probably felt that we could not stay alive doing that, because it was too rugged a job.

Now we have come to a place where in order to produce the tonnages we are capable of and in order to produce for the markets requiring 12 months a year delivery, we have to have a right-of-way that is out of the stream. I believe if I may be allowed to read my prepared testimony, I can show the attempts that we have made to do that.

Senator BIBLE. You may resume from that point.

Mr. SHALLIT. Because I have taken so much time in this introduction, I think it probably would be advisable for me to just skip over the highlights, because otherwise it would take me an hour to read what I have here.

Senator BIBLE. Just hit the highlights, please. It is understood that your entire statement will be inserted into the record as if it was read in full.

(COMMITTEE NOTE.—In accordance with the acting chairman's directive, the full text of Mr. Shallit's prepared statement appears at the conclusion of his oral presentation.)

Mr. SHALLIT. Yes, sir. I would like to comment now on the fact that the Department of the Interior or others may raise specious issues clouding the real one, and the principal issue before the committee is why the Secretary of Interior refused to authorize Alaska Railroad to construct a railroad spur from the present rail's end at Suntrana to Cripple Creek property in the face of the finding of its experts who stated that the extension of the railroad would result in a savings of from 200 to 300 thousand dollars annually to the military and the civilian consumers of coal in the Fairbanks area of Alaska. Also that the extension of the railroad would facilitate and promote the development of the coal resources in the Healy River Valley, and provide railroad access to the Government coal resources to meet the military installations in Alaska now and in the future.

Also, that the extension of the railroad would mean a substantial saving to the Government in the price of coal which should amortize the cost of construction within 3 or 4 years.

Senator BIBLE. Who made those findings?

Mr. SHALLIT. The various experts of the Department of Interior some of which are on your list of witnesses, and I assume will testify as to their findings.

Senator BIBLE. When were those findings made?

Mr. SHALLIT. The findings were made all the way from 1950 up to December of this last year.

Senator BIBLE. Very well.

Mr. SHALLIT. As a corollary to the findings of the Interior Department, the extension of the railroad would also promote competition which was not particularly brought out by any of the expert witnesses. That of course would benefit the military and civilian consumers by making coal available at a cheaper price.

Almost 6 years now have elapsed since a coal prospecting permit was issued to me by the Department.

Senator BIBLE. Were you in that area before?

Mr. SHALLIT. I have lived in Alaska for 25 years.

Senator BIBLE. You have been in the area before.

Mr. SHALLIT. Yes, sir. I was first in the area about 1931.

Senator BIBLE. You have been in Cripple Creek pursuant to this coal prospecting permit since 1950?

Mr. SHALLIT. Yes, sir.

At the time that the permit was first issued to me, I wrote to Mr. Ghiglione—actually I probably wrote to the Commissioner of Roads at that time, I don't remember whether he was Ghiglione at that time—and Mr. Ghiglione, the chief engineer, I believe, at that time, answered to the effect that—

The desirability of such a road is recognized. However, the Alaska Road Commission is not at present in a position to undertake this work since it has not been our policy to construct roads into undeveloped mining prospects.

All of the letters I quote here are also included in the petition in full, so if I merely quote a certain part of the letter, the entire letter is there for reference.

An important thing he says later on in the letter is:

Should the actual development and production be instigated on the property, it is very probable that some cooperative assistance could be worked out whereby the road could be constructed with a portion of the expense shared by you as offered in your letter.

Senator BIBLE. What type of offer of sharing expenses did you make in the letter?

Mr. SHALLIT. I think it was probably very general. It has been the custom in Alaska for the Road Commission to build roads into mining and farm areas, and the person being benefited tries to help as much as he can. There is nothing very definite about it. You do all you can to help and the Road Commission does all it can to help you. This offer was very rough.

Later on I made a specific offer, but that was in 1953.

In 1950, I obtained my first contract with the Government to supply 50,000 tons of coal to the military. Then, since the property was in operation and relying on this letter, I again wrote to Mr. Ghiglione. That was on December 20, 1950, when I was hauling coal in fulfillment of my contract, and Mr. Ghiglione wrote as follows:

The need for access to your coal properties is recognized and the Alaska Road Commission is interested in seeing that such access is provided.

Mr. Saarela, territorial mining engineer, has been contacted concerning the area served by your present road and the various mines and developments that would also be served if the road were improved as you have recommended. Mr. Saarela is of the opinion that the district merits development and he has taken the initiative by writing to the Alaska Railroad in order to ascertain whether an extension of the present railroad spur could not be undertaken. It appears that an extension of the railroad would be much more desirable than the road improvement, since the railroad service would eliminate your shorthaul trucking and rehandling of the coal.

If it transpires that the Alaska Railroad will not undertake extension of their line, Alaska Road Commission will program the road improvement, providing the anticipated farm and industrial road funds are appropriated by Congress.

So several months later, on April 3, the Commissioner of roads for Alaska, John R. Noyes, wrote to the Director of the Office of Territories of the department of interior, pointing out the desirability of extending the railroad to Cripple Creek.

Skipping over his letter again, just the high spots,

The development of the coal resources of the region on any adequate scale is dependent upon railroad transportation. For this reason the matter was referred to the Alaska Railroad through the Alaska Field Committee. A copy of a letter recently received from Col. J. P. Johnson, general manager of the Alaska Railroad, to Mr. A. Ben Shallit of the Cripple Creek Coal Co., indicates that funds are not available for this new railroad construction.

Road funds are not available either; but in view of the fact that the project was first proposed as a road project, it is desired to urge that the Alaska Railroad provide whatever facilities are required in the Healy River Valley rather than to attempt an unsatisfactory, half-way solution by means of a road. It is my opinion, concurred in by the Territorial Commissioner of Mines, that this area is definitely worthy of development at this time. Unless directed by the Office of Territories, we will leave this matter entirely to the Alaska Railroad. At the same time I wish to emphasize that I think the project is a worthy one for railroad development.

In May of 1951—I am following along in chronological order—Mr. Ghiglione advised that it would not be possible to undertake any

road construction to provide access to the Cripple Creek Coal Co., lease, and the reason given was—

\* \* \* This decision has been made necessary since the Interior Department considers that the development should be accomplished by the Alaska Railroad and that no highway funds can therefore be involved.

Four years have now gone by since I received those letters, and since the Interior Department decided that access was needed, and such access should be provided by an extension of the Alaska Railroad.

During all this time Cripple Creek Coal Co. has struggled along on the makeshift roads we have under the assumption that the findings and recommendations of these people in the Interior Department would be acted upon by the Secretary. In June of 1952, the Navy was short on coal and they wired to us, asking how much coal we could put out. I won't read the wire. I answered to the effect that I could put out 10,000 tons each month beginning in October, and continuing in the spring of 1953, as long as the roads were usable. The uncertain road conditions before October 1 precluded delivery during July, August, and September. Thus it is evident that the Cripple Creek Coal Co. was unable to deliver coal during that particular time.

On April 30, 1953, a meeting of the Coal Subcommittee of the Alaska Field Committee of the Interior Department attended by 12 of their top officials, including the military, the people from the railroad, the people from the Alaska Road Commission, the Bureau of Land Management, and the Geological Survey, and the Land Office, were all present, and I am going to hit the high spots on that.

All through that meeting which was rather long, the necessity for access to Cripple Creek, preferably by a railroad, was emphasized. Mr. Hinman, who was then assistant to the manager, was asked if the construction of the road had ever been on the railroad budget, and Mr. Hinman said it had been on their 6-year program for several years.

Incidentally, prior to that time I had discussed the railroad with Col. Johnson, who was then the manager, and Mr. Sharod, the chief engineer, and both had said they had constantly thought about that road, especially in so far as it was originally suggested by Mr. Frank Manley back in 1924. Mr. Sharod pulled a bunch of papers out of his desk and he said "We have a lot of information on this. As a matter of fact, this is one of the roads which if we owned the railroad we would put up ourselves." That was the attitude that the chief engineer had at that time.

Incidentally, they were very disturbed about getting this railroad built, because at that time they felt that coal was very essential. The military situation in the Far East was very bad. The military wanted to get a very large stockpile of coal at that time. They did so, but with the military situation the way it is at present, they are now reducing their stockpile from possibly a year or a year and a half to a 90-day stockpile.

At that time they wanted the railroad to be completed by October 1, 1953. This was April 30. That is a rather short time, but it is entirely realistic, for at one time when I was trying other methods of getting our spur up there, I contacted a large construction company in

Alaska, who told me that with the equipment they had available in Alaska, at that time, they would put the entire spur from Suntrana through to the Roth property in 2 months.

Senator GOLDWATER. How much money?

Mr. SHALLIT. At that time the amount was not discussed. Actually this company was willing to do it provided that I would give them the biggest chunk of Cripple Creek. Also in discussing this matter, I am not sure whether it was Mr. Sharod who was chief engineer at that time, or possibly Pat Cook, who is now the chief engineer. I asked him how long it would take to put up the railroad in accordance with the survey which the railroad had already prepared, and he said he thought they could get it through in about 4 months.

That is probably a tight schedule. I have gone over all of the data which was prepared by the Alaska Railroad and which was so kindly made available to me at one time, and in my opinion as an engineer, the railroad could be constructed at least with the amount of funds set up.

All these maps that you see here which I have colored in order to make them more easily read were supplied to the Healy River Spur, Inc., which was a private nonprofit corporation that I formed after I came down here last January with the idea that because, as you will see later on, there was this continued recommendation of these various experts in the Department to build the railroad, I thought surely we would get a railroad through this last year, and I came down here in order to kind of push the boys along a little bit, and help them carry the papers from place to place.

When it became evident that they were not going to ask for an appropriation this year, I suggested that possibly if I could obtain a contract to supply 500,000 tons of coal over the next 3 years—a sure contract—at a certain price which at that time was a dollar more than the prevailing price, I would be able to finance the construction of the railroad myself, although it was at first greeted with some enthusiasm, it was later turned down, because the military felt that their requirements during the next 3 years would be so low that if they entered into a contract of that type with me, then I would be supplying all of the coal and it would be unfair.

Actually as a result of this discouragement, the people in the Interior Department who are interested in this railroad, including people in the railroad, and people in the Defense Department, sat around and batted around the possibilities and came up with a brilliant brain child of forming a private nonprofit corporation for the purpose of borrowing money from Defense Transport Administration in order to build this spur, and then charge the users of the spur a certain amount which would be not more—actually we set it up a little less—than the actual savings they would effect, and then take the money we would obtain from the use of this spur and use it to pay back the money we had borrowed from the Government. When the money was all paid back, we would turn the spur over lock, stock, and barrel to the Alaska Railroad, and they would continue to operate it as a part of their own road.

It was actually a sort of quasi-Government deal. I am the one that formed the corporation because a private individual had to do it. I paid all of the costs incurred in the incorporation of the corporation

and other attendant costs. But the board of directors was to consist at that time of the 3 representatives from the 3 mines in the Healy River Valley, and a representative from the Bureau of Mines, a representative from the Geological Survey, from the Bureau of Land Management, and 1 from the Governor's office—the Governor was quite interested in this—and 4 or 5 from the Alaska Railroad.

The reason for putting in more directors from the Alaska Railroad was that we felt that the Alaska Railroad should actually control this situation. We got along pretty good in that meeting until our final meeting with OPA, RFC, and the Defense Department and everybody else. There were 17 people who met in Secretary Tudor's office.

Senator BIBLE. When was this?

Mr. SHALLIT. This was about May of last year, I would guess.

Senator BIBLE. May 1954?

Mr. SHALLIT. Yes.

Senator BIBLE. Give us the end result of that.

Mr. SHALLIT. The end result was that the people in the OPA—

Mr. BARASH. Not OPA. Office of Defense Mobilization.

Mr. SHALLIT. Office of Defense Mobilization and RFC felt that what we were doing might be interpreted as an attempt to circumvent the normal channels of appropriation, and therefore they did not want to do anything in conflict with those people.

Senator BIBLE. In short, then, in attempting to work out this method of financing, the deal fell through in May 1954.

Mr. SHALLIT. Let us say that the falling through of it was greatly stimulated by some letters which are in your record now in the presentation made by the Usibelli Coal Corp. to the Office of Defense Mobilization and RFC protesting that. That helped it to fall through.

Senator BIBLE. After that fell through in May 1954, what did you do?

Mr. SHALLIT. We canceled the Healy River Spur Corp. and started looking for other means of constructing the railroad.

I discussed the matter with the people in the Department of Interior, particularly Mr. Strand, asking that they consider a direct appropriation, either for a railroad or for an all-weather road. Mr. Strand seemed quite receptive to it at that time, but for some reason or another all of a sudden this whole thing got a very cold shoulder from not only Mr. Strand, but people in the railroad, and apparently the whole Division of Territories, turned a cold shoulder on what at one time they seemed to be very receptive.

Some of the reasons are brought out possibly in the answer to the petition made by the Department of Interior. However, I have been digressing, and I would like, if you don't mind, in order to expedite this hearing, to now read the conclusions of the meeting of this Coal Board in Alaska, which was the Department of Interior Subcommittee on Coal. Their own people unanimously passed—

Senator BIBLE. This was back in 1953?

Mr. SHALLIT. Yes, sir, I am trying to follow through.

Senator BIBLE. I thought you were up to 1954.

Mr. SHALLIT. We got off the track here on the construction of the road and how long it would take to do it.

Senator BIBLE. Just quickly give us the conclusions.

Mr. SHALLIT. The conclusions were—

That steps should be taken at once to finance the construction of an extension of the railroad from the Healy River mine to the Cripple Creek and Roth properties. This spur to be completed or partially so before October 1, 1953.

That the extension of the Healy River spur to the Roth property is vital to the security of military installations this coming fiscal year of 1954, and in the future, and to the development and prosperity of the coal industry as a whole in Alaska.

That the extension of the Healy River spur to the Roth property would mean a substantial savings to the Government in the price of coal and this savings to the Government should amortize the cost of construction within 3 or 4 years.

Senator GOLDWATER. Do you know the estimated cost of construction?

Mr. SHALLIT. Yes, sir; I have that figure from the estimates of the Alaska Railroad.

Senator GOLDWATER. That is it?

Mr. SHALLIT. Actually it is around \$512,000, as I remember, from Suntrana to the Usibelli property; about \$304,000 from the Healy property on up to Cripple Creek.

The cost of a bridge across Cripple Creek would vary. This is an awfully rough estimate that does not mean much. \$75,000, according to the railroad, if they could put a pile-driven wooden trestle across which, in my opinion, they could do, and up to \$500,000 if they wanted to put up a permanent steel structure, and another \$136,000 if they decide to extend the road all the way to the Roth property. In other words from Suntrana to Cripple Creek it would be something a little less than \$1 million, \$800,000 if the smaller bridge could be put in, and \$1,400,000 if a permanent bridge was put in.

The other conclusion was, "That shipment of coal by rail transportation is the only logical solution to the presently existing critical situation."

It was in view of this sort of expert advice that I have been trying to get this railroad through and the reason we have not tried to break our neck or knock ourselves out of business entirely in fighting Usibelli in trying to obtain the use of his road—

Senator GOLDWATER. Have either you or the other companies looked into the feasibility of conveyor belts to carry this down to Healy?

Mr. SHALLIT. Yes, sir; a conveyor belt could be built but the cost would be much more expensive than a road for the tonnages that would have to be hauled. You are still going to have to put it on a railroad. There would be no savings to the consumer if we had to have an expensive conveyor belt all the way through there. That is used only in extremely rough country by mines. The only advantage it would have is that the coal would be passing overhead as Usibelli's camp instead of passing on the ground. A conveyor belt is good if you have large tonnages so that it can be amortized. In the mines in the States they have rather long conveyor belts but they are putting out millions of tons a year. Here we are fooling around with a few hundred thousand tons only.

Just continuing here, and I will try to go faster as I seem to bog down: The Secretary of the Interior felt that the coal situation was so serious that he appointed a special committee headed by Charles W. Connor, to conduct an investigation on the ground in Alaska, and submit to the Secretary his findings. Mr. Connor is no longer with



the Government. Mr. Plein, however, is still with Defense Solids Fuels, and possibly it might be a good idea to have him testify. I would like to refer to Senator Jackson's letter in which he quotes something from the Connor report, which incidentally has not been made public, but in part and very briefly the Connor report states that prompt construction of the spur is urgent. Prompt construction of the spur beginning no later than the summer of 1954 is of salient importance.

Later on the responsibility for constructing the spur would appear to rest on the Alaska Railroad as the Department of Interior agency charged with providing the rail transportation facilities needed to further develop the Territory. A corresponding responsibility to assist in financing the spur also rests with the military agents who will be the principal beneficiaries of the project. Not only will the military agencies stand to profit directly from the reduced coal costs, but the construction of the spur is yearly of major significance in the defense mission in Alaska.

Continuing on now—and Mr. Plein is available and can probably testify as to his own on-the-ground findings—on April 29, 1953, Acting General Manager of the railroad, Mr. John Manley, who has probably been with the railroad as long as anybody, and as Acting Manager is the one who is responsible for a great deal of the success of the railroad—I am terribly sorry this is getting so extended, but what I would like to do is show in chronological order from 1950—

Senator BIBLE. Just proceed in your own way.

Mr. SHALLIT. Thank you. Mr. Manley, who was then Acting Manager of the railroad, and familiar with the whole problem from several administrations, filed a right-of-way with the Bureau of Land Management, which is shown on these various prints that are over here. Incidentally, in filing the right-of-way, that is tantamount to acceptance, because the railroad by filing the right of way obtains the right-of-way. I am going to skip over most of this, but the last paragraph I think is worth reading, and it says:

You will note in our letter of June 23, 1952, that the railroad contemplates the extension of this line in order that the Usibelli Coal Co., the Cripple Creek Mining Co., and any future producers, may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. It is estimated that the construction of this line will result in the reduction of coal costs to the Territory of \$200,000 annually.

Skipping on down again, in Mr. Kalbaugh's letter to Mr. Strand, who was Director of the Office of Territories, March 3, 1954:

The line between Suntrana Mine and Usibelli Mine has been located and staked. The remaining portion of the extension, M. P. 6.6 to the Roth Coal Reserve (Coal Creek), is based on a reconnaissance survey, and this line has not been staked. It is estimated that it would require approximately 2 months time with a single survey party to complete the reconnaissance survey and complete location.

Mr. Kalbaugh estimated the cost of constructing the entire spur at \$1,028,251.50. The figures I gave I won't repeat because it is approximately that, and \$1,450,000 if a steel bridge was found necessary. Then with all this, with the experts on the committee, with the people on the railroad, the people in the Road Commission, the Office of Territories, and everybody suggesting that a railroad should be there, with Mr. Manley obtaining the right-of-way on October 11, 1954, Mr. Kalbaugh—

Senator BIBLE. Did he obtain a right-of-way or file it?

Mr. SHALLIT. He filed it, but that is tantamount to obtaining it.

Senator BIBLE. It is your interpretation that when you file, that automatically gives you the right-of-way?

Mr. BARASH. It is automatically operative.

Senator BIBLE. We have the very able Mr. Bennett here. Is that a correct statement?

Mr. BENNETT. I am not familiar with that.

Senator BIBLE. We can check that.

Mr. SHALLIT. Mr. Kalbaugh on October 11, 1954, despite the fact that he was extremely cooperative in the formation of the Healy River Spur, Inc., that he seemed enthusiastic if there was some way of getting this railroad built, especially if he didn't have to dig in Government funds, wrote a letter on October 11, requesting that the right-of-way which had been filed by Mr. Manley be withdrawn.

Senator BIBLE. This is October 11, 1954?

Mr. SHALLIT. That is correct. He said that initially this request for withdrawal of the proposed right-of-way was occasioned by the possibility of the extension of the branch line being essential to the national defense. Since he arrived in Washington he was advised it was not essential.

That is the crux of the matter. I think it is well to call attention to the fact that there was nothing in Mr. Manley's letter, there was very little in the advice of these experts that said that a railroad should be built because it was essential to national defense.

I submit that it is of interest to the national defense as well as of interest to the development of the Territory as a whole. Mr. Manley's own letter in which he didn't say that it was essential to national defense, said that it would reduce the cost of operations which would in turn be passed on to the Government. There would be a saving to the Territory of \$200,000 annually. These reasons speak for themselves.

Senator BIBLE. Has anyone developed how you arrive at a saving of \$200,000 annually?

Mr. SHALLIT. Possibly Mr. Manley when he is here will care to testify.

Senator BIBLE. That is not developed in any of the testimony except the conclusions.

Mr. SHALLIT. No, sir, that is his letter.

Senator BIBLE. That is the conclusion but it does not say how he arrived at it.

Mr. SHALLIT. That is right.

Senator BIBLE. Proceed.

Mr. SHALLIT. There are some rather specious arguments that are probably advanced right now that the military no longer require large amounts of coal.

Senator BIBLE. We will let them tell their own story.

Mr. SHALLIT. Yes, sir. However, the consumption is still over 400,000 and possibly 450,000 tons at the military bases. The domestic consumption is over 150,000 tons, all at the north end of the range. In the south end of the range there is probably another 300,000 to 350,000 tons consumed. With the building of this railroad, we would possibly be able—I believe we would be able—to compete with the coals also furnished by the south.

I am going to skip over a great deal of this because it is in the record here and you possibly will care to read it yourself, but the total tonnage for which bids were invited to be submitted yesterday to the military was 828,300 tons over a 3-year period.

Senator BIBLE. Is that 828,000 tons annually for each of the 3 years?

Mr. SHALLIT. No, sir, that is for the total of 3 years. They are only consuming 400,000 to 450,000 tons each year. But they are reducing the stockpiles by taking the coal from the stockpiles and burning it, and only buying the coal they figure they actually need.

Senator BIBLE. That is a 3-year total figure?

Mr. SHALLIT. Yes, sir, that is a 3-year total of purchase only. Despite the fact that the Cripple Creek Coal Co. does not have at the present time year-around access to the railroad, nevertheless, I have submitted bids covering the entire tonnage needed by the military. I have had to do this to stay in business. If I lose the military contracts, then there are no other contracts that I can get. As a result, regardless of what it costs me, I am going to have to make some arrangements to get coal out. I am between the devil and the deep blue sea, and I have to figure out some way to do it, which I will do. I feel reasonably certain that either a railroad or all-weather road or some method is going to be found or I will have to find some way of cutting my costs down so I will have to put out coal 12 months a year or there will not be any Cripple Creek in business.

In my bids to furnish this 828,300 tons of coal, I hope my bid is the low bid, it has been cut down as low as I figure I could do and still stay alive—I have solemnly agreed and made it a part of the contract that I would reduce my bid prices by \$1 a ton for the entire 800,000 tons of coal provided that the spur was built to the mouth of Cripple Creek. There is time to build that spur in accordance with the information I have been given. However, if the spur is not constructed, when deliveries are to start—

Senator BIBLE. Did you incorporate that in your bid?

Mr. SHALLIT. Yes, sir, that is part of my formal bid.

Senator BIBLE. Go ahead.

Mr. SHALLITT. I had to take desperate measures. I have also agreed that if the spur is built at any time when these deliveries are to be made, I will reduce the price of my coal by \$1 a ton for every ton of coal I can deliver over that spur. In that manner I think that we will definitely reduce the price of coal because that means I have also had to bid my coal prices as low as I could. In that manner, if the railroad is built in that time, and the coal is shipped over it, there is a possible saving to the military of \$828,300, which will come very close to paying for construction of the spur within that 3-year period.

Senator BIBLE. I understand the point that you are making.

Mr. SHALLITT. I would like to return to the chronology of events. We kept writing letters. Mr. Barash is pointing out the part I ought to emphasize, that in 1954 on three separate occasions our roads were destroyed by flash floods and required constant rebuilding. The actual cost of rebuilding those roads the three times—we had to build them under emergency conditions, because we were faced with the necessity of making deliveries in a hurry, we pulled all the equipment we had

on the job, we worked on 3-shift basis—by the time we got through rebuilding that road 3 times, it cost me \$42,000. I put out 45,000 tons of coal during that year, so it cost me almost a dollar a ton for the rebuilding. That shows what can happen.

I wrote to Mr. Ghiglione again asking that if they could not get a railroad through, and if they could not get money for an all-weather road, at least get a right-of-way on ground that would not be in the Healy River itself, so that I could build a road where I could haul, and the road would not be washed out all the time.

Senator BIBLE. What did he answer you?

Mr. SHALLIT. I will read parts of his answer. He answered on October 29, 1954:

As you know, the Department has decided that proper access to the Healy River coalfields may best be provided by the railroad spur extension. As a result of this decision, the railroad has proceeded to obtain the necessary right-of-way and has filed necessary maps and instruments with the Bureau of Land Management for this purpose.

When the decision was finally made to encourage railroad access to the Healy River coal properties, the Alaska Road Commission was precluded from sponsoring further road projects for this purpose. As you will recall, a subsequent attempt was made to obtain funds for construction along the Alaska Railroad right-of-way in an effort to provide temporary relief for your problem. This attempt met with failure, again because the project was considered one for the Alaska Railroad and therefore any request for funds to implement the project should be initiated by that agency.

Since this was a temporary thing, therefore the project was considered one for the Alaska Railroad, and any request for funds to implement the project should be initiated by that agency. He adds:

I can only suggest that you contact the Alaska Railroad in an effort to expedite their development of the railroad spur further up the Healy River.

So I did. I wrote again to Mr. Ghiglione first because I had not gotten any place and I wondered whether or not that was an official finding.

Senator BIBLE. Tell us what you did.

Mr. SHALLIT. Anyway, I asked if he had been officially advised that the Alaska Railroad alone was to be responsible and could I have a copy of that directive so we may act. Mr. Ghiglione answered:

The situation along Healy River, insofar as access by railroad in preference to highway has been determined as policy by the Interior Department, has not been resolved in the form of a directive to the Alaska Road Commission. However, since all requests for funds must be processed through the Interior Department before reaching the Bureau of the Budget and Congress, it is obvious that the policies of the Department must be adhered to.

It is rather strange here Mr. Ghiglione was not aware at that time, that Mr. Kalbaugh had withdrawn his right-of-way. Anyhow, there is a continuous exchange of correspondence all the way through. I don't think it is fair to burden the committee with it. It is all in the same vein. I continually write to the Department, and they come back continually and say it is departmental policy to build the railroad, and it is essential in the well-being of the Territory as well as in the interest of the military.

Senator BIBLE. What is the last expression that you have from the Interior Department on that subject?

Mr. SHALLIT. Let me see if I can find that here. The last correspondence was from Mr. Ghiglione on December 21, 1954, in which in part he states:

I am surprised at Mr. Kalbaugh's statement regarding the appropriation of funds for this project since all previous—

Mr. Kalbaugh's statement, I might state, is to the effect that the railroad would not be economically justified and therefore we ought to get a road through there—

departmental policy has been in support of extension of the railroad spur in preference to the highway and obviously no funds will be appropriated by Congress without the support of the Interior Department.

Again I am going to skip a great deal of this. I think it is pertinent at this point, however, to show that there has been a great deal of objection from Usibelli to the building of any of our roads or rights-of-way. On page 16 of this presentation, I am reading from a Bureau of Land Management decision in which they state that the Usibelli Coal Co. claims that the proposed right-of-way would interfere with its operation, especially in furnishing an adequate water supply.

The report negatives this claim.

The report also shows a rifle range has been set up with gun pits on one side of the proposed Shallit right-of-way and the targets on the other side.

Both field reports recommend that a right-of-way be granted and one of them even suggests that it would be preferable to move the road, the subject of the application, out of the riverbed and onto the adjacent high land. However, it seems probable that a substantial part of the right-of-way will only be required temporarily. It is understood that the Alaska Railroad is now surveying a route for the extension of its line, now terminated at the Healy River Coal Co.'s mine, to a point at or near the Shallit lease, which will obviate the need for most of the rights-of-way.

Senator BIBLE. That is a decision of the Bureau of Land Management dating back to December 10, 1952?

Mr. SHALLIT. That is correct.

Senator BIBLE. Let us bring it as close to date as you can.

Mr. SHALLIT. I will try to bring it a little closer to date. There is one other thing I think I should point out. Rather than try to find it in this discussion, it is in the written form—possibly Mr. Ghiglione would care to testify on that. At one time when it looked like a railroad would not come through but possibly we would be able to get a road built, I offered the Alaska Road Commission the entire facilities of my camp. I offered to board and feed his men free of charge. I offered to provide free of charge the gasoline and the oil and the fuels and the power necessary to build the road.

In other words, what the road commission would do would be to bring in their equipment and their men and I would pay for the other costs. We had even gotten so far along in those arrangements that I had built an extra bunkhouse to house these men. I made a trip to Anchorage to find out what type of oil the road commission would particularly like in their trucks so I would be getting what they would want.

Mr. Ghiglione and the people from the Alaska Railroad and Mr. Usibelli met on the ground and went over the proposed road, but Mr. Usibelli objected so violently to the use of any parts of his road,

objected to the road going through his camp, threatened them with legal action if the road was built, and made such a fuss that he bluffed them out, is what it amounts to. However, he did offer \$50,000 for the construction of the railroad at that time, which he felt was important. However, I believe he stipulated—I do not know whether it was a railroad or a road—that if it was built it would have to be built on the south side of the river, which is engineeringly not feasible because of the nature of the ground.

There are only a few more pages, and Mr. Barash suggested I actually read it. This is at the bottom of page 18.

Thus, we find on the basis of the foregoing correspondence, that Usibelli Coal Mine, Inc., refused to permit the Alaska Road Commission to construct a highway across its lease, notwithstanding that it comprises public lands of the United States, and actually threatened to enjoin the Federal Government if the Alaska Road Commission attempted to do so. Moreover, we find from Mr. Kalbaugh's letter of March 3, 1954, to Director Strand that Mr. Usibelli has objected quite violently from time to time to the railroad line passing through what is known as the "G" bed, but that representatives of the Bureau of Mines and Geological Survey do not express as much concern about the potential of these beds as Mr. Usibelli.

It is apparent, therefore, that Usibelli Coal Mine, Inc., will resist the extension of the railroad or the construction of an all-weather highway over its coal lease unless the construction occurs at locations satisfactory to it, but entirely impractical and extremely costly from an engineering standpoint.

We hope that the committee will bear in mind that one way to postpone indefinitely railroad or highway access to the Cripple Creek Coal Co. lease is to insist that the construction be performed in a manner neither practical nor economically feasible. Thus far, the Interior Department has apparently remained browbeaten by these tactics.

Is progress to be halted—is the development of the coal resources of the Healy River Valley above the Usibelli lease to be stopped—is a monopoly to be created in the Healy River Valley for the benefit of the two existing coal mines having year-round transportation—is the military and civilian consumer of coal in the Fairbanks area to be denied greater competition—all because one coal operator is defying the Government?

Cripple Creek Coal Co. has an investment of approximately \$500,000 in its coal lease, which is being jeopardized because of lack of railroad access. Suntrana Mining Co., Usibelli Coal Mine, Inc., and Cripple Creek Coal Co. all operate coal leases issued by the United States and all are entitled to just and equal treatment at the hands of the Interior Department. Anyone in his right mind knows very well that there must be some place on the Usibelli lease on the north side of the Healy River where a narrow one-track railroad can cross without doing violence to the mining operations of Usibelli Coal Mine, Inc.

As stated earlier, the military was in dire need of coal in 1952 and 1953. No one can say when an emergency will threaten again. Is it necessary for an atomic bomb to explode before the Department will act to extend the railroad? We have shown that even on the basis of the tonnage the military expects to purchase in the next 3 years,

828,000 tons, the cost of extending the railroad will be substantially amortized as a result of a reduction in price to the military. In my own bids submitted to the Navy Fuel Supply Office yesterday, I have firmly obligated myself to reduce the bid prices by \$1 per ton if the railroad is extended to the Cripple Creek Coal Co. lease. This is evidence of good faith as well as firm conviction that extension of the railroad is vital to the development of the coal resources of the Healy River Valley, to the military and civilian consumer of coal in Alaska, and to the betterment of the Territory as a whole.

Through the courtesy of the staff of the committee, we have had an opportunity to read the report of the Department of the Interior submitted only yesterday, in response to Senator Jackson's letter of April 13. To say that we are shocked by its contents is putting it mildly.

It is hard for me to believe that the Department in putting out a letter of that type could possibly have the concurrence of the experts in its Department. I am not reading from the statement at this time. It is just my own personal opinion. I have worked for the Government. I have worked in a professional capacity as a mining engineer for them. I have worked with the professional people in the Department which one would normally expect, in Government procedure, to endorse such a letter to the committee as the Secretary has put out. It is almost beyond my belief that that letter has been endorsed by these experts. I think it might be interesting, Mr. Chairman, to ask the Secretary who of the experts in his Department actually endorsed it rather than merely acknowledged having read it. It just does not make sense to me.

Senator BIBLE. You may proceed.

Mr. SHALLIT. Yes, sir. Please bear in mind, Mr. Chairman, that the Suntrana and Usibelli coal mines with year-round railroad access supply coal to the domestic market in Alaska, as well as to the military. The domestic market at the present time is in excess of 150,000 tons annually. On the other hand, Cripple Creek Coal Co. without year-round railroad access is in a position to supply only the military, and then only if deliveries are permitted during the fall and winter months exclusively. As I indicated previously, the military has invited bids for fiscal years 1957 and 1958 on a 12-month-delivery schedule. The future of Cripple Creek Coal Co. is therefore shrouded in doubt unless railroad access is provided so that we can compete for military and civilian markets.

The position that the Secretary of the Interior is now taking in his report of May 27 to Senator Jackson leads me to conclude that the Department believes it owes a greater duty to the Suntrana and Usibelli coal mines than it does to the Cripple Creek coal mine and, even more important, that it owes a greater duty to the Suntrana and Usibelli coal mines than it does to the Government, the Territory of Alaska, and the taxpayers. Here is what the Department says:

Fifth, and finally, no showing has ever been made to this Department that the savings, if any, would accrue to the buyer rather than the producer of the coal. Clearly, the proposed extension would alter the competitive relationship among the three firms to the advantage of Cripple Creek. The Suntrana Mining Co. Inc., has largely exhausted its reserves of stripable coal, and Usibelli Coal Mine, Inc., likewise has used its strip reserves heavily. Both have made large investments in underground development. It is questionable whether either

could complete against a third firm engaged entirely in a stripping operation, if that third firm were given the additional advantage of a special rail extension constructed primarily for its benefit.

Cripple Creek at this time is a stripping operation. However, we have shown in our petition we are trying to put in an underground mine, and once we get railroad access it is good development procedure that the underground mine be put in.

The Department's doubt whether the savings, if any, would accrue to the buyer rather than to the producer is best answered by my current bids to supply the military for the next 3 fiscal years. Is there better proof than my offer to reduce my bids by \$1 per ton, if the spur is constructed to the Cripple Creek Coal Co. mine, for all coal shipped over the spur? Moreover, the Department's statement of doubt that any savings would accrue to the buyer of coal impeaches the contrary views of its own experts—namely, John Manley of the Alaska Railroad, who stated that the savings to the Territory are estimated at \$200,000 annually, and I think my bid substantiates that; Leo Saarela of the Geological Survey, who stated that the estimated savings to the military in 1953 would be \$300,000, provided that it could be put over a spur line, and the entire Alaska Subcommittee on Coal, who stated that the savings to the Government should amortize the cost of constructing the spur in 3 or 4 years.

With respect to the next statement of the Department quoted above, since when has it become incumbent upon the Department to substitute its judgment, as against our free-enterprise system, in stating that "It is questionable whether either (referring to Suntrana and Usibelli) could compete against a third firm engaged entirely in a stripping operation." Here is a strange and amazing anomaly. Is the Department attempting to protect Suntrana and Usibelli, the two giants, from little Cripple Creek Coal Co.?

Is the Department, as well as Suntrana and Usibelli, fearful of competition from Cripple Creek Coal Co.? Isn't that what the Department is saying? The Department's position would be ludicrous if it were not so serious for Cripple Creek Coal Co. In the light of the military's invitation for bids for the fiscal years 1957 and 1958 requiring deliveries to be made on a 12-month basis, Cripple Creek Coal Co. is in desperate straits. Yet the Department says not one word to explain how this predicament is to be met by Cripple Creek Coal Co. without railroad access, but instead helps Suntrana and Usibelli shed crocodile tears because they will be compelled to meet honest competition if the branch line is constructed.

Mr. Chairman, the position of the Department is so one-sided in favor of Suntrana and Usibelli, as it has been all along in overruling its own experts who have strongly recommended the construction of the spur, that we hope indeed this committee will not be misled by the spurious reasons advanced by the Department in its letter to Senator Jackson of May 27. Look at this statement in the letter:

\* \* \* Even during the present period of decline, we do not believe it would be desirable to permit any 1 of the 3 firms to fall by the wayside, since expanded needs for coal which we cannot now foresee may occur again in the future. We cannot justify a heavy investment in a rail extension at a time when the need clearly does not exist, the principal effect of which would be to subsidize one producer and disturb the present competitive relationship.



Since when is it subsidizing one producer to put it on a year-round operational basis so that it can compete on an equal basis with its competitors? Is it proper to call it a subsidy when it is evident that the cost of the spur will be repaid over a period of a few short years in terms of savings to the military alone in the lower price of coal, even leaving aside the benefits that would flow to the civilian consumer of coal in Alaska? Is there "present competitive relationship" as the Department states, when Cripple Creek Coal Co. does not have year-round railroad access and cannot compete for military and civilian markets? The Department says it would not "be desirable to permit any 1 of 3 firms to fall by the wayside." But what is to keep Cripple Creek Coal Co. from falling by the wayside if it cannot meet military requirements that deliveries be made over a 12-month period?

We leave to the committee the decision whether the Department is attempting to pull the wool over the eyes of the committee.

I thank you for giving me this opportunity to present my story and I hope that the committee will act promptly in preparing its conclusions in the light of all the testimony which is heard.

I am sorry I have digressed and taken so much time as I have.

Senator BIBLE. That is perfectly all right. I am not clear on the amount of production that you have had at Cripple Creek from the time that you first went in there in 1950. Could you develop that?

Mr. SHALLIT. Yes, sir; I have produced approximately 86,000 tons.

Senator BIBLE. I understand of that you produced—

Mr. SHALLIT. 135,000 tons in the 1953-54 fiscal year.

Senator BIBLE. Approximately how much would you produce this particular fiscal year?

Mr. SHALLIT. If I am the low bidder on this contract, I will produce 149,800.

Senator BIBLE. If you are not the successful low bidder?

Mr. SHALLIT. I will go fishing, I guess. That is the only market I have.

Senator BIBLE. You produce none at all in this current fiscal year?

Mr. SHALLIT. It is entirely possible that we may not produce coal in this fiscal year because the only markets I have are with the military. It is possible—I do not know that they will do it—that the military may decide to negotiate the contracts and divide them some way or other among all of the coal properties. I do not know.

Senator BIBLE. Have you sold any coal from July 1, 1954, to date?

Mr. SHALLIT. Yes, sir; from July 1954 to date I have sold 45,000 tons of coal.

Senator BIBLE. That is the figure I was looking for. I am not talking about the next fiscal year but the current fiscal year.

Mr. SHALLIT. Yes, sir. That is the amount of coal which the Department felt they should award to Cripple Creek and equal amounts to the Suntrana Coal Mining Co. in order to keep them alive during this past fiscal year.

Senator BIBLE. I think that is all I have, Mr. Shallit. Thank you very much.

(Mr. Shallit's prepared statement follows:)

STATEMENT OF A. BEN SHALLIT, CRIPPLE CREEK COAL CO.

May I state at the outset that it is reassuring and heartwarming that a small-business man in the Territory of Alaska can come to the Interior and Insular

**Affairs Committee of the United States Senate for help and assistance in the circumstances outlined in my petition, copies of which were filed with the committee on April 2 of this year. I take this opportunity to express my deep appreciation to the committee.**

No matter how the Department of the Interior or others may seek to cloud the real issues by raising specious ones, the principal issue before the committee is why the Secretary of the Interior refuses to authorize the Alaska Railroad to construct a railroad spur from the present rail's end at Suntrana to the Cripple Creek Coal Co. lease in the face of the findings of his own experts that:

1. Extension of the railroad would result in savings of \$200,000 to \$300,000 annually to the military and civilian consumers of coal in the Fairbanks area of Alaska;

2. Extension of the railroad would facilitate and promote the development of the coal resources in the Healy River Valley and provide railroad access to the Government coal reserves to meet the needs of the military installations in Alaska now and in the future; and

3. Extension of the railroad would mean substantial savings to the Government in the price of coal, which should amortize the cost of construction within 3 or 4 years.

As a corollary to the findings of the Interior Department, extension of the railroad would promote competition in the Healy River Valley which at present has only two coal mines operating on a year-round basis—thus benefiting military and civilian consumers by making coal available at cheaper prices. Documentary evidence in support of these findings is contained in my petition and reference will shortly be made thereto page by page.

So that the committee may have a clear understanding of the background which gives rise to the filing of the petition and this hearing, I shall sketch very briefly the salient facts.

Almost 6 years have now elapsed since a coal prospecting permit was issued to me by the Department of the Interior in July 1949 on what is now known as the Cripple Creek Coal Co. lease. Immediately following the issuance of the permit, I commenced the exploratory work necessary to develop a paying mine. In February 1950, I called upon the Alaska Road Commission of the Department of the Interior to construct an all-weather access road from the rail's end of the Alaska Railroad at Suntrana to my lease property so that I would be in a position to haul coal on a year-round basis. I offered to pay a portion of the expense involved in constructing the road. In response, Mr. A. F. Ghiglione, then chief engineer of the Alaska Road Commission, stated as follows (p. 5 of petition):

"The desirability of such a road is recognized. However, the Alaska Road Commission is not at present in a position to undertake this work since it has not been our policy to construct roads into undeveloped mining prospects.

"Should the actual development and production be instigated on the property, it is very probable that some cooperative assistance could be worked out whereby the road could be constructed with a portion of the expense shared by you as offered in your letter."

In July 1950, I entered into my first contract with the Department of the Army calling for the delivery of 50,000 tons of coal to the military installations in Alaska. It is a 6-mile haul by truck from my mine to the railroad siding of the Alaska Railroad at Suntrana, and to reach it it is necessary to cross the lands under lease to two competitors in the coal business, Usibelli Coal Mine, Inc., and Suntrana Mining Co., both holding coal leases from the Interior Department. The Usibelli lease has good roads on high ground which I was not permitted to use. Having no other alternative I undertook construction of a temporary road in the bed of the Healy River in the late summer of 1950 so that it could be completed and frozen over in time for deliveries of coal to be made to the military in October. Since the mine was now in commercial production, I again called upon the Alaska Road Commission for assistance in constructing an all-weather road. On December 20, 1950, Mr. Ghiglione replied as follows (p. 7 of petition):

"The need for access to your coal properties is recognized and the Alaska Road Commission is interested in seeing that such access is provided.

"Mr. Saarela, Territorial mining engineer, has been contacted concerning the area served by your present road and the various mines and developments that would also be served if the road were improved as you have recommended. Mr. Saarela is of the opinion that the district merits development and he has taken the initiative by writing to the Alaska Railroad in order to ascertain whether an extension of the present railroad spur could not be undertaken. It appears that an extension of the railroad would be much more desirable than the road

improvement, since the railroad service would eliminate your shorthaul trucking and rehandling of the coal.

"If it transpires that the Alaska Railroad will not undertake extension of their line, Alaska Road Commission will program the road improvement, providing the anticipated farm and industrial road funds are appropriated by Congress."

Several months later, on April 3, 1951, the then Commissioner of Roads for Alaska, John R. Noyes, wrote to the Director, Office of Territories, Interior Department, pointing out the desirability of extending the railroad to the Cripple Creek Coal Co. lease rather than constructing an all-weather road. Commissioner Noyes said (p. 8 of petition) :

"The development of the coal resources of the region on any adequate scale is dependent upon railroad transportation. For this reason the matter was referred to the Alaska Railroad through the Alaska Field Committee. A copy of a letter recently received from Col. J. P. Johnson, General Manager of the Alaska Railroad, to Mr. A. Ben Shallit of the Cripple Creek Coal Co., indicates that funds are not available for this new railroad construction.

"Road funds are not available either; but in view of the fact that the project was first proposed as a road project, it is desired to urge that the Alaska Railroad provide whatever facilities are required in the Healy River Valley rather than to attempt an unsatisfactory, halfway solution by means of a road. It is my opinion, concurred in by the Territorial Commissioner of Mines, that the area is definitely worthy of development at this time. Unless directed by the Office of Territories, we will leave this matter entirely to the Alaska Railroad. At the same time I wish to emphasize that I think the project is a worthy one for railroad development."

In May of 1951, Mr. Chiglione of the Alaska Road Commission advised me that it would not be possible to undertake any road construction to provide access to the Cripple Creek Coal Co. lease and the reason given was as follows (p. 8 of petition) :

"\* \* \* This decision has been necessary since the Interior Department considers the development should be accomplished by the Alaska Railroad and that no highway funds can therefore be involved."

Four years have now gone by since we were advised that the Interior Department had decided that access was needed and that such access should be provided by the extension of the Alaska Railroad rather than by the construction of an all-weather road. And during all that time Cripple Creek Coal Co. has struggled along operating its mine on a seasonal basis and supplying coal to the military during the winter months when our temporary makeshift road in the bed of the Healy River was frozen over so that deliveries could be made by truck. Several times during that period the military was in short supply of coal. In June 1952, the Naval Supply Depot at Seattle wired Cripple Creek Coal Co. as follows (see p. 12 of petition) :

"Request immediate advice by wire or telephone concerning additional tentative quantities of coal for Ladd and Eielson Air Force bases. Assuming availability of cars advise tonnage you could supply of size 8-6 X  $\phi$  mine run for each of the following months July, August, and September."

In its telegraphic reply Cripple Creek Coal Co. stated as follows (p. 13 of petition) :

"Reurtel June 25 can deliver 10,000 tons coal each month beginning October and continuing into spring of 1953 as long as road is usable.

"Uncertain road conditions before October 1 preclude deliveries during July, August, and September."

Thus Cripple Creek Coal Co. was unable to deliver coal to the military during the summer months for lack of railroad access or an all-weather road. Again in 1953 the military was in short supply of coal. A meeting of the coal Subcommittee of the Alaska Field Committee of the Interior Department was held on April 30, 1953, in the offices of the Alaska Railroad at Anchorage to discuss the critical shortage of coal. Some excerpts from that meeting will indicate the seriousness of the problem.

"Mr. ANDERSON (Bureau of Mines) (pp. 40 and 41 of petition). "When Mr. Usibelli gave Lieutenant Fisher his proposals of 100,000 tons Lieutenant Fisher called Mr. Shallit and asked him for the maximum tonnage he could produce. Mr. Shallit told him 100,000 tons, but he would be willing to negotiate for 150,000 tons if the railroad or the highway would be built up to Cripple Creek before October of this year. On the strength of that and from the meetings we had prior to this meeting with the Navy on negotiating coal contracts this year, we thought it was

almost certain that the Alaska Road Commission at least would be able to build a road into Cripple Creek or Roth property, which is just above the Cripple Creek property. Mr. Hinman, has it not been in your budget request to get funds for building this spur?"

"Mr. HINMAN (Alaska Railroad). 'It has been in our 6-year program for several years.'

"Mr. ANDERSON (p. 41). 'Now the vital point under consideration is how are we going to get the money immediately to build a road up to Cripple Creek? I called George Rogers in Juneau but he was unable to attend this meeting. He expects to go back to Washington and talk to the Secretary as to whether or not it would be possible to get funds for a railroad. Will this be possible, Mr. Hinman?'

"Mr. HINMAN. 'I do not know.'

"Major GOCHENAUR (Headquarters, Elmendorf Air Force Base) (p. 41 of petition). 'We are under now by about 12,000 tons of our requirements—figuring that Cripple Creek will take 150,000 tons.'

"Mr. HINMAN. 'Cripple Creek does not know how they are going to deliver 150,000 tons unless they get an all-weather road or a railroad this summer.'

"Major GOCHENAUR. 'That is why the military is here today. I compiled figures yesterday for our budget planning for the fiscal year 1955 for the Air Force, (I do not know the requirements of the Army). We will have at Eielson roughly 225,000 tons; at Ladd, 300,000 tons, and at Elmendorf, 140,000 tons. These are conservative figures. The main powerplant at Eielson at full capacity is capable of burning 50 or 60 tons an hour. Figures from the plant superintendent, based on full capacity, would be around 50 tons an hour. The average consumption during mild weather is 7,000 tons a month.'

"Major GOCHENAUR (p. 43 of petition). 'What was the conversation, Mr. Anderson, you had with Mr. Flakne when you went back to Washington? It was my understanding that the Department of the Interior was back of that road. After the conversation I had with you, Lieutenant Fisher said he laid it in the hands of the Interior Department and they would put it through.'

"Mr. HINMAN (p. 44 of petition). 'You ask if ARC had ever asked for funds to build a road. I am sure they have not. There is no reason to build a road when it should be a railroad. If you are going to ask for money, ask for funds to construct a railroad.'

"Mr. ANDERSON (p. 44 of petition). 'This suggestion comes from Joe Flakne. I am asking you to think about it as a possible solution. Joe Flakne and I spent about three-fourths of an hour in Assistant Secretary Lewis' office and gave him the whole picture, stressing the importance of this railroad up there, consequently, he is familiar with the immediate necessity of the construction of this project. I do not know what can be done; however, George Rogers will take this information to Washington and perhaps talk it over with the Governor—point out that it is a military necessity.'

"Mr. ROBINSON (Territorial Department of Mines) (p. 45 of petition). 'Right now, unless we get a railroad to Cripple Creek Mine to take care of 150,000 tons, the military is going to be at least 50,000 tons short. If the military is going to use coal, it will be shipped in from the States.'

At the conclusion of the meeting, the Alaska Field Subcommittee on Coal unanimously passed the following resolutions (p. 46 of petition):

"2. That steps be taken at once to finance the construction of an extension of the railroad from the Healy River mine to the Cripple Creek and Roth properties. This spur to be completed or partially so before October 1, 1953.

"3. That the extension of the Healy River spur to the Roth property is vital to the security of military installations this coming fiscal year of 1954, and in the future, and to the development and prosperity of the coal industry as a whole in Alaska.

"4. That the extension of the Healy River spur to the Roth property would mean a substantial savings to the Government in the price of coal and this savings to the Government should amortize the cost of construction within 3 or 4 years.

"5. That shipment of coal by rail transportation is the only logical solution to the presently existing critical situation."

Because the coal situation in Alaska was so critical, Secretary of the Interior McKay appointed a special committee headed by Charles W. Connor, formerly Administrator of Defense Solid Fuels Administration, to conduct an investigation on the ground in Alaska and to submit a report and recommendations to the Secretary. The Committee spent about 3 months in Alaska inspecting the

various mines and holding informal meetings with the mine operators. The Connor report has never been released to the public but it is generally known that the report strongly recommends the extension of the railroad to the Cripple Creek lease and to the Government coal reserves.

During this period, Cripple Creek Coal Co. continued its efforts to have the Department construct the railroad spur. They seemed to be bearing fruit, for under date of April 29, 1953, Acting General Manager of the Alaska Railroad John E. Manley filed a right-of-way with the Bureau of Land Management reading as follows (pp. 31 and 32 of petition) :

"The Alaska Railroad contemplates constructing at an early date an extension of its rail line from mile 4.2 on the Suntrana branch to mile 6.6, adjacent to the Usibelli mine camp. Also, from mile 6.6 to mile 10.3, adjacent to the Roth coal reserve.

"It is requested that there be noted under the act of March 12, 1914 (38 Stat. 305, 48 U. S. C. 301-308), a right-of-way for this line to the extent of 100 feet on each side of the center line of the track. Accordingly, we are attaching three copies each of part 1, Suntrana branch extension, Suntrana to Usibelli, and part 2, Suntrana branch extension, Usibelli to Roth reserve.

"You will note in our letter of June 23, 1952, that the railroad contemplates the extension of this line in order that the Usibelli Coal Co., the Cripple Creek Mining Co. and any future producers, may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. It is estimated that the construction of this line will result in the reduction of coal costs to the territory of \$200,000 annually."

In furtherance of the proposed construction of the spur, General Manager of the Alaska Railroad Kalbaugh submitted to his superior, William C. Strand, Director, Office of Territories, under date of March 3, 1954, drawings and estimates covering the proposed construction, in which he stated (p. 34 of petition) :

"The line between Suntrana Mine (mile 4.2) and Usibelli Mine (mile 6.6) has been located and staked. The remaining portion of the extension, mile 6.6 to the Roth coal reserve (Coal Creek), is based on a reconnaissance survey, and this line has not been staked. It is estimated that it would require approximately 2 months time with a single survey party to complete the reconnaissance survey and complete location."

Mr. Kalbaugh estimated the cost of constructing the entire spur at \$1,028,251.50 if a wooden trestle could be utilized to cross Cripple Creek and an additional \$425,000 if a steel bridge was to become necessary after a more complete study was made (p. 4 of exhibit Y of petition). Thus, the cost of constructing the entire spur was estimated at approximately \$1 million if a wooden trestle could be utilized to cross Cripple Creek, or \$1,450,000 if a steel bridge was found necessary. These figures include also an estimated cost of \$136,000 to extend the spur from the Cripple Creek Coal Co. lease to the Government coal reserves.

Then came the bombshell—the straw that broke the camel's back. Without notice of any kind to Cripple Creek Coal Co., General Manager of the Alaska Railroad Kalbaugh on October 11, 1954, filed with the Bureau of Land Management a withdrawal of the railroad right-of-way, stating as follows (p. 36 of petition) :

"Will you please refer to our letter of April 29, 1953, wherein the Alaska Railroad made request upon your organization for the withdrawal of a railroad right-of-way 100 feet on each side of center line of track on our Suntrana branch from the present end of said branch line at mile 4.2 to mile 10.3.

"Initially this request for withdrawal of the proposed right-of-way was occasioned by the possibility of the extension of this branch line being essential to the national defense. Since my recent arrival in Washington, however, I have been informed that the Defense Department does not consider the extension of this branch line essential to the national defense, and it would therefore be appreciated if you would withdraw the request as contained in our letter of April 29, 1953, on this matter."

I wish particularly to invite the committee's attention to the statement in Mr. Kalbaugh's letter that following his arrival in Washington he had been informed that the Defense Department did not consider the extension of the branch line essential to the national defense. We submit, Mr. Chairman, that the question is not whether the extension of the railroad is essential to the national defense. The real and only reasons for the extension of the railroad were succinctly stated in the earlier letter of April 29, 1953, from the Alaska

Railroad to the Bureau of Land Management applying for a right-of-way. In that letter the reasons are stated as follows (p. 38 of petition):

" \* \* \* the railroad contemplates the extension of this line in order that the Usibelli Coal Co., the Cripple Creek Mining Co. and any future producers, may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. It is estimated that the construction of this line will result in the reduction of coal costs to the territory of \$200,000 annually."

These reasons speak for themselves. We submit to your committee that there is not the slightest relevancy in whether the branch line is essential to the national defense. There is a vast distinction between the words "essential to national defense" and "in the interest of national defense." We say it is very much in the public interest and in the interest of national defense that coal be made available to military and civilian consumers in Alaska at cheaper prices and there can be no doubt that extension of the railroad would accomplish that objective.

Let me demolish once and for all the specious argument that the situation has now changed completely and that the military demand for coal is such that extension of the Alaska Railroad to the Cripple Creek Coal Co. lease is no longer necessary. There are two air force bases in the Fairbanks area which are served by the coal mines in the Healy River Valley. They are the Eielson and Ladd Air Force Bases. Combined they burn coal currently at the rate of between 400,000 and 450,000 tons annually. Because the military in Alaska has decided to reduce its rather large coal stockpile over the next 2 years to about a 90-day supply, bids were invited last week to supply the 2 installations with 149,800 tons of coal during fiscal year 1956; 286,000 tons of coal during fiscal year 1957, and 392,500 tons of coal during fiscal year 1958. The total tonnage for which bids were invited to be submitted by May 31 is 828,300 tons over a 3-year period. Despite the fact that the invitation for bids requires delivery of coal on a year-round basis during fiscal years 1957 and 1958 and Cripple Creek Coal Co. does not have at the present time year-round railroad or road access, Cripple Creek has nevertheless submitted bids covering the entire tonnage needed by the military. We do so in the firm belief that not even the Secretary of the Interior can or will stand in the way of progress and that the coal resources of the Healy River Valley will be opened up for development by providing adequate railroad access thereto.

In any event, I want this committee and the Department of the Interior and the Department of Defense to know that in submitting Cripple Creek Coal Co.'s bids to the Navy Fuel Supply Office yesterday, May 31, which we hope will prove to be the lowest bids, I have solemnly agreed that Cripple Creek Coal Co. will reduce its bid prices by \$1 per ton for the entire 828,300 tons if the railroad spur is constructed to the Cripple Creek Coal Co. lease before deliveries to the military commence. If the spur is constructed after deliveries commence, \$1 per ton will be deducted from the price of the remaining coal shipped over the new spur. It is obvious, therefore, that the military is in a position to save \$828,300 over the next 3 years if Cripple Creek Coal Co.'s bids are the low bids and the railroad spur is constructed. Even if the tonnage is divided among the present coal operators, there will still be substantial savings to the military as well as to civilian consumers of coal if the spur is constructed.

How, then, can it be contended by anyone that the situation has changed and that there is no longer any need for extending the Alaska Railroad to the Cripple Creek Coal Co. lease property? After all, when the stockpile is reduced within the next 2 fiscal years, the Ladd and Eielson military installations will again be purchasing coal at the rate of a minimum of 400,000 tons annually. It is conceivable that the tonnage required at Ladd and Eielson may be greater in 1958 than 400,000 tons. It is obvious, therefore, that the Government and the taxpayers would be the principal beneficiaries in terms of dollars saved if a spur is constructed, and that the spur would make readily available to the military large quantities of coal which otherwise would not be available quickly if needed. We challenge anyone to deny the truth of these statements. If anyone does, we respectfully submit the denial would be palpably untrue and intellectually dishonest.

To return to the chronology of events, in the meantime Cripple Creek Coal Co. was having a terrible time in 1954 with the temporary makeshift road in the bed of the Healy River. On three separate occasions the road was destroyed

by flash floods, requiring time-consuming and costly rebuilding. In desperation, Cripple Creek Coal Co. wrote to Mr. Ghiglione, commission of roads for Alaska, as follows (p. 55 of petition) :

"Since you are entirely familiar with our problem, there is no point in repeating the factors involved. I would like to point out that the road that we are now using and for which we have a tentative right-of-way, was destroyed 3 times this year, requiring rebuilding at a cost in excess of \$40,000.

"Our present road is considerably better than any we had previously built, but the section through the Usibelli lease is still subject to destruction during every period of high water.

"I would appreciate your giving consideration to the possibility of the road commission obtaining a right-of-way at least through that section since we have not been able to make any progress in obtaining a right-of-way on which we can construct a permanent road."

Despite the fact that the General Manager of the Alaska Railroad had withdrawn the railroad right-of-way by letter of October 11, 1954, apparently without notice to the Alaska Road Commission, Mr. Ghiglione responded to Cripple Creek Coal Co. under date of October 29, 1954, as follows (p. 55 and 56 of petition) :

"As you know, the Department has decided that proper access to the Healy River coalfields may best be provided by the railroad spur extension. As a result of this decision, the railroad has proceeded to obtain the necessary right-of-way and has filed necessary maps and instruments with the Bureau of Land Management for this purpose.

"When the decision was finally made to encourage railroad access to the Healy River coal properties, the Alaska Road Commission was precluded from sponsoring further road projects for this purpose. As you will recall, a subsequent attempt was made to obtain funds for construction along the Alaska Railroad right-of-way in an effort to provide temporary relief for your problem. This attempt met with failure, again because the project was considered one for the Alaska Railroad and therefore any request for funds to implement the project should be initiated by that agency.

. . . . .

"\* \* \* I can only suggest that you contact the Alaska Railroad in an effort to expedite their development of the railroad spur further up the Healy River." Cripple Creek Coal Co. hastened to reply to Mr. Ghiglione on November 4, 1954, in pertinent part, as follows (p. 56 of petition) :

"For your information, this situation was recently discussed with officials of the Alaska Railroad, and we were advised that they had no immediate plans for the construction of such a spur. Under the circumstances, we believe that unless an actual directive was issued to you, precluding the construction of a road, it would still be in order for you to consider this project. If, however, you have been officially advised that the Alaska Railroad alone is to be responsible for the construction of this spur, we will appreciate a copy of this directive so that we may act accordingly."

Mr. Ghiglione responded on November 8, 1954, in pertinent part, as follows (p. 57 of petition) :

"The situation along Healy River, insofar as access by railroad in preference to highway has been determined as policy by the Interior Department, has not been resolved in the form of a directive to the Alaska Road Commission. However, since all requests for funds must be processed through the Interior Department before reaching the Bureau of the Budget and Congress, it is obvious that the policies of the Department must be adhered to."

I invite the attention of the committee to the fact that even as late as November 8, 1954, almost a month after the Alaska Railroad had withdrawn its right-of-way for the extension of the railroad, Mr. Ghiglione still adhered to his previous view that the policy of the Department remained the same: namely, that access by railroad was preferred to a highway. Following the exchange of letters between Cripple Creek Coal Co. and Mr. Ghiglione, I wrote to Mr. Kalbaugh of the Alaska Railroad on October 21, 1954, in pertinent part, as follows (p. 57 of petition) :

"Sections of our road were destroyed three times this year, pointing to the necessity of obtaining less vulnerable right-of-way on which a permanent road can be constructed. Assistance from an appropriate agency of Government, who can obtain a right-of-way through their powers of eminent domain appears to be the only way in which such a road can be built through the intervening leases.

"It is therefore, again, respectfully requested that consideration be given to the extension of the existing spur to Cripple Creek, and that if it is not believed advisable to construct a spur at this time, to at least survey and obtain a right-of-way for such a spur, and allow the Cripple Creek Coal Co. and the general public the right to use this right-of-way, until such time as a spur is constructed."

I was still not aware at this point of the withdrawal of the railroad right-of-way. By letter of November 5, 1954, Mr. Kalbaugh responded to my letter, in pertinent part, as follows (p. 58 of petition) :

"As we discussed in our several conversations on this matter, the Alaska Railroad is required to be self-sustaining and any such large expenditures as you have proposed by the railroad would have to be economically justified and, as we also discussed, such economic justification cannot be made by the railroad in support of this track extension.

"Inasmuch as the Defense Department has indicated that they cannot lend support to your proposed track extension, it appears to us that your next best bet would be to endeavour to procure an all-year road from your property to the present railhead at Suntrana, and of course such a road would not be under the jurisdiction of the Alaska Railroad. Therefore, you may wish to consider the possibility of having the Alaska Road Commission undertake such action as would be necessary for such a roadbuilding program."

On December 15, 1954, I again wrote to the Alaska Road Commission, to which Mr. Ghiglione responded under date of December 21, 1954, as follows (pp. 58 and 59 of petition) :

"Reference is made to your letter of December 15 regarding the possibility of obtaining funds for construction of an all-year road from Suntrana to Cripple Creek. I am surprised at Mr. Kalbaugh's statement regarding the appropriation of funds for this project, since all previous departmental policy has been in support of extension of the railroad spur in preference to the highway, and obviously no funds will be appropriated by Congress without the support of the Interior Department.

"In reviewing our previous estimates for this project, I find that several factors enter into the cost of the road and, therefore, any estimate must be qualified. Our last estimate, made in April 1953, for construction of the road from Suntrana to Cripple Creek, totaled \$420,000. This estimate was based upon the alignment following the present Alaska Railroad line within their right-of-way, since at that time Mr. Usibelli had refused consideration of a road easement either over his road or through his property, excepting on the railroad line. His refusal was always based on the contention that any such easements would conflict with the future development of his property \* \* \*."

Analyzing the correspondence, it is apparent that Cripple Creek Coal Co. is an innocent victim of bureaucratic buckpassing to the detriment of the development of the coal resources of the Healy River Valley and to the financial detriment of the military and civilian consumers of coal in the Fairbanks area. We respectfully submit that it is unconscionable for Mr. Kalbaugh to state in his letter of November 5, 1954, that "economic justification cannot be made by the railroad in support of the track extension." Had the spur been constructed 5 years ago, the military would have saved a minimum of \$263,614 in the cost of coal purchased from Cripple Creek Coal Co. at a savings of \$1 per ton. The military would also have saved a substantial sum in the cost of acquiring some 800,000 tons of coal over the same period from Usibelli Mine, Inc. What more is necessary to justify the construction of a spur when the Secretary's own Alaska Subcommittee on Coal unanimously concluded that "savings to the Government should amortize the cost of construction within 3 or 4 years" (p. 46 of petition) and when the Acting General Manager of the Alaska Railroad stated unequivocally that "it is estimated that the construction of this line will result in the reduction of coal costs to the territory of \$200,000 annually?" (p. 32 of petition).

Even leaving aside the fact that the savings to the military over the last 5 years would have amortized the entire cost of the spur, let us look at the future. In the invitation for bids to supply the military with 828,300 tons of coal during the next 3 fiscal years, I have offered to reduce my price by \$1 per ton if I am awarded the contracts and the spur is constructed before deliveries of coal commence. Here is tangible proof of the savings to the military as well as to the civilian consumer of coal in Alaska if the spur is constructed. How does Mr. Kalbaugh explain his statement that "economic justification cannot be made by the rail-



road in support of the track extension" in the light of the facts herein presented? This committee is entitled to an answer.

One other aspect of the current invitation for bids to supply the military installations during the next 3 years deserves the consideration of this committee. For the fiscal years 1957 and 1958, bids have been invited on the basis of deliveries on a year-round basis. Unless railroad or highway access is provided to Cripple Creek Coal Co., we are in a desperate situation. Even worse off, however, is the Territory of Alaska and the military and civilian consumer in the Fairbanks area. Its effect is to lock up and block the development of the coal resources in the Healy River Valley. Its effect also would be to create a monopoly in the Healy River Valley in favor of the two present coal operators who have year-round access to the railroad. Is this in the public interest and in the interest of the Territory of Alaska? We submit that the answer is self-evident.

I hope that the committee will bear with me in discussing the last problem which doubtless has played an important role in delaying the extension of the railroad or the construction of an all-weather road. I refer to the continuous protests and objections which have been raised by Usibelli Coal Mine, Inc. to the railroad or highway crossing its lease on the ground that it would interfere with its mining operations. It is important for this committee to know that the Usibelli coal lease is a lease from the United States embracing public lands and that Congress has provided by statute (pp. 15 and 16 of petition) that all coal leases issued by the Department of the Interior shall expressly reserve to the Government the right to grant easements in, over, through, or upon the lands so leased as may be necessary for the working of other coal lands under permits or leases issued by the Department. It would be simple indeed for a lessee to seek to keep competitors out of a particular area by alleging that any right-of-way across its lease would constitute interference with its mining operations. That appears to be the procedure which Usibelli Coal Mine, Inc. has utilized here to prevent the extension of the railroad or the construction of a highway. Even when Cripple Creek Coal Co. filed its right-of-way application in 1951 (p. 17 of petition) with the Bureau of Land Management for a road in the bed of the Healy River, which was its only alternative because of vigorous opposition by Usibelli, but which road was highly vulnerable to destruction by flash floods, spring thaws, and the elements in general, Usibelli Coal Mine, Inc. nevertheless filed vehement protests with the Department. On September 10, 1952, the Bureau of Land Management rendered a decision dismissing the protests and granting the right-of-way, stating, in pertinent part, as follows (pp. 18 and 19 of petition):

"\* \* \* The Usibelli Co. claims that the proposed right-of-way would interfere with its operations, especially in the furnishing of an adequate water supply for the domestic use of the employees on its lease who reside at a camp within the lease boundaries. The report negatives this claim and shows that there is more than ample underground seepage to furnish a sufficient supply of domestic water. The report also shows that a rifle range has been set up with the gun pits on one side of the proposed Shallit right-of-way and the targets on the other. \* \* \*

"Both field reports recommend that a right-of-way be granted and one of them even suggests that it would be preferable to move the road, the subject of the application, out of the riverbed and onto the adjacent high land. However, it seems probable a substantial part of the right-of-way will only be required temporarily. It is understood that the Alaska Railroad is now surveying a route for an extension of its line, now terminated at the Healy River Coal Co.'s mine, to a point at or near the Shallit lease, which will obviate the need for most of the rights-of-way. \* \* \*

\* \* \* \* \*

"This matter has been thoroughly considered. The facts have been meticulously assembled by three agencies of the Department whose representatives have examined the land and discussed the proposed right-of-way with the parties concerned, including the Usibelli Co. That company has filed a substantial body of arguments in support of its protest, all of which has been considered. We are unable to perceive in what way oral argument would supplement the showing already made or establish what has not been established that the granting of the right-of-way seriously affects Usibelli's interests as a lessee. On the contrary, it appears that no adverse effect would result but that the Usibelli Co. could accommodate its operations to the situation with little or no additional

expense. To accede to the protest would result in placing a heavy burden on Shallit who is also a lessee which is not justified in the circumstances. Accordingly, the application for an oral hearing and the protest as well are dismissed."

In 1953 the Department decided to have the Alaska Road Commission construct a road along the route of the survey of the Alaska Railroad so that the spur could be constructed thereon at a later date when funds did become available. Cripple Creek Coal Co. immediately placed at Mr. Ghiglione's disposal its entire camp facilities and offered without charge meals, lodging, gasoline, diesel fuel, lubricants, and other supplies. (See p. 27 of petition.) In Mr. Ghiglione's reply of March 11, 1953, he stated in part as follows (p. 27 of petition):

"\* \* \* The Alaska Road Commission now plans to initiate the construction as soon as possible this spring and will draw upon your cooperative assistance as detailed above.

"It is the intent of the Alaska Road Commission to provide and maintain the road from the railroad spur to the entrance of your properties. In accomplishing this it will also be essential that the cooperation of Mr. Usibelli be obtained. It is anticipated that Mr. Usibelli will not oppose this project since he will benefit by the Alaska Road Commission assumption of maintenance and responsibility. The road alignment will follow as much as possible the existing roads up the Healy River and also conform to the proposed alignment for the railroad extension where such conformance does not result in excessive cost. Since it is essential that this work be started this spring, I will contact you further regarding arrangements for your cooperative assistance."

However, on April 22, 1953, Mr. Ghiglione wrote to Mr. Joseph Flakne, at that time Chief of the Alaska Division of the Office of Territories, as follows (p. 28 of petition):

"It was not possible to obtain Mr. Usibelli's permission to utilize his road or to traverse his area as was planned for the low-cost road project. Mr. Usibelli claims that the traversing of his mine area by the road through to Mr. Shallit's property would seriously handicap his operations, in addition to preventing access to large quantities of coal which his approved development plans have contemplated mining. In addition, the increased liability to Mr. Usibelli's operations from through traffic using his road is considered by him to far offset any advantages he might receive through the Alaska Road Commission's assumption of maintenance responsibility. In view of the above factors Mr. Usibelli refuses public use of his road and further advised that he would be forced to take legal action to restrain the Alaska Road Commission if we should attempt to take over. Mr. Usibelli is extremely anxious to obtain railroad access to his property and made the firm offer to our group of a \$50,000 contribution toward this end.

"The above situation again forces the Shallit mine into the position of having only temporary road access which is not usable for at least six months of the year. \* \* \*

"\* \* \* The desirability of providing the railroad extension rather than a temporary road is again apparent and I urge that further effort be towards this end. \* \* \*

In Mr. Kalbaugh's letter of March 3, 1954, to Director Strand of the Office of Territories, forwarding drawings and estimates of the proposed extension of the Alaska Railroad, he stated as follows (page 34 of petition):

"It will be noted that on the located line drawing between Suntrana Mine (M. P. 4.2) and Usibelli Mine (M. P. 6.6) we show our location passing over the Usibelli Mining Company's air strip. This location was discussed with Mr. Usibelli, and he did not voice any objection other than that which could be normally expected under the circumstances. The line then passes through (according to information I have received) what is called 'G' Bed. This location Mr. Usibelli has objected to quite violently from time to time, inasmuch as he says he plans to mine these underground beds. However, from discussions with the Bureau of Mines Representatives and the Geological Survey, they do not express as much concern about the potentials of these beds as Mr. Usibelli has."

"In reviewing our previous estimates for this project, I find that several factors enter into the cost of the road and, therefore, any estimate must be qualified. Our last estimate, made in April 1953, for construction of the road from Suntrana to Cripple Creek, totaled \$420,000. This estimate was based upon the alignment following the present Alaska Railroad line within their right-of-way, since at that time Mr. Usibelli had refused consideration of a road easement either over

his road or through his property, excepting on the railroad line. His refusal was always based on the contention that any such easements would conflict with future development of his property \* \* \*."

Thus, we find on the basis of the foregoing correspondence that Usibelli Coal Mine, Inc. refused to permit the Alaska Road Commission to construct a highway across its lease, notwithstanding that it comprises public lands of the United States, and actually threatened to enjoin the Federal Government if the Alaska Road Commission attempted to do so. Moreover, we find from Mr. Kalbaugh's letter of March 3, 1954, to Director Strand that Mr. Usibelli has objected quite violently from time to time to the railroad line passing through what is known as the "G" bed, but that representatives of the Bureau of Mines and Geological Survey do not express as much concern about the potential of these beds as Mr. Usibelli. It is apparent, therefore, that Usibelli Coal Mine, Inc. will resist the extension of the railroad or the construction of an all-weather highway over its coal lease unless the construction occurs at locations satisfactory to it, but entirely impractical and extremely costly from an engineering standpoint. We hope that the committee will bear in mind that one way to postpone indefinitely railroad or highway access to the Cripple Creek Coal Co. lease is to insist that the construction be performed in a manner neither practical nor economically feasible. Thus far, the Interior Department has apparently remained browbeaten by these tactics. Is progress to be halted; is the development of the coal resources of the Healy River Valley above the Usibelli lease to be stopped; is a monopoly to be created in the Healy River Valley for the benefit of the two existing coal mines having year-round transportation; is the military and civilian consumer of coal in the Fairbanks area to be denied greater competition; all because one coal operator is defying the Government? Cripple Creek Coal Co. has an investment of approximately \$500,000 in its coal lease, which is being jeopardized because of lack of railroad access. Suntrana Mining Co., Usibelli Coal Mine, Inc., and Cripple Creek Coal Co. all operate coal leases issued by the United States and all are entitled to just and equal treatment at the hands of the Interior Department. Anyone in his right mind knows very well that there must be some place on the Usibelli lease on the north side of the Healy River where a narrow one-track railroad can cross without doing violence to the mining operations of Usibelli Coal Mine, Inc.

As stated earlier, the military was in dire need of coal in 1952 and 1953. No one can say when an emergency will threaten again. Is it necessary for an atomic bomb to explode before the Department will act to extend the railroad? We have shown that even on the basis of the tonnage the military expects to purchase in the next 3 years, 828,000 tons, the cost of extending the railroad will be substantially amortized as a result of a reduction in price to the military. In my own bids submitted to the Navy Fuel Supply Office yesterday, I have firmly obligated myself to reduce the bid prices by \$1 per ton if the railroad is extended to the Cripple Creek Coal Co. lease. This is evidence of good faith as well as firm conviction that extension of the railroad is vital to the development of the coal resources of the Healy River Valley, to the military and civilian consumer of coal in Alaska, and to the betterment of the Territory as a whole.

Through the courtesy of the staff of the committee, we have had an opportunity to read the report of the Department of the Interior submitted only yesterday, in response to Senator Jackson's letter of April 13. To say that we are shocked by its contents is putting it mildly.

Please bear in mind, Mr. Chairman, that the Suntrana and Usibelli coal mines with year-round railroad access supply coal to the domestic market in Alaska, as well as to the military. The domestic market at the present time is in excess of 150,000 tons annually. On the other hand, Cripple Creek Coal Co. without year-round railroad access is in a position to supply only the military, and then only if deliveries are permitted during the fall and winter months exclusively. As I indicated previously, the military has invited bids for fiscal years 1957 and 1958 on a 12-month delivery schedule. The future of Cripple Creek Coal Co. is therefore shrouded in doubt unless railroad access is provided so that we can compete for military and civilian markets.

The position that the Secretary of the Interior is now taking in his report of May 27 to Senator Jackson leads me to conclude that the Department believes it owes a greater duty to the Suntrana and Usibelli coal mines than it does to the Cripple Creek coal mine and, even more important, that it owes a greater duty to the Suntrana and Usibelli coal mines than it does to the Gov-

ernment, the Territory of Alaska, and the taxpayers. Here is what the Department says:

"Fifth and finally, no showing has ever been made to this Department that the savings, if any, would accrue to the buyer rather than the producer of the coal. Clearly, the proposed extension would alter the competitive relationship among the three firms to the advantage of Cripple Creek. The Suntrana Mining Co., Inc. has largely exhausted its reserves of strippable coal, and Usibelli Coal Mine, Inc. likewise has used its strip reserves heavily. Both have made large investments in underground development. It is questionable whether either could compete against a third firm engaged entirely in a stripping operation, if that third firm were given the additional advantage of a special rail extension constructed primarily for its benefit."

The Department's doubt whether the savings, if any, would accrue to the buyer rather than to the producer is best answered by my current bids to supply the military for the next 3 fiscal years. Is there better proof than my offer to reduce my bids by \$1 per ton, if the spur is constructed to the Cripple Creek Coal Co. mine, for all coal shipped over the spur? Moreover, the Department's statement of doubt that any savings would accrue to the buyer of coal impeaches the contrary views of its own experts—namely, John Manley of the Alaska Railroad, who stated that the savings to the Territory are estimated at \$200,000 annually, and I think my bid substantiates that; Leo Saarela of the Geological Survey, who stated that the estimated savings to the military in 1953 would be \$300,000; and the entire Alaska Subcommittee on Coal, who stated that the savings to the Government should amortize the cost of constructing the spur in 3 or 4 years.

With respect to the next statement of the Department quoted above, since when has it become incumbent upon the Department to substitute its judgment, as against our free-enterprise system, in stating that "It is questionable whether either [referring to Suntrana and Usibelli] could compete against a third firm entirely in a stripping operation. Here is a strange and amazing anomaly. Is the Department attempting to protect Suntrana and Usibelli, the two giants, from little Cripple Creek Coal Co.?"

Is the Department, as well as Suntrana and Usibelli, fearful of competition from Cripple Creek Coal Co.? Isn't that what the Department is saying? The Department's position would be ludicrous if it were not so serious for Cripple Creek Coal Co. In the light of the military's invitation for bids for the fiscal years 1957 and 1958 requiring deliveries to be made on a 12-month basis, Cripple Creek Coal Co. is in desperate straits. Yet the Department says not one word to explain how this predicament is to be met by Cripple Creek Coal Co. without railroad access, but instead helps Suntrana and Usibelli shed crocodile tears because they will be compelled to meet honest competition if the branch line is constructed.

Mr. Chairman, the position of the Department is so one-sided in favor of Suntrana and Usibelli, as it has been all along in overruling its own experts who have strongly recommended the construction of the spur, that we hope indeed this committee will not be misled by the spurious reasons advanced by the Department in its letter to Senator Jackson of May 27. Look at this statement in the letter:

"... Even during the present period of decline, we do not believe it would be desirable to permit any one of the three firms to fall by the wayside, since expanded needs for coal which we cannot now foresee may occur again in the future. We cannot justify a heavy investment in a rail extension at a time when the need clearly does not exist, the principal effect of which would be to subsidize one producer and disturb the present competitive relationship."

Since when is it subsidizing one producer to put it on a year-round operational basis so that it can compete on an equal basis with its competitors? Is it proper to call it a subsidy when it is evident that the cost of the spur will be repaid over a period of a few short years in terms of savings to the military alone in the lower price of coal, even leaving aside the benefits that would flow to the civilian consumer of coal in Alaska? Is there "present competitive relationship" as the Department states, when Cripple Creek Coal Co. does not have year-round railroad access and cannot compete for military and civilian markets? The Department says it would not "be desirable to permit any one of the three firms to fall by the wayside." But what is to keep Cripple Creek Coal Co. from falling by the wayside if it cannot meet military requirements that deliveries be made over a 12-month period?

We leave to the committee the decision whether the Department is attempting to pull the wool over the eyes of the committee.

I thank you for giving me this opportunity to present my story and I hope that the committee will act promptly in preparing its conclusions in the light of all the testimony which is heard.

Senator BIBLE. I think we will next hear from Colonel Welch.

**STATEMENT OF COL. DARRELL G. WELCH, CHIEF, FUELS DIVISION,  
DIRECTORATE OF SUPPLY AND SERVICES, DEPUTY CHIEF OF  
STAFF, MATERIEL HEADQUARTERS, UNITED STATES AIR FORCE**

Colonel WELCH. Thank you, sir.

Senator BIBLE. You may proceed.

Colonel WELCH. I have a prepared statement, Mr. Chairman.

Senator BIBLE. I see it is rather short, and I think it might be well that you read it in its entirety.

Colonel WELCH. Yes, sir. I am Col. D. G. Welch, Fuels Division, Directorate of Supply and Services, Headquarters, USAF. I have been asked to represent the Department of Defense in presenting the coal requirements in the Fairbanks, Alaska area, since these requirements are largely used at Ladd and Eielson Air Force Bases.

The total requirement for this area consists of that required for annual consumption and that required for a reserve stockpile. A reserve stockpile is necessary to provide the uninterrupted supply of coal during periods when work stoppages, transportation delays, and other interruptions in the supply system occur.

Since coal deteriorates when stockpiled, we try to keep the stockpile at a minimum consistent with the reliability of resupply.

The desired stockpile quantity is equal to one-quarter of the annual consumption. The current stockpile is larger than the above goal, due to estimates which were in excess of actual consumption. In planning for the fiscal year 1955 procurement, it became apparent that the coal stockpile was excessive. Instead of drastically curtailing new procurement, and reducing the surplus stocks immediately, it was determined to reduce surplus stocks gradually in order to prevent collapse of a production base for military use.

Our plan is to reduce the current stockpile through fiscal year 1956, after which the estimated consumption should level off at about 336,000 tons annually.

Accordingly, procurement of new coal will decline through fiscal year 1956 and increase to the above estimated level of consumption by fiscal year 1957.

The attached schedule indicates the Air Force requirements from fiscal year 1955 through fiscal year 1958 for coal at Ladd and Eielson Air Force Bases.

You will note that the next 3 years, fiscal year 1956 through 1958 amount to about 825,000 tons. It is actually 822,000 tons for the next 3 years to be procured, as compared with a Department of Interior figure furnished in the letter previously referred to, which gave 828,000 tons.

Senator BIBLE. Colonel, do you have available to you the amounts of coal that were consumed at Ladd and Eielson Air Force Bases for the years 1950 up to and through 1955?

Colonel WELCH. We cannot furnish that information at this time.

Senator BIBLE. I think it might be well to have it furnished for the record because it seems that is a period of time when a lot of coal estimates were made by defense.

Colonel WELCH. Yes, sir.

Senator BIBLE. I wonder if it might not be well to have not only your estimates but the actual consumption for the purposes of the record.

Colonel WELCH. Yes, sir, we could furnish those for the record.

(The material referred to follows:)

DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE SECRETARY,  
Washington, D. C., July 1, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs,  
United States Senate.*

DEAR MR. CHAIRMAN: During the hearing of June 1, 1955, before the Subcommittee on Territories and Insular Affairs of the Senate Committee on Interior and Insular Affairs on the Secretary of Interior's alleged failure to build the Alaskan Railroad spur, the Air Force witness was requested to furnish information for the record concerning estimates of coal consumption and the coal consumed at Ladd and Eielson Air Force Bases for the years 1950 up to and through 1955. The preceding information, in addition to procurement information for the above period, is as follows:

[In tons]

Fiscal year	Estimated requirements <sup>1</sup>	Procurement	Consumption
1950.....	159,000	(2)	111,636
1951.....	230,000	(2)	2 64 209
1952.....	165,000	152,000	2 62,080
1953.....	379,700	299,097	112 286
1954.....	315,559	392 236	172 206
1955.....	250,228	232,000	4 265,000

<sup>1</sup> Estimated 6 months prior to beginning of fiscal year.

<sup>2</sup> Procurement records for fiscal years 1950 and 1951 have been retired by the Alaskan Command and are no longer available.

<sup>3</sup> The reduced quantities used in fiscal years 1951 and 1952 are due to deterioration of coal-fired equipment to the extent that oil-fired equipment was required to meet heating demands.

<sup>4</sup> Estimated.

The USAF procured 1,075,000 tons of coal in northern Alaska during fiscal years 1952 through 1955, inclusive, as compared to a consumption of 611,000 tons. The balance of 464,000 tons contains only four-sevenths of the original heat content or an equivalent of 265,000 tons of new coal. Deterioration is caused by the high moisture content of the Alaskan atmosphere and the type of coal produced in this area. The coal acts similar to a sponge in absorbing moisture from the air and its maximum efficiency is reduced since additional heat is required to burn off the excessive moisture.

It is estimated that there is a surplus of 186,000 tons after allowance for a normal 90-day stockpile of 79,000 tons. The surplus of 186,000 tons plus procurement of 150,000 tons will meet the estimated fiscal year 1956 consumption requirement of 336,000 tons.

It is requested that the annual quantity of coal for procurement for fiscal year 1955 which appears in the enclosure to the statement of Colonel Welch which was presented before the above subcommittee be changed to read "232,000 tons" instead of "242,000 tons."

Sincerely yours,

JOE W. KELLY,  
Major General, USAF, Director, Legislative Liaison.

Senator BIBLE. What is the project that is used in calculating future coal consumption?

Colonel WELCH. The equipment in the area that will consume the coal and also the forces that will be in the area that will need it. We have both heating and generating equipment that uses coal at these two bases. The amount of generation and heating depends partially on the amount of use that is made of the base and the forces that are in the area using those bases.

Senator BIBLE. Do you forecast beyond the fiscal year 1958?

Colonel WELCH. We have no forecast at the moment beyond 1958.

Senator BIBLE. I think that is all we have, Colonel. Thank you very much.

(Discussion off the record.)

Senator BIBLE. The staff suggests that there are some projected natural-gas pipelines into this area. I am wondering whether or not with the advent of those pipelines—I do not know how realistic they are, I do not know how far along the planning is, whether there is going to be a natural-gas pipeline into this area or not—but if so, would that be likely to replace your coal needs at the two bases?

Colonel WELCH. I could not answer specifically. I could give you the Department of Defense policy. Our policy is that we use the cheapest fuel available. If at that time the sufficient gas was available and was cheaper than the coal, it would be a logical assumption to assume that we would convert to gas.

Senator BIBLE. Do you have any information as to the projected Haines pipeline?

Colonel WELCH. The Haines pipeline is not a natural-gas pipeline. That is a fuel pipeline which will carry our aviation gasoline and jet fuel and motor gasoline and diesel oil.

Senator BIBLE. Does that in any way affect the coal picture?

Colonel WELCH. No, sir.

Senator BIBLE. Does the possible development of Gubik natural-gas pipeline affect the picture, or do you have any knowledge of that?

Colonel WELCH. I have no knowledge of that, sir.

Senator BIBLE. I think that is all, Colonel. Thank you.

I think we will hear Dr. Reed next. I understand you have to leave Washington fairly soon.

#### STATEMENT OF DR. JOHN C. REED, UNITED STATES GEOLOGICAL SURVEY, WASHINGTON, D. C.

Dr. REED. My name is John C. Reed. I am a member of the staff of the Director of the Geological Survey. I have no prepared statement. I will attempt to answer any of your questions to the best of my ability and develop any aspect of this that you think I might be able to be of help on.

Senator BIBLE. How familiar are you with this particular area?

Dr. REED. I am familiar with the area, sir. I have been there a number of times over a period of a good many years.

Senator BIBLE. In what particular connection in the line of work?

Dr. REED. I have been a geologist in the Alaskan branch of the Geological Survey for nearly 25 years. I am now in the Office of the Director. During my time in the Alaskan branch I spent many years

in Alaska on geological work, involved in the investigation of the mineral resources. Although I have not worked specifically in this area to do detailed mapping or investigations, I have been there and probably connected with the area for a long time. I might also point out that the Geological Survey is responsible for the supervision of leases on the public lands, and I have had some familiarity with the area because of the responsibilities of lease supervision. We have here, however, Mr. Leo Saarela who is the regional supervisor of the Survey for that area.

Senator BIBLE. What particular name do you give to this entire area?

Dr. REED. I am referring at the moment to a belt on the north side of the Alaskan Range that includes the three or four lease areas that have been discussed in this area. There are large coal areas stretching along the north and west sides of the Alaska Range for many miles west of the Alaska Railroad to east of the Richardson Highway. This area is the one that has been developed because it is one near the river.

Senator BIBLE. What name do you give the area?

Dr. REED. The specific area is called the Healy River coal fields.

Senator BIBLE. That refers to the area covered by Suntrana, Usibelli, and Cripple Creek, as well as the Roth property to the north?

Dr. REED. As well as some additional area not included in that map.

Senator BIBLE. There has been considerable—and I think you probably picked it up from Mr. Shallit—testimony this morning (said both in the petition and in his testimony concerning the construction of a branch line through the Usibelli lease) as to whether or not that could be done without interfering with the economic mining operation of the Usibelli lease. Have you given any thought or have you made any study of that particular problem?

Dr. REED. The matter of decision as to whether or not there should be a railroad or as to whether or not there should be a highway is not within—

Senator BIBLE. I am not asking you that question. I am not asking you policy questions on either the highway or the road. What I am asking is, Could one extend the spur line from the Suntrana claim to Cripple Creek so as to go through the Usibelli lease without unduly interfering with the mining operations of the Usibelli property, if you are qualified to speak on that question?

Dr. REED. I do not think I am able to answer that question specifically. In my opinion it would be possible to build such a line without danger to the conservation of the coal in the area over which the line would run. I am not qualified specifically to speak as to the degree to which that might or might not interfere with Mr. Usibelli's operation.

Senator BIBLE. Who might, from a Government standpoint, be able to testify to that point?

Dr. REED. I would think Mr. Saarela would come as near to it as any, although I am not sure he would be a proper man, either.

Senator BIBLE. As a practicing lawyer for many years, I can certainly say that engineers disagree.

Dr. REED. The actual matter where such a right-of-way could be given or whether it would hurt would be a decision of the Bureau of



Land Management. We would advise the Bureau of Land Management, but the decision would be that of the Bureau of Land Management.

Senator BIBLE. You do not believe you are in a position to testify on that question?

Dr. REED. No, sir.

Senator BIBLE. I am not asking as to the builder of the highway or the road. I am asking whether you could build the spur line without interfering with the operation of the Usibelli company.

Dr. REED. I am not familiar with the degree to which that might hurt Mr. Usibelli.

Senator BIBLE. Several questions have been suggested to me that seem to go more to the economic phase, and I do not know whether that is your particular field of work in the Department or not.

Dr. REED. It is not.

Senator BIBLE. I might ask the question. If you are not the qualified witness to give the answer, simply say so. Do you believe the extension of the branch line through the Usibelli lease would result in a more economical operation to the Usibelli property? That is an economic question.

Dr. REED. As an individual, in my opinion it would make it easier for Shallit to operate, and hence he probably could deliver coal at a somewhat lower price.

Senator BIBLE. My question was directed to the Usibelli property rather than Cripple Creek. But I assume your answer would be the same.

Dr. REED. No, I am not sure that it would.

Senator BIBLE. You think there is a distinction?

Dr. REED. I have seen Mr. Usibelli's statement that this would not aid him at the present time. I am only going on his statement and not my own.

Senator BIBLE. You have no independent judgment as to whether the railroad would aid him or would not aid him?

Dr. REED. I do not.

Senator BIBLE. Do you have any opinion as to the opening up of the Roth property by extending the spur line to the Cripple Creek line? Is that a desirable feature of the problem before us?

Dr. REED. The Roth property has been held in reserve for a possible emergency. It was the opinion of my Bureau, and I believe generally accepted, that it was an area where coal could be obtained rather easily and rather quickly. However, to take that coal out, transportation of some sort would have to be provided. It hence would follow that it would be more immediately available if transportation were put in at this time.

Senator BIBLE. And if there were a spur line that extended to the Cripple Creek property, then that would be advantageous to the Roth property which adjoins it?

Dr. REED. It would, indeed. Although to my knowledge there is no plan to do any mining in the Roth property at the present time.

Senator BIBLE. There has been testimony given by Mr. Shallit to the effect that there would be a tremendous saving to the military if the railroad is extended to the Cripple Creek property. Are you in a position to comment as to the amount of saving that might be realized by extension of the line?

Dr. REED. No, sir, I cannot answer that. I heard Mr. Shallit's statement that he offered a firm bid at a dollar a ton cheaper if he had such a railroad.

Senator BIBLE. That is out of your field, too, is it? I do not want to ask you any questions on which you are not completely qualified as a witness.

Dr. REED. I will be glad to tell you if I cannot answer.

Senator BIBLE. Do not hesitate to tell me if there is something that is not within your field.

Dr. REED. Yes, sir.

Senator BIBLE. I think it might be helpful for the record if you could comment upon the known reserves in each of these 4 areas and the future potential.

Dr. REED. That matter of reserves is the field in which the Geological Survey is specifically responsible.

Senator BIBLE. So I understand.

Dr. REED. I do not have personally the detailed information to give you. I am sure that Mr. Saarela will be able to give you such figures. I can give you an impression that as we go up the stream from Suntrana across Usibelli to Cripple Creek that the available reserves are larger. There has been less mining, of course.

I heard Mr. Shallit's comments about the reserves that he had. As far as I know, they are of the right order.

Senator BIBLE. Your statement is that Mr. Saarela, who is the regional mining supervisor, is in a better position to develop the actual reserves in these 4 areas?

Dr. REED. That is correct.

Senator BIBLE. Do you have any information as to the quality of the coal in this particular area?

Dr. REED. The coal beds being mined are all in the same group of beds. The quality ranges somewhat from bed to bed and to a certain extent from place to place in the various coal beds. The quality in general is lower than the quality of the coal on the south side of the Alaska Range.

Senator BIBLE. The staff has suggested a number of questions here, Dr. Reed. I think they all go to economic considerations. I do not know whether that is your field.

Dr. REED. Specifically, it is not. Some of the questions I might be able to throw some light on. I do not know what they are.

Senator BIBLE. They are all in the nature of economics of making the extension of the spur line into the field and how that could affect the coal prices.

Dr. REED. I could not answer such questions.

Senator BIBLE. I think that is all we have to develop. Thank you very much, Dr. Reed. I hope you have a very fine trip. I am sorry we delayed your departure.

Dr. REED. That is perfectly all right, sir.

Senator BIBLE. I think we possibly have time for one more witness before the lunch hour. Are there any other witnesses that we can hear before we hear the Under Secretary at 2 o'clock?

(Discussion off the record.)

Senator BIBLE. We will now hear from Mr. Kirkpatrick. Will you identify yourself.

**STATEMENT OF N. B. KIRKPATRICK, SUNTRANA MINING CORP.,  
INC., ANCHORAGE, ALASKA**

**Mr. KIRKPATRICK.** My name is N. B. Kirkpatrick, Suntrana Mining Corp., Inc.

**Senator BIBLE.** You consider your residence as Alaska?

**Mr. KIRKPATRICK.** Anchorage, Alaska, is my home.

**Senator BIBLE.** Mr. Kirkpatrick, your interest in this particular problem is what? You are the owner of the Suntrana Mining Co., Inc.

**Mr. KIRKPATRICK.** I am a member of the corporation of Suntrana Mining Co., Inc.

**Senator BIBLE.** It is held as a corporation?

**Mr. KIRKPATRICK.** Yes, sir.

**Senator BIBLE.** How large a corporation is it?

**Mr. KIRKPATRICK.** How do you mean?

**Senator BIBLE.** Memberwise.

**Mr. KIRKPATRICK.** There are two of us that own the majority of the stock.

**Senator BIBLE.** We would be very happy to get your views as to this spur-line question. Of course, you have a spur line right into your property?

**Mr. KIRKPATRICK.** Yes, sir. I am vitally interested in that. When we purchased the assets of the Healy River Corp. in July of 1953—

**Senator BIBLE.** What was the Healy River Corp?

**Mr. KIRKPATRICK.** That was the predecessor of the Suntrana Mining Co., Inc. We obtained an asset of \$30,000—not \$20,000—that had previously been advanced by the Healy River Coal Corp. for the construction of the existing spur from Healy to Suntrana. I wanted to correct that figure of \$20,000 as stated by Mr. Shallit.

**Senator BIBLE.** You acquired a \$30,000 figure instead of a \$20,000 figure?

**Mr. KIRKPATRICK.** That is correct. We are unable to depreciate it and we still have it as an asset on our books and probably will continue with it. In addition to that there was some statement by Mr. Shallit about our ability to continue to produce coal as we would be removing all the reserves above water level.

**Senator BIBLE.** How do you mine on the Suntrana? Is that underground?

**Mr. KIRKPATRICK.** That is all underground. At the rate we can anticipate by bids here, we have about 2 to 3 years of continuing above water level. There has been engineering work accomplished and we do have pretty good knowledge of how we are going to go to the next lower level. By deepening we hope to increase the quality of the coal by the higher pressures. Indications at the present mining where we are mining with the deeper coal, the coal runs quite materially higher in quality. We do not plan to move to another location, but we do definitely plan to go to another lower level and explore the mine further.

**Senator BIBLE.** Is that below water level?

**Mr. KIRKPATRICK.** Yes, below water level.

**Senator BIBLE.** You have 2 or 3 years of reserves above water level?

**Mr. KIRKPATRICK.** It is dependent on how much our production will be and the market we will have.

Senator BIBLE. When you go below water, what type of cost do you go to in pumping?

Mr. KIRKPATRICK. It is unknown to us how much water there will be. We have quite a water problem in developing reserves now. We have to drain the water that comes in after we drive our gangways, and it runs for quite some time.

Senator BIBLE. How do you drain it, through pumping?

Mr. KIRKPATRICK. No, it drains out through gravity now.

Senator BIBLE. Can you still accomplish that if you go deeper?

Mr. KIRKPATRICK. No, sir; we will have to pump the water.

Senator BIBLE. Where do you get the power for your pumping?

Mr. KIRKPATRICK. We have our own powerplant. We burn our own coal to produce power.

Senator BIBLE. Is that sufficient to generate enough electricity for pumping purposes?

Mr. KIRKPATRICK. Yes, sir.

Senator BIBLE. I have a lot of familiarity with dewatering mines, and I know the cost is a terrific figure.

Mr. KIRKPATRICK. About the only indication of the problem we will have is our experience in getting water to service the camp. We must now go through an existing coal seam out into the river to get enough water to afford the fire protection. There is some doubt that the water permeates through the seams in great quantity.

Senator BIBLE. How long has your corporation held this property?

Mr. KIRKPATRICK. Since July of 1953.

Senator BIBLE. How much have you produced each year since then?

Mr. KIRKPATRICK. We produced the first year approximately 220,000 tons. We took over existing contracts held by the Healy Corp. This year our production will be down, I would anticipate, to 130,000 tons.

Senator BIBLE. Next year will be approximately the same?

Mr. KIRKPATRICK. Next year we do not know. We submitted on the same bids as Mr. Shallit.

Senator BIBLE. It depends upon your success in obtaining the bid?

Mr. KIRKPATRICK. Yes, sir.

Senator BIBLE. Prior to the acquisition by your corporation of the Smtrana property, what producing record did it have? How much coal was produced there by the Healy Coal Corp.? When was that founded?

Mr. KIRKPATRICK. I believe about 1922 or 1923.

Senator BIBLE. Was it a continuous producer from 1922 up until they sold to you in 1953?

Mr. KIRKPATRICK. Yes, it was.

Senator BIBLE. How much coal did they produce, if you know?

Mr. KIRKPATRICK. That varied. In the later years it increased to, I believe, about 150,000 tons from the records as I remember them. They got up to that, but the first year we operated was the largest year in production by quite some extent.

Senator BIBLE. You do not know what the overall 30-year production record of the mine is?

Mr. KIRKPATRICK. No. It is as the market existed.

Senator BIBLE. This is past markets, so there would be some records that would be available to show actual production?

Mr. KIRKPATRICK. That is true. However, I do not have them with me.

Senator BIBLE. You have been operating it for 2 years?

Mr. KIRKPATRICK. Yes, sir.

Senator BIBLE. Simply to clarify that one point as to the potential reserves, it is my understanding that your calculations, that you have reserves for 2 to 3 years' operation above the water level?

Mr. KIRKPATRICK. Yes, sir.

Senator BIBLE. Unknown reserves and unknown economic factors below the water level; is that a correct statement?

Mr. KIRKPATRICK. Yes, sir. We also bid on the entire amount of coal for the next 3 years, and we are willing and able to provide it.

Senator BIBLE. You bid on the entire 882,000 tons that the Air Force is requiring?

Mr. KIRKPATRICK. Yes, sir. We would like to bid on more.

Senator BIBLE. What effect would the extension of the spur to the Cripple Creek property of Mr. Shallit have upon your operation?

Mr. KIRKPATRICK. It is hard for me to forecast that. There would be some competitive effect, no doubt. It depends on what the railroad rate was. If our rate was raised, we would be vitally interested.

Senator BIBLE. Would that be likely if you are not served by it?

Mr. KIRKPATRICK. That I do not know. I have understood that might be a part of the plan in building the road up there, to increase the freight rate from the area. If that was true, our investment in the existing spur is somewhat lost to us.

Senator BIBLE. As I understand you, the cost of the spur from the main line to your property has been completely paid for.

Mr. KIRKPATRICK. The railroad and the Healy River Coal Corp. built that. I do not know whether the \$200,000 figure included the original cost or the development of a new bridge in later years. I think very possibly the latter is what you would find.

Senator BIBLE. Is there any unpaid cost of the spur line chargeable to your corporation at the present time?

Mr. KIRKPATRICK. No, sir.

Senator BIBLE. Would the construction of a spur line into the Cripple Creek area reduce the cost of coal at Anchorage?

Mr. KIRKPATRICK. At Anchorage?

Senator BIBLE. Yes.

Mr. KIRKPATRICK. I would have to know what Mr. Shallit is going to bid to tell you on that. I do not know.

Senator BIBLE. You do not know whether the change in the actual cost of hauling would be materially reduced? That is, railroad as compared to the present method of trucking?

Mr. KIRKPATRICK. No, I cannot say.

Senator BIBLE. You do not truck yourself; is that right?

Mr. KIRKPATRICK. In this mine, no. I have a lot of experience in trucking. But I would not want to make a statement on his analysis of cost, because I have not investigated.

Senator BIBLE. Are you familiar with the petition which Mr. Shallit filed with this committee?

Mr. KIRKPATRICK. Yes, I am.

Senator BIBLE. Likewise, the price and answers that have been made to it?

Mr. KIRKPATRICK. Yes.

**Senator BIBLE.** You have had occasion to read all of those?

**Mr. KIRKPATRICK.** Yes.

**Senator BIBLE.** Do you have any comment or further information that you would like to give to the committee?

**Mr. KIRKPATRICK.** I am particularly interested if there was a railroad built into there, what would be the new freight rate and whether our mine freight rate would be increased or not. That is quite an interesting thing to me.

**Senator BIBLE.** I can see why it would be. I understand your interest in it. We will try to develop that.

Do you have any further information or comments or suggestions you would like to make to the committee in regard to handling this petition?

**Mr. KIRKPATRICK.** Not that I can say right now. I have not heard enough.

**Senator BIBLE.** It can be understood that if you do care to furnish a written statement to the committee at the conclusion of the hearing, the hearing will be kept open for that purpose.

**Mr. KIRKPATRICK.** Thank you.

**Senator BIBLE.** Thank you, Mr. Kirkpatrick.

If there are no further witnesses to be heard during the morning hour, we will recess until 2 o'clock.

(Whereupon, at 12:25 p. m., a recess was taken until 2 p. m., of the same day.)

#### AFTERNOON SESSION

**Senator BIBLE.** The meeting will come to order.

**Mr. Secretary,** we will be very happy to hear from you as the No. 1 witness for the afternoon on this present matter that is before us. You may proceed.

#### STATEMENT OF HON. CLARENCE A. DAVIS, UNDER SECRETARY OF THE INTERIOR

**Mr. DAVIS.** Mr. Chairman, I would like to make a statement with reference to this matter.

In the first place, let me say that I am happy to be here and to present the views of the Department of the Interior with respect to the proposed extension of the present Healy River branch line, as far as the so-called Roth Reserve, approximately 6 miles beyond the present railroad.

Under date of May 27, I wrote to Senator Jackson, chairman of this subcommittee, setting forth in some detail the conclusions which had been reached by the Department on the basis of very careful study. In that letter it was pointed out that Mr. Shallit's petition was based entirely on various recommendations and statements made in 1953 or prior thereto, when it was thought that the demand and market for Alaskan coal north of the range would grow rapidly to a tremendous extent.

Since 1953 many things have happened. The Korean war has come to an end, military building programs have been modified, and a more careful analysis of the need for coal has been made.

These factors have altered the situation radically. It is now clear that the volume of coal which would be shipped over such an extension

would be far less than was formerly supposed. This sharp reduction in the anticipated coal requirements north of the range has made it clear that the proposed extension cannot be justified.

My letter of May 27 sets forth in somewhat more detail the facts upon which this conclusion is based.

To go a little farther into this general problem, it seems to me that there are 2 or 3 points of view from which this proposed extension might be analyzed.

First of all, would construction of the railroad help develop the coal production of the Territory? In other words, is there a market for additional coal production?

If so, there might be a valid argument for proceeding with the construction, notwithstanding the considerable expense in building this short stretch. However our study has convinced us that the market for coal produced north of the range is extremely limited.

Building this railroad extension to reach the Cripple Creek mine will not, in our judgment, result in an expansion of coal production. It may improve the sales of one company at the expense of the other two, but it will not result in any increase in the total volume of sales, or in any overall expansion of the coal industry.

Secondly, will construction of this extension result in savings to the Government and to civilian consumers in the cost of coal? This is strictly an economic question and must be answered solely on the basis of economic analysis. The key question here is, would enough coal be shipped and would the savings be great enough to amortize the cost of construction?

To answer this question, it must be recognized that even under the optimistic estimate of conditions that prevailed in 1953, and even assuming that all the savings would accrue to the consumer rather than to the producer, it would have taken 14 years to amortize the construction cost. Under present conditions, it is impossible to predict whether the construction cost would ever be amortized.

Thirdly, there is the question of the effect of this proposed extension on the financial position of the railroad. It would bring no new traffic to the railroad since the railroad already carries all the coal produced in the Healy River Valley.

If rates were to be established according to the method usually employed in making rates under such circumstances, we would make the same rate to all the coal producers in the Healy River Valley. That would mean that the railroad would derive no revenue at all from this additional mileage, but, on the other hand, would be put to additional maintenance and operational expense of approximately \$42,000 per year. In short, under such circumstances, the railroad would lose rather than gain, moneywise, from having the extension.

As an alternative, it has been suggested that we might try to collect so much a ton from the coal producers to be served by the extension, this revenue to be applied toward paying off the construction cost of the railroad.

Such a method of financing the extension would be rather unorthodox in the railroad business. Assuming that we followed such a system, it would obviously absorb all of the anticipated savings to the consumer or producer of coal for many, many years.

If the Department of Defense should indicate to us that this extension is essential from the standpoint of national security, I feel sure

we would give most serious consideration to the construction on that ground alone. However, the Department of Defense apparently does not consider that its needs require this construction.

As the committee knows, we in the Department of the Interior have made a diligent effort to hold down unnecessary expenses and to avoid unjustified construction programs in order to conform to the administration's policy of reducing Federal expenditures. Since this extension cannot be justified from the standpoint of economic development, national security, or sound business, we do not feel we should request funds for such a purpose.

If the committee has any questions on this subject, I have with me a number of members of my staff who are familiar with the details of the problem and who are in a position to supply any information the committee desires.

In addition to that statement, Mr. Chairman, I might say that the letter which was transmitted, and which I assume you have seen, is in addition to my statement.

Senator BIBLE. It has been made a part of the record.

Mr. DAVIS. Might I suggest that since Mr. Frank Kalbaugh, who has been the manager of the railroad for the last 2 years, is present and is quite familiar with this whole situation with which I obviously am not personally familiar, that we would appreciate it if Mr. Kalbaugh were given an opportunity to explain this situation as he sees it from what we think is a very successful managership of the Alaska Railroad for the last 2 years.

Then there are other members of the staff here who have been more or less familiar with this problem for some length of time.

Senator BIBLE. We would be very happy to do that. The thing that strikes the committee is the apparent reversal of position.

You have commented in your detailed letter of May 27 on that, which of course was made a part of the record. It seems that that is the main burden before this committee, to determine the whys and wherefores of this apparent change as a result of certain findings that were made back in 1952 and 1953 and even some findings and statements and acts of filing for right-of-way that were made as late as April 1954.

I do not know whether you care to develop that or whether you would rather have us call upon the manager of the Alaska Railway and others.

Mr. DAVIS. I think it might be better to call on some who have been closer to it because I, personally, have not had too much to do with this except in a general way.

I do know this, that the military requirements there have rather upset the timetable for everybody concerned. Instead of these estimates which were made in 1953 of estimates running up as high, if my memory is right, as seven hundred or eight hundred thousand tons a year, we are now down to 140,000 tons a year, and the military, of course, have a large stockpile which is accounting for some of that.

But, undoubtedly, there have been material changes in circumstances as to the amount of traffic which this spur might serve. Now that is just a generality but that is, in general I think, the departmental position.

I would like to defer the details of it to some of these other gentlemen.



Senator BIBLE. What is the departmental policy, Mr. Secretary, insofar as attempting to work out a means or method of obtaining adequate access for the Shallit property?

Mr. DAVIS. I think our policy in all of these cases with reference to lands over which we have control is, of course, to develop reasonable access to the property.

Senator BIBLE. I might state for your information that one of the main bases of the petition of the complaint is that the present road serving the Cripple Creek property of Mr. Shallit is inadequate. It is not an adequate road so that he can haul his coal from Cripple Creek to the railhead on the lower property of the Suntrana.

Mr. DAVIS. I am a little familiar with that and, as the committee may already know, of course, there has been a good deal of rivalry, lack of neighborliness shall we say, between some of the competitors in the area there and the right-of-way problem. The road especially has been a troublesome thing.

I do not think anyone would dispute that Mr. Shallit, as a matter of principle, should have access. The question is: Where and what complications ensue from that.

Senator BIBLE. Is the Interior Department in a position to serve as arbitrator and negotiator in attempting to work out proper access for the Shallit property?

Mr. DAVIS. I am not too familiar with where they stand now. There have been applications—and I do not know whether they are still pending or not—for various rights-of-way through the Usibelli property to this property.

There have been, as you probably know, rather forceful objections by Usibelli to the various routes on the grounds that they were interfering with buildings and interfering with wells and all kinds of objections of that nature. The parties have not been able to agree on a right-of-way to the mine.

Senator BIBLE. That has caused the committee some concern, I think, because it appeared here in the later stages of the presentation, at least, that in applying to the railroad company for a spur line; first, there seemed to be some assurance that there would be one as a result of this committee hearing; that later on the position was changed; and then application was made to the road commission and the road commission gave no relief on the grounds that they would build a spur line.

It appeared that somebody was throwing a hot potato from one to the other. I was wondering if there was some way to bring it to a head to determine whether or not the Interior Department itself can exercise powers to resolve this right-of-way problem.

Mr. DAVIS. Well, Senator, I think it possibly could be resolved and I suspect that it ought to be resolved, perhaps by the designation of a route. I have had some question about the right of the Interior Department to simply, on its own motion, say "This is to be the route."

The applications which have been filed there, if my memory serves me right, I took a look at them perhaps a year ago while I was Solicitor and I had the distinct impression then that they were not adequately defined on the map.

I am sure you understand as a lawyer that you file these designations with a map showing the rights-of-way. It seemed to me that it was vague, especially vague in the use of the Usibelli property.

It does create a difficult thing to resolve when you have protests that this route causes damage in such a particular, that route is wrong, and the other is wrong. Yet somehow I would assume that Mr. Shallit was entitled to an access route to that mine.

Senator BIBLE. It would appear to the committee that there has been some showing along that line. How is that resolved, A, B, C, D, by the Interior Department and what form does it take? It is instituted through application?

Mr. DAVIS. Instituted through application for this particular route. Once you disapprove of that particular route and that particular application then, as I say, I question whether Interior has the authority to start changing the route and all that sort of thing. Maybe they have, but it has not been done.

Senator BIBLE. What should be done then in order to clarify that question now?

Mr. DAVIS. What I was very much in hopes could be done was that these people could agree on a route which we would readily approve, of course.

Senator BIBLE. If they cannot approve of a route, what is the next step?

Mr. DAVIS. Then we would have to resolve it anyway.

Senator BIBLE. It would be by the Interior Department's final determination?

Mr. DAVIS. That is correct.

Senator BIBLE. There is no question about the statutory framework for doing that?

Mr. DAVIS. I do not believe there is.

Senator BIBLE. Thank you very much for your kindness, Mr. Secretary. I know you are very, very busy and you certainly may be excused.

Mr. DAVIS. Thank you.

Senator BIBLE. I think it is proper now that we call Mr. Kalbaugh. I was glad to learn that he ran the leading railroad in Nevada for a number of years.

#### **STATEMENT OF FRANK E. KALBAUGH, FORMER GENERAL MANAGER OF THE ALASKA RAILROAD**

Mr. KALBAUGH. Thank you, Mr. Chairman.

Senator BIBLE. Do you have a prepared statement?

Mr. KALBAUGH. No, Senator, I have no prepared statement. I was not informed until yesterday that I was requested to be here so, as a consequence, I did not prepare a statement.

Senator BIBLE. First, will you identify yourself for the record?

Mr. KALBAUGH. My name is Frank E. Kalbaugh and I was General Manager of the Alaska Railroad from September 1, 1953, to April 1, 1955.

Senator BIBLE. In your employment during that time, are you familiar with the present problem as presented by the Shallit petition?

Mr. KALBAUGH. Yes; in a general way, during my tenure in Alaska, I am familiar with the problem. I had the opportunity of looking over the area personally in August of 1954, which was my first, in fact only, trip up through that area to look at the topography of the country with relation to the possibility of building a railroad up in that area.

I might state that on my arrival in Alaska, sometime after my arrival, the matter was brought to my attention of this proposed extension of the Suntrana branch through the Usibelli properties and through the Cripple Creek property up to the Roth Reserve.

At that time it was represented to me by certain of the people on the railroad and elsewhere that the problem was one of national defense. In other words, that the Defense Department was interested in getting a railroad up there to get the coal out.

Subsequently, on a trip to Washington in, as I recall, the fall of 1954 I found out that the Defense Department had notified the Interior Department that they would not support such an extension; that was brought to the attention of the Interior Department in connection with Mr. Shallit's application to the ODM people for a loan as he has outlined. They turned it down on the basis that it was not necessary to defense and, as a consequence, I believe the petition for a loan was withdrawn.

Mr. Shallit asked me if I would not serve upon this board of directors along with others in the railroad group. I told Mr. Shallit that I did not believe it was proper for the Alaska Railroad to be represented on any such group and, if he did secure such a loan, that it should be someone else that should control it rather than have the railroad mixed up in it.

The loan was denied, or at least it was withdrawn on the basis that it would be withdrawn because the Defense Department informed us the extension of the railroad could not be justified from the defense angle. That then left it purely and simply a question of economics as to the railroad, would the railroad built it.

In analyzing the matter from a very practical standpoint, I did not see how 1 ton of coal more was going to be shipped over the railroad than is presently being shipped over the railroad if the spur were extended. So, from a practical standpoint, I could not see why the railroad should spend nearly \$1.5 million on something that would bring no revenue in and particularly after the Congress had indicated on many occasions that the Alaska Railroad should be on a self-sustaining basis and should cease coming to Congress and cease asking for continued appropriations.

So, as a result, I did nothing about it. In fact, the only concrete action I took was the withdrawal of the application to the Bureau of Land Management of our request for a right-of-way easement through this property in order to construct a railroad.

Senator BIBLE. And in making that withdrawal, you based it upon what, specifically?

Mr. KALBAUGH. It was based primarily upon the fact that the railroad could not justify it from the economic standpoint. In other words, it would cost the railroad additional money to operate and maintain this without additional revenues coming in to support it. There would be no more coal shipped than had been shipped previously and I could not see the position, could not take the position, that the railroad should subsidize one coal operator in order to get him on a more competitive basis with other operators.

Senator BIBLE. As I understand it, the cost of building a spur into Cripple Creek varies somewhere between \$1 million and \$1,450,000, and those are your figures; is that correct?

Mr. KALBAUGH. Those were figured at the time, Senator, yes; but, however, those figures were made prior to my arrival in Alaska. I have always felt that they were ultraconservative. I doubt very much that it could be built for that amount of money.

Similarly, the proposed route was surveyed in part and then a reconnaissance survey made of the balance and, after looking at it on the ground, I do not believe that it would be practical for the railroad to be built where the proposed survey was initially outlined.

I discussed that matter informally with Mr. Shallit and, as I recall, I am not too sure of this, he agreed that a possible relocation, if the railroad were to be built, would be the thing. In other words, the railroad would be then faced with the same trouble he is having with his road, the railroad would be washed out and it is true the railroad would have to be replaced at a cost to the railroad and not to the mine operator.

It just seemed to me that as long as this mine is up there, I figured it out that Mr. Shallit went in and developed this property and he certainly knew what he was getting into; that if it could not be justified from a defense standpoint, I could not justify it from a railroad standpoint.

Senator BIBLE. Prior to the time you made withdrawal of the right-of-way, was that before the Bureau of Land Management, is that the agency that would handle that?

Mr. KALBAUGH. Yes.

Senator BIBLE. Prior to that, what representations, if any, did you make to Mr. Shallit concerning the construction of a spur?

Mr. KALBAUGH. I told Mr. Shallit that I would have no objection to constructing the trackage up there if the money were appropriated for it, but I was not in a position to make the request for the money to be appropriated and that I was not then and I still would not be if I were still connected with the railroad.

Senator Bible. During the time you were connected with the railroad, did you ever give Mr. Shallit reason to believe that you felt the railroad should be built into his property?

Mr. KALBAUGH. No; I did not. If I did, it was not the intention to do so. I did not come right out and tell Mr. Shallit, as I recall, that I would either oppose or support such a move because, after all, it was not my decision to make. All of these people who made reports on the proposed extension of the Suntrana Branch, it's true that there have been reams of reports and correspondence made about it but as I recall our files on Alaska, no decision was ever made either in this administration or the prior administration at a level where it would have to be made whether it would or would not be extended.

Senator BIBLE. And you were no party to ever making such a recommendation?

Mr. KALBAUGH. No.

Senator BIBLE. Could a railroad be built into the Cripple Creek area without disrupting the mining operations of the Usibelli property?

Mr. KALBAUGH. I am not sufficiently qualified in mining, Senator, to answer that. I do not know.

Senator BIBLE. The committee called to my attention that they were under the impression that sometime during the course of your em-

ployment with the Alaska Railroad, you had recommended the spur. I do not know whether that is correct or not. I understood you to say you never recommended it.

Mr. KALBAUGH. Not on the basis of it being built by the railroad except in support of a request from the Department of Defense that it was necessary from the defense standpoint. But if it were not necessary from the defense standpoint and the Department of Defense indicated that it was not, then I would not recommend it. In other words, I did not place myself in the position of recommending the extension of the Suntrana branch in opposition to the Department of Defense.

Senator BIBLE. Apparently this particular letter that Mr. French had reference to does not bear directly on that point. It bears more directly on the question of right-of-way. I think that is all I have, Mr. Kalbaugh, unless you have something to add for the enlightenment of the committee.

Mr. KALBAUGH. No; really I cannot think of anything, Senator, but if there is anything subsequently that you would like to discuss with me, I would do my utmost to answer.

Senator BIBLE. My understanding of your testimony is that the costs of between \$1 million and \$1,450,000 were established by your predecessor with the Alaska Railway and that your opinion is that that cost figure, if anything, is conservative.

Mr. KALBAUGH. Yes, sir; notwithstanding that they had planned on using old secondhand 70-pound light rail for the extension. But the bridges in themselves were going to be the very expensive items.

Senator BIBLE. Thank you very much.

Mr. KALBAUGH. Thank you.

Senator BIBLE. Maybe we ought to have the present manager of the Alaska Railroad. I understand the assistant manager is here.

Will you state your name and identify yourself for the record?

#### **STATEMENT OF JOHN E. MANLEY, ACTING MANAGER OF THE ALASKA RAILROAD**

Mr. MANLEY. John E. Manley, Assistant General Manager of the Alaska Railroad.

Senator BIBLE. You have been acting in that capacity for how long a period of time?

Mr. MANLEY. Since July of 1949.

Senator BIBLE. You are familiar with the petition as filed by Mr. Shallit?

Mr. MANLEY. Yes, sir; I am quite familiar with it.

Senator BIBLE. Are you familiar with the requests that have been made for the building of a spur track into the Cripple Creek area?

Mr. MANLEY. Yes, sir.

Senator BIBLE. What assurances have you made or has the Alaska Railroad made to Mr. Shallit concerning the spur?

Mr. MANLEY. I do not think that the Alaska Railroad made assurances to Mr. Shallit directly, Mr. Chairman. The railroad did apply or request funds for the year ending June 30, 1953, the fiscal year 1953 appropriation. The railroad requested, as I recall, \$1,350,000 for the extension of the Suntrana branch.

Senator BIBLE. That request was based on what?

Mr. MANLEY. That request was based on the then tonnage predictions given by the military for projected coal tonnage requirements.

Senator BIBLE. Was a similar request made after that particular date?

Mr. MANLEY. No, sir.

Senator BIBLE. I take it that appropriation was not allowed.

Mr. MANLEY. That is right, sir.

Senator BIBLE. The request has never been renewed?

Mr. MANLEY. No, sir; not to my knowledge.

Senator BIBLE. What is your feeling as to the construction of this spur track into the Cripple Creek area?

Mr. MANLEY. Mr. Chairman, in April, I believe it was April of 1953, I wrote a letter to Mr. Lowell Puckett of the Bureau of Land Management and requested the withdrawal of land for a railroad right-of-way from Suntrana to the Roth Reserve. That request was based largely on a series of meetings which were held by, I believe Mr. Lud Anderson, of the Bureau of Mines. Perhaps it was Mr. Leo Saarela.

These meetings were held subsequent to the time the railroad realized that the money would not be forthcoming from Congress.

Senator BIBLE. These meetings were held when?

Mr. MANLEY. Subsequent to our understanding that the money would not be appropriated for the extension of the Suntrana branch. At that time both coal operators, both Mr. Usibelli and Mr. Shallit, were striving to arrive at a means whereby they could finance the construction, whether by means of a reduction in their price to the procuring officer or by contributing labor.

Mr. Shallit stated at these 1953 meetings that he could save. I believe the figure was 84 cents per ton should a rail spur be built and, at the same time, Mr. Usibelli was in favor of a rail spur; in fact, he stated that he would contribute \$50,000 toward the construction of such a spur.

Senator BIBLE. Now, this was in the spring of 1953, is that correct?

Mr. MANLEY. Yes.

Senator BIBLE. You may proceed.

Mr. MANLEY. Since both operators were striving for a spur, we initiated action with the Bureau of Land Management in order that there would not be any legal question as to the right-of-way between Suntrana and the Roth Reserve. That, I believe, is the last action.

Senator BIBLE. That is the last action that you took, is that correct?

Mr. MANLEY. Yes, sir.

Senator BIBLE. And that was later withdrawn by Mr. Kalbaugh, is that correct?

Mr. MANLEY. Yes, sir.

Senator BIBLE. I note in this letter or this filing under date of April 29, 1953, that after making the request and describing the right-of-way, you state as follows:

You will note in our letter of June 23, 1952, that the railroad contemplates the extension of this line in order that the Usibelli Coal Co., Cripple Creek Mining Co. and any future producers may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed on to the Government in reduction of bid prices for the furnishing of coal as well as to private industry. It is estimated that the construction of this line would result in the reduction of coal costs to the Territory of \$200,000 annually.

I am directing your attention particularly to that last sentence where you state that it is estimated the construction of the line will result in the reduction of coal costs to the Territory of \$200,000 annually. Upon what was that based?

**Mr. MANLEY.** Mr. Chairman, as I recall it, that estimate was based on statements made by Mr. Shallit in the meeting held in the spring of 1953. Mr. Shallit indicated, and I was informed it was an estimate only, that he could in some manner or other contribute or save approximately 84 cents a ton if a rail spur went up there.

On the basis that Mr. Shallit hauls approximately 6 miles and the Usibelli Coal Co. hauls approximately 3 miles, we halved the amount of savings that Mr. Shallit would make and applied that to the tonnage that would be shipped from the Usibelli Coal Corp. and multiplied that by the projected coal tonnage for the following season that we obtained from the military. It produced, I think, actually \$201,000.

**Senator BIBLE.** What projected tonnage did you take in arriving at that figure?

**Mr. MANLEY.** I think it was the fiscal 1954 tonnage, which was approximately 350,000 tons as the combined tonnage from Usibelli and the Shallit property.

**Senator BIBLE.** Well, is it your opinion now that you would save that much in coal costs by building a spur into this property?

**Mr. MANLEY.** Well, Mr. Chairman, on the fiscal 1956 tonnages, I would like to stress incidentally that the railroad would not save anything. It would actually mean an added cost.

**Senator BIBLE.** I understand that.

**Mr. MANLEY.** The 1956 tonnages out of the Suntrana area are, roughly, half of what they were for 1954.

**Senator BIBLE.** It would be half that. Do you think that the users in the Territory would save \$100,000 then in this next fiscal year if the spur were constructed?

**Mr. MANLEY.** There are a lot of variables. If all of the coal were sold by the Suntrana Coal Corp., there would be no saving.

**Senator BIBLE.** I understand.

**Mr. MANLEY.** If it were all by Usibelli, it would be a lesser saving, or if it would be all by Mr. Shallit there would be a greater saving.

In fiscal 1954, the year that estimate was made, there were approximately 550,000 tons of coal, I believe, from the Suntrana area, of which approximately 350,000 tons were shipped by Usibelli and Shallit. The total military requirements as projected for the fiscal year 1956 for north of the range is 150,000 tons so the reduced tonnage, of course, will upset the picture by quite an amount.

**Senator BIBLE.** This right-of-way request was filed April 29, 1953, which is just 2 years ago, by yourself. That was done under what authority? Were you authorized to do that or is that within your purview as manager?

**Mr. MANLEY.** As acting general manager. Actually, Mr. Chairman, under the railroads enabling act, it is not necessary to make such a filing. I think it is title 48, section 301 through 309, which indicates that and also title 48, section 411, confers the right on not only the Alaska Railroad but I believe any railroad in the Territory to achieve a right-of-way by the construction of rail lines. But at the time that

letter was written, the whole thing was in a state of flux and it was felt that if the railroad were not constructed, this same plan that Mr. Shallit was working on could perhaps be utilized in part for a road to be constructed, as you might say by the method of the principal beneficiaries financing it.

Senator BIBLE. The real purpose of my question is to determine why the change in attitude because it does seem to me that in 1952 and 1953 there were some definite indications that right-of-way was to be secured and that a spur line was to be built and that representations were made by certain people, possibly including yourself, and then a short time after that the picture seems to have changed. Exactly why did that picture change?

Mr. MANLEY. At the time of this letter being written, Mr. Chairman, there was no request for funds on the part of the railroad in effect for the extension of this spur. We had, as I say, made for the fiscal year 1953, a request for \$1,350,000 for such an extension and the funds had been deleted. At the time of writing this letter, it was my personal opinion that in view of the apparent enthusiasm at that time of both coal operators, that they would achieve some method of financing. As I said before, Mr. Usibelli offered \$50,000 toward the initial construction of a rail line. Mr. Shallit at these meetings indicated that he had been conferring with the Navy officer who does the procuring for the military coal procurement.

They both, and Mr. Shallit especially, felt so confident that they could achieve some financing that the letter was written to the Bureau of Land Management merely as preliminary step so that there would be no delay if it turned out that the matter could be financed.

Senator BIBLE. Was that filing on behalf of yourself or the Alaska Railroad bolstered by whatever type of showing you had before you? Was that passed on to the Interior Department to secure from them a positive statement as to their policy?

Mr. MANLEY. I would have to presume, Mr. Chairman, that it was passed on in the form of copies. I do not believe I could answer you definitely on that without referring to the files.

Senator BIBLE. Since the date of your filing of April 20, 1953, again, what has come about to change the position of the Alaska Railroad? Does it boil down purely and simply to the estimated needs of the Defense Department, the two airbases?

Mr. MANLEY. That is correct. It was my understanding, and I am not too familiar with this Healy or this Cripple Creek Spur, Inc., that Mr. Shallit spoke of this morning.

I was aware that the incorporation was in progress and he, Mr. Shallit, at least, was hopeful that by that method the spur could be financed. At the time that Mr. Kalbaugh mentioned that he came to Washington, he apparently received information to the effect that the Defense Department or the proper authorities were not going to lend the money, which tended to just abolish the whole plan, you might say.

Senator BIBLE. Are you qualified to speak as to whether or not a spur could be built into the Cripple Creek property without endangering the mining property of the the Usibelli's.

Mr. MANLEY. I believe the Usibelli Coal Co. approached the railroad, either with correspondence or verbally, and indicated that a rail line would cause them difficulties. In any event, the railroad



wrote to Mr. Saarela and requested advice as to whether such a spur or line would destroy the value of mining property, and I believe Mr. Saarela's answer is in Mr. Shallit's presentation. He indicated that he did not believe it would be detrimental.

Senator BIBLE. I think that is all we need at this time, Mr. Manley. Thank you very much.

Mr. MANLEY. Thank you.

Senator BIBLE. I think it might be well to call on Mr. Saarela now.

Do you have a prepared statement, Mr. Saarela?

**STATEMENT OF LEO H. SAARELA, REGIONAL MINING SUPERVISOR,  
UNITED STATES GEOLOGICAL SURVEY, ANCHORAGE, ALASKA**

Mr. SAARELA. No; I do not.

Senator BIBLE. Will you identify yourself for the record, please?

Mr. SAARELA. I am Leo H. Saarela, regional mining supervisor for the Geological Survey in Alaska, a mining branch of the Geological Survey, and my position is to supervise the mining operations under the leases on the public lands and, as practically all of Alaska is on public lands, all the coal leases in the Territory are under the Survey's jurisdiction.

Senator BIBLE. You are familiar with this Healy-Cripple Creek area?

Mr. SAARELA. Yes; I am.

Senator BIBLE. That you heard discussed this morning and this afternoon?

Mr. SAARELA. Yes.

Senator BIBLE. I might ask you, because of Mr. Manley's last statement, What is your opinion as to the construction of a spur line from the Suntrana property to the Cripple Creek property insofar as it might adversely affect the mining property of the Usibelli Corp.?

Mr. SAARELA. Well, Mr. Chairman, that problem has been discussed a number of times as there continually seemed to be objection by the Usibelli Coal Co., but I believe that the road could be routed without an undue hardship or difficulty as far as the Usibelli Coal Co. is concerned.

Senator BIBLE. That was the opinion you expressed in response to Mr. Manley's inquiry to you previously?

Mr. SAARELA. That is right.

Senator BIBLE. It is still your opinion?

Mr. SAARELA. That is right. It might be a little difficult, but most of the stripping reserves on the Usibelli property—the large stripping reserves in the vicinity of the baulage road and the proposed extension of the railroad have already been mined out, and while it would take some study and careful preparation as far as G-bed, which is on the foot wall of the No. 1 bed, is concerned, most of the coal on No. 1 bed, for instance, has been already removed so while it is a problem, I think it is not an unsurmountable one.

Senator BIBLE. If you could secure a right-of-way without undue damage to the Usibelli Coal Mining Co., I assume you could require right-of-way for road purposes by the same standards; is that right?

Mr. SAARELA. That is true. There was a railroad right-of-way, and I think Mr. Shallit himself, for the Cripple Creek Coal Co., has

a right-of-way application in and it was acted upon by the Department. I am fairly certain of that.

Senator BIBLE. Do you have any testimony to add to what was said this morning concerning the reserves in this particular area?

Mr. SAARELA. Well, leasing block 28, which is the old Roth property, has been reserved many years on the question of military necessity.

Going back to the history of coal production in the Territory, you must realize that Alaska produced at the rate of about 200,000 tons per year for many, many years.

In 1942 and 1943, as the result of the establishing of military posts in the Territory, the requirements for coal jumped alarmingly.

In the Healy property there were a number of problems, including mine fires that jeopardized the situation. In fact, the mines of the Territory in 1943 were hard pressed to get coal to keep the establishments going. So that was the reason for the leasing of the Usibelli Coal Co. in the first place.

The leasing of the Usibelli coal was started in about 1944 and has continued to the present date. The Alaska coal production has increased to approximately 880,000 tons a year in 1954. Last year it dropped down to 660,000 tons and I think will continue, the need will continue, at a level of about 700,000 tons per year.

I might also add that the Department set up the Connors committee to investigate and throw additional light on the question of coal production problems in Alaska and that committee came up in the summer of 1954 and investigated the situation thoroughly. The committee came up with greatly increased coal consumption figures. In fact, I think some of their figures were as high as 1.5 million tons per year.

Those figures have not materialized for the simple reason that there have been delays in construction and we have had two very mild winters. However, the capacity of the present military plants in Alaska is far over 1 million tons per year; that is, the actual boiler capacity of the plants.

We have gone over the problem in very, very great detail as did the Connors group. Those figures have not firmed up but it has been the position of the Department to insure that a proper supply of coal be available because certainly we would be severely criticized if an adequate supply of coal were not available. It takes a considerable length of time to get a mining operation going. In fact, we issued a lease last year to the Arctic Coal Co. in Lignite Creek, to the north of Healy River, with the understanding that in possibly within a 3-year period that company could get into operation and probably meet the additional demand.

As I stated before, the fact is that the coal consumption necessary demand has not materialized. However, I would like to point out that the present boiler capacity of these various military plants, plus the civilian plants is over a million tons per year.

I have not heard anything today about the civilian consumption here which is a factor that should also be considered.

Senator BIBLE. I would like to have you comment on that.

Mr. SAARELA. That is a material part of this picture. I think last year the total production was around 700,000 tons from all of Alaska and about 400,000 tons of that came from the Healy field, and I believe that about 260,000 tons of that were civilian.

So we are not faced only with the military, we are also faced with the civilian demand and being positive that enough coal-producing capacity exists in the area.

The problem of transportation as, for instance, Lignite Creek, is an unsurmountable one. It is very, very difficult. However, the Department issued a lease but, these leases, of course, do not guarantee that the mining operation is going to be a profitable one.

I think that the question of the reserves of each individual property, should be examined in this problem that we have here today.

Senator BIBLE. Is it your opinion that a spur line should be built into this particular area? You are laying quite some stress on the Roth property as well, if I understand you.

Mr. SAARELA. The Department of Interior at the time the Roth reserve was set up in 1950, I believe, went around to the various agencies and asked the military and other departments whether or not they thought the leasing of block 28 was essential to maintain a supply of adequate coal. I believe that was written up in a public lands order in 1950. I do not know the number of the land order.

We have a member of the staff here, Mr. Abernathy from the Geological Survey, and I think he has knowledge of the language of that public land order.

Senator BIBLE. Your purpose in commenting on that is what, for the sake of the record?

Mr. SAARELA. The purpose of leasing block 28 was to be positive that an easy, available source of coal would be ready for the military in case it was necessary.

Senator BIBLE. Was it or was it not leased?

Mr. SAARELA. It was not. It is still in reserve.

Senator BIBLE. Still in reserve?

Mr. SAARELA. That is right.

Senator BIBLE. Have you answered the question as to the desirability of constructing or extending the spur line into that particular area?

Mr. SAARELA. Well, as I say, the tonnages did not materialize. However, that is a problem that may arise at any time. In other words, should we have a conflict, should there be a great increase in the demand for coal, it is entirely possible that leasing block 28 might have to be utilized.

Senator BIBLE. My attention has been directed to a statement that has been attributed to you during the Alaska Field Committee's Coal Subcommittee meeting on April 30, 1953, where I am advised you made the statement that the hauling of 140,000 tons 3 miles by Mr. Usibelli and 150,000 tons 6 miles by Mr. Shallit would cost the Government approximately \$300,000 this year. Is that a correct statement?

Mr. SAARELA. I believe that is a reasonable statement.

Senator BIBLE. How is that calculated?

Mr. SAARELA. That is calculated on a tons-per-mile basis. I do not remember what figures I used at that time but it would seem to me that it is cheaper to haul coal by rail than it is by truck because using a figure roughly 25 cents a ton-mile, or 20 cents a ton-mile, versus probably 4 or 5 cents a ton-mile for a railroad, I think that the comparison is obvious.

In other words, you are going to have a saving. Whether or not that saving would be passed on to the consumer depends on the operator, of course, but in this case the military was paying the entire bill.

Senator BIBLE. So I understand. So there would be a saving, according to your statement, according to the Government because they would be saving that much money through the use of railroad transportation rather than truck transportation?

Mr. SAARELA. Yes.

Senator BIBLE. Based on the figures of 150,000 tons from the Usibelli and 150,000 from Shallit?

Mr. SAARELA. Yes.

Senator BIBLE. And you believe that same statement is true today?

Mr. SAARELA. I believe so, yes.

Senator BIBLE. I assume, based upon that statement, that you believe extension of a branch line through the Usibelli lease would result in a more economical operation to the Cripple Creek property then; is that true?

Mr. SAARELA. Yes.

Senator BIBLE. Would that same hold as to the Usibelli property itself?

Mr. SAARELA. I believe it would, although the Usibelli management has disagreed with that. They have a tippie to move. At the railhead they have their present tippie. In other words, they are trucking their coal from 3 miles or more and they have their tippie at the railhead at the present time. However, they have indicated that it would cost too much to move the tippie and that is the prohibiting argument, I believe, in their statement that they do not want to use the railroad.

Senator BIBLE. I guess in view of your statements that it undoubtedly follows that in the event of some type of emergency, it would certainly make the Roth property far more accessible if the spur line were built at least to Cripple Creek.

Mr. SAARELA. Yes, it would.

Senator BIBLE. I think that follows very naturally from what you have developed here.

Mr. SAARELA. In other words, there is another point that I do not think has been explored. We have to consider these problems in the light of physical reserves on each property.

In other words, everyone here appears to think that a coal property is something like a gas well or something like that that you just turn on a valve; that is not true. You are depleting reserves constantly and to increase production there are a number of problems that have to be taken into consideration at great amount of time and cost.

Senator BIBLE. What, in general, is the overall picture concerning the development of the Alaska coal reserves? What has been done along the line of developing the Alaska coal reserves?

Mr. SAARELA. I do not quite understand your question, sir.

Senator BIBLE. How extensive have the explorations been toward developing coal in Alaska?

Mr. SAARELA. Well, Alaska is unlike anywhere else in the world, I believe, for the simple reason that an intensive metamorphism and diastrophism has changed the structure of the coal beds, making coal mining a very precarious and a difficult and costly operation.

We have two areas of coal that we are drawing from and for which the railroad was built. The language of the railroad act of 1912 states that the railroad is built to open up the Alaskan coal lands to development by the Navy and that is one of the reasons for the railroad in the first place to the Matanuska field and the Healy field.

In the Matanuska field, we have today only one large operator due to the fact that faulting, folding, and other conditions have made mining there very costly. The beds there are thin. It, however, happens to be a better grade of coal. It is bituminous coal, running around 11,600 B. t. u. and it is a better grade of coal.

In the Healy River area, however, we have a subbituminous coal, running around 8,600 B. t. u. and, as the railroad progressed or was built to these various areas—

Senator BIBLE. Are these the only two areas?

Mr. SAARELA. That are producing at the present time for any large commercial production. In other words, we have a lot of coal area but we do not have any production capacity except from these two areas.

As the railroad was built past the Healy River, a spur was constructed to the Healy Coal Corp. site. There was some early coal mining around the old station site of Healy. However, it was realized that that was not a good mine site and the thing that was objected to was the coal mining going on under the tracks so they shifted up to Healy River and are in their present position.

One of the witnesses said this morning that they had been mining since 1922 and that is true. Healy River, or the Suntrana Coal Mining Co., was the principal producer up until about 1944 or 1945, when Mr. Usibelli began his operations. Healy River Coal Corp. has produced over 2 million tons in its about 30 years.

You asked that question this morning.

Senator BIBLE. Yes.

Mr. SAARELA. In the Healy field, production has gone on very steadily and with considerable increase.

Senator BIBLE. What further steps are being taken to develop coal reserves in Alaska other than what you have commented on?

Mr. SAARELA. The Geological Survey has done a considerable amount of geologic work—that map is an example—in all coal fields in Alaska and, besides that, the Bureau of Mines has been doing a considerable amount of drilling in the Matanuska field where the faulting and folding problems are difficult ones.

So there has been considerable amount of help in that way of exploration.

Senator BIBLE. I take it that you are in full accord with the Government policy of continuing development of the coal reserves in Alaska?

Mr. SAARELA. That is right.

Senator BIBLE. Are there any better means of developing reserves above Usibelli than would be Cripple Creek and block 28 through the extension of the branch line? Is there any other way to get it out?

Mr. SAARELA. I do not think so.

Senator BIBLE. I think that develops it very well, Mr. Saarela.

Thank you very much.

Mr. SAARELA. Thank you.

Senator BIBLE. Mr. Ghiglione?

Do you have a prepared statement?

**STATEMENT OF ANGELO F. GHIGLIONE, COMMISSIONER, ALASKA ROAD COMMISSION**

**Mr. GHIGLIONE.** No, I do not have a statement, sir.

**Senator BIBLE.** Will you identify yourself for the record, please?

**Mr. GHIGLIONE.** I am Angelo F. Ghiglione, Commissioner of the Alaska Road Commission. I have been with the Alaska Road Commission for 20 years, a commissioner since 1951.

**Senator BIBLE.** Are you familiar with the petition that has been filed in this case?

**Mr. GHIGLIONE.** Yes, sir.

**Senator BIBLE.** And the general problems that arise as to both railroad rights-of-way and highway rights-of-way, road construction?

**Mr. GHIGLIONE.** Yes, sir.

**Senator BIBLE.** It is my understanding that it is your feeling the construction of a road by your commission would more quickly provide the needed access to the Alaska Railroad; that is, the construction of a road from the spur into this property involved.

**Mr. GHIGLIONE.** Yes, sir. I should qualify that. When we originally were contacted by Mr. Shallit when he first opened up this property, his request to the road commission was given consideration along with similar requests from elsewhere in Alaska for assistance to open up properties in Alaska.

It has always been the policy of the road commission to assist wherever a road will become a public road and contributions or cooperation by the requester are offered. In that case, we did recognize that Mr. Shallit needed assistance on the road and we offered assistance on the cooperative basis, however, always recognizing that we were limited in funds to projects of fifteen or twenty thousands dollars in scope. When we got into Mr. Shallit's picture a little further and saw the scope of it, and also recognized that it would be more desirable to have the railroad extended into the area, since this was just a stub road from the railroad and not connected with any road system, the policy of the department came to bear in which we backed out of it, frankly, and supported the justification of a railroad extension.

**Senator BIBLE.** You say the policy of the department came to bear; how did that come about?

**Mr. GHIGLIONE.** Through the Office of Territories, under which both the railroad and the road commission are concerned and through the Alaska field committee which was brought out in the presentation.

All the interior agencies got together about three times a year in Alaska and discussed our mutual problems. It was the feeling of the entire committee at that early stage that it would be more desirable to support a railroad extension than a road.

**Senator BIBLE.** Who made that determination?

**Mr. GHIGLIONE.** That was the Alaska Field Committee made up of the heads of all the Interior agencies in Alaska.

**Senator BIBLE.** Who are the heads of the Interior agencies in Alaska?

**Mr. GHIGLIONE.** That is presented in Mr. Shallit's statement. There is the head of the Alaska Railroad, at that time Colonel Johnson; the head of the Bureau of Land Management, Mr. Puckett; the head of the Road Commission, at that time Colonel Noyes; the Bureau of

Mines; Geological Survey; Bureau of Indian Affairs. I believe that covers the field.

Senator BIBLE. That determination was made in what year?

Mr. GHIGLIONE. It is in the record there, about 1951 or 1952.

Senator BIBLE. And it was resolved then that it was preferable to serve this area by a spur railroad line rather than a highway; is that true?

Mr. GHIGLIONE. That is true; yes, sir.

Senator BIBLE. Is that still the thinking of the Road Commission of Alaska?

Mr. GHIGLIONE. It was our thinking up until just the recent determination that the Department does not support a railroad based on tonnage figures of coal. Now it looks like we are back in the picture.

Senator BIBLE. How are you back in the picture?

Mr. GHIGLIONE. In that any request for road assistance will come to us. If Shallit fails to get a railroad, I know he is going to be back asking for a road.

Senator BIBLE. When he comes to ask you for a road, then what do you do?

Mr. GHIGLIONE. Then we are in a position, as I said, where we can assist on that type of road if it is of small scope; in other words, fifteen or twenty thousand dollars.

Senator BIBLE. How much would a road adequate to take care of Mr. Shallit's needs to the spur line cost, 6 miles?

Mr. GHIGLIONE. We have never run our own survey there but, based on the Alaska Railroad survey, located a road in the canyon practically over Mr. Shallit's road, with all of the riprap and protection against the river floods, would exceed half a million dollars. Such a project now would require identification in our budget and we would have to request the funds from Congress.

Senator BIBLE. What type of road would you have if you spent \$500,000?

Mr. GHIGLIONE. It would still be a gravel road but down in the river, in the canyon, practically on the railroad right-of-way grade which is a terrific section of road to build; that is why Mr. Shallit loses it every year. Such a road, as I say, would require justification, identification as a project in our budget and, frankly, with all the other development in Alaska that is required, it would not be very high in priority in the needed projects in Alaska when the cost is considered.

Senator BIBLE. What category of road does this fall under, is it a mine to market?

Mr. GHIGLIONE. I suppose that is what you would call it; yes, sir. But for us, the present road there is not ours.

Senator BIBLE. I understand it is a private road.

Mr. GHIGLIONE. Building a private road and going to Congress and asking for half a million dollars for one individual is not the policy of the Road Commission. It has been our policy, as I say, on these smaller project to assist even where it is for one individual where he will cooperate and will leave the road open for the public.

We have assisted with these small funds that are available but we have never identified an item in the budget solely for one concern.

Senator BIBLE. The use of small funds available would be of no value in this problem?

Mr. GHIGLIONE. That is right, they would be of no value.

Senator BIBLE. You might as well eliminate them?

Mr. GHIGLIONE. That is right.

Senator BIBLE. Your statement is that it looks as if you are back in the roadbuilding game but it will cost you half a million dollars to do it?

Mr. GHIGLIONE. Yes, sir

Senator BIBLE. That would be a congressional appropriation?

Mr. GHIGLIONE. Yes, sir. I might say that in the middle of this series, we were in the picture at first, and then in the spring of 1953 while the field committee, and you might say the lower echelon of the Interior Department, still felt that the railroad spur was the answer, a meeting was held in the Office of Territories at which time it was recognized that money was not immediately available for extending the railroad; therefore, it would be desirable for the Road Commission to assist if possible on a road that would be on a grade that could be used by the railroad.

At that time Mr. Usibelli, or the presentations to our meeting in Washington were that Mr. Usibelli would permit us to use his existing road, recognizing that by our taking it over he would be relieved of maintenance and improvement. It looked like everybody was getting together and we could move in and take over the maintenance of the road and extend it to Mr. Shallit for, again, 15 or 20 thousand dollars, within the scope of our little fund, and relieve the situation.

At that time Mr. Shallit proceeded to expand his camp because we wrote him that we were coming to do it. However, Mr. Usibelli backed out on us and we stopped.

Senator BIBLE. When was that done?

Mr. GHIGLIONE. In the spring of 1953. When Mr. Usibelli refused to let us use his grade, forcing us down into the canyon where we are talking of a million dollars rather than a few thousand.

Senator BIBLE. I cannot understand why two mining companies cannot use the same road. I cannot quite get that through my head. The Usibellis are here and we will have them testify on that point.

As I understand it, the Usibellis have an upper road which is very adequate for hauling coal out of their property.

Mr. GHIGLIONE. Yes, sir

Senator BIBLE. Yet the property higher up cannot use that road and they are forced down on a lower road which washes out when we have flash floods?

Mr. GHIGLIONE. Yes, sir

Senator BIBLE. If it were possible to secure the high all-weather road that runs through the Usibellis' property, could that be extended on into the Cripple Creek area without difficulty?

Mr. GHIGLIONE. Yes, sir. In fact, Mr. Shallit has very little trouble with the road above Usibelli's property, the road through Mr. Usibelli's property is free of damage and the road above there is practically free of damage, too. The trouble is in, you might say, the detour road forced upon Mr. Shallit. If we could take over the Usibellis' road for Mr. Shallit's use it would solve the problem.

Senator BIBLE. Is it possible to build an all-weather road over the present road Mr. Shallit has?

Mr. GHIGLIONE. It is possible but again, it would cost \$500,000.



Senator BIBLE. Have you any suggestions to make as the road commissioner of the Territory of Alaska concerning solving this problem, because I have a hunch this is going back to some type of road construction?

Mr. GHIGLIONE. No, sir; not being familiar enough with the terms of Mr. Usibelli's permit. I believe as the Assistant Secretary stated that it will wind up in the hands of the Department to determine what is an adequate right-of-way through the Usibelli property under the terms of the permit; that, of course, is the first step here to recognize you have to build a half-million-dollar road or to get Mr. Shallit a right-of-way that does not force him into that extremely high-cost location; that is out of my purview.

Senator BIBLE. Do you have any thinking as to the construction of a railroad spur at this time? Your opinion changes because of the difference in the defense demands; is that a correct statement?

Mr. GHIGLIONE. Yes, sir; that, and frankly, I was not aware of that until just the last 2 months. Up until 2 months ago I would have told you that a railroad extension was justified but I have not kept up with tonnage figures.

I believe in the records is a letter of mine saying I was surprised to learn that the railroad now was out of the picture and Mr. Shallit should come to the road commission for assistance. Since then, studying the new tonnage figures, of course there is a question in my mind as to whether it justifies a railroad.

Senator BIBLE. Based upon the reduced tonnage figures, you feel then that the railroad spur as a possible solution to this problem might be out of consideration?

Mr. GHIGLIONE. That is right, unless some value is given to the nebulous future as to the use of the Roth properties and so forth.

Senator BIBLE. I think I have no other questions.

Thank you very much.

Mr. GHIGLIONE. Thank you.

Senator BIBLE. We would be very happy to hear from you at this time, Mr. Coulter.

#### **STATEMENT OF KIRKLEY S. COULTER, ASSISTANT DIRECTOR, OFFICE OF TERRITORIES, DEPARTMENT OF THE INTERIOR**

Mr. COULTER. I am Kirkley S. Coulter, Assistant Director, Office of Territories, Department of Interior.

I do not have anything very much to add other than to comment on 1 or 2 points to straighten the record. If you have any questions, of course I will be glad to try to answer them.

I would like to make it clear that the Department is not, as has been suggested, barring Mr. Shallit's access. We have objected to spending money, but we have no objection to his having access. We would be glad to try to cooperate with him as the Under Secretary said.

Senator BIBLE. Right at that point, how do you cooperate with him?

Mr. COULTER. Well, I think the key question, he says we will not give him access because we will not build the railroad for him. We will not build a railroad because it involves a lot of money. If we are talking just about access which involves no money, we are talking

about a different thing than access for a road which costs half a million dollars or a railroad which costs \$1.5 million.

Senator BIBLE. Access for road purposes, how do you accomplish that?

Mr. COULTER. The Department would have no objection, I feel sure, to trying to work out an adequate right-of-way for him to do whatever he wanted to do with it, you see.

Senator BIBLE. Even though that right-of-way goes over the Usibelli property?

Mr. COULTER. Even though it goes over the Usibelli property in such a way that it does not damage substantially the mining operation.

Senator BIBLE. Could you designate the right-of-way as going over their present road?

Mr. COULTER. Of course, their present road is something that they have constructed and they have put in a lot of money and I assume we could not take that without paying for it. I understand the Department has the right to designate a right-of-way but of course, if we destroy or take some investment that the present occupant, Usibelli, has made, you would have a question of compensating him; that would be another problem.

Senator BIBLE. Very well, you may proceed.

Mr. COULTER. Mr. Shallit suggested that the railroad could be almost amortized out of the 828,000 tons that the Defense Department has called for on bids at his figure of \$1 per ton.

That, of course, assumes that he would get all of the contract, which we have no way of assuming if we build the railroad. In other words, all of these suggestions about amortizing the railroad involve assumptions as to the tonnage of coal and we have no way of knowing that Mr. Shallit will get the entire contract.

Further, on the amortization of the railroad, we are up against the proposition that any of the computations assume that both Shallit and Usibelli would ship substantial tonnages over that and Usibelli has indicated to us that he will not use a railroad. Whether he might change his mind later is hard to say but we would feel like we were taking an awful risk if we built a railroad on the assumption that Mr. Usibelli would use it, when he tells us he will not. We could never justify it to Congress.

Senator BIBLE. Why does he tell you he will not use it?

Mr. COULTER. I understand that they do not now intend to use it for the time being on account of the fact that it will require considerable investment.

Senator BIBLE. Very well.

Mr. COULTER. At any rate, we cannot overrule them and tell them, "You have to use our railroad."

Senator BIBLE. I understand.

Mr. COULTER. I would like to comment on one other point. Mr. Shallit indicated he felt the Department was biased against him. We certainly do not feel we are. We are anxious, as was stated in Mr. Davis' letter, to keep all of these mines in existence.

To prove that point, last year when the bids were called for and the contracts were let, Mr. Shallit did not secure any part of the defense contract. Thereafter, the Defense and Interior Departments

went out of their way to agree that an additional tonnage should be bought which should be distributed between the two coal mines which did not have any coal contract; that is, Suntrana and Shallit.

The Defense Department refers to that as relief tonnage in the sense that it was let primarily to give these two mines some business. I believe it is our policy to help all three of these mines continue in existence.

Senator BIBLE. Is it the policy of your Department to encourage the development of coal reserves in Alaska?

Mr. COULTER. It is, up to the extent that we can see any market at all. At the moment, with the buying of the military down so far, we would not, I think, go out of our way to start any more coal mines.

Senator BIBLE. I think that is all, Mr. Coulter.

Mr. COULTER. Thank you.

Senator BIBLE. Will you identify yourself?

#### STATEMENT OF ANTHONY T. LAUSI, DIRECTOR, OFFICE OF TERRITORIES, DEPARTMENT OF THE INTERIOR

Mr. LAUSI. Anthony T. Lausi, Director of the Office of Territories of the Department of the Interior, sir.

Mr. Chairman, there has been pretty well pointed out the reason the Department feels we should not go ahead with this railroad spur. Primarily the reduced tonnage of coal, the figures that have been submitted now.

When they talked about a spur they were talking about eight or nine hundred thousand tons of coal. They even talked about a million tons.

Furthermore, the Appropriations Committees when they had before them the request of the \$1,300,000 to do this project, they refused the appropriation and made it clear that the railroad was to be on a self-liquidating basis and any future capital improvements would have to be along that line.

Furthermore, the Defense Department sees no need for the railroad spur. That was another factor that has to be considered.

Now, some comment was made about the Roth reserve. I think Mr. Saarela made the statement that we should have access to the Roth reserve. That reserve is primarily for the military.

So far as I know they have never made a request that we make that property accessible to the railroad even though we have been through one war since the reserve has been in effect.

So far as I know, the military has never requested the railroad or the road commissioner or anybody else to build a road or railroad through that property.

I just want to make those few comments, Mr. Chairman.

Senator BIBLE. Is there anything further you want to add?

Mr. LAUSI. No.

Senator BIBLE. Do you have any information concerning Gubich pipeline, or how it might affect this reserve picture?

Mr. LAUSI. No, I really haven't on that.

Senator BIBLE. That is all. Thank you.

Mr. COULTER. Mr. Chairman, on the Gubich pipeline, the only thing we can say is that it is a proposal that is in the talking stage by some people who are interested in building it.

Senator BIBLE. Where will it be piped from?

Mr. COULTER. From the discovery adjacent to Navy Petroleum Reserve No. 4 on the Arctic Ocean. It would be a pipeline running several hundred miles south from there.

The gas is apparently there. There is a good deal of interest in it, but it has not progressed beyond the talking stage at this time.

Mr. LAUSI. Mr. Chairman, I would like to have made a part of the record, with your permission, the statement in the Interior Department appropriation bill, 1952, which is marked here in this report No. 339.

Senator BIBLE. This is the finding on the \$1,300,000 for the railroad spur?

Mr. LAUSI. Yes, sir.

Senator BIBLE. The entire paragraph entitled "Construction Alaskan Railroad" starting at the end of page 21 and running over to about the center line on page 22, will be made a part of the record at this point.

An estimate of \$2,500,000 was submitted for completion of the rehabilitation program of the railroad, for the acquisition of boats and barges, and for certain repairs and improvements to marine and other facilities. The estimate has been reduced by \$500,000 and an appropriation of \$2 million is recommended to cover all of the items included in the budget. To the extent that such appropriation may be inadequate, the program should be reduced.

The committee does not intend that additional appropriations be provided for the rehabilitation program, and does not intend to support an endless program of additional capital investment in the Alaskan Railroad. Realistic long-range objectives to accomplish well defined transportation needs will have to be worked out before estimates for additional capital expenditures will be considered, and any proposed capital expenditures from the appropriated funds will be carefully reviewed in the light of their self-liquidating possibilities.

We will hear from Usibelli.

Mr. McCarty, are you going to lead off? Will you identify yourself for the purpose of the record?

**STATEMENTS OF ROBERT McCARTY, OF ELY, McCARTY & DUNCAN, WASHINGTON, D. C.; AND WILLIAM WAUGAMAN, GENERAL MANAGER, USIBELLI COAL MINE, INC.**

Mr. McCARTY. My name is Robert McCarty. I am a member of the firm of Ely, McCarty and Duncan, Washington, in the Tower Building.

Our firm is special counsel for the Usibelli Coal Mine, Inc. of Suntrana, Alaska.

I am accompanied here by William Waugaman; Mr. Waugaman is general manager for the Usibelli Coal Mine and has been for the past 2 years.

I am also accompanied by Mr. Duncan of our firm.

Mr. Chairman, I would like, if I may, to proceed along the lines of the formal statement which we submitted in response to the petition. I think some of it can be eliminated because it has been covered.

But I think to bring our arguments on this matter into perspective—I am attempting to get up a brief response to this lengthy petition—I think that this response we have made in the form of a letter to Senator Jackson outlines substantially our position in as brief a fashion as possible.

I think it will serve your questioning if we were permitted to proceed in that fashion.

Senator BIBLE. Proceed along that line.

Mr. McCARTY. I would like to make a preliminary comment with regard to a statement made by Mr. Shallit at the opening. That is to the effect that we had made ourselves a part of this hearing.

We were served with a copy of the petition by Mr. Barash, Mr. Shallit's attorney, and one needs to turn only 1 or 2 pages to discover that not only was our appearance necessary, but it was required.

I think that is obvious. There is one point also that has been generally overlooked in the testimony of Mr. Shallit. That relates to the operator in this area known as the Arctic Coal Co.

I appended this map to our response to the petition. It is slightly different than others already presented. It may be identified as Healy (d-4) quadrangle—

Senator BIBLE. It may go in as exhibit A.

Mr. MCCARTHY. From the United States Geological Survey. We have blocked out the area of the leases in the Healy River Valley on this map.

It shows also the approximate location of the Arctic Coal Co, a new operator which started last year on Lignite Creek.

Their present operation is approximately 4 miles from the Nenana River, and thus also 4 miles from the railroad which is across the Nenana River.

It becomes obvious from this map, as I think Mr. Saarola commented, that the Arctic Coal Co. has a significant transportation problem of its own.

The only other thing which is apparent from this map which I think is useful, is to recognize that these properties all lie cheek by jowl and are only separated by about 6 miles.

It is also significant to note that the Usibelli operation, by virtue of his lease, happens to lay astride the Healy River.

The proper and economic development requires coal mining operations on both banks; accordingly, it may be seen from the lease which he has that any passageway that is to go up and down this river must traverse the full length of the Usibelli leasehold.

To identify somewhat more fully the origins of the Usibelli Mine, in 1943 Mr. Usibelli began mining coal on his present lease under a use permit issued by the United States Army.

In 1946 he applied for a lease on the so-called Roth property. It was rejected on the ground that this property was to remain in reserve. Accordingly, Usibelli was offered in lieu of the Roth property a lease on the property now being developed by the Usibelli Coal Mine, Inc.

I think before I go any further that I should state as I did in the opening paragraph of our response to the petition that the railroad sought here is one which would cut the heart out of the Usibelli Mine in order to serve a claimed but disproven military demand.

That one sentence is the summary of our objection to the repeated proposals that have been made in connection with this railroad.

Since the acquisition of the lease in 1946 progress and development of the mine has been steady, but sure.

The investment in the plant and equipment is now about \$2 million.

This mine is presently equipped to mine and ship a minimum of 500,000 tons of coal a year. This could be boosted to 700,000 tons within a few months and beyond that should the demand for coal warrant it.

The property represents a small village in actuality. There is a schoolhouse, a modern bunkhouse to accommodate the men; there is a mess hall, wash shacks, and all of the accouterments that go up to make a modern mining camp.

Senator BIBLE. Is it operated the year around?

Mr. McCARTY. Yes, sir; it is. And I think without doubt it is as substantial and as properly developed a mining camp as there is in the entire Territory of Alaska.

In 11 years this mine has become the best in the Territory. All earnings over the years have been plowed back into the business to achieve this. No dividends have ever been declared. Salaries to management are modest.

Also, I want to point out that this is a corporation where the moneys made in the mining and selling of coal have been in large proportion plowed back into this mine to develop it and to bring it to its present excellent condition.

There is an airstrip which you may have noted in connection with this larger map on the wall. It is also shown on the small map which I just exhibited. That was, of course, built at our own expense. It is highly necessary because it provides the real link with Fairbanks in the event of an emergency for passengers, for small cargo, and that sort of thing.

To come to the nub of our objection to the railroad, they are, first:

The military demand, upon which heavy production is dependent, does not justify the present extension of the Suntrana branch of the railroad, or a public road; second, the route selected would destroy the economic development of the Usibelli Mine.

We will treat these two points below.

First, we want to make clear that we favor the eventual extension of the Suntrana branch of the Alaska Railroad, assuming that greatly increased coal needs are clearly advanced. But we want to make it equally clear that we do not intend to sit by while a competitor maneuvers in every way possible—the most recent being this petition—to get a railroad or a road built at public expense on a route which will cut the heart out of our mine.

We were not consulted when the Alaska Railroad made its survey in the spring of 1953. We were not consulted when Mr. Shallit filed his Healy River Spur, Inc., proposal with the Government in 1954 asking for a loan of \$1,594,000—without a dime of equity money—using the identical map surveys of the Alaska Railroad.

We protested the proposed location of the railroad in August 1953 to Edgar Hart, the engineer in charge of the survey and to Messrs. Connor, Plein, and Newman, then in Alaska to survey the coal industry for the Secretary of the Interior, as well as to the Interior Department in Washington.

We protested Mr. Shallit's Healy River spur proposal to RFC, ODM, and the Department of Defense in May 1954.

The letters we wrote in connection with the Healy River Spur, Inc., proposal are cited by date at page 69 of Mr. Shallit's position.

We have furnished them as part of our material. I do not intend to read those, Mr. Chairman. I think they speak for themselves, but we would like to again point out that Mr. Shallit did not furnish us with a copy of his Healy River Spur proposal, and we only learned of it sometime after it was submitted, although the proposal itself suggested that we utilize the spur for the transporting of our coal and that the coal operators in the Healy field be invited to serve on the board of directors.

The reasons for our opposition to Mr. Shallit's Healy River Spur, Inc., proposal were identical with those set forth above.

Briefly, they relate to the demand for coal and the route of the proposed railroad. We think our objections are sound. Neither is met by the Shallit.

With respect to demand, he relies on generalizations which events of the past 2 years have proven false. Route, he neglects entirely.

Before going on to these two points, we want to make a further observation and that concerns the matter of the Shallit right-of-way over the Usibelli leasehold.

Mr. Shallit filed a right-of-way map in June 1951. He was immediately given a construction permit, although we protested the route and asked for a hearing under oath as to its location. The hearing was not granted and the road was constructed.

The Bureau of Land Management, in September 1952, upheld the right-of-way. We appealed, still asking for a hearing.

The Interior Department urged some agreement and ultimately a stipulation was achieved between the parties which was incorporated in a decision of the Interior Department dated November 4, 1954.

The stipulation, signed by Mr. Shallit, was in effect an agreed statement of operating conditions under which both mines presumably could work together.

Mr. Chairman, I would like to digress at this moment to point out that decision because there has been discussion here of what the Interior Department might do in order to provide access for Mr. Shallit.

As Mr. Coulter correctly pointed out, there is that access. The degree of cooperation of the Interior Department in getting the parties together in order to arrive at the so-called operating rules under which the mines might live together in this valley, was greatly appreciated, we thought, by both mines.

This Interior decision is dated November 5, 1954. Its number is A-26673. It is signed by Assistant Secretary Orme Lewis. It is found as exhibit M of the petition. Those pages are not consecutively numbered, but it is exhibit M.

I would like to call attention particularly to page 2 of that exhibit, the third full paragraph, in connection with your inquiry as to what sort of rules under which the road might be set up by the Interior Department.

There follow there seven numbered paragraphs which constitute the stipulation arrived at between the parties, between Mr. Usibelli and our office as counsel and Mr. Shallit and Mr. Barash as his counsel.

This was signed by both the parties. After it was signed it was then incorporated in a decision by the Interior Department.

I want to point out also that the right-of-way which is formalized by this decision is identical in most respects with the right-of-way applied for by Mr. Shallit in 1951.

Senator BIBLE. Is that the right-of-way he is now using?

Mr. McCARTY. That is the right-of-way he is now using, and has used since 1951. There are a few variations in it.

The agreement itself provided that there should be a resurvey of the road right-of-way so that everybody would know for certain where it was and a map was filed to show what variations there were in the actual road presently being used, as opposed to the actual filing that had been made for the right-of-way.

They were very slight. In a substantial part the road is identical to the road applied for in 1951.

Senator BIBLE. Is it true that this particular road is occasionally washed out by flash floods?

Mr. McCARTY. I think there is no doubt that portions are for lack of proper construction.

We are willing to follow your preference, Senator. I know the time is late. If you would like to have Mr. Waugaman answer this question, it is all right with me.

Senator BIBLE. No, you go ahead.

Mr. McCARTY. One feature of the stipulation which we point out in our response is that it recognizes the development of the Usibelli leasehold as the dominant use. In any event, following the promulgation of this decision on November 5, 1954, we thought that this matter was finally at rest as it has been going for a long time, because the right-of-way so formalized was approximately the same as that applied for by Mr. Shallit in 1951 and in use by him since that time.

Then came the petition, making it abundantly clear that Mr. Shallit has never contemplated building a road which he could use all year around. He wants a railroad and he wants the Government to build it.

If I may make one further digression at this point. An amendment has already been filed by Mr. Shallit to this agreed right-of-way.

Senator BIBLE. If I understand the testimony of the commissioner of roads, if Mr. Shallit was to build this as a year-around road it would cost \$500,000.

Mr. McCARTY. I am not certain about that. I would like to have Mr. Waugaman make some comment on that. This promontory that bulges out on the map is our campsite. You will note that the Shallit road as it runs around that promontory is on high ground. That is usable all the year around. It is obvious to the east of that promontory going upstream, according to the shading that has been supplied by Mr. Shallit, that the road is subject to washing at certain times of the year.

This is one area in which the riprap that Mr. Ghiglione talked of could be used to make this route—that is, Mr. Shallit's present road—available as an all-year-around all-weather road if the operator were willing to go to the expense necessary to riprap this section.

The same thing goes for the short stretch down here, immediately below our camp. Now, in our response, I make the point that tailings which resulted from the mining of this No. 1 seam were used in our construction of the airstrip. Our road runs right across the airstrip and then continues on down to the tippie.



Our own works below the camp on the north bank [indicating] are protected only because of the tailings which we have piled and accumulated.

Actually the airfield creates the dike for these workings in here.

This is another vulnerable area as far as Mr. Shallit's road is concerned. Again this is an area where riprap could make that unsable all the year around.

Senator BIBLE. Why can he not use the upper road?

Mr. McCARTY. This is the road which we have built. This is our own road. From all the history of the situation as far as I am familiar with it, there has never been a business-like proposal made by Mr. Shallit for the use of that road.

Senator BIBLE. How many trucks go over that mine a day?

Mr. WAUGAMAN. We average 5 trucks running continuously 8 hours a day.

Senator BIBLE. Coming and going?

Mr. WAUGAMAN. Yes, sir.

Mr. McCARTY. The burden of the testimony has been to the effect here that Usibelli is the dog in the manger. Our lease ends right here.

Mr. Shallit pointed out he cannot use this high ground up here [indicating]. This is entirely off our lease. If he wants to apply for a route here the Interior Department may give it to him, but he has never applied.

The only route he has applied for is the route that was granted to him, this was formalized in the decision of November 5, 1954 which I just mentioned.

Now, to get down to our first point with regard to the military demand, there has been quite a bit said about it. Our presentation on that is brief and I would like to go into it, if I may.

The Alaska Range, capped by Mount McKinley, separates Fairbanks and Anchorage. It also separates the Nenana coalfield, in which the Suntrana, Usibelli, Shallit, and Arctic properties are situated, and the Matanuska coalfield, some 30 miles from Anchorage.

Two military bases lie north of the Alaska Range.

In all of this, sir, I think it should be kept in mind that the military requirement, to my best knowledge, makes up over 70 percent of the demand for coal in Alaska.

Senator BIBLE. What is the percentage from the Healy field? Is it still 70 percent?

Mr. McCARTY. I would say, but am not certain, that that supplied by the Healy Feld is above 50 percent.

Mr. WAUGAMAN. Sixty-five percent.

Senator BIBLE. Will you clarify that statement? I do not have it in my mind.

Mr. McCARTY. My point was that of all the coal, 70 percent—

Senator BIBLE. Seventy percent is used for the military? Of the coal used from the Healy field, how much is military demand?

Mr. McCARTY. Close to 70 percent again.

As of this moment, and I mean this moment, the operators are awaiting word from the Navy as to the outcome of the bids.

Senator BIBLE. When are the bids opening?

Mr. McCARTY. I think they are examining them.

Mr. WAUGAMAN. They are supposed to let us know between now and Friday.

Mr. McCARTY. Whether that will be the final word or whether that means they will make further inquiries, I don't know.

Senator BIBLE. Very well.

Mr. McCARTY. As we wrote our response the requirements were not known.

The statement we made in our response was that we anticipated a rather pessimistic demand this year. We were not disappointed because as we now know the requirement is for 149,000 tons for fiscal 1956.

We understand that all of this is in further effort to bring the stockpile to a workable size.

In any event, we estimated in our response that military needs, north of the Alaska Range, even with all of the projected power units on the line, would not exceed 450,000-500,000 tons per year.

That was Mr. Waugaman's opinion. He felt it was optimistic but, on the other hand, for the purpose of our response we did not want to appear niggardly. We now find by virtue of this 3-year program the Navy has announced that the peak demand is apparently to be 336,000 tons per year.

Senator BIBLE. Is that Navy or is that Army?

Mr. McCARTY. That is Navy. The Navy buys the coal. The Army and the Air Force use it and the Interior Department has the policy problems. So it is quite a situation.

Senator BIBLE. We had the testimony from Army colonels.

Mr. McCARTY. It was an Air Force colonel. The Air Force is the substantial user of the coal.

Senator BIBLE. The Navy buys it.

Mr. McCARTY. That is correct. I understand they buy all of the coal requirements for the military west of the Mississippi. I am not certain.

Mr. WAUGAMAN. They buy the solid fuel, sir.

Senator BIBLE. Very well.

Mr. McCARTY. At least this much coal, 336,000 tons, can be provided with the existing facilities of our mine—working at half schedule—let alone the four mines in the field. Yet the petition demands public expenditures for a railroad or public road as essential to the national defense.

Assume for the purposes of argument that a railroad were built, on whatever route, to the Usibelli mine tomorrow. The mine's tippie is located at the present railhead. In order to make use of a railroad to the camp, the Usibelli mine would have to move its tippie. Moving the tippie, which will in fact involve constructing a new one, is expected to cost in the vicinity of \$200,000.

Production and improvements at the mines are, of course, dependent upon demand. The Usibelli mine is now carrying a heavy load in the effort to pay off RFC loans, which funds were put into the most recent improvements.

Unless there is an appreciable jump in demand, hardly indicated now, it will be several years at least before the Usibelli Mine is able, financially, to rebuild its tippie. And until the tippie is moved, several years hence at present demand, this mine will continue to truck its production to its present tippie.

Both the Usibelli and Shallit strip operations would need trucks to get the coal from constantly moving pits to a railroad, even though extended. The petition concedes this, page 72, yet claims that \$1 per ton could be saved on haulage costs if a railroad were extended to these two mines.

Just a year ago, in his Healy River Spur, Inc. proposal, Mr. Shallit estimated the savings would be 70 cents a ton, (exhibit C (b) in that proposal). In that same proposal, he said the cost of the railroad would be \$1,600,000, yet in his present petition alleges that at his estimated saving of \$1 per ton of haulage cost, the Government over the past 5 years would have saved \$1 per ton, or \$1,200,000, the entire cost of constructing the railroad spur, page 75. We are unable to reconcile these changing figures.

It should be noted that Mr. Shallit does not take into consideration the cost of maintenance of a railroad in figuring the saving to the Government, although he is careful to include the cost of maintenance of a road in his estimates that 70 cents or \$1 per ton would be saved. Nor does he include any figure for maintenance of railroad rolling stock, annual railroad roadbed, and bridge repair or board loss, all of which he takes into consideration in connection with trucks and truckroads.

We submit that if a figure were arrived at for these costs in connection with a railroad, that Mr. Shallit's savings, whether he chooses to set it at 70 cents or \$1 per ton, would prove to be fictional. And in the very demonstration of these figures, whichever he chooses, he explodes the idea that a public road or a truck route would save anything.

Mr. Giaglione in his figure of half million dollars for the road did not indicate what it would cost to maintain that road.

Nor did he indicate whether the Alaska Road Commission, in its modest budget, would be able to provide the equipment to keep that road in condition.

Although we do not for a moment concede the saving Mr. Shallit presupposes, let us assume for argument it would be \$1. Let us also assume a military demand of 500,000 tons and an extension of the railroad as desired by Mr. Shallit which would cost, on estimates he has used, some \$1,600,000.

To start with, Mr. Shallit would be the only real user of the railroad, because Suntrana is already on it, and has been for over 30 years, and Usibelli could not use it. If Mr. Shallit got all the tonnage, the railroad would be paid for in something over 3 years, exclusive of maintenance costs, which Mr. Shallit ignores. Suntrana and Usibelli would be out of business. So would Arctic, which has significant transportation problems of its own.

Such a result, which would eliminate the 2 most significant producers and 1 new mine, would hardly be in the interests of national defense, yet this is the basis upon which the railroad is urged.

The point is that there does not exist a military demand justifying this railroad and this conclusion cannot be avoided.

Mr. Shallit relates an elaborate history, in none of which we participated, in support of his contentions. These conferences and correspondence took place before the actual military needs were known.

The low military requirement of 142,000 tons north of the range, published in March 1954, brought reality into the picture. It was only

after months of still further conferences that the Suntrana and Shallit mines received an additional 90,000 tons, split between them, which was granted to keep them operating. This, together with military realization that the full capacity figures for the powerplants (cited p. 41 of the Shallit petition.) estimated prior to the installation of the major plants, were simply not working out in actual operations, burst the bubble entirely.

The figures quoted at page 41 of the Shallit petition for fiscal year 1955 total 525,000 tons for the 2 bases north of the range, Ladd and Eielson. What was actually ordered in fiscal year 1955? Only 235,000 tons, or a little more than two-fifths of the estimated made in April 1953, and that exceeded by 90,000 tons what the military authorities indicated would be actually required; 90,000 tons were ordered on a relief basis, one-half of it to help Mr. Shallit, not because it was currently needed.

I might point out here also that for the first time figures from the Connor report have been made available. I am not certain whether it was in the Secretary's letter which was filed with you today. In any event, the Connor report apparently indicates figures 2 and 3 times the size of the 525,000-ton figure, again the basis for the feeling, and we think proper on those figures, that there should be a railroad, but hardly in the face of actuality.

We do not rejoice that military needs are proving to be less than heating engineers may have estimated. There are a number of reasons, not the least of which is an improved quality of coal giving more heat per ton than anticipated.

But the realities have to be faced squarely. Recognition of them leads to only one conclusion: the extension of the Suntrana branch of the Alaska Railroad or a public road are not essential to the national defense.

Now, our second point concerns the route. One of the four mines in the Nenana coalfield, Suntrana Mining Co., Inc., is already on the Alaska Railroad.

Another mine, Arctic Coal Co., Inc., is 4 miles over the hills and could not possibly be served by the railroad for which the petition asks. Thus the railroad desired will affect only two mines, Usibelli and Shallit. Of these two, the Usibelli mine would be affected adversely by reason of the route for which Mr. Shallit contends.

When operations were started at the Usibelli mine, the first development was to take the strippable coal from No. 1 seam.

This [indicating] is the No. 1 seam. It runs along here, back of the airstrip, entirely back of the camp itself, this being the campsite on this promontory, over to the edge of the river again.

When that coal was taken from that seam, it provided, together with the tailings that had been dumped to make the airstrip as an extension of the natural contours of the promontory, a drainage ditch. The long-range mining plan provided that that would be the manner in which the property would be developed.

I will not take the time to open up this plan [indicating], but it was done by an engineering service in Fairbanks. It is brought up to date on occasion to reflect recent developments and consists of a number of maps, charts and cross section drawings.

This one I have happens to be for September 1953 and shows the buildings at that time. It shows the long-range economic develop-

ment of this property, the manner in which the underground and the stripping is to proceed.

These charts, so far as I am informed, are filed with the Geological Survey. As far as I know, no objection to the production plan disclosed in these charts has ever been given to us at least by the Geological Survey or anyone else within the Interior Department.

When Mr. Edgar Hart, surveyor for the Alaska Railroad, made his survey in 1953, he plotted the line directly through the No. 1 cut. The location of a railroad or a road in this cut would destroy its use for drainage and render the planned economic development of the mine impossible.

We protested emphatically, at the time that Mr. Hart and the Connor group were in Alaska in August 1953, and to the Interior Department in Washington. Mr. Hart and the Connor group told us that they would recommend that a feasible alternate route, skirting the camp to the right, be surveyed. The Interior Department advised us that the matter would be held in abeyance until Mr. Connor's report had been received and considered.

Incidentally, Mr. Shallit's petition also takes note of that in connection with his rhetorical question as to why the Interior Department suddenly reversed itself. Yet earlier in his petition there is the statement that he had been advised there would be no further developments on a railroad until the Conner group had made its report (pp. 22-23, Shallit petition).

In 1954 Mr. Shallit filed his Healy River Spur, Inc., proposal. The survey maps he used were identical with those filed in 1953 by the Alaska Railroad.

Exhibits 1, 2 and 3 tell our reaction to this and need not be repeated here. These exhibits show that by this time in 1954, however, the military requirements for fiscal 1955, amounting to 142,000 tons, had been published.

Thus, to our only objection in 1953, namely, that if a railroad was to be built in the interests of national defense it should not be built so as to destroy the Usibelli Mine, was added the belief that the railroad was simply not essential to that same national defense.

The petition ignores the question of route entirely. Yet if the railroad is to be constructed for \$1,200,000 as the petition suggests, it must obviously take the shortest and most direct route which could be devised, and still could not be constructed for that sum if the figure of \$1,600,000 in Mr. Shallit's Healy River spur proposal is correct.

In any event, such a route would be through our No. 1 cut. This cut, which we made, is essential to our mine. If it were used as a transportation artery we might as well close the mine.

After 2 years of objections to this route it should be abundantly clear to Mr. Shallit and to anyone else interested that we will fight it every time it is proposed. We cannot do otherwise.

I should point out that immediately above this No. 1 cut, which forms the natural drainage ditch I have referred to, lie the five seams, No. 2, 3, 4, 5, and 6, going up this steep hill, which constitute the major portion of our reserves. Mining a considerable portion of them by hydraulic sluicing is the cheapest and most efficient way to produce the coal.

The underground development work on these seams is expensive, as we have found out and as Mr. Waugaman may have opportunity

to tell you, but the important thing is that the stripping of a good portion of these No. 2, 3, 4, 5, and 6 seams that lie up the hill from the No. 1 cut cannot be accomplished unless there is some way in which that overburden can be carried off to the river.

If there were a railroad running through that No. 1 cut it would either have to be trestled for the entire distance in order to permit drainage, or there could be no sluicing down there at all. The trestling would be impossibly expensive, I am sure.

In our conclusions, Mr. Chairman, we point out that we have absolutely nothing to hide in this matter.

We are volunteering herewith, as exhibits, letters hinted at darkly by the petition.

Mr. Usibelli's letter to the Senate committee of April 14 offers every cooperation, including the opening of the company records, should your committee desire to go further into this matter.

That letter also mentions other developments in Alaska such as the possibility of opening the Gubik gas field, the intensified search for oil, and the opening of coal beds on Lignite Creek, as possibly having some effect upon decisions among the Government departments against Mr. Shallit's proposals.

We would have been happy to have joined in some of the conferences which Mr. Shallit enjoyed, as shown by his petition. Contrary to the petition's inference that influence was somehow exerted by Usibelli, a reading of the petition and its exhibits makes the Usibelli mine quite conspicuous by its absence from the many meetings and conversations which Mr. Shallit discloses that he had with Department officials, all having considerable impact on the Usibelli operation.

Mr. Shallit says that "powerful pressures" were brought to bear to halt the railroad. If protests to the agencies of Government concerned, charged with the responsibility of protecting all citizens, based on a right-of-way filing that would have cut the development potential of the Usibelli mine to ribbons, can be characterized as "pressure," what defenses are left?

We decry this whispering of scandal in the effort to get the Congress to build something the Government departments have rejected on the basis of cold fact.

We can only speculate what reasons have prompted the Government to reject the Shallit proposals. We have urged two reasons with vigor. Mr. Shallit's record shows equal vigor in the urging of his proposals.

Our reasons are "demand," which at its expected rate would make a railroad constructed to our camp tomorrow practically useless and which does not justify the proposals under the color of the national defense; and "route," which, as has been proposed, would kill us.

We submit that the combination of these factors justifies the action taken by the Government. We feel the agencies involved are earnestly attempting to bring some stability into the coal procurement picture.

We feel that should the demand picture change sharply in the next several years that they will again consider a railroad. We are hopeful when and if that time comes, that our development will be considered in connection with its route.

Mr. Chairman, if I may, in connection with your inquiry about the present right-of-way, I would like to submit for the record 2

letters, 1 to the Solicitor of the Interior Department, dated October 6, 1953, and signed by Northcutt Ely.

Briefly this letter points out that we had withdrawn our appeal on a decision rejecting our application for a flume and ditch right-of-way over the southern portion of the Shallit property which would have diverted waters from Cripple Creek to be used in the hydraulic sluicing of overburden from a 400-foot level on the south bank of the Usibelli operation.

Senator BIBLE. The letter may be received.

(The letter referred to is as follows:)

Re Fairbanks Serial 08832

OCTOBER 6, 1953.

The honorable the SOLICITOR,

*The Department of the Interior,  
Washington 25, D. C.*

DEAR MR. SOLICITOR: Reference is made to my letter of June 4, 1953, concerning the above-captioned matter.

Fairbanks Serial 08832 constitutes an application for a road right-of-way over the leasehold of my client, Usibelli Coal Mine, Inc., of Suntrana, Alaska, filed by A. Ben Shallit, holder of a lease on adjacent coal lands. Mr. Shallit's application was approved by Bureau of Land Management decision dated September 10, 1952.

As you know, we have appealed this decision to the Secretary. Since the withdrawal of our appeal on Usibelli's application for a pipeline right-of-way, the Shallit road right-of-way constitutes the only matter now on appeal.

Usibelli's proposed pipeline right-of-way would have utilized waters of Cripple Creek to sluice off overburden. Mr. Shallit's sluicing operation this past summer involved the use of Cripple Creek waters for this same purpose. Accordingly, Mr. Usibelli recognized that use by him of Cripple Creek flow would constitute some interference with the Shallit operation and instructed us to withdraw his appeal.

The road right-of-way involves the same principle. If there is to be such a right-of-way, we feel it should incorporate the following factors:

1. That it be located so as to insure a minimum of interference with Usibelli's development and enjoyment and avoid the Usibelli headquarters and camp area where men and their families are housed;

2. That any right-of-way be definitely located; and

3. That the continued development of the Usibelli lease will make it necessary to cut the right-of-way from time to time in order to provide access to water, provide drainage, etc., thus making it essential that Usibelli's development be expressly recognized as a dominant use to the right-of-way.

In order to insure definite location and location with a minimum of interference, we have continued to request a hearing of this entire matter.

In connection with item 3 above—that is, dominant use, I would like to advise that the case of *Shallit v. Usibelli*, upon motion by plaintiff and by consent of defendant Usibelli, was recently stricken from the calendar. As we understand it, this action involved claims for damages by Shallit for alleged injuries to his road as well as an application by Shallit for an injunction. In denying the Shallit application, the court enjoined him in June 1952 from trespassing without a proper right-of-way. Even so, he continued to use roads over the Usibelli lease.

Even though Usibelli has consented that this case be stricken from the calendar, there remains the possibility of future suits for damages for alleged injuries to any right-of-way. Departmental action on our appeal should recognize that a right-of-way must be qualified as subservient to the developmental requirements of the Usibelli leasehold in order to minimize, if not obviate, such suits.

Respectfully,

NORTH CUTT ELY.

Mr. McCARRY. The point we made in withdrawing our application for the use of Cripple Creek waters which, incidentally, was made in 1950 before Shallit began operations, was that our use would have

been detrimental to Mr. Shallit's need for those waters for the same purpose, that is, sluicing.

We felt the same principle was involved in the right-of-way.

We pointed out by that letter three features which we felt were necessary in the Department's consideration of the formalization of the right-of-way over the Usibelli leasehold. They related essentially to the fact that the right-of-way should recognize the development of our lease as the dominant use so that we might be able to cut that right-of-way and provide substitute roads as we do under the present decision under which we are operating; or to provide the use of our roads in the event it is necessary to disrupt any Shallit road because of our operation. We felt that that was a proper proposal to make to the Department.

The second letter I have is a reply made by Mr. Barash, dated October 23, 1953, again to the Solicitor.

If I may, I would like to read a portion of this. He says:

I have noted with interest Mr. Northcutt Ely's letter of October 6 to you relative to the road right-of-way Fairbanks 08832 of my client, A. Ben Shallit, and it struck me rather forcibly that there is in fact no real controversy between appellants Emil Usibelli and Usibelli Coal Mine, Inc., and my client which could not be amicably resolved by the parties themselves if a determined effort were made to do so.

He then says:

It may come as a surprise to appellants, but Shallit does not disagree with the principles enunciated by Mr. Ely in those three factors.

Then Mr. Barash discusses the three factors. It was in this spirit that we arrived finally at the stipulation which is incorporated in this decision.

It was this road that was applied for. It was this road which was eventually granted.

No other route has been applied for by Mr. Shallit.

Senator BIBLE. Do you want to make that letter a part of the record?

Mr. McCARTY. If I may.

Senator BIBLE. The statement will be made a part of the testimony. (The letter referred to is as follows:)

WASHINGTON 5, D. C., October 23, 1953.

Re Road right-of-way Fairbanks 08832

The honorable the SOLICITOR,  
Department of the Interior,  
Washington 25, D. C.

DEAR MR. SOLICITOR: I have noted with interest Mr. Northcutt Ely's letter of October 6 to you relative to the road right-of-way Fairbanks 18832 of my client, A. Ben Shallit, and it struck me rather forcibly that there is in fact no real controversy between appellants Emil Usibelli and Usibelli Coal Mine, Inc. and my client which could not be amicably resolved by the parties themselves if a determined effort were made to do so.

Appellants obviously recognize that a suitable, permanent road right-of-way is indispensable to Shallit's mining operation. What appellants object to is summed up in three factors cited by Mr. Ely in his letter of October 6 as being in effect essential prerequisites to the road right-of-way. It may come as a surprise to appellants but Shallit does not disagree with the principles enunciated by Mr. Ely in those three factors.

With regard to the first factor, appellants surely must know that Shallit has sought conscientiously and with due regard to the rights of appellants to locate his road right-of-way in such a manner as to insure a minimum of interference with their mining operation and the enjoyment of their coal lease. Appellants



cannot reasonably expect the road right-of-way to be located where it would be flooded and washed out time and again, causing interruption to the hauling of coal as well as great expense to Shallit in rebuilding the washed-out portions of the road.

We sincerely believe that the location of the road right-of-way could be resolved amicably if appellants gave the same consideration to Shallit as they would wish if the situation were reversed. Incidentally, I understand that in two recent incidents where appellants' stripping water was beginning to destroy Shallit's road, both parties took cooperative measures to their mutual benefit and satisfaction. These incidents merely serve to illustrate that the present differences are not insurmountable if approached in a spirit of cooperation and reasonable accommodation one to the other.

There is, of course, no difference of opinion with respect to Mr. Ely's second factor, namely, that the road right-of-way should be definitely located. We contend that the road is definitely located and that this can be established from the data shown on the map by any competent surveyor. Yet here, too, I have no doubt that Shallit would be willing, as an accommodation to appellants, to do whatever may be reasonable to allay their apprehension on this score.

With respect to Mr. Ely's third factor: Here again Shallit has no objection to appellants' development work being recognized as the dominant use for the purpose of cutting temporarily the road right-of-way in order to provide access to water, drainage, etc., provided that appellants in doing so make temporary arrangements for Shallit to have access over a substitute right-of-way until appellants restore the permanent road. This does not actually present any great problem because appellants would simply have to put in temporary culverts or small crossings.

One remaining point in Mr. Ely's letter needs discussion. The injunction of the court to which he refers is in our judgment no longer in force and effect, bearing in mind that Shallit does have a proper right-of-way granted by the Bureau of Land Management in its decision of September 10, 1952. The purpose of this letter is not argumentative. It is, rather, to suggest that there are in fact no real differences between the parties which justify a hearing with the expense and delays inherent therein. We have always been ready and willing to resolve these differences with appellants in a spirit of cooperation and good faith.

A copy of this letter has been mailed today to the office of Northcutt Ely, Tower Building, Washington, D. C., as you will note from a copy of my letter to him of this date which is annexed hereto for your convenience.

Sincerely yours,

MAX BARASH.

Mr. McCARTY. There is one other point. There has been some discussion about the filing of a right-of-way by the railroad and it becoming automatically a right-of-way. I think that is subject to some question.

There is no doubt about the broad authority of the Alaskan Railroad under the organic act.

Senator BIBLE. It was withdrawn in any event.

Mr. McCARTY. It was withdrawn and the policy responsibility of Interior and the Secretary in connection with the Alaska Railroad cannot be avoided.

That policy responsibility must be exercised when it is determined whether or not there shall be any building on a right-of-way.

I think it is in that connection that this should be considered. I don't need to offer this memorandum for the record, but for the information of the committee or staff, if it would be useful at all, I shall be glad to put it in.

Senator BIBLE. This is a memorandum prepared by your law firm. I do not think it need to be made a part of the record.

Mr. McCARTY. There has been some comment about Mr. Usibelli's desire for a railroad and his offer to contribute \$50,000. That is correct.

However, it concerned the placing of the railroad not in the area we object to and Mr. Shallit desires, but on the south bank of the river which we now understand some engineers, or, at least, the engineers for the railroad, say is unfeasible for the reason it is underlaid with schist which might occasion slides and that sort of thing.

Whether that is true as far as a road is concerned, we do not know, but we would appreciate very much if this matter is continued, that that be examined and examined rather closely because if it were feasible to put this road on the south bank of the river, then as far as our camp operations are concerned and as far as the proper economic development of the bulk of our reserve is concerned, Mr. Shallit would be out of our way entirely.

As a matter of fact, Mr. Usibelli offered \$50,000 for the construction of that road as well, but it was not considered feasible at that time.

I don't think that we would be able to go through with that offer any longer for the reason that we are now operating a big plant on a small demand which makes it pretty difficult to compete as it is. The unit costs are naturally higher. I am afraid that that old proposal no longer holds good.

I did want to straighten up for the record that reference earlier to Mr. Usibelli's desire for the railroad. There was such a desire on the demand picture 3 years ago, but not on the route that has always been proposed.

Mr. Chairman, there are some other things that have come up in this hearing on which I might comment but I think I have used enough time. Mr. Waugaman is from way out of town. You can hear from me any time.

Senator BIBLE. If you feel that there are other things that you want to comment on, Mr. McCarty, you are more than free to do so by filing a written statement which will be examined by the committee if you would like to file a supplementary statement. The record will be kept open for a reasonable time for that purpose.

Mr. McCARTY. I think anything further that I might say would be brought out by questions you might direct to Mr. Waugaman.

Senator BIBLE. There is one question on which I am not clear yet. I understand that it is your position that by stipulation you worked out a mutual mining operation in November of last year, November of 1954. In accordance with that stipulation, the decision was handed down by the Assistant Secretary Orme Lewis designating the use of the lower right-of-way—

Mr. McCARTY. Designating the use of the route for which Mr. Shallit applied.

Senator BIBLE. And that is the lower right-of-way as you pointed out in brief.

Mr. McCARTY. Yes, Senator, that is what is shown in green as the lower road.

Senator BIBLE. It is your contention that that is the right-of-way which he, himself, said he wanted?

Mr. McCARTY. Yes, sir.

Senator BIBLE. He agreed with you on an agreed statement of facts for mutual operation of the two properties that that was a satisfactory route?

Mr. McCARTY. We could only assume so because it was the only route for which he had applied.

Senator BIBLE. But it is your position, by entering into that agreement pursuant to which a later decision was handed down, that that indicated satisfaction with that particular route?

Mr. McCARTY. I think that is substantially correct.

Senator BIBLE. Over the past few years, where this very obvious controversy has existed, has there been any effort made to work out an agreement concerning the joint use of the upper, higher, all-weather road?

Mr. McCARTY. I would like to ask Mr. Waugaman to comment on that.

Senator BIBLE. I will be very glad to question him on those points because that is one thing the record is not clear on, why cannot the two mining companies use the upper all-weather road.

Mr. WAUGAMAN. From what I know, sir, and I have been with this company for 2 years, the only time of which I am aware that Mr. Shallit has ever made any offer whatsoever to use our road was last fall at which time he approached me and I told him that I would refer the matter to the owner.

He later was asked to contact our attorney in Fairbanks, Mr. Clasby, and after several conferences, I understand—now this is hearsay—that Mr. Shallit's purpose for buying or attempting to buy into our road a half interest was for the purpose of building a railroad down through the middle of it—

Senator BIBLE. I am not so much interested in what his purpose was as to determine what was actually done toward working out a joint—

Mr. WAUGAMAN. This naturally stopped negotiations immediately because we definitely did not want a railroad built in the middle of our road, and we still do not, sir.

Senator BIBLE. What is the position of your company as of now on the use by Mr. Shallit of the upper all-weather road?

Mr. WAUGAMAN. At the present time, if we were offered reimbursement for 50 percent of the cost of that road we would consider the offer. The road cost us approximately \$100,000—

Senator BIBLE. And you have used it how many years?

Mr. WAUGAMAN. We have used it about 10 years, or about 9 years.

Senator BIBLE. Do you depreciate roads? I do not know whether you do or not.

Mr. WAUGAMAN. No, sir, we have not depreciated our road. In fact, every year we add to it. We straighten out curves, make it wider and put in additional drainage.

Senator BIBLE. I am not talking about maintenance. I am talking about the cost of the road. I understand the road cost you \$100,000. You have used it for 10 years, and you will sell a half interest to Mr. Shallit for \$50,000.

Mr. WAUGAMAN. Yes, sir.

Senator BIBLE. In addition to that, there is cost of maintenance and operation occurring year after year.

Mr. WAUGAMAN. Yes, sir.

Senator BIBLE. What is the cost annually to maintain the road?

Mr. WAUGAMAN. Frankly, sir, I do not have any cost on it extended to the present time because last year, this present fiscal year, is the first year that we have ever used our present maintenance system on

the road—I know that costs were less this year than last year. I know what it cost to truck coal, but I do not know what it cost us to maintain our road, because we have not maintained it under our present system of maintenance for a full year.

Senator BIBLE. Other than this one effort to work out a joint use of the road which you say fell by the wayside, because you learned that the purpose was to construct a railroad, were there any other conversations between Mr. Shallit and your company looking toward a joint use of the road?

Mr. WAUGAMAN. To my knowledge, no, sir.

Mr. McCARTY. I think I can add to that.

It is my understanding that there have been conversations from time to time in regard to the road but none of those has approached the basis of actually sharing the capital cost of the road.

I think the suggestion has been made previously by Mr. Shallit that he would bear half of the maintenance cost or something of that sort. There must be, in addition to half of the maintenance some consideration regarding capital cost and that the Usibelli mine be held harmless from any accident which may result from the road. It is a treacherous country, sometimes foggy. It is a three-lane road, so constructed for the purpose of safety. If there is going to be any other traffic on it, we do not want to be held liable.

There is another problem which arises in connection with the public road. It would subject us to licensing or subject us to other Territorial requirements from which we are now free.

Senator BIBLE. You may proceed if you have anything further.

Mr. WAUGAMAN. That is all I have, sir, unless you have questions.

Senator BIBLE. Let me ask you this: What is the position of your company as to the construction of the spur line into your mining property? Are you for it or are you against it, as of now? I understand once in 1953 you were for it and were willing to put up \$50,000 for the construction of a spur. Is that a correct statement?

Mr. WAUGAMAN. Provided it was constructed on the south side of the river.

Senator BIBLE. So as not to harm your mining property?

Mr. WAUGAMAN. We do not object to having a spur line up there on the north side of the river, either, sir. What we do object to is having a spur run up through the middle of the existing road through the No. 1 cut which would eliminate the possibility of stripping any coal reserves which amount to about 2 million tons on the north shore of the river. Now, we happen to be located in the spot in Healy Valley where all of these coal seams cut across the river. We mine on both sides of the river. So, as a result, regardless of where you build a road, you either interfere with existing operations or with the tailings resulting from operations located away from the river. So, regardless of where you go it interferes. It is all a matter of which location is chosen that would interfere with us least. Sticking a railroad or a road up through the old No. 1 cut would eliminate the possibility of stripping any coal whatsoever out of that whole area on the north side.

Senator BIBLE. What advantage would a spur line in your property be at the present time?

Mr. WAUGAMAN. At the present time, it would be no advantage whatsoever other than we would be able to unload our freight up there, and as far as loading coal up there is concerned, we would still have to haul our coal to a tipple. A new tipple would cost approximately \$200,000.

Senator BIBLE. Building the spur line in would shorten up your haul from 3 miles to approximately what, a half mile?

Mr. WAUGAMAN. I would say about a half mile, or a quarter mile, all depending on which pit you were hauling from.

Senator BIBLE. Even with your spur line in your property, you would still have a loading and unloading operation?

Mr. WAUGAMAN. That is correct.

Senator BIBLE. I think I have no further questions unless you want to add something to what Mr. McCarty said.

Mr. WAUGAMAN. That is all.

Senator BIBLE. Mr. McCarty, it may be understood you can file a supplementary statement.

Mr. Woozley, were you going to testify on this matter? We will be very happy to have you join us.

Mr. WOOLEY. I do not know, Senator, if there is anything I, as representative of the Bureau of Land Management, can add. If there are any questions, I will be glad to attempt to answer them.

Senator BIBLE. Are you familiar with the petition which has been filed?

You might come up here and make yourself comfortable, Mr. Woozley.

#### **STATEMENT OF EDWARD WOOLEY, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Senator BIBLE. You are familiar with the petition of Ben Shallit, which has been filed in this matter?

Mr. WOOLEY. Yes, sir.

Senator BIBLE. I think probably the only question we might care to ask of you is how would Mr. Shallit obtain a right-of-way through the Usibelli property in order to reach the spur line on the Alaska Railway, some 6 miles distance?

Mr. WOOLEY. I would say he would make an application for the right-of-way, giving the metes and bounds description that he desired to use. It could then be considered and weighed on its merits.

Senator BIBLE. In case of a conflict and protest filed by Usibelli, that is resolved in the same manner as other filings and protests are resolved?

Mr. WOOLEY. Yes, sir; we would probably make a decision based on all the known facts and that is subject to appeal to the Director and on to the Secretary.

Senator BIBLE. It would follow the regular pattern of the Bureau of Land Management procedure?

Mr. WOOLEY. Yes, sir.

Senator BIBLE. I am directing my attention almost entirely to the right-of-way for road purposes as distinguished from the right-of-way for railroad purpose.

I think it is a fair statement from the evidence that the road presently being used by Mr. Shallit does wash out during flash floods at various times of the year. The road is of some 25 feet in width, it is a gravel road, it is not an all-weather road.

I do not know whether there is anyway that can be designed other than meeting of the minds of these two parties, whereby a satisfactory road can be built to serve not only the Cripple Creek property but also the so-called Roth property on the north. It seems to me this problem directs itself pretty much to that point.

MR. WOOLEY. Yes, sir; I think if they can find a way that they can cross the property without undue damage, that they should try and work it out between themselves. That has been our attitude.

I think Mr. Shallit is now offered a right-of-way permit from the Bureau of Land Management.

SENATOR BIBLE. It appears that is not completely satisfactory although I am not too clear, and I think we can recall Mr. Shallit for the purpose of questioning him on it as to why that road is not satisfactory if in fact he agreed to accept that right-of-way in November of last year. Are you familiar with that particular negotiation?

MR. WOOLEY. No, sir.

SENATOR BIBLE. That decision is one that was written by Under Secretary Orme Lewis; is that correct?

MR. WOOLEY. I think it was on appeal; yes, sir.

SENATOR BIBLE. My attention has been directed to a letter which is made part of the petition, on pages 51 and 52. I direct your attention, first, to page 51, where you directed a letter to the Assistant Secretary under date of October 14, 1954.

MR. WOOLEY. Yes, sir.

SENATOR BIBLE. With particular reference to the last paragraph of that letter as it is contained on page 52:

At the meeting Mr. McCarthy (sic) stated that the relations between his client and Mr. Shallit were better, that Mr. Barash and he were engaged in preparing a form for a stipulation and agreement between Usibelli and Shallit which would provide for the mutual operation of 1 truck road only through the Usibelli interests, instead of the present 2 roads, one Usibelli's and the other Shallit's. As soon as this agreement is signed and filed with the record of the appeal, Fairbanks 08832, your solicitor expects to dispose of the appeal and thus close the entire case.

MR. McCARTY. May I comment with regard to that, because it uses my name?

SENATOR BIBLE. Yes.

MR. McCARTY. Later in the text of the petition, there is this sentence:

The latter statement, attributed to Mr. McCarty, is completely erroneous.

I subscribe to that entirely.

SENATOR BIBLE. This letter itself is correct?

MR. McCARTY. No doubt about that.

SENATOR BIBLE. But the reference to you is wrong?

MR. McCARTY. Exactly. There must have been some mistaken impression. That is all I can say. I did not say that.

MR. WOOLEY. Mr. Chairman, there may have been a misunderstanding, but that was my understanding at the time that Mr. Mc-

Carty and Mr. Barash were engaged in trying to arrive at a satisfactory arrangement for the use of the road.

Senator BIBLE. That was your understanding. Of course, it seems that might be one ideal way of working this out, but, apparently, that is not what they were doing.

Mr. WOOLEY. That was my understanding. That is why I stated so in the letter.

Senator BIBLE. Do you have any further ideas as to how you can work out a mutual use of that road?

Mr. WOOLEY. I would think that if these two gentlemen cannot arrive at a satisfactory solution to get through there and Mr. Shallit makes an application for a road by metes and bounds that we would have to make a determination whether that road would be satisfactory or not.

Senator BIBLE. If they designate it as the route, the present all-weather road which Usibelli is using exclusively—

Mr. WOOLEY. That would be something we would have to determine when we got to it if they made that application.

Senator BIBLE. If that is the property of the Usibelli Co., is it not true that some compensation would have to be provided for use of that road?

Mr. WOOLEY. I would think so; yes, sir. There would have to be an arrangement worked out.

I am not so sure, Mr. Chairman, that that road—and I would have to ask Mr. McCarty or Mr. Barash, whether that road itself is on public lands. If it were not—

Mr. McCARTY. Yes; these are all public lands.

Senator BIBLE. I was under the impression they were.

Do you have any further suggestion to offer as to the amiable solution of this entire problem?

Mr. WOOLEY. I am afraid I do not.

Senator BIBLE. I think that is all, Mr. Woolley. Thank you very much. I did not know how familiar you were with this particular situation.

Mr. WOOLEY. I am sorry I do not have any technical people down here with me who have actually worked on this.

Senator BIBLE. I understand that Mr. Barash wants 3 minutes by way of rebuttal.

#### STATEMENT OF MAX BARASH—Resumed

Mr. BARASH. Mr. Chairman, I merely want to make some comments on the question of the right-of-way.

Senator BIBLE. Let us limit ourselves to the right-of-way for the road.

Mr. BARASH. First, with regard to the right-of-way, Mr. Chairman, Mr. Shallit filed the application for right of way in 1951. Thereafter, Usibelli Coal Mine, Inc., filed protest and appeals against that right-of-way. That continued in the Department for a period of 2 years. I should say 3 years. The final decision was rendered by the Department in 1954.

Well, we might ask, why did Usibelli Coal Mines, Inc., write a letter to the Secretary of the Interior offering to settle the controversy on certain conditions to which I subsequently acquiesced.

Let us look at this in proper perspective. You must bear in mind that in April 1953, the Alaska Railroad had filed a right-of-way application with the Bureau of Land Management. The construction of the railroad was at that time imminent.

My theory is, sir, if I may say so, that Usibelli Coal Mine, Inc., was willing to concede and give Mr. Shallit at that time a road in the bed of the Healy River, which they should not have opposed in the first instance.

The petition that Cripple Creek Coal Co. has filed cites the decision of the Bureau of Land Management, dismissing the protest filed by Usibelli as being without merit.

I do not want to take the time of the committee, but merely want to suggest that that was one reason why Usibelli was willing to settle the controversy with regard to the right-of-way in the bed of the Healy River.

Senator BIBLE. Now, to clear my own thinking on it, the statement of the counsel for Usibelli says this: that the stipulation of last year, signed by Mr. Shallit, was in effect an agreed statement of operating conditions under which both mines would work together:

It recognized the development of the Usibelli leasehold as the dominant use. We thus thought this matter was finally at rest because the right-of-way so formalized was approximately the same as that applied for by Mr. Shallit in 1951 and in use by him since that time.

Mr. BARASH. Yes, sir. But bear in mind, sir, that in 1951, Mr. Shallit had no other alternative.

Mr. Usibelli would not permit Mr. Shallit to construct a road on the high ground of his lease. The only place that he would permit Mr. Shallit to file a right-of-way and to construct a road was in the bed of the Healy River. So rather than get into any extended controversy at that time, in 1951, Mr. Shallit took the easiest way out and filed his right-of-way in the bed of the Healy River.

Senator BIBLE. What you are saying is that although you formalized that right-of-way does not necessarily mean you were satisfied with that right-of-way.

Mr. BARASH. Yes, sir; because all through those years, 1951, 1952, 1953, and 1954, even though Mr. Shallit's right-of-way application was pending, we nevertheless were asking the Alaska Road Commission and the Alaska Railroad either to construct an all-weather road or a spur.

Senator BIBLE. What consideration has your client, and yourself, given to working out a joint use of the upper road?

Mr. BARASH. Well, Mr. Shallit has testified with regard to that before and I would rather he would say a word about that.

Senator BIBLE. You can sum it up very briefly.

#### STATEMENT OF A. BEN SHALLIT—Resumed

Mr. SHALLIT. I have attempted many times to work out some sort of deal where we could use the road but at all times we have never arrived at any figure that would leave me any chance to compete in any markets. What Usibelli wanted was so much that I would be entirely out of the business. I have discussed this matter with Mr. Waugaman since he has been in charge of Usibelli's operations, but Mr. Waugaman apparently cannot make any decisions. It is up to



Mr. Usibelli to do that. I have asked Mr. Waugaman, "Where on your lease can I go and still keep out of the river? Where will I interfere least with your operation? That is where I will file for my right-of-way." He says, "There just isn't any place you can go. That is your answer."

Mr. BARASH. Now with regard to the testimony of Mr. Kalbaugh, he proceeded on the philosophy, Mr. Chairman, that the Alaska Railroad is a private railroad rather than a Government railroad, and that its purpose is to open up and develop the coal resources of Alaska. Both the Alaska Railroad and the Defense Department are arms of the Government. The Government is the beneficiary in any event if the military purchases coal at cheaper prices. True, the military expects to purchase only 828,000 tons during the next 3 fiscal years because it is reducing its present stockpile to a 90-day supply, but the Ladd and Eielson Air Force Bases are burning coal currently at about 400,000 tons annually. These air bases will again be purchasing coal at the rate of, as the colonel from the Defense Department testified today, 336,000 tons after fiscal year 1958, if not a greater tonnage. If the spur is constructed, there is no doubt that the military would be purchasing coal at cheaper prices. It would unquestionably promote competition in the Healy River Valley.

Cripple Creek Coal Co. has offered to cut its price by \$1 per ton. That is tangible proof of the savings that would result. Usibelli Coal Mine, Inc., does not want the railroad spur constructed. It will not permit the Alaska Road Commission to utilize Usibelli's present road to construct an all-weather road to the Cripple Creek Coal Co. property.

What is the answer? Is Cripple Creek Coal Co. to be forced out of business? That sums up my comments.

Senator BIBLE. Thank you very much.

Mr. SHALLIT. In rebuttal to what Mr. McCarty or Mr. Waugaman said in regard to the mining operations on the north side of the river, it was stated that it would be impossible to put a railroad through that cut; that it would so interfere with the mining operations that they could not sluice, remove the overburden from the coal from the 2, 3, 4, 5, or 6 beds up there. That is a question of engineering judgment. It is my opinion that first of all they will not strip the beds on the north side of the river that dip into the hill because that is a question of economics, it is a question of cost, and in my opinion as an engineer, I do not think they will be able to do it. The other thing is, they say if you put a railroad through that cut or some place around there that it will block off the stripping so that the gravel cannot be drained through there. It is my contention that a small trestle in 1 or 2 places or a culvert or something like that would be ample to bring the water in the strip area and let the tailing go down below. I think it is an extremely simple engineering problem; and if Usibelli does not have the engineering staff to decide on it, I think there are experts around here who are familiar with that work and can testify on that.

Senator BIBLE. Prior to the time that you obtained this lease permit in 1949 or 1950, did you investigate the right-of-way possibility both for the road and the railroad?

Mr. SHALLIT. Yes, sir.

Senator BIBLE. As a lawyer of seven lots of land-blocked people, what did you do prior to the time you obtained the permit or the lease?

**Mr. SHALLIT.** I had read the act. It was my impression that access would be granted to me, that the Government had reserved that right to all coal leases. I see no reason now why proper access cannot be granted. Before I even started on there one of the main problems was that of transportation. That is when I wrote to Mr. Ghiglione asking if it was possible to get any help from the road commission. It was my feeling that if the road commission came in there and even got a right-of-way, even though I had to put the money into it, if they got a safe right-of-way I could build on it there; it would be necessary in order to get through. In other words, it is my contention that when the Government gives you a coal lease they give you access to it. And by access I mean a reasonable access. I felt that certainly I could obtain a proper right-of-way either through the railroad or through the road commission.

For a long time, thinking that the railroad would, of course, be the ultimate way of getting coal out, because it is the cheapest way, and after all the thing to do is to get your coal out as cheaply as possible—so you want to get it on the railroad as soon as possible—I asked the railroad if they would kindly survey the right-of-way; where, if they ever built a railroad, I would build my road there. They could give me permission to use that right-of-way and I would gradually build that right-of-way on railroad grade.

I would start in building along the grade of the railroad where I could, and where it got too difficult in the cuts or fills, I would skirt around until such time as I could gradually whittle away at it. I thought in a period of time I would have that road whittled down so it would be feasible for railroad grading. But the railroad never saw fit to run that survey until the year the Connor Committee was up there. At that time it looked as though they were going to put the road through. So I did not request the permission to use that right-of-way while they were in the process of surveying.

**Senator BIBLE.** Thank you, Mr. Shallit.

Do we have any further witnesses?

**Mr. BARASH.** We appreciate the time you have given us.

**Senator BIBLE.** Is there anything further?

**Mr. McCARTY.** I would like to make this one general observation. That is, that we are here on the petition directed at the railroad. We have gotten into a right-of-way problem which, in my opinion, is a substantially different situation. If the committee desires more information with regard to either of them, we will be delighted to supply it. We are prepared today mainly in connection with this railroad. That is what our formal statement was directed to.

**Senator BIBLE.** I think the petition was directed to that and a great deal of the case. The Chair feels that possibly there is a happy solution to this overall problem.

**Mr. McCARTY.** Mr. Shallit stated he could not file for a right-of-way anywhere else than where it now is. That is obviously wrong. The man can file for anything he wants anywhere. Whether it is granted or not, is the question.

**Senator BIBLE.** What will the attitude of your client be when he files on the upper road?

**Mr. McCARTY.** The problem, of course, is to get a road which can be constructed economically. Accordingly, the area is restricted and it runs smack into our operation. As far as the railroad is concerned,

the continued insistence for some reason or another to want to plot this thing through our No. 1 cut would be something that might be to the economic advantage of the railroad and Mr. Shallit, but would simply destroy us.

Senator BIBLE. The joint use of the upper road would not bother?

Mr. McCARTY. No, sir, but there are conditions which we state with respect to that. That proposition has never been made except in the context that it be bought into by Mr. Shallit with the idea of converting it to a railroad. If it means we are going to let ourselves open to someone participating in our investment so they might have some say as to what that will be used for at a later date, I am afraid we have to be quite wary in connection with it.

Thank you, Mr. Chairman, very much for your courtesy.

Senator BIBLE. We are very happy to have you, Mr. McCarty.

I might state that the record will be available to all who testified for the purpose of correcting and editing their statements if they would like to do so. I assume that the record can be kept open for a reasonable time for the purpose of allowing any insertions.

Mr. WATGAMAN. Mr. Shallit said a minute ago that it would not be economically feasible to strip coal on the north side of the river in the area where the No. 1 cut goes through the hill. I might say, sir, that we have been stripping coal there for the last 2 years. We have constructed a dam on that side. We have installed 2 pumps and 2 pipelines. We intend to strip in there the remainder of this stripping season and probably for the next 2 or 3 stripping seasons or until all the coal is stripped out of there. I cannot understand his making that comment. Of course, we may lose money on it. If so, some of our stupid engineers will probably get fired over it.

Senator BIBLE. Without getting into any surrebuttal here on that question, the subcommittee hearing will stand adjourned.

I want to thank and commend all of the witnesses. Without exception, presentations have been clear and pertinent to the issues. I think we have made a good record upon which the subcommittee will be able to reach a determination. So that all of the material may be available in a single document, I will direct that Mr. Shallit's petition and Mr. Usibelli's answer appear as an appendix, together with any related material that is pertinent. Also, the record will be kept open a reasonable time to permit any party in interest to file supplemental statements or additional information that might be helpful to the committee. Again, thank you.

(COMMITTEE NOTE.—Pursuant to the express permission of the acting chairman, the record of the hearings was kept open for a period of 2 weeks to permit any party in interest to submit additional and supplemental material. Mr. Usibelli's counsel requested that the original answer to Mr. Shallit's petition be printed and this document appears as appendix B, post.)

(The following supplemental statement was submitted by Mr. Max Barash, counsel for Mr. Usibelli:)

WASHINGTON, D. C., June 7, 1955.

HON. ALAN BIBLE,

*Acting Chairman, Subcommittee on Territories,*

*Interior and Insular Affairs Committee,*

*United States Senate, Washington 25, D. C.*

DEAR SENATOR BIBLE: At the conclusion of the hearing on June 1, 1955, of the Subcommittee on Territories of the Interior and Insular Affairs Committee,

United States Senate, on the petition of Cripple Creek Coal Co., you kindly offered to keep the record open for a reasonable time for the submission of such additional statements as might be desired. The following statement is therefore being submitted pursuant thereto in the hope it will be helpful to the committee in pinpointing the vital issues and the key testimony of the Interior Department expert witnesses who had no ax to grind.

I. There is nothing in the statute authorizing the establishment of the Alaska Railroad which requires that construction of a branch be self-sustaining and self-amortizing.

The petition of Cripple Creek Coal Co. (see p. 74) quotes the governing statute (48 U. S. C., 1955 edition, secs. 301 et seq.) which declares the policy of Congress to be that the line or lines of the Alaska Railroad

"\* \* \* be so located as to connect one or more of the Pacific Ocean harbors on the southern coast of Alaska \* \* \* with a coalfield or fields so as best to aid in the development of the \* \* \* mineral or other resources of Alaska, \* \* \* and so as to provide transportation of coal for the Army and Navy \* \* \*." [Emphasis added.]

and empowers, authorizes, and directs the President

"\* \* \* to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs \* \* \*."

On pages 74 to 80 of the petition several instances are cited where branch lines were constructed out of lump-sum appropriation in furtherance of the purposes of the act. In those instances nothing was said to even suggest the necessity that the branch lines be self-sustaining or self-amortizing except for the significant observation that the construction of the branch lines would result in saving money for the Alaska Railroad and the taxpayer in cheaper fuel. On pages 76 and 77 of the petition appears the following statement made by Colonel Steese, head of the Alaskan Engineering Commission, now the Alaska Railroad, to Chairman Cramton of the House Appropriations Committee:

"Colonel STEESE. \* \* \* The Moose Creek spur was never estimated for, but was actually built out of a lump-sum appropriation. It was built after the matter had been referred to the President. One of the objects specified in the Railroad Act was to reach the coalfields as a means of development. The statement shows that the construction of the Moose Creek spur would save its cost to the railroad in 2 years in the lower price of coal."

Colonel Steese's statement that one of the objects of the Railroad Act was to reach the coalfields as a means of development is as valid today as it was then. On pages 77 to 79 of the petition appears the story behind the construction of the 4-mile spur to the coal deposits of the Healy River Coal Corp., predecessor to Suntrana Mining Co. The cost of constructing the spur was stated by Colonel Mears, then head of the Alaskan Engineering Commission, to be \$200,000 (see p. 79 of the petition). Toward the cost of constructing that spur, Healy River Coal Co. contributed \$10,000 in cash and \$20,000 in coal delivered to the railroad. Again, it is significant that no mention was made of the need for the spur to be self-sustaining or self-amortizing other than the fact that it would result in cheaper coal to the railroad and to the Territory.

There is no need to labor the point that the Alaska Railroad is Government-owned and operated and that it has a clear duty under the statute to provide railroad access to open up the coal resources of Alaska even if the cost of constructing a spur should never be amortized. However, there is not the slightest doubt, on the basis of the evidence adduced at the hearing, that the cost of constructing a spur to the Cripple Creek Coal Co. lease would be amortized over a period of years by savings to the military alone. In submitting its bids to the Navy Fuel Supply Office to supply the coal requirements of the Ladd and Eielson Air Force bases in Alaska for the fiscal years 1956, 1957, and 1958, estimated at 828,000 tons for the 3 years, Cripple Creek Coal Co. made a firm offer to reduce its price by \$1 per ton if a spur is constructed to its lease property. This evidences good faith and demonstrates the savings which would accrue to the military. Nor can there be any doubt that the savings to the civilian consumers of coal in the Fairbanks area would also be substantial by virtue of the added competition that would result from the construction of a spur.

II. The testimony of the key witnesses of the Interior Department at the hearing demonstrates beyond doubt the need for railroad access to the Cripple Creek Coal Co. lease and to the Government coal reserves.

Of all the key witnesses personally familiar with coal mining operations in Alaska, Leo H. Saarela, regional mining supervisor of the United States Geo-

logical Survey, is best qualified to discuss the importance of the spur in developing the coal resources of the Healy River Valley above the Usibelli lease. Mr. Saarela is in charge of coal mining operations on all Federal coal leases in Alaska, including the Usibelli and Cripple Creek coal leases. Excerpts from his testimony follow:

Transcript, page 141:

"Senator BIBLE. \* \* \* So there would be a saving, according to your statement, according to the Government because they would be saving that much money through the use of railroad transportation rather than truck transportation?"

"Mr. SAARELA. Yes.

"Senator BIBLE. Based on the figures of 150,000 tons from the Usibelli and 150,000 tons from Shallit?"

"Mr. SAARELA. Yes.

"Senator BIBLE. And you believe that same statement is true today?"

"Mr. SAARELA. I believe so; yes.

"Senator BIBLE. I assume, based upon that statement, that you believe extension of a branch line through the Usibelli lease would result in a more economical operation to the Cripple Creek property then; is that true?"

"Mr. SAARELA. Yes.

"Senator BIBLE. Would that same hold as to the Usibelli property itself?"

Page 142:

"Mr. SAARELA. I believe it would, although the Usibelli management has disagreed with that. They have a tippie to move. At the rail head they have their present tippie. In other words, they are trucking coal from 3 miles or more and they have their tippie at the rail head at the present time. However, they have indicated that it would cost too much to move the tippie and that is the prohibiting argument, I believe, in their statement that they do not want to use the railroad.

"Mr. SAARELA. I guess in view of your statements that it undoubtedly follows that in the event of some type of emergency, it would certainly make the Roth property far more accessible if the spur line were built at least to Cripple Creek.

"Mr. SAARELA. Yes; it would.

"Senator BIBLE. I think that follows very naturally from what you have developed here."

\* \* \* \* \*

Page 145:

"Senator BIBLE. Are there any better means of developing reserves above Usibelli than would be Cripple Creek and block 28 through the extension of the branch line? Is there any other way to get it out?"

"Mr. SAARELA. I do not think so.

"Senator BIBLE. I think that develops it very well, Mr. Saarela.

Dr. John C. Reed, in charge of Alaskan Affairs for the Geological Survey, is headquartered in Washington, D. C., but he has personally inspected the coal properties in the Healy River Valley and, although competent to testify on the key issues, did so with tongue in cheek to avoid conflict with the policy decision of the Secretary of the Interior not to construct a spur. Nevertheless, we believe his testimony although guarded is self-revealing. Excerpts from that testimony follow:

Transcript, pages 95-96:

"Senator BIBLE. I might ask the question. If you are not the qualified witness to give the answer, simply say so. Do you believe the extension of the branch line through the Usibelli lease would result in a more economical operation to the Usibelli property? That is an economic question.

"Dr. REED. As an individual, in my opinion it would make it easier for Shallit to operate, and hence he probably could deliver coal at a somewhat lower price.

"Senator BIBLE. My question was directed to the Usibelli property rather than Cripple Creek. But I assume your answer would be the same.

"Dr. REED. No; I am not sure that it would.

"Senator BIBLE. You think there is a distinction?"

Page 96:

"Dr. REED. I have seen Mr. Usibelli's statement that this would not aid him at the present time. I am only going on his statement and not my own.

"Senator BIBLE. You have no independent judgment as to whether the railroad would aid him or would not aid him?"

"Dr. REED. I do not.

"Senator BIBLE. Do you have any opinion as to the opening up of the Roth property by extending the spur line to the Cripple Creek line? Is that a desirable feature of the problem before us?"

"Dr. REED. The Roth property has been held in reserve for a possible emergency. It was the opinion of my Bureau, and I believe generally accepted, that it was an area where coal could be obtained rather easily and rather quickly. However, to take that coal out, transportation of some sort would have to be provided. It hence would follow that it would be more immediately available if transportation were put in at this time.

"Senator BIBLE. And if there were a spur line that extended to the Cripple Creek property, then that would be advantageous to the Roth property which adjoins it?"

"Dr. REED. It would, indeed. Although to my knowledge there is no plan to do any mining in the Roth property at the present time."

Mr. A. F. Ghiglione, Commissioner of Roads for Alaska, falls in the same category as Dr. Reed—a witness who would have preferred to speak more freely. Excerpts from his testimony follow:

Transcript pages 146-149:

"Senator BIBLE. It is my understanding that it is your feeling the construction of a road by your Commission would more quickly provide the needed access to the Alaska Railroad; that is, the construction of a road from the spur into this property involved.

"Mr. GHIGLIONE. Yes, sir. I should qualify that. When we originally were contacted by Mr. Shallit when he first opened up this property, his request to the Road Commission was given consideration along with similar requests from elsewhere in Alaska for assistance to open up properties in Alaska.

"It has always been the policy of the Road Commission to assist wherever a road will become a public road and contributions or cooperation by the requester are offered. In that case, we did recognize that Mr. Shallit needed assistance on the road and we offered assistance on the cooperative basis; however, always recognizing that we were limited in funds to projects of fifteen or twenty thousand dollars in scope. When we got into Mr. Shallit's picture a little further and saw the scope of it, and also recognized that it would be more desirable to have the railroad extended into the area since this was just a stub road, it was not connected with any road system, the policy of the Department came to bear in which we backed out of it, frankly, and supported the justification of a railroad extension.

"Senator BIBLE. You say the policy of the Department came to bear; how did that come about?"

"Mr. GHIGLIONE. Through the Office of Territories, under which both the railroad and the Road Commission are concerned and through the Alaska Field Committee which was brought out in the presentation.

P. 148:

"All the Interior agencies got together about three times a year in Alaska and discussed our mutual problems. It was the feeling of the entire committee at that early stage that it would be more desirable to support a railroad extension than a road.

"Senator BIBLE. Who made that determination?"

"Mr. GHIGLIONE. That was the Alaska Field Committee made up of the heads of all the Interior agencies in Alaska.

"Senator BIBLE. Who are the heads of the Interior agencies in Alaska?"

"Mr. GHIGLIONE. That is presented in Mr. Shallit's statement. There is the head of the Alaska Railroad, at that time Colonel Johnson; the head of the Bureau of Land Management, Mr. Puckett; the head of the Road Commission, at that time Colonel Noyes; the Bureau of Mines; Geological Survey; Bureau of Indian Affairs. I believe that covers the field.

"Senator BIBLE. That determination was made in what year?"

"Mr. GHIGLIONE. It is in the record there, about 1951 or 1952.

"Senator BIBLE. And it was resolved then that it was preferable to serve this area by a spur railroad line rather than a highway; is that true?"

"Mr. GHIGLIONE. That is true; yes, sir.

"Senator BIBLE. Is that still the thinking of the Road Commission of Alaska?"

Page 149:

"Mr. GHIGLIONE. It was our thinking up until just the recent determination that the Department does not support a railroad based on tonnage figures of coal. Now it looks like we are back in the picture."

Mr. John E. Manley, Acting General Manager of the Alaska Railroad, for obvious reasons was reluctant to offer testimony which might conflict with departmental policy. Excerpts from his testimony are, we submit, revealing.

Transcript, page 130:

"Senator BIBLE. \* \* \* Do you think that the users in the Territory would save \$100,000 then in this next fiscal year if the spur were constructed?"

"Mr. MANLEY. I would say that they would save, well, there are a lot of variables. If all of the coal were sold by the Suntrana Coal Corp., there would be no saving.

"Senator BIBLE. I understand.

"Mr. MANLEY. If it were all by Usibelli, it would be a lesser saving, or if it would be all by Mr. Shallit there would be a greater saving.

"In fiscal 1954, the year that estimate was made, there were approximately 550,000 tons of coal, I believe, from the Suntrana area, of which approximately 350,000 tons were shipped by Usibelli and Shallit. The total military requirements as projected for the fiscal year 1956 for north of the range is 150,000 tons so that, of course, will upset the picture by quite an amount, of course."

Transcript, pages 132-133:

"Senator BIBLE. Was that filing [referring to the railroad right-of-way] on behalf of yourself or the Alaska Railroad bolstered by whatever type of showing you had before you? Was that passed on to the Interior Department to secure from them a positive statement as to their policy?"

"Mr. MANLEY. I would have to assume, Mr. Chairman, that it was passed on in the form of copies. I do not believe I could answer you definitely on that without referring to the files.

Page 133:

"Senator BIBLE. Since the date of your filing of April 20, 1953, again, what was come about to change the position of the Alaska Railway? Does it boil down purely and simply to the estimated needs of the Defense Department, the two airbases?"

"Mr. MANLEY. That is correct. \* \* \*

In connection with this latter testimony, it is important to note what Col. Darrel G. Welch, Chief, Fuels Division, United States Air Force, testified with respect to reduction of the present coal stockpile and estimated future needs for the Ladd and Eielson Air Force Bases in Alaska.

Transcript, pages 88-89:

"Colonel WELCH. \* \* \* Our plan is to reduce the current stockpile through fiscal year 1956, after which the estimated consumption should level off at about 336,000 tons annually.

"Accordingly, procurement of new coal will decline through fiscal year 1956 and increase to the above estimated level of consumption by fiscal year 1957.

"The attached schedule indicates the Air Force requirements from fiscal year 1955 through fiscal year 1958 for coal at Ladd and Eielson Air Force Bases.

Page 89:

"You will note that for the next 3 years, fiscal year 1956 through 1958 amount to about 825,000 tons. It is actually 822,000 tons for the next 3 years to be procured, as compared with a Department of Interior figure furnished in the letter previously referred to, which gave 828,000 tons."

Thus, the stockpile is to be reduced significantly only in fiscal year 1956. In the following fiscal year 1957 Colonel Welch states military procurement of coal will increase to 336,000 tons. For fiscal year 1958, however, the Navy Fuel Supply Office, acting for the Air Force, has invited bids to supply the Ladd and Eielson bases in Alaska with 392,000 tons. It is difficult to understand, therefore, Colonel Welch's statement that after fiscal year 1956 "the estimated consumption should level off at about 336,000 tons annually." Whether the tonnage be 336,000 tons, 392,000 tons, or more, the plain fact is that the military would unquestionably save money if the spur is constructed.

III. The testimony of the Department's key witnesses establishes that the construction of a spur line would not affect adversely the mining operations of Usibelli Coal Mine, Inc.

Some brief excerpts from the testimony of key witnesses should be sufficient to establish that the plea of Usibelli Coal Mine, Inc., of possible damage to its mining operations has for its purpose delaying construction of a spur.

Transcript pages 134-135:

"Senator BIBLE. I might ask you, because of Mr. Manley's last statement, what is your opinion as to the construction of a spur line from the Suntrana property to the Cripple Creek property insofar as it might adversely affect the mining property of the Usibelli Corp.?"

Page 135:

"Mr. SAARELA. Well, Mr. Chairman, that problem has been discussed a number of times as there continually seemed to be objection by the Usibelli Coal Co. but I believe that the road could be routed without an undue hardship or difficulty as far as the Usibelli Coal Co. is concerned.

"Senator BIBLE. That was the opinion you expressed in response to Mr. Manley's inquiry to you previously?

"Mr. SAARELA. That is right.

"Senator BIBLE. It is still your opinion?

"Mr. SAARELA. That is right. \* \* \*

Transcript pages 93-94:

"Senator BIBLE. I am not asking you that question. I am not asking you policy questions on either the highway or the road. What I am asking is, Could one extend the spur line from the Suntrana claim to Cripple Creek so as to go through the Usibelli lease without unduly interfering with the mining operations of the Usibelli property, if you are qualified to speak on that question?

"Dr. REED. I do not think I am able to answer that question specifically. In my opinion it would be possible to build such a line without danger to the conservation of the coal in the area over which the line would run. I am not qualified specifically to speak as to the degree to which that might or might not interfere with Mr. Usibelli's operation."

Transcript page 133:

"Senator BIBLE. Are you qualified to speak as to whether or not a spur could be built into the Cripple Creek property without endangering the mining property of the Usibelli's?

"Mr. MANLEY. I believe the Usibelli Coal Co. approached the railroad, either with correspondence or verbally, and indicated that a rail line would cause them difficulties. In any event, the railroad wrote to Mr. Saarela and requested advice as to whether such a spur or line would destroy the value of mining property, and I believe Mr. Saarela's answer is in Mr. Shallick's presentation. He indicated that he did not believe it would be detrimental."

#### IV. CONCLUDING REMARKS

The principal objection of the Secretary of the Interior to the construction of the spur is the contention that it is not economically justified in view of the declining military demand for coal. This contention is manifestly specious and without merit. The military demand for coal in fiscal year 1956 to supply the Ladd and Eielson Air Force bases in Alaska has been reduced to approximately 150,000 tons only because it has been decided to reduce the present stockpile over a 3-year period. Both bases are still burning coal at the rate of about 400,000 tons annually. For fiscal years 1957 and 1958 the military requirements for coal for the 2 bases are estimated by the Navy Fuel Supply Office, acting for the Air Force, as totaling 678,000 tons, such estimate being predicated on continued reduction of the stockpile. Beyond fiscal year 1958 it is reasonable to assume that the demand for coal will be greater. In any event, however, it is indisputable that the military must save money on coal procurement if railroad access is provided. We hope and pray that the committee's report on the hearing will produce the following conclusions:

1. That railroad access to the Cripple Creek Coal Co. lease and to the Government coal reserves is the only feasible means for opening the coal resources above the Usibelli lease to development to assure an adequate and uninterrupted supply of coal to the military and civilian consumers of coal in Alaska.

2. That until railroad access is provided, immediate steps should be taken by the Department of the Interior, acting through the Alaska Road Commission, to construct an all-weather highway to the Cripple Creek Coal Co. lease and to the Government coal reserves, properly graded so that rail tracks can eventually be laid thereon.

3. That the all-weather road be constructed over the Federal lease properties of Suntrana Mining Co., Usibelli Coal Mine, Inc., and Cripple Creek Coal Co. utilizing all existing roads on public lands of the United States deemed most feasible engineeringly.

Respectfully submitted.

MAX BARASH,

*Attorney for Cripple Creek Coal Co.*

(Whereupon, at 5:55 p. m., the hearing in the above-entitled matter was concluded.)





# APPENDIXES

## APPENDIX A

### **PETITION OF A. BEN SHALLIT DOING BUSINESS AS CRIPPLE CREEK COAL CO., FAIRBANKS, ALASKA, TO THE INTERIOR AND INSULAR AFFAIRS COMMITTEES OF THE UNITED STATES SENATE AND THE HOUSE OF REPRESENTATIVES FOR AN INVESTIGATION AND PUBLIC HEARINGS**

#### OUTLINE

Purpose of investigation and public hearings.

Chronological account of efforts made by Cripple Creek Coal Co. to have the railroad spur constructed by the Department of the Interior.

Issuance of coal prospecting permit to A. Ben Shallit and need for railroad access.

Correspondence in 1950 and 1951 between Cripple Creek Coal Co. and Interior Department with regard to construction of railroad spur or all-weather road.

Shallit's application for preference right lease and dismissal of protests by the Interior Department.

Correspondence in 1952 between Cripple Creek Coal Co. and Interior Department with regard to construction of railroad spur or all-weather road.

Exchange of telegrams between Naval Supply Depot and Cripple Creek Coal Co. showing need for supplying additional coal to military installations and outcome thereof.

Statutory authority for Secretary of Interior to issue right-of-way easements and action taken under the regulations.

Protests filed against granting of right-of-way easement to Cripple Creek Coal Co. and disposition thereof.

Work done by Alaska Railroad in 1952 and 1953 in surveying the route of its proposed right-of-way in anticipation of construction of spur.

Correspondence between Office of Secretary of Interior and Governor of Alaska in 1952 with regard to importance of increasing coal production in Alaska.

Correspondence in 1953 between Cripple Creek Coal Co. and Interior Department with regard to construction of railroad spur or all-weather road.

Request of Alaska Railroad for railroad right-of-way for construction of spur.

Suspension of permission to construct railroad spur by Bureau of Land Management and withdrawal of right-of-way by Alaska Railroad.

Recommendations of Coal Subcommittee of Alaska Field Committee of Interior Department urging construction of railroad spur.

Investigation of Alaska coal situation by committee headed by Charles W. Connor, formerly Administrator of Defense Solid Fuels Administration, and Annual Reports of Secretary of Interior to the President for fiscal years ending June 30, 1953, and June 30, 1954.

Exchange of correspondence between Assistant Secretary of the Interior and Director, Bureau of Land Management; which led to withdrawal of railroad right-of-way.

Correspondence in 1954 between Cripple Creek Coal Co. and Interior Department with regard to construction of railroad spur or all-weather road.

Cripple Creek Coal Co.'s application for Government loan to develop an underground mine, the need therefor, and approval thereof as a defense loan pursuant to section 302 of Defense Production Act.

Creation of Healy River Spur, Inc. as nonprofit corporation, to construct railroad spur, how it was conceived, and its demise.

Estimated savings to Government had railroad spur been constructed and in existence since 1950.

Failure of Secretary of Interior to carry out statutory mandate of Congress and precedents for providing railroad access to lessees operating coal leases on Federal lands in Alaska.

Conclusion.

#### EXHIBITS

A. Letter dated March 2, 1950, from Alaska Road Commission to A. Ben Shallit.

B. Letter dated December 20, 1950, from Alaska Road Commission to Cripple Creek Coal Co.

C. Letter dated April 3, 1951, from Alaska Road Commission to Director, Office of Territories.

D. Letter dated May 9, 1951, from Alaska Road Commission to Cripple Creek Coal Co.

E. Bureau of Land Management decision of April 5, 1951.

F. Departmental decision of October 2, 1951.

G. Departmental decision of October 6, 1951.

H. Letter dated February 25, 1952, from Alaska Road Commission to Cripple Creek Coal Co.

I. Telegram of June 25, 1952, from Naval Supply Depot to Cripple Creek Coal Co.

J. Telegram of June 25, 1952, from Cripple Creek Coal Co. to Naval Supply Depot.

K. Telegram of June 27, 1952, from Cripple Creek Coal Co. to Naval Supply Depot.

L. Bureau of Land Management decision of September 10, 1952.

M. Departmental decision of November 5, 1954.

N. Undated letter from Assistant Secretary of the Interior to Governor of Alaska.

O. Letter dated January 12, 1953, from A. Ben Shallit to General Manager, Alaska Railroad Co.

P. Letter dated January 28, 1953, from Acting General Manager, Alaska Railroad, to Cripple Creek Coal Co.

- Q. Letter dated February 2, 1953, from Cripple Creek Coal Co. to Chief Engineer, Alaska Railroad.  
 R. Letter dated February 2, 1953, from Cripple Creek Coal Co., to Acting General Manager, Alaska Railroad.  
 S. Telegram dated March 1, 1953, from Cripple Creek Coal Co. to Max Barash.  
 T. Letter dated March 3, 1953, from Max Barash to Chief, Alaska Division, Office of Territories.  
 U. Letter dated March 11, 1953, from Alaska Road Commission to Cripple Creek Coal Co.  
 V. Letter dated April 22, 1953, from Alaska Road Commission to Chief, Alaska Division, Office of Territories.  
 W. Letter dated June 30, 1953, from Alaska Road Commission to Chief, Alaska Division, Office of Territories.  
 X. Letter dated April 29, 1953, from acting general manager, Alaska Railroad, to regional administrator, Bureau of Land Management.  
 Y. Letter dated March 3, 1954, from general manager, Alaska Railroad, to Director, Office of Territories.  
 Z. Teletype of August 4, 1953, from Administrator, Bureau of Land Management to regional administrator, Anchorage, Alaska.  
 AA. Letter dated October 11, 1954, from General Manager, Alaska Railroad, to Area Administrator, Bureau of Land Management, Anchorage, Alaska.  
 BB. Bureau of Land Management decision of November 2, 1954.  
 CC. Transcript of minutes of meeting of Alaska Field Committee's Coal Subcommittee dated April 30, 1953.  
 DD. Newspaper clipping *Jessen's Weekly* October 22, 1953.  
 EE. Memorandum dated October 1, 1954, from Assistant Secretary of Interior to Director, Bureau of Land Management.  
 FF. Memorandum dated October 14, 1954, from Director, Bureau of Land Management, to Assistant Secretary, Public Land Management.  
 GG. Letter dated December 23, 1954, from Max Barash to Director, Bureau of Land Management.  
 HH. Letter dated October 19, 1954, from A. Ben Shallit to Alaska Road Commission.  
 II. Letter dated October 29, 1954, from Alaska Road Commission to Cripple Creek Coal Co.  
 JJ. Letter dated November 4, 1954, from A. Ben Shallit to Alaska Road Commission.  
 KK. Letter dated November 8, 1954, from Alaska Road Commission to Cripple Creek Coal Co.  
 LL. Letter dated October 21, 1954, from A. Ben Shallit to general manager, Alaska Railroad.  
 MM. Letter dated November 5, 1954, from General Manager, Alaska Railroad, to Cripple Creek Coal Co.  
 NN. Letter dated December 21, 1954, from Alaska Road Commission to A. Ben Shallit.  
 OO. Letter report of January 15, 1953, from A. Ben Shallit to regional mining supervisor, Geological Survey.  
 PP. Letter dated August 16, 1954, from Reconstruction Finance Corporation to Healy River Spur, Inc.  
 QQ. Letter dated August 11, 1954, from Office of Defense Mobilization to Reconstruction Finance Corporation.  
 RR. Analysis of truck haulage costs by A. Ben Shallit.

HON. JAMES E. MURRAY,  
*Chairman, Interior and Insular Affairs Committee,*  
*United States Senate, Washington, D. C.*

and

HON. CLAIRE ENGLE,  
*Chairman, Interior and Insular Affairs Committee,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMEN: Because of the continued failure of the Secretary of the Interior to provide adequate railroad access to the Healy River Valley of the Nenana coalfield, Territory of Alaska, A. Ben Shallit, doing business as Cripple Creek Coal Co., Fairbanks, Alaska, holder and operator of a Federal coal lease on public lands in the United States in the Territory, hereby petitions the Interior and Insular Affairs Committees of the Congress to conduct an investigation and hold public hearings to determine:

1. Why the Secretary of the Interior refuses to authorize the Office of Territories, which has jurisdiction over the Alaska Railroad, to construct a spur from the present rail's end at Suntrana, Alaska, to the operating coal mines and to the Government coal reserves (also known as the Roth coal reserves) in the Healy River Valley, a distance of approximately 6 miles, when:

(a) it is essential in the public interest and in the interest of national defense that a spur be constructed to serve the military and civilian needs of the Territory of Alaska;

(b) the interested bureaus and agencies of the Department of the Interior familiar with Alaskan coal development in the Healy River Valley have for the past 4 years consistently recommended the construction of a spur;

(c) the United States Government and the taxpayers will be the principal beneficiaries of a spur in terms of dollars saved each year in the cost of purchasing coal used by the military installations in Alaska—failure to construct the spur has already cost the Government an estimated additional \$1 million over the last 5 years;

(d) the construction of a spur will facilitate the development of the coal resources in the Healy River Valley and provide ready access to the reserves to meet the ever-increasing needs of the military installations in Alaska;

(e) the development of the coal resources in the Healy River Valley is necessary and essential in promoting true competition among the present coal operators serving the military and civilian markets in Alaska;

(f) the importance of maintaining adequate coal reserves and year-round transportation facilities in Alaska is even more significant today to meet projected military demand in the light of the present tensions in the Far East;

(g) the Secretary of the Interior is under a statutory duty to provide adequate railroad access to lessees operating coal leases on Federal lands in Alaska in circumstances such as are present here.

After almost 5 years of continuous but unsuccessful efforts to prevail upon the Department of the Interior to construct a railroad spur or an all-weather road so that coal produced from the Healy River Valley can be transported at the lowest possible cost to military and civilian consumers, we have no alternative but to petition your committee to conduct an investigation and to hold public hearings so that the true reasons for the failure to do so may be brought to light. Failure to construct a spur has resulted in increasing the cost to the Government of coal purchased for use by the military installations in Alaska over the last 5 years by an estimated \$1 million. Moreover, the lack of a spur has needlessly cost Cripple Creek Coal Co. a total of \$132,495.37 to construct and maintain temporary roads and bridges—money that was wasted and could have been contributed toward the construction of the needed spur.

So that the members of your committee may have a better understanding of the reasons which prompt this petition, we are submitting herewith a chronological account of the efforts we have made to have a spur constructed from the present rail's end at Suntrana to the operating coal mines and Government coal reserves in the Healy River Valley.

On July 22, 1949, the Department of the Interior granted A. Ben Shallit a coal prospecting permit covering 1,120 acres of land in the Healy River Valley for a period of 4 years. While performing the exploratory work necessary to determine the existence, extent, and workability of the coal deposits underlying the lands included in the prospecting permit, it became obvious that proper development of the coal deposits would necessitate an extension of the Alaska Railroad from its rail's end at Suntrana to the property or, in the alternative as an immediate expedient, the construction of an all-weather truck haulage road. The rail's end at Suntrana is situated on the Federal coal lease of Suntrana Mining Co. (formerly Healy River Coal Co.). Adjoining the Suntrana lease to the east is the Federal coal lease of Usibelli Coal Mine, Inc., and adjoining the Usibelli lease also to the east farther up the Healy River Valley is the coal property of Cripple Creek Coal Co. The Government coal reserves, also known as the Roth coal reserves, adjoin and lie beyond the Cripple Creek lease still farther to the east and continuing up the Healy River Valley. The Healy River traverses the Suntrana, Usibelli, Cripple Creek, and Roth properties. An extension of the Alaska Railroad from Suntrana to the Usibelli mine would cover a distance of approximately 2.4 miles; from the Usibelli mine to the mouth of Cripple Creek a distance of approximately 2.2 miles; and from Cripple Creek to Coal Creek (Government coal reserves) a distance of approximately 1.5 miles—making a total of little more than 6 miles from Suntrana to the Government coal reserves.<sup>1</sup>

On February 15, 1950, more than 5 years ago, a request for the construction of an all-weather road as an immediate expedient was made by Shallit to the Alaska Road Commission of the Department of the Interior. Replying to this request on March 2, 1950, Mr. A. F. Ghiglione, then Chief Engineer of the Alaska Road Commission, stated as follows:<sup>2</sup>

"Reference is made to your letter of February 15 requesting that an extension of the Healy River-Suntrana road be undertaken to serve your property. *The desirability of such a road is recognized.* However, the Alaska Road Commission is not at present in a position to undertake this work since it has not been our policy to construct roads into undeveloped mining prospects.

<sup>1</sup>These distances are based upon estimates submitted by F. E. Kalbaugh, general manager of the Alaska Railroad, to William C. Strand, Director, Office of Territories, Department of the Interior, under date of March 8, 1954. (See exhibit Y appended thereto under footnote 25.)

<sup>2</sup>A copy of the letter is appended hereto as exhibit A.

"Should the actual development and production be instigated on the property, it is very probable that some cooperative assistance could be worked out whereby the road could be constructed with a portion of the expense shared by you as offered in your letter.

"Since you indicate that you will be in Juneau in the near future, it is suggested that you visit our office, at which time more detailed information can be given you." [Italics supplied.]

By July 5, 1950, Mr. Shallit had developed sufficient coal reserves to mine commercially and, pursuant to the regulations of the Department of the Interior, he filed a preference right application for a coal lease on the lands included in his prospecting permit. Toward the end of June, Mr. Shallit organized the Cripple Creek Coal Co. and in July executed a contract with the Department of the Army calling for the delivery of 50,000 tons of coal to the military installations in Alaska.

To reach the railroad siding at the rail's end at Suntrana, a distance of approximately 6 miles, it is necessary to cross the lands under lease to two other coal mining companies, viz. Usibelli Coal Mine, Inc., and Suntrana Mining Co. Because the contract with the military was not signed until late July, and because the Usibelli Coal Mine, Inc., interposed such strenuous opposition not only to the use of any of its existing and available roads running through its Federal coal lease but also to the construction of any road traversing the high ground of its lease, it was necessary immediately to begin construction of a temporary road down the middle of the stream of the Healy River so that it could be completed and frozen over in time for deliveries of coal to military installations starting in October of that year. Thus, the only immediately available location of the road in the middle of the stream subjected it to being washed out and destroyed by the spring thaws, summer flash floods, and manmade destruction, rendering the road unavailable for use during part of the year and requiring rebuilding and maintenance at great cost.

Since the Cripple Creek Coal Co. property was now in commercial production, a formal request for assistance was again made to the Alaska Road Commission on November 4, 1950. On December 20, 1950, Chief Engineer Ghigliione responded, in pertinent part, as follows:<sup>3</sup>

*"The need for access to your coal properties is recognized and the Alaska Road Commission is interested in seeing that such access is provided.*

*"Mr. Saarela, Territorial mining engineer, has been contacted concerning the area served by your present road and the various mines and developments that would also be served if the road were improved as you have recommended. Mr. Saarela is of the opinion that the district merits development and he has taken the initiative by writing to the Alaska Railroad in order to ascertain whether an extension of the present railroad spur could not be undertaken. It appears that an extension of the railroad would be much more desirable than the road improvement, since the railroad service would eliminate your short-haul trucking and rehandling of the coal.*

*"If it transpires that the Alaska Railroad will not undertake extension of their line, Alaska Road Commission will program the road improvement, providing the anticipated farm and industrial road funds are appropriated by Congress."* [Italics supplied.]

On April 3, 1951, Mr. John R. Noyes, then Commissioner of Roads for Alaska, addressed a letter to the Director, Office of Territories, in which he stated as follows:<sup>4</sup>

*"The development of the coal deposits of the Healy River Valley up to the present time has been dependent upon the Alaska Railroad for transportation. The Healy River Coal Corp. mine is served directly by the railroad. Several properties farther up the valley, including the Usibelli and Cripple Creek mining properties, have been served by the railroad through short access roads of a low standard extending from the properties to the end of the railroad.*

*"Appeal has now been made to the Alaska Road Commission to construct a standard all-weather road up the Healy River Valley from the end of the railroad to the farther coal properties. This would involve about 8 miles of road.*

*"The development of the coal resources of the region on any adequate scale is dependent upon railroad transportation. For this reason the matter was referred to the Alaska Railroad through the Alaska field committee. A copy of a*

<sup>3</sup> A copy of the letter is appended hereto as exhibit B.

<sup>4</sup> A copy of the letter is appended hereto as exhibit C.

letter recently received from Col. J. P. Johnson, general manager of the Alaska Railroad, to Mr. A. Ben Shallit of the Cripple Creek Coal Co., indicates that funds are not available for this new railroad construction.

"Road funds are not available either; but in view of the fact that the project was first proposed as a road project, *it is desired to urge that the Alaska Railroad provide whatever facilities are required in the Healy River Valley rather than to attempt an unsatisfactory, half-way solution by means of a road. It is my opinion, concurred in by the Territorial Commissioner of Mines, that the area is definitely worthy of development at this time. Unless directed by the Office of Territories, we will leave this matter entirely to the Alaska Railroad. At the same time I wish to emphasize that I think the project is a worthy one for railroad development.* [Emphasis supplied.]

On May 9, 1951, Chief Engineer Ghiglione of the Alaska Road Commission, wrote to Shallit as follows:

"This letter is written to inform you that it will not be possible for the Alaska Road Commission to undertake any road construction to assist in providing access to your property on Healy River. This decision has been necessary *since the Interior Department considers the development should be accomplished by the Alaska Railroad* and that no highway funds can therefore be involved.

"I am sorry that our previous correspondence may have misled you and may have caused you to plan on having assistance this season. I hope we will be in a position to work with you at some future date." [Emphasis supplied.]

Thus, even as early as 1950 and 1951 the Alaska Road Commission and the territorial mining engineer recognized the necessity for extending the railroad from Suntrana up the Healy River valley to encourage the development of the coal resources and to serve the coal-mining properties, including Usibelli and Cripple Creek. Commissioner of Roads Noyes unequivocally stated in his letter of April 3, 1951, that The Development of the coal resources of the region on any adequate scale is dependent upon railroad transportation; that "It is desired to urge that the Alaska Railroad provide whatever facilities are required in the Healy River Valley rather than to attempt an unsatisfactory, half-way solution by means of a road; and that I wish to emphasize that I think the project is a worthy one for railroad development." Chief Engineer Ghiglione stated with equal firmness in his letter of December 20, 1950, that "The need for access to your coal properties is recognized" and that "It appears that an extension of the railroad would be much more desirable than the road improvement." In his later letter of May 9, 1951, Chief Engineer Ghiglione advised Shallit that it would not be possible for the Alaska Road Commission to undertake any road construction to assist in providing access to his property on Healy River because "the Interior Department considers the development should be accomplished by the Alaska Railroad." Four years have elapsed since Shallit was advised that the Interior Department considered that the needed access should be provided by the Alaska Railroad, and despite the fact that Cripple Creek Coal Co. has continuously pleaded with the Department for the construction of the spur its efforts have met with failure.

In the meantime, Shallit's application for a preference right lease was meeting vigorous opposition in the Department of the Interior at the hands of Emil Usibelli and Usibelli Coal Mine, Inc., the owner and operator of the adjoining coal lease and a competitor in the coal business. Protests were filed with the Bureau of Land Management and later with the Secretary of the Interior against the issuance of a lease to Shallit. Three separate decisions dated April 5, 1951, October 2, 1951, and December 6, 1951, were rendered by the Department of the Interior dismissing the protests as being without merit and affirming the right of Cripple Creek Coal Co. to the issuance of the lease applied for and the coal lease was finally issued on December 20, 1951, effective as of July 5, 1950.<sup>5</sup> The final decision of the Department is reported in volume 60, Interior decisions, beginning at page 515.

While the delay in the issuance of a lease to Shallit did not preclude Cripple Creek Coal Co. from entering into contracts for supplying coal to the military installations in Alaska, it did seriously hamper obtaining the financing necessary for long-range planning and development of the lease property. However, the delay in issuing the lease did not detract from the obvious—namely, that the construction of a spur and the extension of the railroad from its present rail's

<sup>5</sup> A copy of the letter is appended hereto as exhibit D.

<sup>6</sup> Copies of the decisions are appended hereto as exhibits E, F, and G.

end at Suntrana to the Usibelli lease property, then continuing on to the Cripple Creek lease property, and beyond that to the Government coal reserves, was in fact a military necessity to meet any possible emergency and was absolutely essential if the coal resources of the Healy River Valley were to be properly developed. Every agency of the Department of the Interior concerned with this problem has so declared itself in no uncertain terms, as we shall hereinafter establish.

Following the issuance of a lease to Shallit on December 20, 1951, he renewed his efforts to obtain construction of a spur, or an all-weather road which could be used as a base for the eventual laying of the spur. Under date of February 25, 1952, A. F. Ghiglione, Commissioner of Roads for Alaska, wrote to Shallit as follows:<sup>7</sup>

"Reference is made to your letter of February 20, 1952, concerning the recent plans for providing an all-weather approach road up the Healy River to the Roth property. The statement received from your Washington attorney is correct insofar as the plans of the Alaska Road Commission are concerned. However, to date no funds are available for the initiation of this work.

"As you will recall, our previous efforts to construct a road up the Healy River were stopped when the possibility of the extension of the Alaska Railroad spur entered the picture. At a recent meeting in Washington, D. C., it was decided that the construction of a road by the Alaska Road Commission would most quickly provide the needed access to the coal reserves. As a result of this meeting the Alaska Road Commission was instructed to make surveys and prepare estimates for the project in anticipation of funds for the construction.

"No funds for this work are included in our budget estimates now before Congress, and unless an emergency appropriation is received, there can be no work undertaken this coming season. Since I have no information regarding possible emergency funds for this work, I am not able to give you any assurance upon which to base your judgment in submitting bids to the military for a coal contract."

Thus, 9 months after Shallit was advised that the Department considered desirable the extension of the railroad by the Alaska Railroad, he was told by letter of February 25, 1952, that it had been decided at a meeting in Washington, D. C., that construction of a road by the Alaska Road Commission would most quickly provide the needed access to the coal reserves. But even this road was not forthcoming despite the fact that, as indicated in Mr. Ghiglione's letter of February 25, 1952, the Alaska Road Commission had been instructed to make surveys and prepare estimates for the construction of an all-weather road in anticipation of an emergency appropriation for this purpose. Moreover, Mr. Ghiglione was not even able to give Shallit any assurance with regard to the all-weather road upon which to base judgment in submitting bids to the military for a coal contract. The need for year-round access had become extremely important in supplying coal to the military. On June 25, 1952, Cripple Creek Coal Co. received from the Naval Supply Depot, Seattle, Wash., the following telegram:<sup>8</sup>

"Request immediate advice by wire or telephone concerning additional tentative quantities of coal for Ladd and Eielson Air Force bases. Assuming availability of cars advise tonnage you could supply of size 8-6 x 0 mine run for each of the following months July, August, and September."

By telegram of the same date, Cripple Creek Coal Co. replied as follows:<sup>9</sup>

"Reurtel June 25 engineer at mine now determining available tonnage months July, August, September and will advise you.

"Meanwhile right-of-way across Usibelli lease blocked by Usibelli Coal Mine since April 21 although permission for advance construction granted by Bureau of Land Management on August 10, 1951.

"This roadblock until removed precludes delivery of any coal unless right-of-way established.

"Interior Department Washington fully advised regarding Usibelli interference."

Again by telegram of June 27, 1952, Cripple Creek Coal Co. advised Naval Supply Depot as follows:<sup>10</sup>

"Reurtel June 25 can deliver 10,000 tons coal each month beginning October and continuing into spring of 1953 as long as road is usable.

<sup>7</sup> A copy of this letter is appended hereto as exhibit H.

<sup>8</sup> A copy of the telegram is appended hereto as exhibit I.

<sup>9</sup> A copy of the telegram is appended hereto as exhibit J.

<sup>10</sup> A copy of the telegram is appended hereto as exhibit K.

"Uncertain road conditions before October 1 preclude deliveries during July, August, and September."

Inasmuch as Cripple Creek Coal Co. was not in a position to supply coal to the military installations on a year-round basis because of the failure of the Department of Interior to construct an all-weather road or to construct a spur extending the Alaska Railroad from Suntrana to the Cripple Creek coal lease and beyond that to the Government coal reserves, the major portion of coal purchased by the military for the year beginning July 1, 1952, went to Usibelli Coal Mine, Inc. Whether this point up the real motivation for the vigorous opposition which Usibelli Coal Mine, Inc., later interposed to the construction either of a railroad spur or an all-weather road across the Usibelli lease, as evidenced by the official correspondence of the Department of the Interior hereinafter cited, we deem unnecessary to discuss.

Although the Usibelli mine operations are from 2 to 3 miles from the present rail's end at Suntrana, it has a permanent substandard all-year road which, though expensive to maintain, is used to truck coal to the railroad. Obviously, extending the railroad to the Usibelli lease property would eliminate a large part of the truck haul and reduce substantially the cost of supplying coal to the military. Even more important, however, it is apparent that Usibelli Coal Mine, Inc., recognizes that if a spur is constructed it would also serve Cripple Creek Coal Co. and give it permanent all-year transportation. Should this occur, Cripple Creek Coal Co. would then become a real competitor not only in supplying coal to the military but in supplying coal to the civilian consumer in Alaska.

Failure of the Secretary of the Interior to extend the Alaska Railroad up the Healy River Valley to the Government coal reserves serves to impede the development of the coal resources and, in effect, to freeze that entire area by discouraging new venture capital that might otherwise be interested in coal development. Cripple Creek Coal Co. does not fear competition—it welcomes it because we believe that in the long run it will prove beneficial to the coal industry and to the Territory of Alaska. Aside from retarding the development of the coal resources of the Healy River Valley for lack of adequate railroad access, the military has paid in higher prices for coal purchased over the last 5 years the entire estimated cost of constructing a spur from Suntrana to the Government coal reserves. Thus, despite the fact that the military has paid higher prices for its coal, there is still no railroad access to the Usibelli and Cripple Creek coal mines and to the Government coal reserves in the Healy River Valley. Should an emergency develop, the need for coal would be urgent. In that event, the failure of the Secretary of the Interior to authorize the extension of the Alaska Railroad in order to provide year-round access to the operating coal mines and to the Government coal reserves would be disastrous. The public interest and the national security would be jeopardized.

From the very beginning, following the issuance of a coal prospecting permit to Shallit by the Department of the Interior, Emil Usibelli and Usibelli Coal Mine, Inc., have successfully resisted the construction of a railroad spur or the construction of a permanent all-weather road across the Usibelli coal lease property as constituting interference with the enjoyment of its lease and its conduct of mining operations thereon. That such opposition was and is without merit will become evident as this story unfolds, but it should be obvious that cooperation on the part of a competitor coal company was not to be expected. It is important to remember that the Usibelli coal lease is a Federal lease embracing public lands of the United States. The Congress has provided that all coal leases issued by the Department of the Interior shall expressly reserve to the Government the right to grant easements in, over, through, or upon the lands so leased as may be necessary for the working of other coal lands under permits or leases issued by the Department. 48 U. S. C. 446 provides as follows:

"Any lease, entry, location, occupation, or use permitted under sections 432-445 and 446-452 of this title shall reserve to the Government of the United States the right to grant or use such easements in, over, through, or upon the land leased, entered, located, occupied, or used as may be necessary or appropriate to the working of the same or other coal lands by or under authority of the Government and for other purposes: *Provided*, That the Secretary of the Interior, in his discretion, in making any lease under said sections, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted insofar as said surface is not necessary for use by the lessee in extracting and



removing the deposits of coal therein. If such reservation is made, it shall be so determined before the offering of such lease.

"The said Secretary during the life of the lease is authorized to issue such permits for easements herein provided to be reserved, and to permit the use of such other public lands in the Territory of Alaska as may be necessary for the construction and maintenance of coal washeries or other works incident to the mining or treatment of coal, which lands may be occupied and used jointly or severally by lessees or permittees, as may be determined by said Secretary (Oct. 20, 1914, ch. 330, sec. 11, 38 Stat. 744)."

and 43 United States Code 956 provides that—

"The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him, to permit the use of the right-of-way through the public lands of the United States, not within the limits of any national forest, park, military or Indian reservation, for tramroads, canals, or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and 50 feet on each side of the marginal limits thereof, or 50 feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber or for the purposes of furnishing water for domestic, public, and other beneficial uses (Jan. 21, 1895, ch. 37, 28 Stat. 635; May 11, 1898, ch. 292, sec. 1, 30 Stat. 404; Mar. 4, 1907, ch. 2907, 34 Stat. 1269)."

The general regulations promulgated by the Interior Department applicable to such rights-of-way in effect at that time provided for the granting of permission for advance construction. 43 CFR 244.10 (a) provides as follows:

"The manager may grant authority to construct project works over and through Interior Department lands other than Indian lands, in advance of approval of a permit or easement for the right-of-way or site upon a satisfactory showing of the necessity for such action, if found compatible with the public interest. Applications for such authority shall be cleared with interested agencies of the Department. The applicant for such authority shall agree that such construction is done at the applicant's own risk and that the applicant will make full and prompt compliance with all requirements laid down by the Department as conditions precedent to the approval of the permit or easement. Applications for such authority should be filed with the agency of the Department of the Interior having supervision of the land involved. Such agency shall submit the record with an appropriate report and recommendation to the manager."

Acting pursuant to the statutes and regulations above quoted, Cripple Creek Coal Co. on June 14, 1951, filed an application with the Bureau of Land Management for a road right-of-way across the Federal coal leases of Usibelli Coal Mine, Inc., and Suntrana Mining Co. Because of the strenuous resistance encountered from Usibelli when Shallit sought to use part of the Usibelli road for hauling supplies and equipment to his prospecting permit—a road which is situated on high ground and which Shallit considered at that time to be a public tramroad available for use in common by coal operators—the road right-of-way applied for by Cripple Creek Coal Co. followed the bed of the Healy River in an effort to avoid further controversy. Permission for advance construction of the road was granted by the manager of the Fairbanks land office on August 10, 1951. In this connection, it might be added that even though the road right-of-way followed the bed of the Healy River, legal proceedings and counterclaims for injunctive relief and for damages between Shallit, on the one hand, and Emil Usibelli and Usibelli Coal Mine, Inc., on the other, were prosecuted in the Alaska courts during this period.

Notwithstanding that the law provides for the granting of tramroad easements, that the Usibelli coal lease itself expressly reserves to the Secretary of the Interior the right to grant such easements, and that the road right-of-way in the bed of the Healy River was highly vulnerable to destruction by flash floods, spring thaws, and the elements in general, and was costly to maintain and rebuild, Emil Usibelli and Usibelli Coal Mine, Inc., nevertheless vigorously protested to the Department of the Interior not only the grant of permission for advance construction of the road but the grant of the easement itself. So vehement were the protests that two field investigations were conducted—one by the Bureau of Land Management and one at the direction of the Secretary.

Upon receipt of the two reports of field investigation and upon consideration of all the facts, the Bureau of Land Management rendered a decision on September 10, 1952, dismissing the protests and granting the right-of-way.<sup>11</sup> Its decision, in pertinent part, is as follows:

<sup>11</sup> A copy of the decision of September 10, 1952, is appended hereto as exhibit L.

"\* \* \* The Usibelli Co. claims that the proposed right-of-way would interfere with its operations, especially in the furnishing of an adequate water supply for the domestic use of the employees on its lease who reside at a camp within the lease boundaries. The report negatives this claim and shows that there is more than ample underground seepage to furnish a sufficient supply of domestic water. The report also shows that a rifle range has been set up with the gun pits on one side of the proposed Shallit right-of-way and the targets on the other. \* \* \*

"Both field reports recommended that a right-of-way be granted and one of them even suggests that it would be preferable to move the road, the subject of the application, out of the riverbed and onto the adjacent high land. However, it seems probable a substantial part of the right-of-way will only be required temporarily. It is understood that the Alaska Railroad is now surveying a route for an extension of its line, now terminated at the Healy River Coal Co.'s mine, to a point at or near the Shallit lease, which will obviate the need for most of the rights-of-way. It is possible that the railroad will follow, if not use a part of the proposed Shallit right-of-way. The proposed right-of-way is usable in winter and can be used during the coming season after certain repairs are made. A new right-of-way would apparently involve extensive new construction which Shallit has not indicated that he desires to undertake. In fact, Shallit on his map outlines the same general route as that he first applied for. In view of these facts, it seems unnecessary to consider the suggestion that the right-of-way be relocated on higher ground.

"Although the matter has not been called to the attention of this office by either Shallit or Usibelli, the field report made at the request of his office recites that the surface works of the Healy River Coal Co. were destroyed by fire on August 29, and that in consequence it will be some time before that company can resume full active mining operations: The report states that the Healy River Co. carried the major portion of the burden of supplying coal to the rail belt portion of Alaska. In such an emergency, it seems obvious that both Usibelli and Shallit will need to meet more of this burden than they have in the past and it is apparent from the whole record that the right-of-way is necessary to Shallit's operations and that it does not unreasonably burden the Usibelli operation.

"This matter has been thoroughly considered. The facts have been meticulously assembled by three agencies of the Department whose representatives have examined the land and discussed the proposed right-of-way with the parties concerned, including the Usibelli Co. That company has filed a substantial body of argument in support of its protest, all of which has been considered. We are unable to perceive in what way oral argument would supplement the showing already made or establish what has not been established that the granting of the right-of-way seriously affects Usibelli's interests as a lessee. On the contrary, it appears that no adverse effect would result but that the Usibelli Co. could accommodate its operations to the situation with little or no additional expense. To accede to the protest would result in placing a heavy burden on Shallit who is also a lessee which is not justified in the circumstances. Accordingly, the application for an oral hearing and the protest as well are dismissed.

"Since the rifle range across the right-of-way is neither a necessary nor proper activity under the lease and since it is a hazard to the free use of the right-of-way, the Usibelli Co. is required to dismantle it and to discontinue its use. Thirty days from receipt of a copy of this decision by that company are allowed within which to show compliance herewith in the absence of which further appropriate action will be taken."

In citing the Bureau's decision of September 10, 1952, and in quoting therefrom, we have no desire to rekindle the controversy with regard to this road. Our purpose primarily is to show that the Bureau of Land Management recognized that the road right-of-way in the riverbed was undesirable but deemed it unnecessary to consider the suggestion made in one of the reports of field investigation that the right-of-way be relocated on higher ground because, as the Bureau said in its decision, "it seems probable a substantial part of the right-of-way will only be required temporarily" and "It is understood that the Alaska Railroad is now surveying a route for an extension of its line, now terminated at the Healy River Coal Co.'s mine, to a point at or near the Shallit lease, which will obviate the need for most of the rights-of-way." At the same time, we do wish to call the Bureau's decision to the attention of the committees to show that the Bureau found the protests against the granting of a road right-of-way to be without merit.

Emil Usibelli and Usibelli Coal Mine, Inc., however, did not accept the decision of the Bureau of Land Management as final. They filed an appeal to the Secretary of the Interior from the Bureau's decision of September 10, 1952, and submitted briefs in support thereof. The appeal dragged on for 2 years and finally, in an effort to resolve the controversy in which we are glad to say Usibelli and Usibelli Coal Mine, Inc., cooperated, agreement was reached between Shallit and Usibelli with respect to certain conditions governing the use of the right-of-way by Shallit. The appeal was thereupon withdrawn and the conditions governing the use of the right-of-way were incorporated in the decision of the Department of November 5, 1954.<sup>12</sup>

It seems hardly necessary to point out that the right-of-way granted by the Department after more than 3 years of controversy is still a temporary makeshift road requiring constant rebuilding. It is not a permanent all-year road which is an absolute necessity if the coal resources of the Healy River Valley are to be properly developed. While the appeal was pending in the Department, Cripple Creek Coal Co. nevertheless continued with its efforts to have the Department act quickly in constructing the railroad spur.

Returning to the decision of the Bureau of Land Management of September 10, 1952, it should be noted again that the Bureau stated its understanding as being that "the Alaska Railroad is now surveying a route for an extension of its line, now terminated at the Healy River Coal Co.'s mine, to a point at or near the Shallit lease, which will obviate the need for most of the rights-of-way." The latter statement was in fact true. In the spring of 1952 the Alaska Railroad sent a survey party into the field which began a detailed right-of-way survey on the proposed extension of the railroad from Suntrana. A plan of location line between Suntrana and Usibelli Coal lease property, a distance of 2.4 miles, was located and staked. A plan of reconnaissance survey from the end of the location line at the Usibelli lease to the Government coal reserves (Roth property) was made but not staked and it was estimated by F. E. Kalbaugh, General Manager of the Alaska Railroad, that it would require 2 months time with a single survey party to complete the reconnaissance survey and location. At that point the survey was temporarily discontinued. In the spring of 1953 the Alaska Railroad survey party resumed work on the project. Field quarters were established at the Cripple Creek Coal Co. camp and the company at its expense furnished this survey party with bunk and mess facilities as well as a jeep and a bulldozer in order to facilitate its work. Two weeks later, for reasons never clearly explained to Cripple Creek Coal Co., this location survey was discontinued. Later it was learned that the Secretary of the Interior had ordered an investigation to be made of the coal resources of Alaska by a committee headed by Charles W. Connor, formerly Administrator of Defense Solid Fuels Administration.<sup>13</sup> The investigation was to be made on the ground in Alaska and pending the submission of a report by the Connor Committee all decisions or activities pertaining to the Alaskan coal situation were to be held in abeyance.

In the interim, in October 1952, Ludlow G. Anderson, Chief of the Coal Mining Branch of the Bureau of Mines at Anchorage, prepared a report on the coal situation in the Healy River valley for the information of all interested Government agencies in Alaska, in which it is understood he strongly recommended that the Alaska Railroad be extended from Suntrana to Cripple Creek to assure production throughout the year and to encourage the development of the coal resources in that area. Shortly thereafter, then Assistant Secretary of the Interior Joel D. Wolfsohn wrote to the then Governor, Ernest Gruening of Alaska, in response to the latter's letter of October 30, 1952, on the problems pertaining to the coal supply situation in Alaska. Reiterating the policy of the Department, Assistant Secretary Wolfsohn stated, in pertinent part, as follows<sup>14</sup>: "This Department has been endeavoring for some time to promote an increase of coal-producing facilities in the Territory to meet the increase in demand, which the best information available indicates will arise in the near future.

"The present tight situation, due in a large measure to the fire at the Healy River mine which curtailed production, and the loss of production at the Usibelli mine during the labor difficulties, indicates the necessity for an increase in productive capacity. *It appears clear that the present mining facilities cannot pro-*

<sup>12</sup> A copy of departmental decision of November 5, 1954 (A-26673) is appended hereto as exhibit M.

<sup>13</sup> Further reference will be made to this committee and its report later in this presentation.

<sup>14</sup> A copy of this undated letter is appended as exhibit N.

*duce sufficient additional coal to meet the requirements of the proposed new facilities which will be erected by the Department of Defense, and the needs of the increasing population."* [Emphasis supplied.]

On January 12, 1953, Shallit wrote to Col. J. P. Johnson, then manager of the Alaska Railroad, as follows<sup>16</sup>: "We have been advised that the survey of the proposed Healy-Suntrana spur extension has been completed as far as the Usibelli airstrip and that a preliminary line has been run on the right limit of the Healy River as far as Coal Creek.

"Any extension of the present spur would be of advantage to Cripple Creek, as well as the other operators in the Healy district. We have already gone on record as willing to assume our share of the cost of this construction, provided the financing can be arranged on a tonnage basis or by any other equitable means within our capacity.

"Considerable benefit will accrue to us if the spur is extended as far as the mouth of Cripple Creek. Maximum advantage for full scale production would require a river crossing to the left limit of the Healy River near Cripple Creek.

"In our long-range planning we are contemplating increasing our production to 200,000 tons per year by 1955. We believe that best operating costs will be obtained if the spur is brought over to the left limit of Healy River near the mouth of Cripple Creek.

"It would be appreciated if during the coming season your engineering department would look into the feasibility of building such a spur, in order that we may have benefits of your estimates in arriving at our future operating decisions."

Acting General Manager of the Alaska Railroad John E. Manley replied to Shallit on January 28, 1953, as follows: <sup>16</sup>

"This will acknowledge your letter of January 12, 1953, in reference to extension of the Healy River spur from the Healy River mine to your operations at Cripple Creek.

"As you are undoubtedly aware, we have surveyed a location as far as the Usibelli mine and proceeded with preliminary location thence on to your mine at Cripple Creek. The construction of this extension from Healy River is thoroughly contingent on the financing, and it is very gratifying to hear that you have funds to contribute to the building.

"In order that we can better consolidate the thinking of various people concerned, we would appreciate it if, the next time you are in Anchorage, you would contact Mr. Irvin P. Cook, our chief engineer, and discuss the problem with him in reference to our preliminary location, as well as finance."

As requested, Cripple Creek Coal Co. wrote to Chief Engineer Irvin P. Cook, on February 2, 1953, in pertinent part, as follows: <sup>17</sup>

"We believe that the preliminary location as surveyed by you is entirely satisfactory for our needs and we would be pleased if actual construction during 1953 proceeded as far as the Usibelli mine. If this were done, we would expect that we would be given track area and a small site for loading at that point.

"We are willing to contribute to the cost of this construction on a tonnage basis, assuming that other users will make a like contribution. We assume that payments would be made to reimburse the railroad after the spur was completed. The foregoing represents our thinking in regard to this matter but if there are any other questions we shall appreciate hearing from you as soon as possible.

"The United States Bureau of Mines has recently released figures indicating the requirements for coal along the rail belt during the next few years and from these figures it should be apparent that uninterrupted production on a year-round basis would be required to fill these needs. The present haulage road of the Cripple Creek Coal Co. is subject to unforeseen washouts and is often made impassable because of glaciering of the Healy River. In order to insure year-round coal deliveries, it is imperative that this spur track be extended without delay."

On the same date Cripple Creek Coal Co. wrote to Acting General Manager Manley as follows: <sup>18</sup>

"Thank you for your letter of January 28 inviting us to call on Mr. Irvin P. Cook, your chief engineer at Anchorage, to further discuss the extension of the Suntrana spur.

<sup>16</sup> A copy of this letter is appended as exhibit Q.

<sup>17</sup> A copy of this letter is appended as exhibit P.

<sup>18</sup> A copy of this letter is appended as exhibit Q.

<sup>19</sup> A copy of this letter is appended as exhibit R.

"As mentioned in our letter of January 12, we are willing to assume our share of the cost of this construction, provided the financing can be arranged on a tonnage basis or by any other equitable means within our capacity. We wish to make it clear that at the present time we do not have funds to contribute to the building of the railroad, but it is assumed that we would be permitted to reimburse the railroad on a tonnage basis for an equitable share of the cost.

"We understand that the railroad has requested funds for this construction in the current budget."

Later in the month our Washington attorney was advised informally by Joseph T. Flakne, Chief, Alaska Division, Office of Territories of the Department of the Interior, that funds were not available to the Alaska Railroad for construction of the spur but that a decision had been reached for the Alaska Road Commission to construct a road along the route of the survey of the Alaska Railroad so that the spur could be constructed thereon at a later date when funds did become available. When it was learned that Mr. Ghiglione, Commissioner of Roads for Alaska, was to be in Washington, D. C., early in March, Cripple Creek Coal Co. sent a telegram dated March 1, 1953, to its Washington attorney as follows:<sup>19</sup>

"Suggest you advise Mr. Ghiglione that entire camp facilities of Cripple Creek mine will be at his disposal and that we will, without charge, provide meals, lodging, gasoline, diesel fuel, lubricants, explosives, lumber, welding supplies, and use of shop and repair facilities."

A copy of this telegram was forwarded to Mr. Flakne by letter of March 3, 1953.<sup>20</sup> On March 11, 1953, Mr. Ghiglione, writing to Cripple Creek Coal Co. from Washington, D. C., acknowledged receipt of the offer of assistance as follows:<sup>21</sup>

"Your offer to cooperate in the construction of a road up the Healy River from the Alaska Railroad spur has been transmitted to the Office of Territories by Mr. Barash. This offer by which you agreed to furnish all housing and feeding of road crews in addition to supplying fuel and explosives needed in the construction will greatly assist in accomplishing this needed project. The Alaska Road Commission now plans to initiate the construction as soon as possible this spring and will draw upon your cooperative assistance as detailed above.

"It is the intent of the Alaska Road Commission to provide and maintain the road from the railroad spur to the entrance to your properties. In accomplishing this it will also be essential that the cooperation of Mr. Usibelli be obtained. It is anticipated that Mr. Usibelli will not oppose this project since he will benefit by the Alaska Road Commission assumption of maintenance and responsibility. The road alignment will follow as much as possible the existing roads up the Healy River and also conform to the proposed alignment for the railroad extension where such conformance does not result in excessive cost. Since it is essential that this work be started this spring, I will contact you further regarding arrangements for your cooperative assistance."

Any elation over the prospect of having the road constructed in the spring of 1953 was short-lived. On April 22, 1953, Mr. Ghiglione wrote Mr. Flakne as follows:<sup>22</sup>

"Confirming our telephone conversation of this date the following is a résumé of the present status of the Healy River coal transportation problem.

"After preliminary meetings with the Healy River Coal Corp., Usibelli Coal Mine, Inc., and A. Ben Shallit's attorney in Fairbanks, a trip was made on April 18 into the Healy River area for the purpose of working out the details of providing low-cost road access. *These details were to conform with the plan of construction outlined to me in Mr. Davis' letter on March 9, 1953.*<sup>23</sup>

"The following people were present at the site on April 18: Mr. Emil Usibelli, president, Usibelli Coal Mine, Inc.; Mr. Pete Nielsen, superintendent of Healy River Mine; Mr. Pat Cook, chief engineer of the Alaska Railroad; Mr. Ed Hart, locating engineer, the Alaska Railroad; Mr. Bruce Cannon, engineer, the Alaska Railroad; Mr. B. D. Stewart, Jr., chief, operations division, Alaska Road Commission; Mr. E. J. White, district engineer of the Anchorage district, Alaska Road Commission; and myself. Mr. Ludlow Anderson had been expected to attend but was called to Washington at the last minute.

"*It was not possible to obtain Mr. Usibelli's permission to utilize his road or to traverse his area as was planned for the low-cost road project.* Mr. Usibelli

<sup>19</sup> A copy of this telegram is appended hereto as exhibit S.

<sup>20</sup> A copy of this letter is appended hereto as exhibit T.

<sup>21</sup> A copy of this letter is appended hereto as exhibit U.

<sup>22</sup> A copy of this letter is appended hereto as exhibit V.

<sup>23</sup> Mr. Davis at that time was Director, Office of Territories.

claims that the traversing of his mine area by the road through to Mr. Shallit's property would seriously handicap his operations, in addition to preventing access to large quantities of coal which his approved development plans have contemplated mining. In addition, the increased liability to Mr. Usibelli's operations from through traffic using his road is considered by him to far offset any advantages he might receive through the Alaska Road Commission's assumption of maintenance responsibility. In view of the above factors *Mr. Usibelli refuses public use of his road and further advised that he would be forced to take legal action to restrain the Alaska Road Commission if we should attempt to take over.* Mr. Usibelli is extremely anxious to obtain railroad access to his property and made the firm offer to our group of a \$50,000 contribution toward this end.

"As a result of the stand of Mr. Usibelli, the only construction possible at this time would be along the Alaska Railroad right-of-way and it is obvious that insufficient funds are available for this heavy work involving river changes, bridges, and rock riprap bank protection. The previous suggestion of Mr. Usibelli that the line be located south of Healy River is not practical both from a road and railroad construction standpoint, and he now agrees to accept a through line south of his camp area on the north side of the river.

*"The above situation again forces the Shallit mine into the position of having only temporary road access which is not usable for at least 6 months of the year. I do not consider it reasonable for the Alaska Road Commission to undertake any work on this temporary line since the work would be lost in subsequent seasonal floods. This, of course, forces the Shallit mine to consider contracts for supplying coal only during the fall and winter months.*

"As discussed in our telephone conversation, it will be necessary to obtain considerable funds before any improvement of the road access problem may be attempted. If supplemental funds could be obtained through support of the military, it is possible that some relief could be afforded the Shallit mine this season. In my opinion such action is not too probable and I have so advised Mr. Shallit. *The desirability of providing the railroad extension rather than a temporary road is again apparent and I urge that further effort be toward this end.* Our estimates for preparing the railroad grade from the Healy River mine to Cripple Creek by force-account work, exclusive of railroad ballast, rail, and structures, is \$420,000.

"The Alaska Road Commission is unable to proceed further with this project under the conditions outlined above." [Emphasis supplied.]

Cripple Creek Coal Co's hopes were further jolted by the contents of Mr. Ghiglione's letter of June 30, 1953, to Mr. Flakne as follows: \*

"Reference is made to our telephone conversation of June 29 and previous correspondence on the subject of transportation access to the Healy River coal fields. Specifically answering the questions posed, it is necessary to restate that the Alaska Road Commission does not have sufficient funds to initiate construction of an access road beyond the present railroad spur. This situation was explained in detail in my letter of April 22, 1953, which submitted an estimate of \$420,000 as being necessary for providing year-round highway access to the Usibelli and Cripple Creek mines along the Alaska Railroad right-of-way.

"Provision of a dependable low-cost road through to the Cripple Creek mine as planned earlier this season on the basis of utilizing all existing roads of the Usibelli and Cripple Creek Coal Cos. is not possible as further stated in my letter of April 22.

"The Alaska Road Commission has not filed formal right-of-way plat with the Bureau of Land Management for road access through this area. The Regional Administrator, BLM, has advised such filing is unnecessary since the Alaska Railroad filing will cover either road or railroad construction. A copy of Mr. Puckett's letter of June 24 is enclosed.

"In summing up the situation I see no way in which the Alaska Road Commission can provide dependable access to the Cripple Creek property with funds presently available. I have again so advised Mr. Leo Saarela and Mr. Orsini. As stated in my letter of April 22, I similarly advised Mr. Shallit in early April. The heavy construction that would be necessary through the present Usibelli tiddle area and on up the Healy River with channel changes, bridges, and large amounts of heavy riprap protection would require funds greatly in excess of any which might be diverted from our meager farm road allotments. The cooperation offered by the Cripple Creek mine, while of considerable value, would still be insufficient to offset the large cost involved in this project."

\* A copy of this letter is appended hereto as exhibit W.

Despite the confusion that seemed to prevail in the spring of 1953 as to whether a spur would be constructed by the Alaska Railroad or an all-weather road by the Alaska Road Commission as an immediate expedient, the Alaska Railroad nevertheless proceeded to file in the Fairbanks land office of the Bureau of Land Management a right-of-way along the route of the proposed extension of the railroad from Suntrana to the Government coal reserves, a distance of approximately 6 miles. This was accomplished by a letter dated April 29, 1953, from Acting General Manager of the Alaska Railroad John E. Manley to Lowell M. Puckett, Regional Administrator, Bureau of Land Management, Anchorage, Alaska, reading in pertinent part as follows:<sup>28</sup>

"The Alaska Railroad contemplates constructing at an early date an extension of its rail line from mile 4.2 on the Suntrana branch to mile 6.6, adjacent to the Usibelli mine camp. Also, from mile 6.6 to mile 10.3, adjacent to the Roth coal reserve.

"It is requested that there be noted under the act of March 12, 1914, 38 Statutes 35, 48 United States Code 301 to 308, a right of way for this line to the extent of 100 feet on each side of the center line of the track. Accordingly, we are attaching 3 copies each of part 1, Suntrana Branch extension, Suntrana to Usibelli, and part 2, Suntrana Branch extension, Usibelli to Roth Reserve.

"You will note in our letter of June 23, 1952, that the railroad contemplates the extension of this line in order that the Usibelli Coal Co., the Cripple Creek Mining Co., and any future producers, may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. *It is estimated that the construction of this line will result in the reduction of coal costs to the Territory of \$200,000 annually.*" [Emphasis supplied.]

It should be observed that under the act of March 12, 1914 (48 U. S. C. secs. 301-308), upon the filing by the Alaska Railroad of a right-of-way application accompanied by appropriate maps of location of the road, the rights-of-way becomes automatically operative upon notation of the application on the records of the Bureau of Land Management. Consequently, upon the filing of the right-of-way application in the Bureau of Land Management, the Alaska Railroad was immediately in a position to begin construction of the spur provided, of course, that funds were available.

Three things stand out in Acting General Manager Manley's letter, of April 29, 1953, which we wish particularly to stress and to invite close scrutiny by your committees. First, is his statement that the Alaska Railroad contemplates constructing at an early date an extension of its rail line from Suntrana to the Roth coal reserve. Second, is the impelling reason given for the extension of its rail line from Suntrana to the Roth coal reserve, namely, that Usibelli Coal Mine, Inc., Cripple Creek Coal Co., and any future producers may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. And third, is the clear and unequivocal declaration that "It is estimated that the construction of this line will result in the reduction of coal costs to the Territory of \$200,000 annually." Thus, the load of the Alaska Railroad, estimated at that time that the spur would result in a saving of \$200,000 annually in coal costs to the consumer. Every interested bureau and agency of the Interior Department which have been concerned with this matter are in agreement that the savings would be substantial and have so stated verbally and in writing.

In furtherance of the proposed construction of the railroad spur, General Manager of the Alaska Railroad Kalbaugh wrote to his superior, William C. Strand, Director, Office of Territories, on March 3, 1954, in part, as follows:<sup>29</sup>

"In accordance with your request, I am forwarding the following drawings and estimates covering the proposed extension of the Suntrana Branch from Suntrana mine (M. P. 4.2) to the Roth Coal Reserve:

1. Plan of location line between Suntrana (M. P. 4.2) and Usibelli mine (M. P. 6.6).
2. Plan of reconnaissance survey from end of location line at Usibelli mine (M. P. 6.6) to Roth Coal Reserve (M. P. 10.3).
3. Profile of location line between Suntrana mine (M. P. 4.2) to M. P. 6.6.
4. Estimated cost of located line between Suntrana mine (M. P. 4.2) and M. P. 6.6.

<sup>28</sup> A copy of this letter is appended hereto as exhibit X.

<sup>29</sup> A copy of the letter is appended hereto as exhibit Y.

5. Estimated cost based on reconnaissance survey between Cripple Creek mine (M. P. 8.8) to Coal Creek (Roth Coal Reserve), M. P. 10.3.

"The line between Suntrana mine (M. P. 4.2) and Usibelli mine (M. P. 6.6) has been located and staked. The remaining portion of the extension, M. P. 6.6 to the Roth Coal Reserve (Coal Creek), is based on a reconnaissance survey, and this line has not been staked. It is estimated that it would require approximately 2 months time with a single survey party to complete the reconnaissance survey and complete location.

"It will be noted that on the located line drawing between Suntrana mine (M. P. 4.2) and Usibelli mine (M. P. 6.6) we show our location passing over the Usibelli Mining Co.'s airstrip. This location was discussed with Mr. Usibelli, and he did not voice (sic) any objection other than that which could be normally expected under the circumstances. The line then passes through (according to information I have received) what is called G bed. *This location, Mr. Usibelli has objected to quite violently from time to time, inasmuch as he says he plans to mine these underground beds. However, from discussions with the Bureau of Mines representatives and the Geological Survey, they do not express as much concern about the potentials of these beds as Mr. Usibelli has.*

"We have filed with the Bureau of Land Management maps of both our located line and our reconnaissance lines, in order that we could obtain the necessary right-of-way. *These have been on file approximately 8 months and no objections, to my knowledge, have been made to our locations.*" [Emphasis supplied.]

Mr. Kalbaugh estimated the cost of constructing the entire spur from the rail's end at Suntrana to the Government coal reserves (Roth coal reserve) at \$1,928,251.50 if a wooden trestle could be utilized to cross Cripple Creek, and an additional \$425,000 if a steel bridge should be found necessary after a more complete study was made. At this point, therefore, as late as March 3, 1954, there was nothing that even gave the slightest inkling of any intention to abandon the construction of the railroad spur. On the contrary, Mr. Kalbaugh expressly stated in his letter of March 3, 1954, that the maps of right-of-way "have been on file approximately 8 months and no objections, to my knowledge, have been made to our locations."

But what happened? Out of a clear sky, without notice of any kind to Cripple Creek Coal Co. who for the last 5 years has urged and pleaded with the Department of the Interior for the extension of the railroad from Suntrana up the Healy River Valley, a message was dispatched by teletype under date of August 4, 1953, from Edward Woozley, then Administrator, Bureau of Land Management, to the regional administrator at Anchorage reading as follows: "

"Re our TT June 10 (MM:AHF) concerning Fairbanks 010449. Please advise railroad that permission to proceed with construction of line is suspended pending further notice from this office."

Peculiarly enough, Mr. Kalbaugh had made no mention at all in his letter of March 3, 1954, to Director Strand of having received the message dated August 4, 1953, from the Bureau of Land Management suspending "permission to proceed with construction of line." How is this explained? We respectfully request your committees to inquire into the circumstances and reasons that prompted Administrator Woozley to dispatch the teletype previously quoted to the regional administrator at Anchorage. It is strange indeed that suddenly, without notice to Cripple Creek Coal Co. or an opportunity to be heard, permission to proceed with the construction of the spur is suspended. We seriously question the legal authority of the Bureau of Land Management to suspend construction of an extension to the Alaska Railroad, a matter which is outside the jurisdiction of the Bureau of Land Management since the Alaska Railroad is administered by the Office of Territories of the Interior Department. Apart from this, the railroad right-of-way became automatically operative under the law upon its filing with the Bureau of Land Management and upon its being noted on the records and, consequently, the Bureau was wholly without jurisdiction over the proposed construction of the railroad spur. We believe that your committees are entitled to an explanation of the strange and irregular action taken by the Bureau of Land Management.

Fourteen months later, on October 11, 1954, F. E. Kalbaugh, general manager of the Alaska Railroad, wrote to regional administrator of the Bureau of Land Management, at Anchorage as follows: <sup>28</sup>

<sup>27</sup> A copy of this teletype is appended hereto as exhibit Z.

<sup>28</sup> A copy of this letter is appended hereto as exhibit AA.



"Will you please refer to our letter of April 29, 1953, wherein the Alaska Railroad made request upon your organization for the withdrawal of a railroad right-of-way 100 feet on each side of center line of track on our Suntrana branch from the present end of said branch line at Mile 4.2 to Mile 10.3.

"Initially this request for withdrawal of the proposed right-of-way was occasioned by the possibility of the extension of this branch line being essential to the national defense. Since my recent arrival in Washington, however, I have been informed that the Defense Department does not consider the extension of this branch line essential to the national defense and it would, therefore, be appreciated if you would withdraw the request as contained in our letter of April 29, 1953, on this matter."

Upon receipt in the Bureau of Land Management in Washington, D. C., of Mr. Kalbaugh's letter, a decision was promulgated under date of November 2, 1954, as follows:<sup>20</sup>

"By letter of April 29, 1953, the Alaska Railroad requested that notation of a right-of-way desired under the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. sec. 301), for the extension of its Suntrana branch for a distance of 6.1 miles, be noted upon the records of the Bureau.

"The manager of the Fairbanks land office was instructed on May 5, 1954, by the then regional chief, division of adjudication, to note the right-of-way on his records under the instructions of January 13, 1916, (44 L. D. 513).

"By letter of October 11, 1954, the general manager of the Alaska Railroad withdrew the request for the right-of-way, explaining that initially the application was based on the possibility of national defense needs, but that now the extension is not needed for this purpose.

"The reason assigned for the withdrawal of the application is satisfactory. The withdrawal is accepted and the case closed."

We ask your committees to examine the letter dated April 29, 1953, from the acting general manager of the Alaska Railroad to the regional administrator, Bureau of Land Management, at Anchorage, which constituted the application for a railroad right-of-way. Is there anything in that letter which supports the statement made in Mr. Kalbaugh's letter of October 11, 1954, that "Initially this request for withdrawal of the proposed right-of-way was occasioned by the possibility of the extension of this branch line being essential to the national defense?" We submit there is nothing. The plain facts and justification for the extension of the railroad are recited in the Alaska Railroad's letter of April 29, 1953, applying for the right-of-way in the following words:<sup>21</sup>

"\* \* \* the railroad contemplates the extension of this line in order that the Usibelli Coal Co., the Cripple Creek Mining Co., and any future producers, may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. It is estimated that the construction of this line will result in the reduction of coal costs to the Territory of \$200,000 annually."

To repeat, two cogent reasons were advanced by the Alaska Railroad in applying for the railroad right-of-way: First, that Usibelli Coal Mine, Inc., Cripple Creek Coal Co., and any future producers may have access to the Alaska Railroad, thereby reducing the costs of operation which would be passed on to the Government and to private industry in reduced prices of coal, and second, that the construction of the line would result in the reduction of coal costs to the Territory of \$200,000 annually. It seems to us that these reasons in themselves amply justify the extension of the railroad. Aside from this, however, we think General Manager of the Alaska Railroad Kalbaugh should furnish your committees with the source of his information that the Defense Department does not consider the extension of this branch line essential to the national defense. This statement is completely at variance with the facts, as we shall soon establish.

On the basis of the foregoing, we can only conclude that there are other undisclosed reasons why the railroad right-of-way was withdrawn, which we hope that the committees will ascertain. Moreover, we respectfully request that your committees ascertain what occurred in the Department of the Interior during the 18-month period between April 29, 1953, when the railroad right-of-way application was submitted to the Bureau of Land Management, and October 11, 1954, when the application was withdrawn, to cause the Bureau of Land Management to suspend the construction of the railroad spur and the eventual withdrawal

<sup>20</sup> A copy of this letter is appended hereto as exhibit BB.

<sup>21</sup> A copy of this letter is appended hereto as exhibit X.

of the railroad right-of-way; what pressure was brought to bear on the Department of the Interior to stop the construction of the spur, by whom; and for what reasons.

At the same time, we wish your committees to know what the interested bureaus and agencies of the Department of the Interior and the Defense Department which are primarily concerned with providing adequate road and railroad access to the producing coal mines in the Healy River Valley were thinking during the same 18-month period. On April 30, 1953, a meeting of the coal subcommittee of the Alaska field committee of the Department of the Interior was held in the offices of the Alaska Railroad.<sup>21</sup> Present at that meeting were representatives of the Military Establishments, Bureau of Mines, Geological Survey, Bureau of Land Management, Territorial Department of Mines, Alaska Road Commission, and the Alaska Railroad. The purpose of the meeting was to discuss the extension of the Alaska Railroad up the Healy River Valley. Present in person were the following:

Maj. R. L. Gochenaur, Headquarters AAC, Elmendorf AFB  
 Mr. P. B. Miller, Headquarters AAC, Elmendorf AFB  
 Comdr. E. H. Willis, Headquarters, Alaskan Command, Elmendorf AFB  
 Mr. L. G. Anderson, United States Bureau of Mines, Anchorage  
 Mr. Phil Holdsworth, Territorial Department of Mines, Juneau  
 Mr. Wiley Robinson, Territorial Department of Mines, Anchorage  
 Mr. Lowell Puckett, regional administrator, Bureau of Land Management, Anchorage  
 Mr. L. H. Saarela, United States Geological Survey, Anchorage  
 Mr. A. Ben Shallit, Cripple Creek Coal Co., Fairbanks  
 Mr. E. J. White, Alaska Road Commission, Anchorage  
 Mr. Elroy F. Hinman, the Alaska Railroad, Anchorage  
 Mr. Irvin P. Cook, the Alaska Railroad, Anchorage

The transcript of the minutes of the meeting is annexed hereto as an exhibit and we urge the members of your committees to read it. For convenience, we shall quote the views expressed by the officials present bearing on the urgency of extending the railroad to the Usibelli and Cripple Creek coal properties and to the Government coal reserves. Mr. L. G. Anderson, Bureau of Mines, who was chairman, opened the meeting by reciting the difficulties which were being encountered in contracting for sufficient coal to supply military needs (tr. p. 1). Referring to his discussion with Shallit as to the tonnage he could produce for the military, Mr. Anderson said (tr. pp. 1 and 2):

"\* \* \* Mr. Shallit told me he was not interested in producing much over 60,000 to 100,000 tons this coming year, preferably around 60,000 or 65,000 tons. Until such time as he had an all-weather road up to Cripple Creek or the railroad built into his property, he did not want to obligate himself to tonnages that would be very doubtful as to whether he could produce under weather conditions as far as scheduling of deliveries according to contract.

"When Mr. Usibelli gave Lieutenant Fisher his proposals of 100,000 tons Lieutenant Fisher called Mr. Shallit and asked him for the maximum tonnage he could produce. Mr. Shallit told him 100,000 tons, but he would be willing to negotiate for 150,000 tons if the railroad or the highway would be built up to Cripple Creek before October of this year. On the strength of that and from the meetings we had prior to this meeting with the Navy on negotiating coal contracts this year, we thought it was almost certain that the Alaska Road Commission at least would be able to build a road into Cripple Creek or Roth property, which is just above the Cripple Creek property. Mr. Hinman, has it not been in your budget request to get funds for building this spur?

"HINMAN. It has been in our 6-year program for several years."

Again, Mr. Anderson said (tr. p. 3):

"\* \* \* Now the vital point under consideration is how are we going to get the money immediately to build a road up to Cripple Creek? I called George Rogers in Juneau, but he was unable to attend this meeting. He expects to go back to Washington and talk to the Secretary as to whether or not it would be possible to get funds for a railroad. Will this be possible, Mr. Hinman?

"HINMAN. I do not know."

Speaking of the impending shortage of coal to supply the military installations, the following discussion took place (tr. p. 3):

"GOCHENAUR. We are under now by about 12,000 tons of our requirements—figuring that Cripple Creek will take 150,000 tons.

<sup>21</sup> A transcript of the minutes of the meeting is appended hereto as exhibit CC.

"HINMAN. Cripple Creek does not know how they are going to deliver 150,000 tons unless they get an all-weather road or a railroad this summer.

"GOCHENAUR. That is why the military is here today. I compiled figures yesterday for our budget planning for the fiscal year 1955 for the Air Force. (I do not know the requirements of the Army). We will have at Eielson roughly 225,000 tons; at Ladd, 300,000 tons; and at Elmendorf, 140,000 tons. These are conservative figures. The main powerplant at Eielson at full capacity is capable of burning 50 or 60 tons an hour. Figures from the plant superintendent, based on full capacity, would be around 50 tons an hour. The average consumption during mild weather is 7,000 tons a month."

On pages 5, 6, and 7 of the transcript appears the following colloquy:

"SAARELA. Has this money for constructing the railroad to Cripple Creek and Roth ever been asked from Congress?

"HINMAN. We have programed it. In our budget estimates for fiscal year 1953 we included an amount of \$2,350,000 for improvements to and extension of the Suntrana branch. This was approved by the Interior Department, reduced to \$1 million by the Bureau of the Budget, and entirely deleted in Congress when final action was taken on the appropriation bill. Right now the Alaska Railroad is prepared to and will commit itself to furnish and install the rail and fastenings in a very short period, probably 1 month, if the grade is provided. No appropriation would be necessary to install the railroad if the grade is provided. It would be necessary that a grade be ready not later than the middle of August.

"SAARELA. Why couldn't the military take the stand that this railroad is essential or necessary? A couple of years ago I wrote to the commanding general and tried to get it ironed out so there would be some statement from the military as to the essentiality of the road or railroad, but I got a refusal. I think the situation has come to pass now that we are not going to meet the demand and it is mainly a problem of transportation. Therefore, I think it would seem reasonable that as it is a military problem and that a statement could be made by the military as to the essentiality of the railroad, so that the Alaska Railroad could go ahead and make the request. The hauling of 140,000 tons 3 miles by Mr. Usibelli and 150,000 tons 6 miles by Mr. Shallit will cost the Government approximately \$300,000 this year.

\* \* \* \* \*

"SAARELA. If it is necessary to take the Roth property out of the reserve and split these contracts up, some additional leasing of acreage will be necessary, but I believe at the present time the survey feels there is enough production facilities in the Healy field. In view of this constant bottleneck of getting coal out because of the lack of transportation it may be necessary to release additional acreages to get other small operators. Two years ago we received a letter from the commanding general stating that the military did not think the road was essential. I think the situation has changed drastically. The whole coal supply depends upon the solution of this problem. The military is not going to countenance this continual harassment. One of these days the military is going to throw up its hands and put in a pipeline.

"HINMAN. On the transportation part of it the railroad does not have the funds to build the extension.

"ANDERSON. The essentiality of the access road into that mining area should be set up on the budget and be backed by the military.

"GOCHENAUR. What was the conversation, Mr. Anderson, you had with Mr. Flake when you went back to Washington? It was my understanding that the Department of the Interior was back of that road. After the conversation I had with you, Lieutenant Fisher said he laid it in the hands of the Interior Department and they would put it through."

Continuing the discussion, Mr. Anderson said (tr. p. 7):

"I concur with Mr. Saarela's statement, and I wish to state further that I have held the same line of reasoning for the past 10 years in regard to coal production from this area. From a military security standpoint, I recommended in 1946 to Charles Kurtz, consulting coal-mining engineer from the Quartermaster General's Office, Washington, D. C., that the Roth property be put in a reserve.

"At present, the only sound, economical plan is to build a railroad from the Healy River mine to the Roth property as the quality of coal in this property is far superior to any other coals reasonably accessible to transportation. Production from the Roth property, due to geological formations, and from a mining standpoint, would make it possible to produce considerable tonnage in a short time in case of emergency."

Responding to an inquiry as to whether the Alaska Road Commission had requested funds to build a road, Mr. Hinman stated (tr. p. 8) :

"You ask if ARC had ever asked for funds to build a road. I am sure they have not. There is no reason to build a road when it should be a railroad. If you are going to ask for money, ask for funds to construct a railroad."

Subsequently Mr. Anderson made the following statement (tr. p. 10) :

"This suggestion comes from Joe Flakne. I am asking you to think about it as a possible solution. Joe Flakne and I spent about three-fourths of an hour in Assistant Secretary Lewis' office and gave him the whole picture, stressing the importance of this railroad up there; consequently, he is familiar with the immediate necessity of the construction of this project. I do not know what can be done; however, George Rogers will take this information to Washington and perhaps talk it over with the governor—point out that it is a military necessity."

Later, the following discussion took place (tr. pp. 11, 12, and 13) :

"ANDERSON. Lieutenant Fisher and I certainly stressed the importance of having this railroad built.

"SAARELA. Correspondence from Rogers would indicate that everything was squared away.

"WILLIS. It becomes essential that we get coal out. Yet at the same time we now have no request for money in either for a road or a railroad. This seems to me that it is about 2 years late or 2 years early, as far as essentiality. I think it is late at this particular time, but we are going to have to move. In the first place we are going to have to get a request in for money properly substantiated.

"SAARELA. In my files I still have my correspondence with the commanding general. At that time (1951) they were reluctant, but this is 1953 and the problem is entirely different now.

"MILLER. In 1951 there were no anticipated coal demands or steam production.

"SAARELA. If you are going to continue to burn coal the demand will be firm and will increase until probably 1956 when construction is complete.

"ROBINSON. Right now, unless we get a railroad to Cripple Creek mine to take care of 150,000 tons, the military is going to be at least 50,000 tons short. If the military is going to use coal, it will be shipped in from the States.

"GOCHENAUER. We will just burn oil.

"MILLER. That is 50,000 tons this year; next year it may be closer to 150,000 tons; two from now it will increase in direct proportion to 1955.

\* \* \* \* \*

"Cook. As far as the railroad ever making a request for funds, we are operating under a directive as to the method to proceed, which calls for the location of a feasible line, and then that is to be forwarded to Washington for further action. That was completed last fall. I believe the intent from then on was whether it was feasible to build a railroad up there, or a highway depending on tonnage. But as the necessity for coal has developed by leaps and bounds the outlook now is that the railroad would be more desirable."

Toward the close of the meeting, Mr. Saarela said (tr., p. 15) :

"I would like to make a motion that the same motion made in the previous coal committee meeting in January in regard to construction of a railroad spur be again brought to the attention of the various Interior officials through Mr. Rogers of the Alaska field committee and copies of letters from various Interior agencies requesting this construction be made part of the record with the motion."

Subsequently the following resolutions were unanimously passed by the Alaska field committee, subcommittee on coal:

1. That Mr. George Rogers, chairman of the Alaska field committee inquire into the status of the request of Ben Shallit for a permit for a highway right-of-way which has been granted, but which, it is understood, is on appeal to the Washington office of the Bureau of Land Management or to the Secretary's Office, by Emil Usibelli of the Usibelli Coal Co. It is the suggestion of the subcommittee that Mr. Rogers urge that action be taken to resolve the problem if it is still undecided in Washington.
2. That steps be taken at once to finance the construction of an extension of the railroad from the Healy River mine to the Cripple Creek and Roth properties. This spur to be completed or partially so before October 1, 1953.
3. That the extension of the Healy River spur to the Roth property is vital to the security of military installations this coming fiscal year of 1954, and in the

future, and to the development and prosperity of the coal industry as a whole in Alaska.

4. That the extension of the Healy River spur to the Roth property would mean a substantial savings to the Government in the price of coal and this savings to the Government should amortize the cost of construction within 3 or 4 years.

5. That shipment of coal by rail transportation is the only logical solution to the presently existing critical situation.

The resolutions speak for themselves. They completely demolish the specious reasons advanced by the Alaska Railroad in its letter of October 11, 1954, withdrawing the railroad right-of-way. They establish that every bureau of the Department of the Interior and the Department of Defense represented on the Alaska coal subcommittee unanimously agreed that extension of the Alaska Railroad to the Government coal reserves (Roth property) is vital to the security of the military installations in the fiscal year 1954 and in the future, and to the development and prosperity of the coal industry in Alaska as a whole; that construction of the spur would mean substantial savings to the Government and that these savings would pay the cost of construction within 3 or 4 years.

About this same time in 1953, the Secretary of the Interior ordered an investigation to be made of the coal resources of Alaska. A committee was appointed headed by Charles W. Connor, formerly Administrator of Defense Solid Fuels Administration, to conduct the investigation on the ground in Alaska and to submit a report and recommendations to the Secretary. The committee arrived in Alaska in July 1953 and departed in September 1953. It inspected the various coal mines in the Territory and held a number of meetings with the mine operators and with the representatives of the Interior Department and Defense Department concerned with the development of coal in the Healy River Valley. When the committee returned to Washington, D. C., it prepared its report and recommendations to the Secretary of the Interior. This report has never been made public but, no doubt, copies will be made available to your committees upon request.

We have never read the Connor Committee report but on the basis of newspaper items and discussions with the committee in Alaska we believe that the report strongly recommends the construction of a railroad spur from Suntrana to the Government coal reserves.<sup>22</sup> We believe, too, that the report strongly recommends that development of the coal properties of Usibelli, Cripple Creek, and the Government coal reserves be conducted in such a manner that strip mining and underground mining should be carried on concurrently.

Reference to the work of the Connor Committee is made in the annual reports of the Secretary of the Interior to the President for the fiscal years ending June 30, 1953, and June 30, 1954. In the earlier report, the Secretary said (at p. 354):

"The mining of coal has become a major Alaskan industry in which the Federal Government, through its ownership of territorial coal lands, is in partnership with private enterprise. In order to improve the quality of its assistance to the industry, the Department, in the late summer of 1953, planned a field survey of supply and demand factors that affect the production and marketing of coal. *The survey will include studies of military and civilian requirements; existing mine capacity; need for new mines; transportation, manpower, and financing problems; and a review of Government leasing regulations and conservation practices. The study has been prompted by the fact that the rate of expansion of Alaska coal production during the past fiscal year was not great enough to meet estimated requirements.*" [Emphasis supplied.]

In the 1954 report, the Secretary said (at pp. 371-372):

"*The growth of the Military Establishment in Alaska following the Korean outbreak greatly increased the demand for coal mined in the area served by the Alaska Railroad.* There are two major coalfields in this area, the Healy River field about 75 miles southwest of Fairbanks, and the Matanuska field about 60 miles northeast of Anchorage. In response to rapidly mounting demand, coal companies in these fields nearly doubled their production in the 3 years following 1950 and produced an estimated 900,000 tons in the calendar year 1953.

"*In order to construct realistic production goals, in view of the wide range of military estimates as to consumption requirements,* the Secretary of the Interior appointed a survey team to undertake an investigation. This study covered

<sup>22</sup> Jessen's Weekly of October 22, 1953, carried the story that Charles W. Connor "recommended construction of a railroad spur to the two coal mines now operating in the Healy River field." The news item is appended hereto as exhibit DD.

military and civilian requirements, existing mine capacity, need for new mines, problems of transportation, manpower, and financing, as well as a review of Government leasing regulations and conservation practices. The survey will provide guidance in the development of programs by the Department of the Interior to increase coal output in the Territory in response to essential needs." [Emphasis supplied.]

The foregoing reports of the Secretary spell out in a few well-chosen words the critical situation which had developed in Alaska in meeting military requirements for coal. In the 1953 annual report the Secretary declared that "the rate of expansion of Alaska coal production during the past fiscal year was not great enough to meet the estimated requirements" and in the 1954 annual report he advised the President that he had appointed a survey team to undertake an investigation "In order to construct realistic production goals, in view of the wide range of military estimates as to consumption requirements \* \* \*."

But notwithstanding the urgency and seriousness of the problem which had been spelled out in the annual reports of the Secretary of the Interior to the President, which had prompted the unanimous resolutions of the Alaska Subcommittee on Coal, and which had resulted in the strong recommendations of the Secretary's own appointed Connor Committee, railroad access has still not been provided to the producing coal properties in the Healy River Valley. To add insult to injury, General Manager of the Alaska Railroad Kalbaugh's withdrawal of the railroad right-of-way on October 11, 1954, repudiates the Secretary's declarations of policy to the President with respect to the impelling need for developing and expanding coal production in Alaska to supply military and civilian demand, and overrules the urgent recommendations both of the Alaska Subcommittee on Coal and the Connor Committee.

And, incidentally, it should be recalled that representatives of the Alaska Railroad had voted unanimously with the other members of the Alaska Subcommittee on Coal in favor of the resolutions urging the construction of the railroad spur.

We respectfully request your committee to invite the members of the Alaska Subcommittee on Coal and other representatives of the Department to testify with regard to all of the foregoing matters and to ascertain the real reasons why the Alaska Railroad suddenly discontinued the survey of the railroad line and why the railroad right-of-way was withdrawn. In this connection, we invite the attention of your committees to the exchange of memoranda between Assistant Secretary of the Interior Orme Lewis and the Director of the Bureau of Land Management Edward Woosley. On October 1, 1954, the Assistant Secretary sent the following memorandum to Director Woosley: "

"There is at present in the Office of the Solicitor an appeal by the Usibelli Coal Mine, Inc., and Emil Usibelli from the Bureau of Land Management decision in connection with the right-of-way application of A. Ben Shallit, Fairbanks 08832. This dispute was investigated in Alaska by the Alaskan coal survey group which submitted a report on November 12, 1953. A copy was sent to the Associate Director of the Bureau of Land Management. The group suggested that the opposing parties might reach an amicable solution. Following this suggestion, representatives of Mr. Shallit and of the Usibelli interest have been consulting with each other in an attempt to reach such a solution. Meantime, of course, action on the appeal has been suspended.

"In a letter of September 3, Mr. Northcutt Ely, attorney for the Usibelli interest, points out that there is still pending an application by the Alaska Railroad to cross the Usibella leasehold for the purpose of reaching the Shallit mine and possibly other deposits in the area. Mr. Ely points out that the railroad right-of-way would cover a different route than the right-of-way applied for by Mr. Shallit, and he contends that the railroad right-of-way would seriously damage the Usibelli operations. He states that the Usibelli interests are reluctant to conclude an amicable agreement with Shallit for one right-of-way while the railroad right-of-way is still pending.

"Without passing on the merits of this contention, I do think that the Bureau of Land Management and the Alaska Railroad should examine the situation promptly. If possible, an amicable agreement with Mr. Usibelli regarding this line, if it is still to be built, should be reached. Since the Bureau of Land Management has the railroad's application before it, I expect the Bureau to take the initiative in this matter. Copies of the correspondence are being sent to the Alaska Railroad. The Manager of the Alaska Railroad will be in Washington until October 19, 1954, and is, therefore, available for consultation on this problem."

\* A copy of this memorandum is appended hereto as exhibit EE.

On October 14, 1954, Director Wozzley replied to Assistant Secretary Lewis as follows: <sup>54</sup>

"Reference is made to your memorandum dated October 1, 1954, relating to the application, Fairbanks 010449, of the Alaska Railroad for right-of-way for an extension of its Suntrana Branch for a distance of 6.1 miles with a view to reaching the A. Ben Shallit coal mine and possibly other deposits. This extension would go through the camp area of the Usibelli Coal Mine, Inc., operated by Emil Usibelli in connection with mining his coal lease area in the vicinity.

"Mr. Shallit has pending a truck road right-of-way application, Fairbanks 08832. This truck road right-of-way also crosses the Usibelli interests. This application is in the Solicitor's Office on appeal by Usibelli.

"I held a meeting yesterday at 2 p. m. at which your solicitor was represented. Mr. Kalbaugh, the general manager of the Alaska Railroad was present also. Mr. McCarthy [sic] representing Usibelli was at the meeting. Mr. Barash, Shallit's attorney, was absent.

"Mr. Kalbaugh filed with the record a copy of his withdrawal dated October 11, 1954, of the right-of-way application, Fairbanks 010449 of the Alaska Railroad. The withdrawal itself was forwarded to our area administrator, area 4. It will be accepted very shortly. So, the Alaska Railroad right-of-way application no longer presents a problem.

"At the meeting Mr. McCarthy [sic] stated that the relations between his client and Mr. Shallit were better, that Mr. Barash and he were engaged in preparing a form for a stipulation and agreement between Usibelli and Shallit which would provide for the mutual operation of one truck road only through the Usibelli interests, instead of the present 2 roads. 1 Usibelli's and the other Shallit's. As soon as this agreement is signed and filed with the record of the appeal, Fairbanks 08832, your solicitor expects to dispose of the appeal and thus close the entire case."

Of particular importance to which we invite the attention of your committees is the statement in Director Wozzley's memorandum of October 14, 1954, that Mr. McCarty (representing Usibelli Coal Mine, Inc.) had stated that he and Mr. Barash (representing Cripple Creek Coal Co.) were preparing a form of stipulation and agreement "between Usibelli and Shallit which would provide for the mutual operation of 1 truck road only through the Usibelli interests, instead of the present 2 roads, 1 Usibelli's and the other Shallit's." The latter statement, attributed to Mr. McCarty, is completely erroneous. The form of stipulation and agreement therein referred to did not provide for mutual operation by Usibelli and Shallit of 1 truck road only across the Usibelli lease. It merely contained the conditions upon which it was finally agreed that Shallit would be permitted to use not the Usibelli road on high ground but the Cripple Creek Coal Co. temporary makeshift road in the bed of the Healy River which is constantly subject to destruction by flash floods, spring thaws, and the elements. And even this concession on the part of Usibelli came only after more than 3 years of vigorous opposition to the grant of any right-of-way easement to Cripple Creek Coal Co.

Equally significant is the statement in Director Wozzley's memorandum of October 14, 1954, that "Mr. Barash, Shallit's attorney, was absent" from the meeting which is referred to therein. This would presuppose that Mr. Barash was invited to the meeting held in Mr. Wozzley's office on October 13, 1954. No such invitation was extended to Mr. Barash, however, and he did not actually learn that such a meeting took place until almost a month later. On December 23, 1954, Mr. Barash wrote the following letter to Director Wozzley: <sup>55</sup>

"Early in November I received a copy of your decision of November 2, 1954, accepting a withdrawal filed by the Alaska Railroad of its application Fairbanks C10449 for right-of-way.

"Recently I had occasion to examine the record of Fairbanks 010449 in connection with a presentation I am preparing which will urge the Department of the Interior to extend the Suntrana branch of the Alaska Railroad to coal lease Fairbanks 07350 of my client, A. Ben Shallit, Cripple Creek Coal Co. In that record is a memorandum dated October 14, 1954, from you to the Assistant Secretary, Public Land Management, calling attention to a meeting which was held in your office at 2 p. m. on October 13, at which were present representatives of the solicitor's office, Mr. Kalbaugh, general manager of the Alaska Railroad and Mr. McCarty, of the office of Northcutt Ely, Esq., representing Usibelli Coal

<sup>54</sup> A copy of this memorandum is appended hereto as exhibit FF.

<sup>55</sup> A copy of this letter is appended hereto as exhibit GG.

Mine, Inc. 'The same memorandum contains the statement, 'Mr. Barash, Shallit's attorney, was absent.'

"I don't know that my presence at the meeting in your office on October 13 would have contributed in any way to the discussion that took place, but it seems appropriate to point out that my absence from that meeting was due solely to the fact that I was not invited and actually knew nothing thereof until my examination of the record of Fairbanks 010449. I shall appreciate very much this letter being made part of the record of Fairbanks 010449 so that there may be no misunderstanding in the future as to the reasons for my absence from the meeting of October 13, 1954."

What the real reasons were for withdrawing the railroad right-of-way will never be known unless your committees investigate and conduct public hearings to fix responsibility for this action as well as for the failure to construct the railroad spur. It is unthinkable that in the light of all that has transpired over the last 5 years in the struggle to obtain railroad access to the producing coal mines in the Healy River Valley, the unanimous conclusion of the Alaska Subcommittee on Coal that construction of the spur is vital to the security of the military installations and to the development of the coal industry as a whole in Alaska, and the strong recommendations of the Connor committee, the railroad right-of-way should now be withdrawn and abandoned.

In the meantime, Cripple Creek Coal Co. was having a terrible time in 1954 with the temporary makeshift road in the bed of the Healy River. On three separate occasions the road was destroyed by flash floods requiring time-consuming and costly rebuilding. On October 19, 1954, Shallit wrote to Mr. A. F. Ghiglione, commissioner of roads for Alaska, as follows: "

"Since you are probably already making your estimates on next year's requirements, I believe that it is appropriate at this time to again request that some consideration be given construction of a road between Suntrana and Cripple Creek.

"Since you are entirely familiar with our problem, there is no point in repeating the factors involved. *I would like to point out that the road that we are now using and for which we have a tentative right-of-way, was destroyed three times this year, requiring rebuilding at a cost in excess of \$40,000.*

*"Our present road is considerably better than any we had previously built, but the section through the Usibelli lease is still subject to destruction during every period of high water.*

*"I would appreciate your giving consideration to the possibility of the road commission obtaining a right-of-way at least through that section since we have not been able to make any progress in obtaining a right-of-way on which we can construct a permanent road.*

"This is the same problem we have been fighting for the last 5 years, and I believe it will not be solved until your Department takes some direct-action. \* \* \* [Emphasis supplied.]

By letter of October 29, 1954, Mr. Ghiglione responded as follows: "

"Reference is made to your letter of October 19, 1954, requesting information regarding the status of the access road between Suntrana and Cripple Creek, and requesting assistance in its construction and maintenance. I am sorry to advise that the Alaska Road Commission has been unable to initiate action toward assuming this responsibility and the status of the project remains unchanged since the policy decisions were made by the Department of the Interior over a year ago.

*"As you know, the Department has decided that proper access to the Healy River coalfields may best be provided by the railroad spur extension. As a result of this decision, the railroad has proceeded to obtain the necessary right-of-way and has filed necessary maps and instruments with the Bureau of Land Management for this purpose.*

*"When the decision was finally made to encourage railroad access to the Healy River coal properties, the Alaska Road Commission was precluded from sponsoring further road projects for this purpose. As you will recall, a subsequent attempt was made to obtain funds for construction along the Alaska Railroad right-of-way in an effort to provide temporary relief for your problem. This attempt met with failure, again because the project was considered one for the Alaska Railroad and therefore any request for funds to implement the project should be initiated by that agency.*

\* \* \* \* \*

\* A copy of this letter is appended hereto as exhibit HH.

\* A copy of this letter is appended hereto as exhibit II.



"\* \* \* I can only suggest that you contact the Alaska Railroad in an effort to expedite their development of the railroad spur farther up the Healy River." [Emphasis supplied.]

Mr. Shallit hastened to reply to Mr. Ghiglione on November 4, 1954, in pertinent part, as follows: <sup>20</sup>

"Thank you for your letter of October 29 advising us that the Alaska Road Commission was unable to initiate action in providing an access road to the Healy River coalfields because of a decision by the Department of the Interior to provide such access by the extension of the Alaska Railroad spur.

"For your information, this situation was recently discussed with officials of the Alaska Railroad, and *we were advised that they had no immediate plans for the construction of such a spur.* Under the circumstances, we believe that unless an actual directive was issued to you, precluding the construction of a road, it would still be in order for you to consider this project. If, however, you have been officially advised that the Alaska Railroad alone is to be responsible for the construction of this spur, we will appreciate a copy of this directive so that we may act accordingly." [Emphasis supplied.]

Mr. Ghiglione responded on November 8, 1954, as follows: <sup>21</sup>

"This will acknowledge receipt of your letter of November 4, 1954, which further discusses the possibilities of the Alaska Railroad Commission's participation on the Healy River road to serve your coal properties. In spite of the many factors outlined in your letter which tend to justify this project as a public necessity, I am still unable to offer assistance since no funds are presently available to the Alaska Road Commission for this work.

\* \* \* \* \*

"The situation along Healy River, insofar as *access by railroad in preference to highway has been determined as policy by the Interior Department*, has not been resolved in the form of a directive to the Alaska Road Commission. However, since all requests for funds must be processed through the Interior Department before reaching the Bureau of the Budget and Congress, *it is obvious that the policies of the Department must be adhered to.*" [Emphasis supplied.]

During this same period Mr. Shallit wrote to General Manager of the Alaska Railroad Kalbaugh by letter of October 21, 1954, in pertinent part, as follows: <sup>22</sup>

"During my last visit to Washington I discussed with Mr. Strand the advisability of including a request for an appropriation in the next budget to build a spur line from Suntrana to Cripple Creek.

"As you know, our efforts on behalf of accomplishing this purpose through the Healy River Spur, Inc., was nonproductive. Although the coal requirements for the next fiscal year will probably not be much larger than those requested this year, we have been advised that future requirements may be a great deal larger. Under the circumstances, it would appear that it would be in order to request an appropriation at the next budget hearings, in order that the spur could be completed in time to meet the increased demand.

"Sections of our road were destroyed three times this year, pointing to the necessity of obtaining less vulnerable right-of-way on which a permanent road can be constructed. Assistance from an appropriate agency of Government, who can obtain a right-of-way through their powers of eminent domain, appears to be the only way in which such a road can be built through the intervening leases.

"*It is therefore, again, respectfully requested that consideration be given to the extension of the existing spur to Cripple Creek*, and that if it is not believed advisable to construct a spur at this time, to at least survey and obtain a right-of-way for such a spur, and allow the Cripple Creek Coal Co. and the general public the right to use this right-of-way until such time as a spur is constructed." [Emphasis supplied.]

To this letter Mr. Kalbaugh responded under date of November 5, 1954, as follows: <sup>23</sup>

"On my return to Anchorage received your letter of October 21, 1954, concerning the Alaska Railroad requesting an appropriation for the extension of our Suntrana branch.

"As we discussed in our several conversations on this matter, the Alaska Railroad is required to be self-sustaining and any such large expenditures as

<sup>20</sup> A copy of this letter is appended hereto as exhibit J.J.

<sup>21</sup> A copy of this letter is appended hereto as exhibit K.K.

<sup>22</sup> A copy of this letter is appended hereto as exhibit L.L.

<sup>23</sup> A copy of this letter is appended hereto as exhibit M.M.

you have proposed by the Railroad would have to be economically justified and, as we also discussed, such economic justification cannot be made by the Railroad in support of this track extension.

"Inasmuch as the Defense Department has indicated that they cannot lend support to your proposed track extension, it appears to us that your next best bet would be to endeavor to procure an all-year road from your property to the present railhead at Suntrana, and of course such a road would not be under the jurisdiction of the Alaska Railroad. Therefore, you may wish to consider the possibility of having the Alaska Road Commission undertake such action as would be necessary for such a roadbuilding program.

"I regret very much our inability to be of more concrete assistance to you, and am looking forward to seeing you in the not too far distant future."

On December 15, 1954, Mr. Shallit again wrote the Alaska Road Commission and by letter of December 21, 1954, he received the following reply from Mr. Ghiglione:

"Reference is made to your letter of December 15 regarding the possibility of obtaining funds for construction of an all-year road from Suntrana to Cripple Creek. *I am surprised at Mr. Kalbaugh's statement regarding the appropriation of funds for this project, since all previous departmental policy has been in support of extension of the railroad spur in preference to the highway, and obviously no funds will be appropriated by Congress without the support of the Interior Department.*

"In reviewing our previous estimates for this project, I find that several factors enter into the cost of the road and, therefore, any estimate must be qualified. Our last estimate, made in April 1953, for construction of the road from Suntrana to Cripple Creek, totaled \$420,000. This estimate was based upon the alignment following the present Alaska Railroad line within their right-of-way, *since at that time Mr. Usibelli had refused consideration of a road easement either over his road or through his property, excepting on the Railroad line.* His refusal was always based on the contention that any such easements would conflict with future development of his property \* \* \*." [Emphasis supplied.]

In analyzing the exchange of correspondence between Cripple Creek Coal Co. on one hand and the Alaska Road Commission and the Alaska Railroad on the other, it is important for your committees to understand that both the Alaska Road Commission and the Alaska Railroad are arms of the Office of Territories of the Interior Department and under its administrative jurisdiction. Yet we find the Alaska Road Commission still unaware as late as December 1954 that the Alaska Railroad had withdrawn the railroad right-of-way and still insisting, properly we submit, that all previous departmental policy has been in support of extension of the railroad spur in preference to the highway for providing access to the coal deposits in the Healy River Valley. At the same time, we find General Manager of the Alaska Railroad Kalbaugh saying nothing in his letter of November 5, 1954, to Shallit of the withdrawal of the railroad right-of-way or of any change in the policy of the Department with respect to the extension of the Alaska Railroad. Incidentally, the first information we received of the withdrawal of the railroad right-of-way was the decision of the Bureau of Land Management of November 2, 1954, which was received several days thereafter. We believe that it is entirely fitting and proper that your committees ascertain why Cripple Creek Coal Co. received the brushoff it did in Mr. Kalbaugh's letter of November 5, 1954.

Moreover, we ask that Mr. Kalbaugh be called upon to explain the statement in his letter of November 5, 1954, that "economic justification cannot be made by the Railroad in support of the track extension." Is the unanimous resolution of the Alaska Subcommittee on Coal that the "savings to the Government should amortize the cost of construction within 3 or 4 years" untrue? Is the statement of Acting General Manager of the Alaska Railroad Manley that "construction of this line will result in the reduction of coal costs to the Territory of \$200,000" untrue? Is the statement of Mr. Saarela, mining supervisor of the Geological Survey in charge of coal-mining operations for Alaska, that "hauling of 140,000 tons 3 miles by Mr. Usibelli and 150,000 tons 6 miles by Mr. Shallit will cost the Government approximately \$300,000 this year" (1953) untrue? We ask your committees to call upon these officials, among others, to ascertain whether their statements are true or false.

• A copy of this letter is appended hereto as exhibit NN.

Despite the lack of railroad access to Cripple Creek Coal Co. coal lease over the last several years, Cripple Creek Coal Co. has nevertheless proceeded with the development of the property in the earnest belief that the recommendations and promises of officials of the Department of the Interior that a spur would be constructed would be fulfilled, thus providing year-round transportation. In that spirit Cripple Creek Coal Co. made application on March 10, 1951, for a Government loan in the amount of \$400,000 pursuant to section 302 of the Defense Production Act of 1950. The purpose of the loan was stated in the application as follows:

"A loan is requested in order to expand the capacity of applicant's present strip coal mine and to develop a modern underground mine capable of supplying the increasing demand for coal in Alaska essential to the military and domestic market. Funds are required for the purchase of equipment and supplies, building improvements, mine development, and working capital." [Emphasis supplied.]

For the information of your committees, it should be said that the coal measures in the Nenana field occur in pitching synclines with all of the operating properties in the Healy River area confined to workings on the north dipping flank. The workable beds vary in thickness from 10 to 60 feet with a relatively consistent dip of about 30 degrees. As a result, depending upon the local topography, it is usually more efficient to mine the thicker beds above natural-drainage level, by strip-mining methods, than through underground workings. The thinner underground beds can be mined at comparable unit costs only after the more expensive underground development work has been completed. As a result, in the interest of conservation and good mining practice and to assure an equitable distribution of costs which would be passed on to the consumer in lower average prices, underground coal-mining operations in the Nenana field should be carried on concurrently with open-pit operations. The Cripple Creek Coal Co. has, therefore, consistently taken the long-range view that strip-pit mining and underground development should be done concurrently.

To illustrate what has been said previously, Cripple Creek Coal Co. estimates its probable strippable reserves at 8 million tons of coal. On the other hand, it estimates its probable underground reserves at 260 million tons of coal. It is obviously easier and cheaper to mine the strippable coal first and leave the underground coal, which is more expensive mining, for later development. To do so, however, would mean that after the strippable reserves were exhausted, both the military and civilian consumer in Alaska would be compelled to pay substantially higher prices for their coal. On the other hand, concurrent development of the strippable coal and the underground coal would be a leveling factor in determining the price of coal to the consumer. It should be recalled, too, that the Connor report strongly recommended that strip mining and underground mining should be conducted concurrently.

That Cripple Creek Coal Co. intended in good faith to develop an underground mine in the interests of concurrent development of the strippable coal and the underground coal in order to provide, for the foreseeable future, sufficient reserves to assure an adequate supply of coal for military and civilian consumption at the lowest possible prices is further evidenced, aside from the application for a defense loan, in the generalized operating plan which Cripple Creek Coal Co. submitted on January 15, 1953, to the regional mining supervisor of the Geological Survey in charge of coal mining operations on Federal coal leases in Alaska.<sup>42</sup> That operating plan contains a history of Cripple Creek Coal Co.'s operations, its reserves at that time, and its long-range plans for strip mining and underground mining. Referring to the latter, Mr. Shallit said in part:

"Under favorable conditions, we plan to increase our annual production from less than 50,000 tons, at present, to 100,000 tons during the fiscal year 1953-54; 150,000 tons in 1954-55; and 200,000 tons thereafter.

"Eighty thousand tons of the 1953-54 production is to come from surface operations and 20,000 from underground. One hundred thousand tons of the 1954-55 production is to come from the surface and 50,000 from underground. Half of the 1955-56 production will be from the surface and half from underground. By 1958 all tonnage will be produced from underground operations.

"By 1958 it is planned to have at least three fully equipped underground mines, each independent of the other operations. Under very competitive market

<sup>42</sup> A copy of the generalized operating plan is appended hereto as exhibit OO.

conditions it is conceivable that only the most efficient unit would be operated. Under increased demands production could be stepped up from all units, and additional beds developed."

In concluding the operating plan for mining coal on the Cripple Creek leasehold, Shallit made the following prophetic observation:

*"The most important single factor that would prevent our increasing production in 1953 would be the failure of the Alaska Railroad to extend their spur as now planned, from present rails' end at Suntrana. Under present hauling conditions, we would not plan to mine more than 60,000 tons during any year, and would be forced to confine our deliveries to the winter months only."* [Italic supplied.]

On March 9, 1953, the Reconstruction Finance Corporation approved the application for a Government loan in the amount of \$413,500 which had been applied for March 10, 1951. This loan was approved as a defense loan pursuant to section 302 of the Defense Production Act and a certificate of necessity was granted to Cripple Creek Coal Co. by the Defense Production Administration. Of the total loan granted 109,700 was specifically set aside for the purchase of underground equipment. \$161,800 was authorized for surface improvements to both underground and strip-pit facilities. Following granting of the loan, rails, electric conduit, timber, and similar materials were purchased for specific underground use. Surface facilities were constructed and a mine portal started on the No. 6 bed. Meanwhile, it became apparent that the Secretary of the Interior was not following through on the recommendations of his subordinate bureaus and that year-round transportation facilities would not become available to Cripple Creek Coal Co. during the development stage of its underground mine. It became very questionable whether such facilities would even be available after the underground mine was fully developed. This in spite of the fact that a defense loan was made to Cripple Creek Coal Co. to develop an underground mine upon the recommendation and with the strong support of the Defense Solid Fuels Administration of the Department of the Interior. Positive measures were, therefore, necessary if the underground mining program was to be carried out.

In addition, the physical properties of the Nenana coal beds are such that underground workings are susceptible to spontaneous combustion unless adequately ventilated. Once started, these fires are difficult to control as, for example, the fires in the Suntrana (Healy River) mine which have been burning continuously for about 30 years and have destroyed enormous quantities of coal. Control of spontaneous combustion in an operating underground mine in the Nenana field does not present any unusual problems, but the suspension of operations for even a few days at a time requires positive and expensive action to prevent the coal from firing. Consequently, unless transportation facilities are such that mining operations can be conducted throughout the year it is economically impractical and conservationally unsafe to develop an underground mine in the Nenana field. The cost of maintaining entries and providing adequate ventilation necessary to prevent the coal from firing would be prohibitive during any prolonged shutdown period. On complete abandonment, unmined reserves can be protected by sealing and backfilling but this, of course, is not economically feasible where the opening and closing of such mines would occur for lack of year-round transportation.

In a last desperate effort to salvage the underground program and to carry out its long-range planning for a balanced underground-surface operation which would be in the best interest of the development of the Territory of Alaska as well as the Government coal resources leased to Cripple Creek Coal Co., a corporation called Healy River Spur, Inc., was organized on March 12, 1954, with Cripple Creek Coal Co. as the moving spirit. The purpose of that corporation was set forth in the certificate of incorporation as follows:

"To conduct and carry on the work of the corporation, not for profit but exclusively for the purpose of borrowing money from the United States Government in order to build a spur railroad from the present rail's end at Suntrana in the Territory of Alaska, and to build and operate such spur and manage the same until such time as the entire loan is repaid and thereupon to dissolve the corporation and transfer and convey title to all the assets of the corporation, including the railroad spur, to the appropriate agency of the United States Government which operates and maintains the Alaska Railroad, for its exclusive use and benefit to be operated and maintained as part of the Alaska Railroad."

As explained in the certificate of incorporation, Healy River Spur, Inc., was organized as a nonprofit corporation. Money was to be borrowed from the

Government to build the railroad spur and upon repayment of the loan the corporation was to be dissolved and title to the spur and all the assets of the corporation were to be conveyed to the United States to be operated and maintained as part of the Alaska Railroad. The motivation for Healy River Spur, Inc., was purely and simply the construction of a railroad spur which the Department of the Interior had inexcusably and without justification failed to do itself. That Cripple Creek Coal Co. was to have no interest, financial or otherwise, in Healy River Spur, Inc., was made crystal clear. Under Nature of Business and Description of Project, as described in the application to the Reconstruction Finance Corporation for a loan, it was stated:

"Applicant is a private, limited, nonprofit corporation, formed for the sole purpose of constructing a railroad spur from present rail's end at Suntrana to the known operating and reserve coal properties in the Healy field. The corporation was formed as the only practical means of obtaining funds for that purpose. All other means investigated were found impractical.

"The officers of the corporation will serve without remuneration. All income after actual expenses will be used to retire the corporation's indebtedness. As soon as free of debt, the corporation will turn the spur over to the Alaska Railroad, without cost to the Alaska Railroad, and the corporation will dissolve.

"Prior to the disbursement of any funds, a new board of directors will be appointed by majority decision of responsible Government officials. A managing director will be appointed to serve without pay and shall be directly responsible to the board for the construction and operation of the spur."

The idea of forming Healy River Spur, Inc., was actually born out of the combined efforts of interested officials of the Department of the Interior and the Department of Defense to bring to fruition the extension of the Alaska Railroad. The corporation was to be a quasi-Government agency, and it had the tacit blessing of officials of both Departments, as evidenced by the assistance and cooperation they gave in the formation of the corporation and in the preparation of its loan application to the Reconstruction Finance Corporation. Several conferences were held in the Office of the Under Secretary of the Interior Ralph Tudor which were attended by representatives of the Interior Department, Defense Department, Office of Defense Mobilization, and the Reconstruction Finance Corporation. There was unanimous agreement among the conferees that construction of the railroad spur was in the public interest and in the interest of national defense to assure an uninterrupted supply of coal to meet military and civilian demand in Alaska for the years ahead. Representing the Defense Department at those meetings were Colonel Vissering, Chief of Transportation, Office of Assistant Secretary of Defense; George A. Grimm, utilities and fuel adviser to the Assistant Secretary of Defense for Supply and Logistics; and Commander Webster, Lieutenant Fogel, and Mr. Bedwell, of the Navy Fuel Supply Office. The only discordant note heard at those meetings was from the representatives of the Reconstruction Finance Corporation and the Office of Defense Mobilization who expressed concern that Healy River Spur, Inc., might be construed by Congress as an attempt to circumvent the legislative appropriation processes. Later, by letter of August 16, 1954, the Reconstruction Finance Corporation advised Healy River Spur, Inc., as follows:

"As you have previously been advised, your application for a loan of \$1,754,839.50 under section 302 of the Defense Production Act was submitted on March 16, 1954, to the Office of Defense Mobilization for determination regarding the issuance of a certificate of essentiality as required by Executive Order No. 10281.

"In this connection, there is enclosed for your information copy of a letter we have received from the Office of Defense Mobilization.

"For reason that no certificate of essentiality will be issued further consideration of the application is precluded. The files on this matter are, therefore, being closed."

With its letter of August 16, 1954, the RFC enclosed a copy of a letter dated August 11, 1954, it had received from the Office of Defense Mobilization, reading as follows:

"This refers to your letter of March 16, 1954, requesting that we make a determination of essentiality to the national defense of the section 302 application of the Healy River Spur, Inc., for a loan of \$1,754,840.

"The proceeds of this loan will be used to build a spur track connecting with the Alaska Railroad at Suntrana, Alaska.

"The Department of Defense has advised it does not feel the proposed addition to the existing spur track is essential to the national defense.

<sup>44</sup> A copy of this letter is appended hereto as exhibit PP.

<sup>45</sup> A copy of this letter is appended hereto as exhibit QQ.

"In view of the above, this Office will not issue a certificate of essentiality for this application at this time."

Here was another bombshell. Despite the unanimity that prevailed at the meetings in Under Secretary of the Interior Tudor's office at which the representatives of the Defense Department agreed with the others that construction of the railroad spur was in the interest of national defense, the letter of August 11, 1954, from the Office of Defense Mobilization nevertheless reported that "the Department of Defense has advised that it does not feel the proposed addition to the existing spur track is essential to the national defense."

How can this be rationalized in the light of the views expressed by the representatives of the Defense Department present at the meetings in Under Secretary of the Interior Tudor's office only a few short weeks previously and in the light of the views expressed by the representatives of the Military Establishments in Alaska who participated in the meetings of the Alaska Subcommittee on Coal in 1953? Perhaps the explanation may be letters of protest in behalf of Usibelli Coal Mine, Inc., which were forwarded under date of May 19, 1954, to the Secretary of Defense and under date of May 26, 1954, to Assistant Secretary of Defense Thomas P. Pike against granting a loan to Healy River Spur, Inc., for the purpose of constructing the railroad spur.

Copies of these protests were not furnished to Healy River Spur, Inc., but we have learned informally that the grounds for the protests were that the spur was not economically justified; that it was not a military necessity; and that Usibelli Coal Mine, Inc., would not use the spur because the cost of moving its tippie from its present site would be prohibitive. The short answer to these objections is that they are completely devoid of merit. The economic justification of and military necessity for the railroad spur is fully supported and documented by what has been said in this petition and by the exhibits annexed hereto. The inconvenience and expense involved in moving the tippie will be more than compensated by savings resulting from substantial avoidance of hauling coal by truck. What then is the real motivation for the filing of the protests against the granting of a loan to Healy River Spur, Inc.? The answer would seem to be that Usibelli Coal Mine, Inc., dreads the competition for military and civilian markets which would result if permanent year-round railroad access were provided by the construction of a spur to the Cripple Creek Coal Co. lease and to the Government coal reserves in the Healy River Valley.

Thus, despite the time, effort, and expense which went into the organization of Healy River Spur, Inc., with the tacit blessing of officials of the Department of the Interior and the Department of Defense, it was doomed to failure because the Office of Defense Mobilization refused to issue a certificate of essentiality on the basis of a report from the Department of Defense which stated in writing the exact reverse of what its representatives stated orally at open meetings. What caused the reversal is a matter which we respectfully request that your committees should inquire into and ascertain. When the Alaska Railroad shortly thereafter filed a withdrawal with the Bureau of Land Management of its railroad right-of-way under the peculiar circumstances previously related, there was nothing left to do but to dissolve Healy River Spur, Inc., which was done on December 23, 1954.

In the interim, since one of the principal purposes for which the Cripple Creek Coal Co. had obtained a Government loan was no longer capable of being carried out effectively in the foreseeable future, Reconstruction Finance Corporation requested cancellation of that part of the loan pertaining to the development of an underground mine. Approximately \$184,000 in unused funds was relinquished and all immediate plans for the development of an underground mine at Cripple Creek were indefinitely deferred. What the resultant loss to the Territory of Alaska will be by virtue of Cripple Creek Coal Co.'s inability to proceed with the orderly development of its underground coal reserves is difficult to estimate, but that it will operate to the great disadvantage of the military and civilian consumer in Alaska and that the failure to construct the spur will seriously retard the development of the coal resources of the Healy River Valley there can be little doubt.

We have previously shown that the Alaska Subcommittee on Coal representing the Department of the Interior and the Defense Department unanimously held that the construction of the railroad spur "would mean a substantial savings to the Government in the price of coal and that this savings should amortize the cost of construction within 3 or 4 years" (see exhibit CC). The officials on this subcommittee are physically located in Alaska and their views are based upon personal knowledge of the problems involved in the production of coal for military and civilian consumption. The conclusion of the Subcommittee on Coal

confirms the views expressed by Acting General Manager of the Alaska Railroad Manley that construction of the spur would result in the reduction of coal costs to the Territory of \$200,000 annually (see exhibit X) and by the mining supervisor of the Geological Survey Saarela that the "hauling of 140,000 tons 8 miles by Mr. Usibelli and 150,000 tons 6 miles by Mr. Shallit will cost the Government approximately \$300,000 this year" (see exhibit CC). Similar views have been expressed orally many times by other officials of the Interior Department and Defense Department in Alaska.

Cripple Creek Coal Co. has a truck haulage route of 6 miles from its pit to the railroad siding at Suntrana. Usibelli Coal Mine, Inc. has a truck haulage route of from 2 to 3 miles from its pits to the Suntrana railroad siding. Although Usibelli Coal Mine, Inc. has the shorter truck-haulage distance, the comparative truck-haulage costs of the two companies are about the same. This is due to the fact that the Usibelli mine hauls coal over the entire 12 months of the year, including the rainy summer season. Maintenance of road and haulage equipment over the entire year is in itself an expensive proposition and in the rainy summer season it is even more so. Upon the construction of a spur through the lands under lease to Usibelli and Cripple Creek, it would eliminate all direct haulage costs from the Usibelli operations on the north side of the Healy River and would limit its haulage costs from the south side of the river to approximately 1 mile. With respect to Cripple Creek Coal Co., construction of a spur would eliminate all except 1 mile of truck-haulage costs. In addition to the savings of direct-haulage costs, the Government would benefit by substantial savings of demurrage charges paid by the Government because lack of a railroad spur prevents proper scheduling of coal deliveries.

Had the railroad spur been constructed and in existence from Suntrana to the Cripple Creek lease property since 1950 when Cripple Creek Coal Co. received its first contract to supply 50,000 tons of coal to the military installations, it is estimated that the total savings to the United States over the 5-year period would be in the neighborhood of \$1,200,000. This is predicated on a total production from the Usibelli and Cripple Creek coal mines for the years 1950 to the present date of 1,207,429 tons of coal, of which the Government has been the principal consumer, at an average savings of about \$1 per ton, if railroad access had been provided.<sup>46</sup> The production figures broken down between the two companies for the years 1950 to the present are as follows:

	Tons
Usibelli Coal Mine, Inc.-----	943, 815
Cripple Creek Coal Co.-----	263, 614
Total-----	1, 207, 429

Until such time as the railroad spur is constructed, the additional costs to the Government resulting from truck haulage and demurrage charges will continue without compensatory benefit to the United States or to the military and civilian consumers of coal. In the last 5 years the Government has already paid out in additional coal costs the entire cost of constructing the railroad spur. Should there be a substantial increase in military or civilian demand for coal in Alaska, it is doubtful that the demand could be met without proper railroad access. Leaving that aside, a railroad spur would serve as an important defense measure by assuring accessibility to the Government coal reserves in time of emergency and in permitting increased production from the producing coal mines in the Healy River field.

In failing to construct a railroad spur from the present rail's end at Suntrana to the operating coal mines and to the Government coal reserves in the Healy River Valley, we submit that the Secretary of the Interior has failed to carry out a specific mandate of Congress. In providing for the establishment of a railroad in the Territory of Alaska (48 U. S. C., 1952 edition, secs. 301 et seq.), Congress declared as its policy that the line or lines of railroad—

"\* \* \* be so located as to connect one or more of the Pacific Ocean harbors on the southern coast of Alaska \* \* \* with a coalfield or fields so as best to aid in the development of the \* \* \* mineral or other resources of Alaska, \* \* \* and so as to provide transportation of coal for the Army and Navy \* \* \*."

To accomplish these objectives, the President is empowered, authorized, and directed—

<sup>46</sup> An analysis of the truck haulage costs is appended hereto as exhibit RR (prepared by A. Ben Shallit, January 1955).

"\* \* \* to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs \* \* \*."

Actual construction on the Alaska Railroad began in 1915, with the starting point at Seward proceeding northward. In order to relieve the fuel situation at the city of Fairbanks and to more quickly develop the Territory along the route of the railroad construction began in 1916 at Fairbanks proceeding southward. The fuel situation, even at that early date, was of supreme importance. The annual report of the Alaskan Engineering Commission "for the year 1916, as contained in Senate Documents (vol. 8, 64th Cong. 2d sess., at pp. 22-23), succinctly points out the problem.

"The development of Fairbanks and the adjacent country has been largely retarded by the extremely high cost of fuel. \* \* \* Along the line of the Government railroad as it follows the Nenana River are large deposits of lignite coal. To reach these from Fairbanks requires the construction of 110 miles of railroad \* \* \*."

The precedents have long been established for the construction of spur lines extending the Alaska Railroad directly to coal mines to provide an incentive for private operation, to relieve the fuel situation, and for development of the Territory. All of these spurs were constructed by the Alaska Railroad "to provide railroad access to operating mines. Most of the construction was accomplished under the general appropriations for the construction of the railroad rather than specific separate appropriations for spur line construction, and at least one spur was constructed by the railroad under contract with the corporation operating a coal mine." With respect thereto, the statement of Col. James G. Steese, Chairman of the Alaskan Engineering Commission (now the Alaska Railroad) as contained in the House and Senate Hearings, Interior Department appropriation bill, fiscal year 1925, 68th Congress, 1st session, on pages 738-739, is illuminating. Referring to outstanding accomplishments during the fiscal year 1923 he lists them, in part, as follows:

"A coal spur extending 4.6 miles up the Healy River from mile 359 to large beds of subbituminous coal.

"Closing down of the Esko Coal Mine [a Government mine] and the abandonment of the Chickaloon mine in order to encourage private investment.

"Construction of a 4½-mile narrow-gage spur connecting newly developed coal mines in Moose Creek with the Chickaloon branch at mile 19."

Thus, even as early as 1923, it was recognized that construction of spurs to coal mines was an effective means, in the long run, of saving money for the Alaska Railroad and the taxpayer. On page 760 of the House and Senate hearings, supra, the following colloquy occurs between Colonel Steese and Chairman Cramton:

"Colonel STEESE. \* \* \* The Moose Creek spur was never estimated for, but was actually built out of a lump-sum appropriation. It was built after the matter had been referred to the President. *One of the objects specified in the railroad act was to reach the coalfields, as a means of development. The statement shows that the construction of the Moose Creek spur would save its cost to the railroad in 2 years in the lower price of coal.*

"Mr. CRAMTON. Would save it?

"Colonel STEESE. It has already begun to save it. As fast as we are buying coal, it is saving it.

"Mr. CRAMTON. When was that spur constructed?

<sup>47</sup> In the fall of 1922 the Government railway project in Alaska was given the official designation the Alaska Railroad and on August 15, 1923, the designation the Alaskan Engineering Commission was dropped.

<sup>48</sup> Some examples of these spurs, although there are probably others, are as follows:

(a) The Matanuska coal field branch from Matanuska Junction to Kings River, a distance of 37.8 miles—the track was laid in 1915 and the branch completed in 1916. (See progress reports of the Alaskan Engineering Commission, letter dated August 9, 1915, from William C. Edes, Chairman to Secretary of Interior.)

(b) Completion of branch line from Matanuska to Chickaloon, 38 miles. Completion of branch line to Esko coal mines, 2½ miles. (See progress report dated Dec. 1, 1917.)

(c) Telegram from Colonel Steese to Secretary of the Interior dated August 26, 1923: "Laying steel Moosecreek spur begins next week." (See correspondence files on Alaska Railroad Construction—Archives.)

<sup>49</sup> The Healy River Coal Co. (now Suntrana Mining Co.) spur was constructed by the railroad. The facts with respect thereto are discussed later in this petition.



"Colonel STEESE. It was constructed from May to September.

"Mr. CRAMTON. This year?

"Colonel STEESE. Yes, sir. We are already getting advantage in our last coal contract of the reduction in cost of coal and in 2 years, assuming that we buy that much coal, which we will have to do, that will be paid for." [Emphasis supplied.]

And at page 740 of the hearings, supra, Colonel Steese, speaking of the need for constant improvement and extension of the Alaska Railroad as it continues to grow, said:

"While the formal completion of the railroad was announced last summer, as stated above, and standard-gage trains are operating between the coast at Seward and the inner terminal at Fairbanks, a great deal of additional work is still required to bring the entire line up to standard. *Furthermore, the Alaska Railroad as a growing concern will never be complete in the sense that capital investment may cease. As revenues increase and more business is presented additional sums will be required for extensions and betterment.*" [Emphasis supplied.]

The Healy River spur was constructed by the Alaskan Engineering Commission under contract dated June 28, 1922, between the Commission and the Healy River Coal Corp. Under the terms of this contract, the corporation was to pay \$10,000 cash, and \$20,000 was to be paid by the delivery of 6,666 $\frac{2}{3}$  tons of coal. Title to the spur remained in the Government. This contract was entered into after receipt of a telegram from the Secretary of the Interior to the Chairman of the Alaskan Engineering Commission dated June 12, 1922, as follows:

"You are authorized to construct Healy spur as per your recommendation and that of Director of Bureau of Mines."

On October 26, 1922, the Chairman of the Alaskan Engineering Commission wired the Secretary of the Interior as follows:

"Reference my letter September 23 the standard-gage spur to Healy Coal Mine was completed October 24. Please advise Dr. Bain."

Although the contract calls for payment by the corporation of \$30,000, the following excerpts from the hearing before the subcommittee of the House Committee on Appropriations, Interior Department appropriation bill, fiscal year 1924, 67th Congress, 4th session, at pages 770-771, show that this spur cost \$200,000 and that it was constructed for the specific purpose of providing railroad access to the coal deposits.

"Colonel MEARS.<sup>50</sup> \* \* \* and we saw the necessity of getting track connection with those big coal deposits of lignite coal which lie on the east side of the Nenana River, opposite mile 356.

"Mr. CRAMTON. Is that the coal deposit which we discussed considerably a year ago, the Government coal deposits?

"Colonel MEARS. No, sir. You probably discussed the Chickaloon deposits.

"Mr. CRAMTON. And you have connected up with this deposit?

"Colonel MEARS. Although no item appeared in the estimate for the construction of spur lines into those coal deposits a distance of 4 miles, we saw that we were going to make some saving in the estimated cost of constructing the bridge over the Tanana River, and Dr. Bain, the Director of the Bureau of Mines, was on the ground, and I took up with him the question of getting a standard-gage track connection with the Healy coal deposits, and we wired the Secretary and got his authority to build that line during the past summer; we spent on that a matter of \$200,000 and have connected up with the coal which you see there in the picture [indicating]."

In the light of the foregoing history of the Alaska Railroad and the construction of various spurs in prior years to aid in the development of the coal resources of the Territory, it becomes extremely difficult to find the slightest justification for the failure of the Secretary of the Interior to construct a railroad spur from the present rail's end at Suntrana to the operating coal mines and to the Government coal reserves in the Healy River Valley. What more is necessary to justify the construction of a spur when the Secretary's own Alaska Subcommittee on Coal unanimously concluded that "savings to the Government should amortize the cost of construction within 3 or 4 years" and when the Acting General Manager of the Alaska Railroad stated unequivocally that "it is estimated that the construction of this line will result in the reduction of coal costs to the Territory of \$200,000 annually."

<sup>50</sup> Lt. Col. Frederick Mears, Corps of Engineers, United States Army, then Chairman and Chief Engineer of the Alaskan Engineering Commission.

It is significant that the construction of the railroad spur to the Healy River Coal Co. mine, a distance of 4 miles, was accomplished without any item in the appropriation for the Alaska Railroad being specifically earmarked therefor. As the head of the railroad at that time said in his testimony, previously quoted, "we saw the necessity of getting track connection with those big coal deposits of lignite coal" and "we wired the Secretary and got his authority to build that line during the past summer."

Why, therefore, did the Bureau of Land Management instruct its field representative in Alaska to advise the Alaska Railroad that permission to proceed with construction of the spur is suspended pending further notice? Why did the Alaska Railroad file with the Bureau of Land Management a withdrawal of its railroad right-of-way after it had partially completed the work of locating and staking a claim of location line along the route of the proposed extension of the railroad?

This petition has taken many more pages than should normally be necessary to present the facts to your committees. But this is a most unusual and abnormal situation. Here we have the Alaska Railroad which is under a statutory mandate to provide railroad access to the operating mines in the coalfields of Alaska. Every bureau of the Department of the Interior which has been concerned with the development of the coal resources of Alaska has strongly recommended the extension of the Alaska Railroad up the Healy River Valley. In the last 5 years the Government and the taxpayers have paid over \$1 million in additional costs of purchasing coal for use by the military installations in Alaska because of the lack of railroad access. The Secretary's own Alaska Subcommittee on Coal has unanimously recommended the extension of the railroad and has pointed out that the cost of construction would be returned in 3 or 4 years. The Secretary's special committee to investigate the coal resources of Alaska, headed by Charles W. Connor, formerly head of the Defense Solid Fuels Administration of the Department of the Interior, strongly recommended the extension of the Alaska Railroad up the Healy River Valley.

Yet no extension of the railroad has been constructed and the railroad right-of-way has now been withdrawn. Why? We can conclude only that powerful pressures have been brought to bear on the Secretary of the Interior to keep development of the coal resources in the Healy River Valley locked up. It is in the public interest, in the interest of national defense, and in the interest of the development of the Territory of Alaska that your committee conduct an investigation, hold public hearings, and determine whether the Secretary of the Interior is faithfully carrying out the statutory mandate of Congress.

We respectfully request that a day certain be fixed for holding public hearings and that we be advised of the date thereof at your earliest convenience.

Respectfully submitted.

A. BEN SHALLIT,  
*Cripple Creek Coal Co.*

FAIRBANKS, ALASKA.

MAX BARASH,  
*Attorney at Law.*

WASHINGTON 5, D. C.

#### EXHIBIT A

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
*Juneau, Alaska, March 2, 1950.*

MR. A. BEN SHALLIT,  
*Spokane, Wash.*

DEAR MR. SHALLIT: Reference is made to your letter of February 15 requesting that an extension of the Healy River-Suntrana Road be undertaken to serve your property. The desirability of such a road is recognized. However, the Alaska Road Commission is not at present in a position to undertake this work since it has not been our policy to construct roads into undeveloped mining prospects.

Should the actual development and production be instigated on the property, it is very probable that some cooperative assistance could be worked out whereby the road could be constructed with a portion of the expense shared by you as offered in your letter.

Since you indicate that you will be in Juneau in the near future, it is suggested that you visit our office, at which time more detailed information can be given you.

Very truly yours,

A. F. GHIGLIONE, *Chief Engineer.*

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
Juneau, Alaska, December 20, 1950.

Mr. A. BEN SHALLIT,  
*Cripple Creek Coal Co., Fairbanks, Alaska.*

DEAR MR. SHALLIT: Reference is made to your letter of November 4 which was held for my return as you have previously been advised by Mr. Niemi of this office.

The need for access to your coal properties is recognized and the Alaska Road Commission is interested in seeing that such access is provided.

Mr. Saarela, Territorial mining engineer, has been contacted concerning the area served by your present road and the various mines and developments that would also be served if the road were improved as you have recommended. Mr. Saarela is of the opinion that the district merits development and he has taken the initiative by writing to the Alaska Railroad in order to ascertain whether an extension of the present railroad spur could not be undertaken. It appears that an extension of the railroad would be much more desirable than the road improvement, since the railroad service would eliminate your shorthaul trucking and rehandling of the coal.

If it transpires that the Alaska Railroad will not undertake extension of their line, Alaska Road Commission will program the road improvement, providing the anticipated farm and industrial road funds are appropriated by Congress.

It is not considered necessary for you to visit Juneau at this stage of these studies. However, if you should be passing through, we would appreciate your visiting our office.

Very truly yours,

A. F. CHIGLIONE, *Chief Engineer.*

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EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
Juneau, Alaska, April 3, 1951.

Mr. JAMES P. DAVIS,  
*Director, Office of Territories,  
Department of the Interior, Washington, D. C.*

DEAR MR. DAVIS: The development of the coal deposits of the Healy River Valley up to the present time has been dependent upon the Alaska Railroad for transportation. The Healy River Coal Corp. mine is served directly by the railroad. Several properties further up the valley, including the Usibelli and Cripple Creek mining properties, have been served by the railroad through short access roads of a low standard extending from the properties to the end of the railroad.

Appeals has now been made to the Alaska Road Commission to construct a standard all-weather road up the Healy River Valley from the end of the railroad to the further coal properties. This would involve about 8 miles of road.

The development of the coal resources of the region on any adequate scale is dependent upon railroad transportation. For this reason the matter was referred to the Alaska Railroad through the Alaska Field Committee. A copy of a letter recently received from Col. J. P. Johnson, General Manager of the Alaska Railroad, to Mr. A. Ben Shallit of the Cripple Creek Coal Co., indicates that funds are not available for this new railroad construction.

Road funds are not available either; but in view of the fact that the project was first proposed as a road project, it is desired to urge that the Alaska Railroad provide whatever facilities are required in the Healy River Valley rather than to attempt an unsatisfactory, halfway solution by means of a road. It is my opinion, concurred in by the Territorial Commissioner of Mines, that the area is definitely worthy of development at this time. Unless directed by the Office of Territories, we will leave this matter entirely to the Alaska Railroad. At the same time I wish to emphasize that I think the project is a worthy one for railroad development.

Sincerely yours,

JOHN R. NOYES,  
*Commissioner of Roads for Alaska.*

## EXHIBIT D

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
*Juncau, Alaska, May 9, 1951.*

Mr. A. BEN SHALLIT,  
*Cripple Creek Coal Co.,  
Fairbanks, Alaska.*

DEAR MR. SHALLIT: This letter is written to inform you that it will not be possible for the Alaska Road Commission to undertake any road construction to assist in providing access to your property on Healy River. This decision has been necessary since the Interior Department considers the development should be accomplished by the Alaska Railroad and that no highway funds can therefore be involved.

I am sorry that our previous correspondence may have mislead you and may have caused you to plan on having assistance this season. I hope we will be in a position to work with you at some future date.

Very truly yours,

A. F. GHIGLIONE, *Chief Engineer.*

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EXHIBIT E

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

Washington 25, D. C., April 5, 1951

Fairbanks 07350

## DECISION

A. BEN SHALLIT  
EMIL USIBELLI

## PROTEST DISMISSED—EVIDENCE REQUIRED

On July 22, 1949, coal prospecting permit Fairbanks 07350 was granted to A. Ben Shallit for a period of 4 years. The permit embraces all of section 15, N $\frac{1}{2}$ , SE $\frac{1}{4}$  sec. 16, T. 12 S., R. 6 W., F. M., Alaska, containing 1,120 acres.

By decision of August 29, 1949, a protest by Emil Usibelli against the granting of the permit was dismissed for the reason that Usibelli failed to submit valid grounds for protest.

On July 5, 1950, Shallit filed an application for a preference right coal lease embracing all of the permit land. He claims to have geologically prospected, developed, and mapped sufficient coal resources in the area to warrant mining operations by open-cut and underground methods.

On November 9, 1950, Emil Usibelli, through his local attorney, filed a protest against the issuance of a preference right coal lease of the land to Shallit on the ground that Shallit has not complied with the terms of the permit, did not perform any prospecting work prior to the date he filed the lease application, and only after he was awarded an Army contract for 50,000 tons of coal; that Shallit has now moved equipment on the permit land and has been shipping coal in fulfillment of the Army contract. It is further represented in the protest that the land should be offered for coal lease competitively in order that Usibelli may have an opportunity to submit a bid for the privilege of leasing the land.

Usibelli is the lessee under coal lease Fairbanks 06561, which embraces 1,120 acres of land adjacent to the above-described land. While Usibelli was the high bidder at a sale of the lands embraced in his lease, the lease is, in fact, the outgrowth of Army license operations by him during World War II. The notice of the lease offer contained a provision that "The successful bidder, if one other than Emil Usibelli, must reimburse Usibelli before a lease will be issued for the reasonable value (as appraised by the Department of the Interior) of all permanent improvements necessary for the successful and continued operation of the

property, including the reimbursement for the reasonable cost of stripping operations for coal readily available for mining from which he has not benefited, the airfield, and the tippie, which value shall not exceed \$508,007."

In connection with the protest by Usibelli against the issuance of a preference right lease to Shallit and Shallit's lease application, a field report received in this office on March 26, 1951, shows that Shallit informed the district mining supervisor at Juneau, Alaska, that he has made large expenditures for transportation, prospecting supplies, and engineering equipment, and that prior to July 5, 1950, he expended \$4,675.83 on field geology and pick and shovel operations to determine the extent of the coal reserves in the land and the feasibility of their development. With further reference to expenditures and work, the report reads in part as follows:

"The district mining supervisor confirms that the work was done and the expenditures were made by Shallit prior to July 5 for the development of the property. He further confirms that studies were made prior to July 5 as to the feasibility of constructing roads, financing the operation, and marketing the output, including entering into a contract with the Army for delivery of 50,000 tons of coal.

"The district mining supervisor has visited the property and inspected 19 trenches of various sizes and depths dug by Shallit or his representative to determine the presence of coal reserves in addition to those originally examined. Between July 5 and September 20 the applicant has expended \$71,225 and has made commitments in connection with the exploration and mining of coal in excess of \$264,000. As of September 20, in excess of \$150,000 has been directly committed with the \$71,225 actually expended. Camp structures have been erected and more than 6 miles of road has been constructed from the property to the Alaska Railroad."

As of this date, the records indicate that Shallit has expended approximately \$112,000 in connection with operations upon the land embraced in his permit, which land constitutes a leasing block.

Section 3 of the act of October 20, 1914 (38 Stat. 742), as amended March 4, 1921 (41 Stat. 1363, 48 U. S. C. 444), contains a provision to the effect that if, within the time specified in a coal permit issued pursuant to the act, a permittee shows that the land embraced in his permit contains coal in commercial quantities, he shall be entitled to a coal lease under the act for all or any part of the permit land.

One of the conditions of the permit is that the permittee is to remove from the premises only such coal or other materials as may be necessary to prospecting work, keep a record of all coal mined and disposed of and pay royalty on the coal mined at the rate of 10 cents per ton of 2,000 pounds to the District Land Office not later than during the calendar month succeeding that during which the coal was disposed of.

No express provision is made in the regulations with respect to mining or to the rate of royalty after the filing of a lease application. In that connection attention is directed to the findings of the Secretary of the Interior in the case of preference right coal-lease application Seattle 04758, now Spokane 015591, that " \* \* it was not contemplated that after a permittee had established the existence of coal in commercial quantities and had filed an application for a lease he should be required to cease all mining operations, \* \* \*. Until the lease is actually executed the applicant must of course continue to deposit the amount \* \* \*, as provided in the permit."

In view of the foregoing, the protest is without merit and is dismissed subject to Usibelli's right of appeal to the Secretary of the Interior within 30 days from service of notice hereof.

The records fail to disclose that Usibelli or his attorney served a copy of the protest on Shallit, but since no valid ground for protest has been shown, it will not be necessary for copy of same to be served on him. However, a copy of this decision which contains substantially all of the allegations made in the protest will be served on Shallit through his local attorney.

Furthermore, in view of the findings as a result of a field investigation, it is the opinion of this office and the Geological Survey that Shallit has earned the right to a coal lease of the land embraced in his permit subject to a royalty of 15 cents a ton, mine run, a minimum investment of \$112,000 recognized as having already been expended, a bond in the sum of \$5,000 and the other provisions set out in the standard coal lease form 4-031a.

Before action can be taken with respect to the issuance of a coal lease of the land to Shallit, it will be necessary for him to comply with the following requirements:

(a) Execute and file the five attached coal-lease forms 4-031a, after he has placed his initials in the margin opposite section 1, article IV at the bottom of page 1, and opposite the provisions relative to fair employment practices and reasonable materials at the top of page 3.

(b) Execute and file a \$5,000 bond with approved corporate surety on the form attached or his personal bond of \$5,000 accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the personal bond with proper conveyance to the Secretary of the Interior of full authority to sell such securities in case of default under the lease terms.

(c) Pay the first year's rental, amounting to \$280. Remittance of that amount should be sent to the manager, land office, Fairbanks, Alaska. If payment is made by certified check or money order, it should be drawn to the order of the Treasurer of the United States.

(d) Submit a showing that he paid the rental specified.

Shallit is allowed 30 days from service of notice to comply with the requirements of this decision or to appeal to the Secretary of the Interior, failing in which his lease application will be finally rejected and such action taken as the facts may then warrant.

In the event an appeal from this decision is taken by Usibelli such an appeal must be accompanied by a showing that a copy thereof has been served on Shallit.

All evidence in response hereto should be filed in this office and refer to the serial number listed above.

ROSCOE BELL,  
*Associate Director.*

Copy to: Emil Usibelli, Region VII, Anchorage, Alaska, GS 2, LO, Fairbanks, Alaska, Northcutt Ely; M. Barash.

# EXHIBIT F

## UNITED STATES DEPARTMENT OF THE INTERIOR

### OFFICE OF THE SECRETARY

Washington 25, D. C., October 2, 1951

A-26277

EMIL USIBELLI.

A. BEN SHALLIT.

Fairbanks 07350.

Protest against issuance of coal lease  
dismissed.

Affirmed.

### APPEAL FROM THE BUREAU OF LAND MANAGEMENT

On July 22, 1949, a coal prospecting permit on all of section 15 and the N $\frac{1}{2}$  and the SE $\frac{1}{4}$  of section 16, T. 12 S., R. 6 W., F. M., Alaska, covering 1,120 acres of land was issued to A. Ben Shallit pursuant to section 3 of the act of October 20, 1914, as amended by the act of March 4, 1921 (41 Stat. 1363; 48 U. S. C., 1946 ed., sec. 444). On July 5, 1950, Mr. Shallit applied for a preference-right coal lease on the lands included in his prospecting permit, in accordance with section 3 of the act of October 20, 1914, as amended.

In a decision dated April 5, 1951, the Associate Director of the Bureau of Land Management dismissed a protest filed by Emil Usibelli against the issuance of a preference-right coal lease to Mr. Shallit. The decision of April 5 held also that Mr. Shallit was entitled to the lease applied for subject to the execution and filing of a satisfactory bond, the payment of the first year's rental, and the execution and filing of the coal lease forms.

On May 21, 1951, a further protest against the issuance of the lease to Mr. Shallit was filed on behalf of Mr. Usibelli. Counsel for Mr. Shallit submitted an answer to the protest, and a reply brief was filed by Mr. Usibelli. Mr. Usibelli's protest is regarded as an appeal to the head of the Department from the Associate Director's decision of April 5.

It appears that Mr. Shallit has complied with the requirements of the Associate Director's decision and that the issuance of a lease to him is dependent on the outcome of the appeal.

In protesting against the issuance of a lease to Mr. Shallit, Mr. Usibelli contends that the Department lacks statutory authority to issue a prospecting permit or a preference-right lease covering the lands included in Mr. Shallit's prospecting permit because the lands are known to contain coal and are subject to leasing only through competitive bidding. This contention cannot be sustained.

Section 3 of the Alaskan Coal Leasing Act (act of October 20, 1914, 38 Stat. 741, 742; 48 U. S. C., 1946 ed., sec. 434) was amended by the act of March 4, 1921, *supra*, which added the following provision:

"\* \* \* That where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area in Alaska, the Secretary of the Interior may issue prospecting permits for a term of not to exceed 4 years, under such rules and regulations and conditions as to development as he may prescribe, to applicants qualified under this act, for not to exceed 2,560 acres, and if within the time specified in said permit the permittee shows to the Secretary of the Interior that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this act for all or any part of the land in his permit."

Neither the words of the statute nor its legislative history provide a valid basis for the protestant's assertion that the statute authorizes the issuance of prospecting permits only on lands which are not known to contain coal deposits. It seems clear that the phrase "determine the existence or workability of coal deposits in any unclaimed, undeveloped area in Alaska" brings within the purview of the act of the authority to issue a prospecting permit in order to determine the workability of existing coal deposits. This interpretation was adopted by the Secretary of the Interior in discussing the effect of the proposed amendment before it was enacted.<sup>1</sup> Likewise, this has been the administrative interpretation of the act as is indicated by regulations issued pursuant to the act which require, *inter alia*, that the application for the permit include information concerning the condition of coal occurrences, so far as determined, and the description of workings and outcrops of coal beds, if any (43 C. F. R. 70, 5 (d); and see 43 C. F. R. 70.1).

Accordingly, it is concluded that the act of March 4, 1921, authorizes the issuance of prospecting permits on lands known to contain coal deposits where it is necessary to determine the workability of the deposits by prospecting or exploratory work.

The meaning of the term "workability" as it is used in connection with coal deposits involves several considerations which have been summarized in Geological Survey Bulletin No. 537<sup>2</sup> as follows:

"The workability of any coal will ultimately be determined by two offsetting factors—(1) its character and heat-giving quality, whence comes its value; and (2) its accessibility, quantity, thickness, depth, and other conditions that affect the cost of its extraction. It must be considered a workable coal if its value, as determined by its character and heat-giving quality, exceeds the cost of extraction, either as judged by actual experience at the point where it is found or as judged by actual experience on similar coals similarly situated elsewhere. There are no absolute limits to any of the factors. The mining of 1 inch of coal that may involve the mining of 3 feet of rock is physically possible but would not pay. Most unworkable coal beds lack 1 or more of 3 things: Quality, thickness, accessibility—that is, they are too poor, too thin, or too deep."

With reference to the lands included in Mr. Shallit's application for a prospecting permit, the Geological Survey reported that prospecting was necessary to determine the presence of coal in workable quantity and quality. Although there were known outcrops of coal on the land,<sup>3</sup> there is nothing in the reports cited by the protestant or in the records of the Department which invalidate a conclusion that the workability of the coal in this land was not established at the time when the permit was issued to Mr. Shallit.

As the report by the Geological Survey with respect to Mr. Shallit's permit application indicated that the workability of coal in the lands applied for was undetermined, the issuance of the prospecting permit was within the authority granted by the act of March 4, 1921.

<sup>1</sup> H. Rept. No. 1266, 66th Cong., 3d sess. (1921), letters dated January 28 and 14, 1921, from the Secretary of the Interior to the chairman of the Committee on Public Lands.

<sup>2</sup> George Otis Smith and others, *The Classification of the Public Lands* (1913), pp. 67, 68. See also pp. 66–79.

<sup>3</sup> Bureau of Mines, *Report of Investigations* 3951 (November 1946), tables 3 and 4, p. 14.

Mr. Usibelli asserts also that in September 1946, he was informed that the Department considered that the lands involved here were available for leasing only by competitive bidding, and that the issuance of a prospecting permit, which is not subject to competitive bidding, to Mr. Shallit was unfair.

The records of the Department indicate that in 1946 Mr. Usibelli's lease application Fairbanks 05490, filed pursuant to section 3 of the act of October 20, 1914, as amended (48 U. S. C., 1946 ed., sec. 434), for lands other than those here involved was under consideration by the Department. Mr. Usibelli had appealed to the head of the Department from a decision by the Commissioner of the General Land Office<sup>4</sup> which rejected the application because the lands applied for were temporarily reserved for the use of the Army. On the basis of a report by the Geological Survey, a tentative proposal was made suggesting that Mr. Usibelli consider applying for a lease of two other tracts which were available for leasing. Part of one of the proposed tracts (SW $\frac{1}{4}$  sec. 15, E $\frac{1}{2}$  sec. 16, T. 12 S., R. 6 W.) is land which is now included in Mr. Shallit's prospecting permit.

The regulations issued pursuant to 48 United States Code, 1946 edition, section 434, indicate that all applications for leases filed under that statutory provision are subject to publication and competitive bidding (43 C. F. R. 70.13, 70.14). As required by those regulations, it was contemplated at the time when Mr. Usibelli's application was being considered that any lease issued to Mr. Usibelli would be subject to competitive bidding. There is no evidence that Mr. Usibelli desired anything other than a lease issued under 48 United States Code, 1946 edition, section 434, on the lands for which he applied.

According to a letter dated October 7, 1946, addressed to the head of the Department from Mr. Usibelli's attorney, Mr. Usibelli refused to apply for a lease of the tract which included parts of sections 15 and 16, as he considered that it was impossible to work the tract because of its inaccessibility for mining. It was stated further in the letter of October 7 that opening up the land in sections 15 and 16 would require driving 320 feet of railroad tunnels which would cost between 50 and 75 thousand dollars, and the construction of railroad yards and bunkers which would cost approximately the same amount.

Thus, in 1946, Mr. Usibelli refused to consider mining part of the lands now in Mr. Shallit's permit, substantially because he believed that they were unworkable within the meaning of that term as it is used by the Geological Survey.

There is nothing in the record of Mr. Usibelli's lease application (Fairbanks 05490) indicating that Mr. Usibelli ever applied for and was denied a prospecting permit on the lands now included in Mr. Shallit's permit. Likewise, there is no evidence that the Geological Survey gave consideration to the question whether the lands in sections 15 and 16 were available for a prospecting permit in 1946. As no further action was taken by Mr. Usibelli with respect to the proposal to include parts of sections 15 and 16 in his lease application, and as he did not apply for a prospecting permit under the act of March 4, 1921, there is no factual basis for the inference that sections 15 and 16 were not available to him for prospecting in 1946. Until Mr. Shallit's application for a prospecting permit was filed in 1949, there was no occasion for an administrative determination as to the availability of the lands in sections 15 and 16 for prospecting.

In the protest against the issuance of a preference-right lease, Mr. Usibelli asserts further that no prospecting on the land involved here was done before Mr. Shallit filed his application for a lease. Mr. Usibelli submitted affidavits by three other persons indicating that none of them found evidence of coal prospecting when they examined the accessible portions of the land late in July 1950.

The prospecting permit which was issued to Mr. Shallit provides that the permittee shall begin prospecting work within 90 days from the day of the permit and shall diligently continue prospecting by the best known methods.

The regulation (43 C. F. R. 70.7) relating to applications for a preference-right lease by a permittee who shows that the land contains coal in commercial quantities provides in part as follows:

"An application for lease under this action should \* \* \* set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit \* \* \*."

Mr. Shallit's application for a lease, and the report of the district mining supervisor concerning the extent of the prospecting work done on the land substantiate the ruling in the Associate Director's decision that Mr. Shallit has

<sup>4</sup> Effective July 16, 1946, the General Land Office was abolished and its functions were transferred to the Bureau of Land Management by sec. 403 of Reorganization Plan No. 3 of 1946 (11 F. R. 7875, 7876, 7776).



earned the right to a preference-right lease on the lands included in his prospecting permit. The evidence in the record sustains the conclusion that Mr. Shallit has shown that the land contains coal in commercial quantities, and that he has complied with the terms of his permit and the applicable regulations. In these circumstances, Mr. Shallit is entitled to a preference-right lease in accordance with the act of March 4, 1921.

For the above-mentioned reasons, I conclude that the protest against the issuance of the preference-right lease to Mr. Shallit does not state a valid basis for a refusal by the Department to issue the lease, and that the decision dismissing the protest was proper.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509; 14 F. R. 307), the decision by the Associate Director of the Bureau of Land Management is affirmed.

W. H. FLANERY, *Acting Solicitor*.

#### EXHIBIT G

#### UNITED STATES DEPARTMENT OF THE INTERIOR

#### OFFICE OF THE SECRETARY

*Washington 25, D. C., December 6, 1951.*

A-26277 (Supp.)

EMIL USIBELLI

A. BEN SHALLIT

Fairbanks 07350

Petition for reconsideration of departmental decision.

Petition denied.

#### SUPPLEMENTAL DECISION

On October 24, 1951, Emil Usibelli filed a petition requesting, in effect, reconsideration of a departmental decision (A-26277) dated October 2, 1951, which dismissed Mr. Usibelli's protest against favorable action being taken on an application from A. Ben Shallit for a preference-right coal lease on 1,120 acres of land described as sec. 15 and the N $\frac{1}{2}$  and the SE $\frac{1}{4}$  of sec. 16, T. 12 S., R. 6 W., Fairbanks meridian, Alaska. This land is situated within the area commonly known as the Nenana coal field.

A brief in opposition to the petition was filed on behalf of Mr. Shallit. On October 31, 1951, counsel for both parties presented oral argument on the petition.

A coal-prospecting permit on the land involved in this controversy was issued to Mr. Shallit under date of July 22, 1949. The issuance of the permit was based, and the request for the issuance to Mr. Shallit of a preference-right lease on the same land is based, upon the statutory provision which is codified in 48 United States Code, 1946 edition, section 444, and which reads in pertinent part as follows:

"Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area in Alaska, the Secretary of the Interior may issue prospecting permits for a term of not to exceed 4 years, under such rules and regulations and conditions as to development as he may prescribe, \* \* \* for not to exceed 2,560 acres, and if within the time specified in said permit the permittee shows to the Secretary of the Interior that the land contains coal in commercial quantities, the permittee shall be entitled to a lease \* \* \* for all or any part of the land in his permit."

1. In the first place, the petitioner contends that, as a matter of law, coal prospecting permits cannot be issued under section 444 of title 48, United States Code, on any land within the area commonly known as the Nenana coalfield, and, therefore, that the document which was issued to Mr. Shallit in 1949 was only a purported prospecting permit which was ineffective to confer any rights upon him respecting the land covered by the document.

It is asserted by the petitioner, in connection with this point, that none of the land within the limits of the Nenana coalfield comes within the category of an "undeveloped area," as that term is used in section 444 of title 48, United States Code. In support of this view, the petitioner refers to the portions of sections 1 and 3 of the act of October 20, 1914 (38 Stat. 741, 742; 48 U. S. C., 1946 edition, secs. 432, 434) which provide, respectively, as follows:

"That the Secretary of the Interior be, and hereby is, authorized and directed to survey the lands of the United States in the Territory of Alaska known to be valuable for their deposits of coal, preference to be given first in favor of surveying lands within those areas commonly known as the Bering River, Matanuska, and Nenana coalfields, and thereafter to such areas or coalfields as lie tributary to established settlements or existing or proposed rail or water transportation lines \* \* \* " (sec. 1).

"That the unreserved coal lands and coal deposits shall be divided by the Secretary of the Interior into leasing blocks or tracts of 40 acres each, or multiples thereof, and in such form as in the opinion of the Secretary will permit the most economical mining of the coal in such blocks, but in no case exceeding 2,500 acres in any one leasing block or tract; and thereafter, the Secretary shall offer such blocks or tracts and the coal, lignite, and associated minerals therein for leasing, and may award leases thereof through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, to any person above the age of 21 years who is a citizen of the United States, or to any association of such persons, or to any corporation or municipality organized under the laws of the United States or of any State or Territory thereof \* \* \* " (sec. 3).

The petitioner reads the provision of section 1 set out above as constituting a declaration by the Congress that the entire area within limits of the Nenana coalfield is known to be valuable for coal, and he believes that this takes the whole area outside any concept of an "undeveloped area" as that term is used in section 444 of title 48, United States Code. The petitioner then proceeds to the conclusion that land within this area can be made available for coal development only pursuant to leases issued under the quoted portion of section 3. Thus, it is the petitioner's view that the whole of the area within the limits of the Nenana coalfield is, in effect, withdrawn by Congress from the scope of the provisions of section 444 of title 48, United States Code, authorizing the issuance of coal prospecting permits on any "undeveloped areas" in Alaska.

This Department's past administrative construction of the provisions of law mentioned in this supplemental decision has been contrary to the view urged by the petitioner. In its administration of these provisions of law, the Department has not regarded all land within the limits of the Nenana coalfield as necessarily outside the scope of section 444 of title 48, United States Code, and thus subject to coal development only under leases issued pursuant to section 3 of the 1914 act. Section 444 has been in existence since March 4, 1921 (41 Stat. 1363), and, since that date, a substantial number of coal prospecting permits under the provisions of this legislation have been issued by the Department on land within the area of the Nenana coalfield.<sup>1</sup> The earliest of these permits was issued on February 15, 1922.

The petitioner's argument does not convince me that the Department's long-standing interpretation of section 444 of title 48, United States Code, as authorizing the issuance, in proper cases, of coal prospecting permits on land within the area of the Nenana coalfield has been erroneous.

The legislation which is codified in section 444, title 48, United States Code, was originally enacted on March 4, 1921 (41 Stat. 1363) in the form of an

<sup>1</sup> The following coal prospecting permits on land within the Nenana coalfield have been issued by the Department:

Permittee	Permit No.	Date issued	Acreage
Healy River Coal Corp.....	Fairbanks 01068	Feb. 15, 1922	200.0
Broad Pass Coal & Development Co.....	Fairbanks 01053	Feb. 16, 1922	2,560.0
J. Van Orsdel.....	Fairbanks 01060	Apr. 29, 1922	1,920.0
Mount McKinley Bituminous Coal Corp.....	Fairbanks 01099	Feb. 17, 1923	2,560.0
M. Singleton.....	Fairbanks 01091	May 17, 1923	1,280.0
R. F. Roth.....	Fairbanks 01109	June 23, 1923	1,920.0
E. Van Kirk.....	Fairbanks 01105	June 28, 1923	640.0
R. Calderhead.....	Fairbanks 01104	Nov. 13, 1923	1,280.0
Val Diebold.....	Fairbanks 04684	Aug. 14, 1942	2,564.34
O. E. Maki, Mike Myntti.....	Fairbanks 05084	Aug. 20, 1943	619.5
U. S. Army.....	Fairbanks 06089	Apr. 5, 1946	1,120.0
W. Wurtz.....	Fairbanks 06292	May 14, 1948	640.0
Wilson J. Smith.....	Fairbanks 07345	July 1, 1949	2,548.88
A. B. Shallit.....	Fairbanks 07350	July 22, 1949	1,120.0
O. E. Maki, Nels Jackson.....	Fairbanks 06771	May 24, 1950	640.0

NOTE.—Fairbanks 01100 was amended Oct. 26, 1923, to include an aggregate of 2,080 acres.

amendment adding a proviso to section 3 of the act of October 20, 1914.<sup>2</sup> Thus, this authorization for the issuance of coal prospecting permits was actually made a part of and was superimposed upon section 3 of the 1914 act, and it provided a means whereby coal prospecting permits could be issued on any "undeveloped area" in Alaska which otherwise met the requirements of the amendment, including, of course, undeveloped areas which theretofore had been open to coal development only under the leasing procedure provided for in the original portion of section 3 enacted in 1914. I find nothing in the language of the 1921 amendment, or in its legislative history, which warrants the conclusion that Congress intended to except from its provisions all land within the limits of the Nenana coalfield, irrespective of whether particular tracts are or are not in fact undeveloped from the standpoint of coal production. Hence, I do not believe that the Department has acted improperly heretofore in taking the view that each application for a coal prospecting permit under the 1921 amendment, whether it relates to land situated within the limits of the Nenana coalfield or elsewhere, is to be considered on its merits, in relation to the facts of the particular case.

For the reasons indicated above, I regard as untenable the petitioner's primary contention that the whole of the area known as the Nenana coalfield is necessarily outside the scope of the provisions of section 444 of title 48, United States Code, authorizing the issuance of coal prospecting permits on undeveloped land in Alaska.

II. The petitioner's next contention is that, in any event, the coal prospecting permit involved in this controversy should not have been issued to Mr. Shallit in view of the fact that, according to petitioner, neither prospecting nor exploratory work was "necessary to determine the existence or workability of coal deposits" on the land covered by the permit.

With regard to this point, the petitioner refers to official reports by this Department which were outstanding at the time when the prospecting permit was issued to Mr. Shallit and which showed the presence of substantial quantities of coal on the land covered by the Shallit prospecting permit, and he also refers to the fact that, at the time of the issuance of the prospecting permit to Mr. Shallit, successful coal-mining operations were being conducted on land contiguous to that covered by the Shallit prospecting permit.

There appears to be no doubt that "the existence \* \* \* of coal deposits" on the land covered by the Shallit prospecting permit was known at the time of the issuance of the permit. This did not, however, necessarily require the disapproval of Mr. Shallit's application for a coal prospecting permit. It will be noted that the use of the disjunctive "or" in the statutory standard, "the existence or workability of coal deposits," made it necessary for the official who passed upon Mr. Shallit's application for a coal prospecting permit to consider—even though the existence of coal deposits on the land applied for was known—the question whether prospecting or exploratory work was "necessary to determine the \* \* \* workability" of the coal deposits on the land.

The record indicates that the prospecting permit was issued because of the belief of the Associate Director of the Bureau of Land Management, who issued the permit under a delegation of secretarial authority, that prospecting was necessary in order to determine the workability of the coal deposits on the land, from the standpoint of quantity and quality. The making of this determination involved an exercise of judgment upon the part of the Associate Director. He was aided in this respect by advice which had been received from the Geological Survey in a report dated January 14, 1949.

If the petitioner believed that the Associate Director was mistaken in deciding that prospecting was necessary in order to determine the workability of the coal deposits on the land applied for by Mr. Shallit, the petitioner should have taken advantage of his right to secure a timely review of the matter by the head of the Department. It appears that the petitioner was cognizant of the pendency of Mr. Shallit's application for a coal prospecting permit, and that he filed a protest against the approval of the application. This protest was dismissed by the Acting Director of the Bureau of Land Management in a decision dated August 29, 1949.<sup>3</sup> Formal notice of this action was received by the petitioner on

<sup>2</sup> The amendatory statute erroneously referred to the basic legislation as the act approved October "24," 1914.

<sup>3</sup> The protest should have been acted upon, of course, before any prospecting permit was issued to Mr. Shallit. In this connection, the record indicates that the prospecting permit, although dated July 22, 1949, was not transmitted to Mr. Shallit until October 6, 1949, which was after the dismissal of Mr. Usibelli's protest.

September 20, 1949. The petitioner then had a right to appeal to the head of the Department respecting the dismissal of his protest, but he failed to do so. Upon the expiration of the period allowed for the taking of such an appeal, the determinations made in the Bureau of Land Management regarding the issuance of the coal prospecting permit to Mr. Shallit and the dismissal of the petitioner's protest became final.

Thus, a legal relationship between the Government and Mr. Shallit, under which he obtained as to the land involved in this controversy the rights provided for in section 444, title 48, United States Code, was created upon the issuance of the coal prospecting permit to him and the expiration of the period that was available to the petitioner under the Department's rules of practice for the taking of an appeal to the head of the Department with respect to the handling of the matter in the Bureau of Land Management. Obviously, the Shallit prospecting permit could not be invalidated at this late date on a dilatory showing by the petitioner that the officials of the Bureau of Land Management were mistaken in concluding that prospecting was necessary in order to determine the workability of the coal deposits on the land applied for by Mr. Shallit. An utterly chaotic condition in administration would result if legal rights, established as the result of the bona fide exercise of judgment by Bureau officials in the performance of delegated secretarial functions, were subject to cancellation upon the basis of the sort of belated review by the head of the Department requested by the petitioner.

III. The petitioner adverts to what he regards as the unfairness of issuing a coal prospecting permit to Mr. Shallit, in view of the fact that, when the petitioner discussed with representatives of the Department in 1946 his desire to obtain land in the Nenana coalfield for coal development, the Department's representatives did not mention the possibility of his obtaining a coal prospecting permit, but, instead, only discussed the possibility of his obtaining a coal lease through competitive bidding.

As stated in the departmental decision of October 2, 1951, the records of the Department indicate that the 1946 contacts with the petitioner revolved around his desire to obtain a coal lease on land within the Nenana coalfield, and that the petitioner did not at that time reveal any interest in obtaining a coal prospecting permit.

Moreover, any objection of this sort that the petitioner may have had to the issuance of a coal prospecting permit to Mr. Shallit should have been brought to the attention of the head of the Department at an appropriate time through the utilization of the appeal procedure provided for that purpose. (See the discussion in part II above.) As the Associate Director of the Bureau of Land Management had lawful authority to issue a coal prospecting permit to Mr. Shallit on the land involved in this controversy, it is now too late for the petitioner to seek to invalidate the permit upon the ground that the Bureau official, in the exercise of his discretion, ought not to have issued the permit.

IV. A further argument is made by the petitioner to the effect that Mr. Shallit has not complied with certain of the conditions prescribed in his coal prospecting permit, and, therefore, that the permit is subject to cancellation and cannot form a proper predicate for the issuance of a preference-right lease pursuant to section 444, title 48, United States Code, on the land covered by the permit.

The petitioner, in this connection refers to the fact that the coal prospecting permit was issued to Mr. Shallit on the condition that he would "remove from said premises only such coal \* \* \* as may be necessary to prospecting work," and on the condition that he would "begin prospecting work within 90 days from date hereof and \* \* \* diligently prosecute the same during the period of such permit in accordance with the \* \* \* best-known methods." The petitioner asserts that Mr. Shallit has failed to comply with these conditions.

A. With regard to the petitioner's contention that Mr. Shallit has failed to comply with the condition in his coal prospecting permit to the effect that he would "remove from said premises only such coal \* \* \* as may be necessary to prospecting work," the record shows that Mr. Shallit has mined 50,249.15 tons of coal from the land covered by his coal prospecting permit.

In connection with this point, it appears that the mining of the substantial tonnage of coal mentioned in the preceding paragraph was begun in November 1950, several months after Mr. Shallit made application on July 5, 1950, for a preference-right coal lease on the land covered by his coal prospecting permit.

In the administration of coal lands on the public domain, it has been the policy of the Department for many years to allow the holder of a coal prospecting permit to begin the mining of coal in commercial quantities from the land upon the filing of an application for a preference-right coal lease on the same land. This goes

back to a departmental decision dated November 11, 1922, in the case of the Elk Coal Co. (A-3333),<sup>4</sup> which involved a situation where a company holding a coal prospecting permit had mined more than 25,000 tons of coal after the filing of an application for a preference-right coal lease on the same land and prior to the issuance of a lease to the company. The prospecting permit held by the company in that case, like the prospecting permit held by Mr. Shallit in the present case, contained a condition to the effect that the permittee would "remove from the premises only such coal \* \* \* as may be necessary to prospecting work." In the departmental decision, First Assistant Secretary Finney stated:

"No express provision is made in the regulations with respect to mining or to the rate of royalty after the filing of a leasing application, but it was not contemplated that after a permittee had established the existence of coal in commercial quantities and had filed his application for a lease he should be required to cease all mining operation, and in general, in the absence of some special reason for contrary action in a particular case, it is believed that the rate of royalty as fixed in the lease should be considered applicable from the date of the application therefor. \* \* \*"

The policy mentioned above was incorporated in departmental instructions issued on May 23, 1924 (50 L. D. 501), the following language being used (p. 503):

"Where a permittee has discovered coal and has applied for a lease, such application supersedes the permit, and when lease is granted it relates back to the time of application. There can be no interval, for the permittee must account for the coal in accordance with the terms of his permit until lease is applied for, and thereafter in accordance with the terms of the lease. \* \* \*"

The rule that an application for a preference-right coal lease supersedes the coal-prospecting permit on which it is based was reaffirmed as recently as June 12, 1951, in the case of Leonard E. Hinkley and Stevens T. Harris, A-26187.

Although the precedents cited above respecting the point now under consideration related to coal-prospecting permits issued on lands in the continental United States, they would be equally applicable to coal-prospecting permits issued on lands in Alaska. Except for the length of time for which coal-prospecting permits may be issued, the statutory provisions governing the issuance of coal-prospecting permits on lands in Alaska are the same as the statutory provisions governing such permits on lands in the United States. (See 48 U. S. C., 1946 edition, sec. 444, and 30 U. S. C., 1946 edition, supp. IV, sec. 201 (b).) Likewise, the provisions of the departmental regulation (43 CFR 70.4) defining the rights of permittees under coal-prospecting permits on Alaskan lands are the same as the provisions of the departmental regulation (43 CFR 193.20, 16 F. R. 2892) defining the rights of permittees under coal prospecting permits issued on lands in the continental United States; and the same language respecting the point now under consideration is used in coal prospecting permits on Alaskan lands and in coal prospecting permits on lands in the continental United States.

Inasmuch as the mining of coal in commercial quantities by Mr. Shallit from the land covered by his coal prospecting permit did not occur until after the filing on July 5, 1950, of his application for a preference-right coal lease on the same land, his action in proceeding with the development of the property on a commercial basis was in accordance with the long-established departmental policy of regarding such development as permissible after the filing by a permittee of an application for a preference-right coal lease. Hence, the Department would not be justified in departing from its previous policy, extending over a period of many years, by attempting in this case to cancel Mr. Shallit's coal-prospecting permit upon the ground that, prior to the actual receipt of a coal lease, he removed coal in commercial quantities from the land covered by his coal-prospecting permit.

B. We turn now to the petitioner's contention that Mr. Shallit has failed to comply with the condition in his prospecting permit to the effect that he would "begin prospecting work within 90 days from date hereof and \* \* \* diligently prosecute the same during the period of such permit in accordance with the \* \* \* best known methods."

The record indicates that, although Mr. Shallit's prospecting permit was issued under the date of July 22, 1949, the permit actually was not transmitted to Mr. Shallit until October 6, 1949. At Mr. Shallit's request, the manager of the district land office at Fairbanks thereafter granted to him an extension until June 1, 1950, of the time for the beginning of prospecting work under the permit. This action appears to have been proper under the circumstances, and it is rati-

<sup>4</sup> Seattle 04758, now Spokane 015591.

fied. In this connection, it should be noted that, at the time of the receipt of the prospecting permit by Mr. Shallit, the 90-day period mentioned in the permit for the beginning of the prospecting work was about to expire, and, in addition, that the onset of severe winter weather was imminent. Compliance with the 90-day requirement in the permit with regard to the beginning of prospecting work was infeasible because of the delay in delivering the prospecting permit to Mr. Shallit.

The record contains copies of reports submitted by Mr. Shallit to the district mining supervisor in Juneau for each month from March 1950 through September 1951. These reports, which were sworn to by Mr. Shallit, indicate the extent of the prospecting and exploratory work performed each month upon the area covered by the prospecting permit, prior to the beginning of the commercial mining of coal from the area.

According to Mr. Shallit's monthly reports for March and April 1950, Mr. Shallit made engineering and economic studies regarding the area covered by the permit and the preparation and transportation of coal, and he also made a reconnaissance study of the geology of the area. Corroborating evidence is provided by a report from the district mining supervisor at Juneau, which states that in April 1950 Mr. Shallit conferred with the supervisor relative to prospecting and marketing studies which Mr. Shallit was making.

The monthly reports which Mr. Shallit submitted for May and June 1950 state that the prospecting and exploratory work completed during these months consisted of detailed mapping of surface exposures, tracing of outcrops, and the exposure of cross sections by surface trenching,<sup>4</sup> measurement of the thickness of exposures, geological interpretation of the continuation of beds, detailed study of transportation and loading site problems, and completion of engineering reports. On June 26, 1950, Mr. Shallit submitted to the district mining supervisor a proposed development and mining plan, called a status report, which dealt with various technical problems involved in mining the area covered by the permit. Eight detailed maps were enclosed with the report.

Mr. Shallit's monthly reports for the period from July 1950 through October 1950 show that trenching and stripping operations within the permit area were carried on, and that a road, camp buildings, a loading site, and at least six bridges were built. A corroborating report from the district mining supervisor indicates that Mr. Shallit's prospecting operations during this period uncovered a bed of coal approximately 350 feet long in the footwall of bed No. 1; that experimental stripping was performed on beds Nos. 2, 3, and 6; that the coal in bed No. 2 was frozen; and that bed No. 3 had been trenched with a bulldozer.

Mr. Shallit's subsequent monthly reports indicate that the commercial mining of coal (under his application for a preference-right coal lease) began in November 1950.

Controverting evidence has been submitted by the petitioner in the form of affidavits from himself and three other persons stating, in substance, that on or about August 1, 1950, they examined parts of the area covered by Mr. Shallit's prospecting permit and found no evidence to indicate that any prospecting had been done by Mr. Shallit within the area. In addition, the petitioner's affidavit stated that he had examined the permit area from the air and had found no evidence that prospecting work had been done by Mr. Shallit.

Upon considering the whole record, it is concluded that the preponderance of the evidence supports the finding that, during the period between June 1, 1950 (when Mr. Shallit was required to begin his prospecting operations under the permit, as modified), and the beginning of the commercial mining of coal from the permit area in November 1950 pursuant to Mr. Shallit's application for a preference-right coal lease, Mr. Shallit complied with the condition in his prospecting permit to the effect that he would diligently prosecute prospecting work on the permit area in accordance with the best known methods, and that, as a result of Mr. Shallit's operations, it was demonstrated that the land contains coal in commercial quantities. That being so, Mr. Shallit is entitled, under the provisions of 48 United States Code, 1946 edition, section 444, to a lease on the land covered by his coal prospecting permit.

<sup>4</sup> The nature of the trenching was subsequently explained by Mr. Shallit in a deposition, a copy of which was furnished to the Department by the petitioner. According to Mr. Shallit, it consisted in the digging of holes which varied in size from 6 inches to 8½ feet deep and from 2 feet wide to 8 or 10 feet wide. Mr. Shallit described at least 18 different locations within the permit area where he had dug these holes. A report in the record indicates that the district mining supervisor and the Territorial mining inspector inspected the permit area in September 1950 and noted a series of 19 pits and trenches which had been dug in order to check the geological structures and expose coal within the permit area.

## V

For the reasons indicated above, it is concluded that no error was made in the departmental decision dated October 2, 1951.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, order No. 2509; 14 F. R. 307), the petition for reconsideration of the departmental decision (A-26277), dated October 2, 1951, is denied.

MASTIN G. WHITE, *Solicitor*.

## EXHIBIT H

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
*Juneau, Alaska, February 25, 1952.*

Mr. A. BEN SHALLIT,  
*Cripple Creek Coal Co.,  
Fairbanks, Alaska.*

DEAR MR. SHALLIT: Reference is made to your letter of February 20, 1952, concerning the recent plans for providing an all-weather approach road up the Healy River to the Roth property. The statement received from your Washington attorney is correct insofar as the plans of the Alaska Road Commission are concerned. However, to date no funds are available for the initiation of this work.

As you will recall, our previous efforts to construct a road up the Healy River were stopped when the possibility of the extension of the Alaska Railroad spur entered the picture. At a recent meeting in Washington, D. C., it was decided that the construction of a road by the Alaska Road Commission would most quickly provide the needed access to the coal reserves. As a result of this meeting the Alaska Road Commission was instructed to make surveys and prepare estimates for the project in anticipation of funds for the construction.

No funds for this work are included in our budget estimates now before Congress, and unless an emergency appropriation is received there can be no work undertaken this coming season. Since I have no information regarding possible emergency funds for this work, I am not able to give you any assurance upon which to base your judgment in submitting bids to the military for a coal contract.

Sincerely yours,

A. F. GHIGLIONE,  
*Commissioner of Roads for Alaska.*

## EXHIBIT I

*Seattle, Wash., June 25, 1952.*

A. BEN SHALLIT,  
*Cripple Creek Coal Co.,  
Fairbanks, Alaska:*

Request immediate advice by wire or telephone concerning additional tentative quantities of coal for Ladd and Eielson Air Force Bases. Assuming availability of cars advise tonnage you could supply of size 8-6 X 6 mine run for each of the following months: July, August, and September.

NAVAL SUPPLY DEPOT.

## EXHIBIT J

JUNE 25, 1952.

NAVAL SUPPLY DEPOT,  
*Seattle, Wash.:*

Re your telegram June 25, engineer at mine now determining available tonnage months July, August, September and will advise you.

Meanwhile right-of-way across Usibelli lease blocked by Usibelli coal mine since April 21, although permission for advance construction granted by Bureau of Land Management on August 10, 1951.

This roadblock until removed precludes delivery of any coal unless right-of-way established.

Interior Department, Washington, fully advised regarding Usibelli interference.

CRIPPLE CREEK COAL CO.

## EXHIBIT K

JUNE 27, 1952.

NAVAL SUPPLY DEPOT,  
*Seattle, Wash.:*

Re your telegram June 25, can deliver 10,000 tons coal each month beginning October and continuing into spring of 1953 as long as road is usable.

Uncertain road conditions before October 1 preclude deliveries during July, August, and September.

CRIPPLE CREEK COAL CO.

## EXHIBIT L

## DECISION

A. BEN SHALLIT  
Right-of-Way Application  
Act of January 21, 1895  
(28 Stat. 635; 43 U. S. C. sec. 956).

SEPTEMBER 10, 1952.

## PROTESTS DISMISSED

## RIGHT-OF-WAY GRANTED CONDITIONALLY

On June 14, 1951, A. Ben Shallit filed his application, Fairbanks 08832, for a tramroad right-of-way from a point in sec. 16, T. 12 S., R. 6 W., Fairbanks meridian, called "Cripple Creek Camp" within his coal prospecting permit, Fairbanks 07350, to a point in the NE $\frac{1}{4}$  of sec. 23, T. 12 S., R. 7 W., Fairbanks meridian, designated on the map of said right-of-way as "R. R. car loading dock."

On August 10, 1951, the manager of the land office at Fairbanks, Alaska, granted Shallit a permit to construct the right-of-way in advance of its approval. That permit was at Shallit's risk and subject to such requirements as might later be attached to the grant of a right-of-way.

The map of the proposed right-of-way was found insufficient under the regulations and Shallit was called upon to file a proper map. This he did on July 31, 1952.

Because of a protest filed by the Usibelli Coal Co. across whose leased lands (Fairbanks 06561) a substantial portion of the proposed right-of-way extends, 2 field investigations have been made; 1 at the instance of this office and 1 at the direction of the Department. With respect to the former, a representative of the Usibelli Co., who according to his statement was in charge of the leased premises, was on the Usibelli lease premises and was contacted by the investigator who discussed the matter of alleged interference of the right-of-way with the Usibelli mining and associated operations. The Usibelli Co., claims that the proposed right-of-way would interfere with its operations, especially in the furnishing of an adequate water supply for the domestic use of the employees on its lease who reside at a camp within the lease boundaries. The report negatives this claim and shows that there is more than ample underground seepage to furnish a sufficient supply of domestic water. The report also shows that a rifle range has been set up with the gun pits on 1 side of the proposed Shallit right-of-way and the targets on the other. Local counsel for Usibelli has asked that no right-of-way be granted until an oral hearing has been held. A protest by the Healy River Coal Co. apparently has been disposed of since the objection was to the location of the right-of-way near that company's camp and Shallit has been using the road, previously authorized to be constructed without any objection to such use by the Healy River Coal Co. Its protest is accordingly dismissed.

Both field reports recommend that a right-of-way be granted and one of them even suggests that it would be preferable to move the road, the subject of the application, out of the river bed and onto the adjacent high land. However, it seems probable a substantial part of the right-of-way will only be required temporarily. It is understood that the Alaska Railroad is now surveying a route for an extension of its line, now terminated at the Healy River Coal Co.'s mine, to a point at or near the Shallit lease, which will obviate the need for most of the rights-of-way. It is possible that the railroad will follow, if not use a part of the proposed Shallit right-of-way. The proposed right-of-way is usable in winter and can be used during the coming season after certain repairs are made.



A new right-of-way would apparently involve extensive new construction which Shallit has not indicated that he desires to undertake. In fact, Shallit on his map outlines the same general route as that he first applied for. In view of these facts, it seems unnecessary to consider the suggestion that the right-of-way be relocated on higher ground.

Although the matter has not been called to the attention of this office by either Shallit or Usibelli, the field report made at the request of this office recites that the surface works of the Healy River Coal Co. were destroyed by fire on August 29, and that in consequence it will be some time before that company can resume full active mining operations. The report states that the Healy River Co. carried the major portion of the burden of supplying coal to the rail belt portion of Alaska. In such an emergency, it seems obvious that both Usibelli and Shallit will need to meet more of this burden than they have in the past and it is apparent from the whole record that the right-of-way is necessary to Shallit's operations and that it does not unreasonably burden the Usibelli operation.

This matter has been thoroughly considered. The facts have been meticulously assembled by three agencies of the Department whose representatives have examined the land and discussed the proposed right-of-way with the parties concerned, including the Usibelli Co. That company has filed a substantial body of argument in support of its protest, all of which has been considered. We are unable to perceive in what way oral argument would supplement the showing already made or establish what has not been established that the granting of the right-of-way seriously affects Usibelli's interests as a lessee. On the contrary, it appears that no adverse effect would result but that the Usibelli Co. could accommodate its operations to the situation with little or no additional expense. To accede to the protest would result in placing a heavy burden on Shallit who is also a lessee which is not justified in the circumstances. Accordingly, the application for an oral hearing and the protest as well are dismissed.

Since the rifle range across the right-of-way is neither a necessary nor proper activity under the lease and since it is a hazard to the free use of the right-of-way, the Usibelli Co. is required to dismantle it and to discontinue its use; 30 days from receipt of a copy of this decision by that company are allowed within which to show compliance herewith in the absence of which further appropriate action will be taken.

The right-of-way as applied for is hereby granted subject to the following conditions:

(1) This right-of-way easement is a license only (56 I. D. 549), and shall continue in effect as to any part of the right-of-way only until such time as that particular portion shall be required by the Alaska Railroad for use as a railroad right-of-way at which time the grant shall cease to be effective as to any or all such portion.

(2) The right-of-way is subject to all of the applicable provisions of 43 CFR 244.9, (a) to (m), inclusive, and acceptance of the grant by the grantee will signify his acceptance of all of the terms and conditions contained in those subsections and his agreement to comply with all of the applicable provisions thereof.

(3) There is hereby reserved for the use of the United States pursuant to the provisions of the act of August 1, 1946 (60 Stat. 755; 42 U. S. C., sec. 1801, et seq.), all uranium, thorium, or other materials which have been or may hereafter be determined by the Atomic Energy Commission to be peculiarly essential to the production of fissionable materials contained in whatever concentration in the lands covered by the right-of-way, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for and mine the same, making just compensation for any damage or injury occasioned thereby.

(4) The payment within 30 days of demand, by the manager, Land Office, Fairbanks, Alaska, of all rentals due and unpaid at the rate of \$5 per mile or fraction thereof for each calendar year or fraction thereof from and after August 10, 1951.

The right of appeal is allowed.

WILLIAM ZIMMERMAN, Jr., *Acting Director.*

## EXHIBIT M

## UNITED STATES DEPARTMENT OF THE INTERIOR

## OFFICE OF THE SECRETARY

Washington 25, D. C., November 5, 1954

A-26673

A. BEN SHALLIT

EMIL USIBELLI

USIBELLI COAL MINE, INC.

Fairbanks 08832.

Protest against application for a right-of-way over leased lands dismissed.

Set aside and right-of-way application allowed.

## APPEAL FROM THE BUREAU OF LAND MANAGEMENT

On June 14, 1951, A. Ben Shallit filed an application (Fairbanks 08832) for a right-of-way under the act of January 21, 1895 (43 U. S. C., 1952 ed., sec. 956), across public lands in Ts. 12 S., Rs. 6 and 7 W., Fairbanks Meridian, Alaska. The right-of-way applied for measures approximately 5.34 miles and runs from within the land covered by a coal lease issued to Mr. Shallit (Fairbanks 08350), across the land covered by a coal lease issued to Emil Usibelli (Fairbanks 06561), to a terminal of the Alaska Railroad located within the area covered by a coal lease issued to the Healy River Coal Corp. (Fairbanks 01068).

On August 17, 1951, Usibelli Coal Mine, Inc., and Emil Usibelli protested the granting of the right-of-way.

On September 10, 1952, the Acting Director of the Bureau of Land Management issued a decision dismissing the protest and granting Mr. Shallit the right-of-way he had applied for subject to certain conditions. Emil Usibelli and Usibelli Coal Mine, Inc., have appealed from that decision to the Secretary of the Interior.

However, the appellants and the appellee have now notified the Solicitor that upon the incorporation in the right-of-way grant of certain conditions upon which they have reached agreement, regulating the use of the right-of-way by Shallit, the appellants will withdraw their appeal.

Thus, the issues which occasioned this appeal have been resolved, it remains only to state the terms and condition upon which the right-of-way shall be allowed.

The act of January 21, 1895 (*supra*), authorizes the Secretary of the Interior under regulations issued by him to permit any citizen engaged in mining to use a right-of-way for a tramroad through the public lands to the extent of 50 feet on each side of the center line of the tramroad. The pertinent regulations are found in 43 CFR, 1953 supp., 244.1-244.21 and 244.52-244.53.

Therefore, pursuant to the authority vested in the Secretary of the Interior by the act of January 21, 1895, Shallit is given permission to use the right-of-way he applied for on June 14, 1951, as delineated on the map of the survey of the proposed right-of-way filed on July 31, 1952. Since the act of January 21, 1895, does not provide otherwise, the right-of-way granted is a permit revocable at the discretion of the regional administrator. 43 CFR, 1953 Supp., 244.7.

The right-of-way is also subject to the applicable general terms and conditions imposed by the pertinent regulation. 43 CFR, 1953 Supp., 244.9, as amended on August 11, 1954 (Circ. 1876, 19 F. R. 5178).

In addition, the parties having agreed to them, the right-of-way is made subject to the following specific provisions:

1. The road which has been constructed by Shallit in advance of the allowance of his application for a right-of-way shall be resurveyed with an engineer from both mines in attendance.<sup>1</sup>

2. As between the parties it is recognized that the development of the Usibelli lease is the dominant use so that Usibelli can cut the road built by Shallit within the right-of-way within the limits of the Usibelli lease from time to time as may be reasonably necessary to his operations; provided, however, that when such cuts are made Usibelli will construct temporary bypasses or permit temporary use by Shallit of Usibelli roads in order to assure Shallit uninterrupted transit by road over the Usibelli lease.

3. Prior to the initiation of any new-road construction, except for normal maintenance, Shallit shall consult with Usibelli so that Usibelli may provide for

<sup>1</sup> If the road does not lie within the limits of the right-of-way herein allowed, it will be necessary for Shallit to comply with the provisions of 43 CFR, 1953 Supp., 244.15 (a).

the incorporation of culverts and other similar structures, as may be necessary for the operation of the Usibelli lease.

4. Shallit shall take no tailings, gravel, or other material as borrow, which has been accumulated by Usibelli, in the construction and maintenance of his road, without express authorization from Usibelli.

5. Shallit shall construct, operate, and maintain the road in the well area opposite the Usibelli camp so as to constitute no interference with the water supply to said camp.

6. The elevation of the road at the point near the Usibelli camp where Usibelli has constructed a washer shall be definitely fixed and determined in the course of the survey provided for in item 1 above. So as to insure that traffic on the road will not interfere with the flume, which must pass over the road, such elevation shall remain constant, unless otherwise agreed to by Usibelli.

7. The right-of-way at such points on the Usibelli lease where it passes any building (including the tippie and washing plant), pump ponds, and roads intersections is limited to the average width of the road, but in no event is the right-of-way in such areas to exceed 25 feet.

The decision of the Acting Director of the Bureau of Land Management is set aside, and the right-of-way is allowed subject to the terms and conditions herein stated.

ORME LEWIS,

*Assistant Secretary of the Interior.*

#### EXHIBIT N

UNITED STATES DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

*Washington 25, D. C.*

Hon. ERNEST GRUENING,

*Governor of Alaska, Juneau, Alaska.*

MY DEAR GOVERNOR GRUENING: This responds to your letter of October 30, 1952, concerning the coal-supply situation in Alaska, in which you state that you understand that applications for Government loans by Usibelli Coal Mines, Inc., and Cripple Creek Coal Co. have been held up, and suggest "that prompt action at the appropriate level in the Department of the Interior is called for."

This Department has been endeavoring for some time to promote an increase of coal-producing facilities in the Territory to meet the increase in demand, which the best information available indicates will arise in the near future.

The present tight situation, due in a large measure to the fire at the Healy River mine which curtailed production, and the loss of production at the Usibelli mine during the labor difficulties, indicates the necessity for an increase in productive capacity. It appears clear that the present mining facilities cannot produce sufficient additional coal to meet the requirements of the proposed new facilities which will be erected by the Department of Defense, and the needs of the increasing population.

In order that you may be fully informed concerning the status of the Usibelli and Cripple Creek loans, the following summary is submitted:

On February 11, 1952, Usibelli Coal Mines, Inc., filed with the Defense Production Administration an application for a loan of \$600,000, of which \$350,000 was to be used for the expansion of productive facilities for underground mining and \$250,000 for working capital. On February 28, 1952, DPA requested a report and recommendation from DSFA.

After an investigation and survey, which included a number of conferences here in Washington between Mr. Usibelli, his counsel, and representatives of DSFA and the Bureau of Mines, Alaska Division of the Office of Territories, Geological Survey, and the Reconstruction Finance Corporation, the DSFA incorporated available information in its report and made a favorable recommendation to me on May 14, 1952. In the interim, the Usibelli mine became involved in labor difficulties, and the question of the ability of Mr. Usibelli to obtain sufficient skilled miners to develop and operate an underground mine was raised. I requested a report on this phase of the situation and withheld my approval of DSFA's recommendation pending the receipt of such report. In September, I received information that the Usibelli labor difficulties had been solved. I then approved the affirmative recommendation of DSFA for the loan and transmitted it to DPA, which agency issued a certificate of essentiality to the Reconstruction Finance Corporation on September 25, 1952.

On July 3, 1952, the RFC authorized the working capital portion of the loan which, under existing regulations, could be made without a certificate of essentiality from DPA. In light of the fact that that part of the loan which concerned working capital had already been granted, and that the report from its Seattle agency concerning the \$600,000 application had been submitted on March 3, 1952, the RFC requested a supplemental report from its Seattle agency. Reports now indicate that Mr. Usibelli has requested that action by RFC be deferred on his loan application until he has completed a study of his future mining plans. It is possible that the application may be amended.

The application of the Cripple Creek Coal Co. still faces some hurdles. This application was originally filed in March 1951, and the report of the Bureau of Mines to DSFA in July 1951 recommended that the loan be denied. On January 3, 1952, the Cripple Creek Coal Co., through its Washington counsel, requested that action be delayed pending a further study, which request was granted.

Following conferences between representatives of Cripple Creek, DSFA, Bureau of Mines, Alaska Division of the Office of Territories, Geological Survey, and Reconstruction Finance Corporation, which were held in Washington in May 1952, DSFA submitted its report and made a favorable recommendation to me, which I approved and transmitted to DPA. In July 1952, DPA issued a certificate of essentiality for this loan to RFC, which agency determined it could not approve the loan because there was no reasonable assurance of repayment.

A supplementary study of the coal situation in Alaska is now being conducted by this Department for the purpose of establishing the facts as they exist today. If the report of this study justifies such action, Interior will recommend to DPA that the Office of Defense Mobilization issue a directive to the RFC to make the loan on the grounds that the production is essential to the national defense.

Three coal mining companies in Alaska have applied for Government loans. The application of the Buffalo Coal Mining Co. was approved and I am informed that approximately \$92,000 has been disbursed as of October 31, 1952, and the balance is available as construction and acquisition proceeds.

Usibelli's application was approved insofar as the \$250,000 working capital funds are concerned. It is reported, however, that as of September 30, 1952, Mr. Usibelli had not used any of the \$250,000 made available to him through the RFC for working capital. It is impossible, at this time, to predict what action will be taken on the Cripple Creek loan.

Sincerely yours,

JOEL D. WOLFSOHN,  
*Acting Secretary of the Interior.*

#### EXHIBIT O

CRIPPLE CREEK COAL CO.,  
*Fairbanks, Alaska, January 12, 1953.*

Re Suntrana spur.

Col. J. P. JOHNSON,  
*Manager, Alaskan Railroad, Anchorage, Alaska.*

DEAR COLONEL JOHNSON: We have been advised that the survey of the proposed Healy-Suntrana spur extension has been completed as far as the Usibelli airstrip, and that a preliminary line has been run on the right limit of the Healy River as far as Coal Creek.

Any extension of the present spur would be of advantage to Cripple Creek, as well as the other operators in the Healy district. We have already gone on record as willing to assume our share of the cost of this construction, provided the financing can be arranged on a tonnage basis or by any other equitable means within our capacity.

Considerable benefit will accrue to us if the spur is extended as far as the mouth of Cripple Creek. Maximum advantage for full-scale production would require a river crossing to the left limit of the Healy River near Cripple Creek.

In our long-range planning we are contemplating increasing our production to 200,000 tons per year by 1955. We believe that best operating costs will be obtained if the spur is brought over to the left limit of Healy River near the mouth of Cripple Creek.

It would be appreciated if during the coming season your engineering department would look into the feasibility of building such a spur, in order that we may have benefits of your estimates in arriving at our future operating decisions.

Very truly yours,

A. BEN SHALLIT.

## EXHIBIT P

UNITED STATES DEPARTMENT OF THE INTERIOR,  
THE ALASKA RAILROAD,  
Anchorage, Alaska, January 28, 1953.

Subject: Suntrana spur.

Mr. A. BEN SHALLIT,  
*Cripple Creek Coal Co., Fairbanks, Alaska.*

DEAR MR. SHALLIT: This will acknowledge your letter of January 12, 1953, in reference to extension of the Healy River spur from the Healy River mine to your operations at Cripple Creek.

As you are undoubtedly aware, we have surveyed a location as far as the Usibelli mine and proceeded with preliminary location thence on to your mine at Cripple Creek. The construction of this extension from Healy River is thoroughly contingent on the financing, and it is very gratifying to hear that you have funds to contribute to the building.

In order that we can better consolidate the thinking of various people concerned, we would appreciate it if, the next time you are in Anchorage, you would contact Mr. Irvin P. Cook, our chief engineer, and discuss the problem with him in reference to our preliminary location, as well as finance.

Very truly yours,

JOHN E. MANLEY,  
*Acting General Manager.*

## EXHIBIT Q

CRIPPLE CREEK COAL CO.,  
*Fairbanks, Alaska, February 2, 1953.*

Re Suntrana Spur.

ALASKA RAILROAD,  
*Anchorage, Alaska.*

(Attention Mr. Irvin P. Cook, Chief Engineer.)

GENTLEMEN: We have just received a letter from Mr. John E. Manley, acting general manager, in which he requests that we call on you at Anchorage to discuss the problems with reference to the preliminary location of the Suntrana Spur.

At the present time Mr. Shallit is in the States on a business trip and for medical attention. It is quite possible that he will be unable to return to Anchorage for at least a month.

We believe that the preliminary location as surveyed by you is entirely satisfactory for our needs and we would be pleased if actual construction during 1953 proceeded as far as the Usibelli mine. If this were done, we would expect that we would be given track area and a small site for loading at that point.

We are willing to contribute to the cost of this construction on a tonnage basis, assuming that other users will make a like contribution. We assume that payments would be made to reimburse the railroad after the spur was completed. The foregoing represents our thinking in regard to this matter, but if there are any other questions we shall appreciate hearing from you as soon as possible.

The United States Bureau of Mines has recently released figures indicating the requirements for coal along the rail belt during the next few years and from these figures it should be apparent that uninterrupted production on a year-round basis would be required to fill these needs. The present haulage road of the Cripple Creek Coal Co. is subject to unforeseen washouts and is often made impossible because of glaciering of the Healy River. In order to insure year-round coal deliveries, it is imperative that this spur track be extended without delay.

Your efforts to work toward this end are anticipated and will be sincerely appreciated.

Very truly yours,

L. ORSINI.

## EXHIBIT R

CRIPPLE CREEK COAL CO.,  
*Fairbanks, Alaska, February 2, 1953.*

Re Suntrana Spur.

The ALASKA RAILROAD,  
*Anchorage, Alaska.*  
*Anchorage, Alaska.*

GENTLEMEN: Thank you for your letter of January 28 inviting us to call on Mr. Irvin P. Cook, your chief engineer at Anchorage, to further discuss the extension of the Suntrana Spur.

As mentioned in our letter of January 12, we are willing to assume our share of the cost of this construction, provided the financing can be arranged on a tonnage basis or by any other equitable means within our capacity. We wish to make it clear that at the present time we do not have funds to contribute to the building of the railroad, but it is assumed that we would be permitted to reimburse the railroad on a tonnage basis for an equitable share of the cost.

We understand that the railroad has requested funds for this construction in the current budget.

Very truly yours,

L. ORSINI.

## EXHIBIT S

MARCH 1, 1953.

MAX BARASH,  
*Washington 5, D. C.:*

Appreciate your letter 27th. Suggest you advise Mr. Ghiglione that entire camp facilities of Cripple Creek mine will be at his disposal and that we will, without charge, provide meals, lodging, gasoline, diesel fuel, lubricants, explosives, lumber, welding supplies, and use of shop and repair facilities. Letter follows.

CRIPPLE CREEK COAL CO.  
L. ORSINI.

## EXHIBIT T

MARCH 3, 1953.

Mr. JOS. T. FLAKNE,  
*Chief, Alaska Division, Office of Territories,*  
*Department of the Interior, Washington 25, D. C.*

DEAR JOE: Enclosed herewith is a copy of a telegram which I received yesterday morning from Cripple Creek Coal Co., which is self-explanatory.

The copy of the telegram is for your information and files.

With best wishes, I am

Sincerely yours,

MAX BARASH.

## EXHIBIT U

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF TERRITORIES,  
*Washington 25, D. C., March 11, 1953.*

Mr. BEN SHALLIT,  
*Cripple Creek Coal Co.,*  
*Fairbanks, Alaska,*

MY DEAR MR. SHALLIT: Your offer to cooperate in the construction of a road up the Healy River from the Alaska Railroad spur has been transmitted to the Office of Territories by Mr. Barash. This offer by which you agreed to furnish all housing and feeding of road crews in addition to supplying fuel and explosives needed in the construction will greatly assist in accomplishing this needed project. The Alaska Road Commission now plans to initiate the construction as soon as possible this spring and will draw upon your cooperative assistance as detailed above.

It is the intent of the Alaska Road Commission to provide and maintain the road from the railroad spur to the entrance to your properties. In accomplishing this it will also be essential that the cooperation of Mr. Usibelli be obtained. It is anticipated that Mr. Usibelli will not oppose this project since he will benefit by the Alaska Road Commission assumption of maintenance and responsibility. The road alignment will follow as much as possible the existing roads up the Healy River and also conform to the proposed alignment for the railroad extension where such conformance does not result in excessive cost. Since it is essential that this work be started this spring, I will contact you further regarding arrangements for your cooperative assistance.

Sincerely yours,

A. F. GHIGLIONE,

*Commissioner of Roads for Alaska, Alaska Road Commission.*

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EXHIBIT V

DEPARTMENT OF THE INTERIOR,

ALASKA ROAD COMMISSION,

*Juneau, Alaska, April 22, 1953.*

MR. JOSEPH T. FLAENE,

*Chief, Alaska Division, Office of Territories,*

*Department of the Interior, Washington 25, D. C.*

DEAR JOE: Confirming our telephone conversation of this date the following is a résumé of the present status of the Healy River coal transportation problem.

After preliminary meetings with the Healy River Coal Corp., Usibelli Coal Mine, Inc., and A. Ben Shallit's attorney in Fairbanks, a trip was made on April 18 into the Healy River area for the purpose of working out the details of providing low-cost road access. These details were to conform with the plan of construction outlined to me in Mr. Davis' letter of March 9, 1953.

The following people were present at the site on April 18: Mr. Emil Usibelli, president, Usibelli Coal Mine, Inc.; Mr. Pete Nielsen, superintendent of Healy River mine; Mr. Pat Cook, chief engineer of the Alaska Railroad; Mr. Ed Hart, locating engineer, the Alaska Railroad; Mr. Bruce Cannon, engineer, the Alaska Railroad; Mr. B. D. Stewart, Jr., Chief, Operations Division, Alaska Road Commission; Mr. E. J. White, district engineer of the Anchorage district, Alaska Road Commission; and myself. Mr. Ludlow Anderson had been expected to attend but was called to Washington at the last minute.

It was not possible to obtain Mr. Usibelli's permission to utilize his road or to traverse his area as was planned for the low-cost road project. Mr. Usibelli claims that the traversing of his mine area by the road through to Mr. Shallit's property would seriously handicap his operations, in addition to preventing access to large quantities of coal which his approved development plans have contemplated mining. In addition, the increased liability to Mr. Usibelli's operations from through traffic using his road is considered by him to far offset any advantages he might receive through the Alaska Road Commission's assumption of maintenance responsibility. In view of the above factors Mr. Usibelli refuses public use of his road and further advised that he would be forced to take legal action to restrain the Alaska Road Commission if we should attempt to take over. Mr. Usibelli is extremely anxious to obtain railroad access to his property and made the firm offer to our group of a \$50,000 contribution toward this end.

As a result of the stand of Mr. Usibelli, the only construction possible at this time would be along the Alaska Railroad right-of-way and it is obvious that insufficient funds are available for this heavy work involving river changes, bridges, and rock riprap bank protection. This previous suggestion of Mr. Usibelli that the line be located south of Healy River is not practical both from a road and railroad construction standpoint, and he now agrees to accept a through line south of his camp area on the north side of the river.

The above situation again forces the Shallit mine into the position of having only temporary access which is not usable for at least 6 months of the

year. I do not consider it reasonable for the Alaska Road Commission to undertake any work on this temporary line since the work would be lost in subsequent seasonal floods. This, of course, forces the Shallit mine to consider contracts for supplying coal only during the fall and winter months.

As discussed in our telephone conversation, it will be necessary to obtain considerable funds before any improvement of the road-access problem may be attempted. If supplemental funds could be obtained through support of the military, it is possible that some relief could be afforded the Shallit mine this season. In my opinion such action is not too probable, and I have so advised Mr. Shallit. The desirability of providing the railroad extension rather than a temporary road is again apparent, and I urge that further effort be toward this end. Our estimates for preparing the railroad grade from the Healy River mine to Cripple Creek by force account work, exclusive of railroad ballast, rail, and structures, is \$420,000.

The Alaska Road Commission is unable to proceed further with this project under the conditions outlined above.

Sincerely yours,

A. F. GHIGLIONE,  
*Commissioner of Roads for Alaska.*

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EXHIBIT W

DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
Juneau, Alaska, June 30, 1953.

Mr. JOSEPH T. FLAKNE,  
*Chief, Alaska Division, Office of Territories,  
Department of the Interior, Washington 25, D. C.*

DEAR JOE: Reference is made to our telephone conversation of June 29 and previous correspondence on the subject of transportation access to the Healy River coalfields. Specifically answering the questions posed, it is necessary to restate that the Alaska Road Commission does not have sufficient funds to initiate construction of an access road beyond the present railroad spur. This situation was explained in detail in my letter of April 22, 1953, which submitted an estimate of \$420,000 as being necessary for providing year-round highway access to the Usibelli and Cripple Creek mines along the Alaska Railroad right-of-way.

Provision of a dependable low-cost road through to the Cripple Creek mine as planned earlier this season on the basis of utilizing all existing roads of the Usibelli and Cripple Creek Coal Cos. is not possible as further stated in my letter of April 22.

The Alaska Road Commission has not filed formal right-of-way plat with the Bureau of Land Management for road access through this area. The regional administrator, BLM, has advised such filing is unnecessary since the Alaska Railroad filing will cover either road or railroad construction. A copy of Mr. Puckett's letter of June 24 is enclosed.

In summing up the situation, I see no way in which the Alaska Road Commission can provide dependable access to the Cripple Creek property with funds presently available. I have again so advised Mr. Leo Saarela and Mr. Orsini. As stated in my letter of April 22, I similarly advised Mr. Shallit in early April. The heavy construction that would be necessary through the present Usibelli tippie area and on up the Healy River with channel changes, bridges, and large amounts of heavy riprap protection would require funds greatly in excess of any which might be diverted from our meager farm road allotments. The co-operation offered by the Cripple Creek mine, while of considerable value, would still be insufficient to offset the large cost involved in this project.

Sincerely yours,

A. F. GHIGLIONE,  
*Commissioner of Roads for Alaska.*



## EXHIBIT X

APRIL 29, 1953.

(Received in Fairbanks May 6.)

Mr. LOWELL M. PUCKETT,  
Regional Administrator, Bureau of Land Management,  
Anchorage, Alaska.

DEAR MR. PUCKETT: The Alaska Railroad contemplates constructing at an early date an extension of its rail line from mile 4.2 on the Suntrana branch to mile 6.6, adjacent to the Usibelli mine camp. Also, from mile 6.6 to mile 10.3, adjacent to the Roth coal reserve.

It is requested that there be noted under the act of March 12, 1915 (38 Stat. 305; 48 U. S. C. 301-308) a right-of-way for this line to the extent of 100 feet on each side of the centerline of the track. Accordingly, we are attaching three copies each of part 1, Suntrana Branch extension, Suntrana to Usibelli, and part 2, Suntrana Branch extension, Usibelli to Roth Reserve.

You will note in our letter of June 23, 1952, that the railroad contemplates the extension of this line in order that the Usibelli Coal Co., the Cripple Creek Mining Co. and any future producers, may have access to the Alaska Railroad, thereby reducing the costs of operation which in turn are passed to the Government in reduction of bid prices for the furnishing of coal, as well as to private industry. It is estimated that the construction of this line will result in the reduction of coal costs to the Territory of \$200,000 annually.

Should additional information be required, please let me know and we will endeavor to arrange to secure it.

Very truly yours,

JOHN E. MANLEY,  
Acting General Manager.

## EXHIBIT Y

DEPARTMENT OF THE INTERIOR,  
THE ALASKA RAILROAD,  
Anchorage, Alaska, March 3, 1954.

Mr. WILLIAM C. STRAND,  
Director, Office of Territories,  
Department of the Interior, Washington 25, D. C.

DEAR MR. STRAND: In accordance with your request, I am forwarding the following drawings and estimates covering the proposed extension of the Suntrana branch from Suntrana mine (mile 4.2) to the Roth coal reserve:

1. Plan of location line between Suntrana (mile 4.2) and Usibelli mine (mile 6.6).
2. Plan of reconnaissance survey from end of location line at Usibelli mine (mile 6.6) to Roth coal reserve (mile 10.3).
3. Profile of location line between Suntrana mine (mile 4.2) to mile 6.6.
4. Estimated cost of located line between Suntrana mine (mile 4.2) and mile 6.6.
5. Estimated cost based on reconnaissance survey between Cripple Creek mine (mile 8.8) to Coal Creek (Roth coal reserve), mile 10.3.

The line between Suntrana mine (mile 4.2) and Usibelli mine (mile 6.6) has been located and staked. The remaining portion of the extension, mile 6.6 to the Roth coal reserve (Coal Creek), is based on a reconnaissance survey, and this line has not been staked. It is estimated that it would require approximately 2 months' time with a single survey party to complete the reconnaissance survey and complete location.

It will be noted that on the located line drawing between Suntrana mine (mile 4.2) and Usibelli mine (mile 6.6) we show our location passing over the Usibelli Mining Co.'s airstrip. This location was discussed with Mr. Usibelli, and he did not voice any objection other than that which could be normally expected under the circumstances. The line then passes through (according to information I have received) what is called G bed. This location, Mr. Usibelli has objected to quite violently from time to time, inasmuch as he says he plans to mine these underground beds. However, from discussions with the Bureau of Mines representatives and the Geological Survey, they do not express as much concern about the potentials of these beds as Mr. Usibelli has.

There is one alternate location past the Usibelli mine, and that would be skirting his camp to the right. This, of course, would bring us up against the stream and would require a considerable amount of bank protection. He originally objected to this location, but, after further consideration on his part, I believe he felt he would receive protection from stream erosion which affects his camp during runoff periods and cloudbursts. This location is not as desirable from our standpoint because of the curvature and the cost of construction.

The line from the Usibelli mine on up to Cripple Creek mine and the Roth reserve could vary considerably from the reconnaissance survey we have made, depending on the nature of the mining operations. Should it be desired to serve only the Cripple Creek mine, a location on the right-hand side of the river would undoubtedly be more feasible. However, if we pass on to the Roth reserve, the location which we have shown tentative on the plans would be the most desirable. This issue, I believe, should be settled prior to any great expense being incurred to establish a located and staked line.

We have filed with the Bureau of Land Management maps of both our located line and our reconnaissance lines, in order that we could obtain the necessary right-of-way. These have been on file approximately 8 months and no objections, to my knowledge, have been made to our locations.

The ruling grade on the line from the Suntrana mine to the Roth coal property would be 2.5 percent. The rest of the line is approximately the same grade as Healy River, down whose channel the line would pass, that being 1 percent and one-half percent.

In general, the greatest cost of this line would be the diversion of the streams adjacent to Suntrana mine. The reason for diverting the stream is to save the construction cost of expensive steel bridges. After we pass Usibelli mine undoubtedly a considerable amount of riprap would be required, inasmuch as the reconnaissance has led us to believe thus far that the most feasible location would be in the stream channel. My reason for believing this is that both the north and south banks of the stream are underlaid with permafrost and considerable glaciation is evident, which would lead to expensive maintenance costs.

Our estimates are based on what we believe would be a fair contract cost. It is also contemplated to use our relay 70-pound rail for this line.

Should you require any more information, please let me know and I will see that it is immediately forthcoming.

Sincerely yours,

F. E. KALBAUGH,  
General Manager.

*Estimate of cost of Suntrana extension*

MILE 4.2 TO MILE 6.6 (SUNTRANA TO USIBELLI MINE)

[Based on 1952 location survey]

Item	Work and/or material	Quantity	Unit	Price	Amount
1	Shift deck on existing pile bents and shim up to revised grade (12 bents).	1	Lump sum	\$3,000.00	\$3,000.00
2	Move 300 feet of ladder truck and change location of 4 No. 7 turnouts.	1	do	2,500.00	2,500.00
3	Move small wooden buildings (on skids)	5	Each	500.00	2,500.00
4	Clearing and grubbing	16	Acres	150.00	2,400.00
5	Excavation for channel changes	79,000	Cubic yards	3.00	237,000.00
6	Excavation for roadway	53,250	do	1.75	93,187.50
7	Overhaul (beyond 1,000 feet)	22,000	Square yards	.03	660.00
8	Furnish and install 36-inch corrugated iron culvert.	316	Linear feet	20.00	6,320.00
9	Furnish and install 42-inch corrugated iron culvert.	48	do	25.00	1,200.00
10	Furnish and install 48-inch corrugated iron culvert.	72	do	30.00	2,160.00
11	Construct trestle (42 linear feet)	1	Lump sum	6,000.00	6,000.00
12	Furnish and place riprap	4,000	Cubic yards	7.50	30,000.00
13	Furnish and install main line track (complete)	13,000	Linear feet	8.00	104,000.00
14	Furnish and install side track (complete)	2,336	do	8.00	18,688.00
15	Furnish and install No. 9 turnouts (complete)	2	Each	1,500.00	3,000.00
<b>Total</b>					<b>512,615.50</b>

## ALASKA COAL LANDS

## MILE 6.6 TO MILE 8.8 (USIBELLI MINE TO CRIPPLE CREEK MINE)

[Based on 1952 reconnaissance]

Item	Work and/or material	Quantity	Unit	Price	Amount
6	Excavation for roadbed.....	100,000	Cubic yards.	\$1.50	\$150,000
8	Furnish and install 36-inch corrugated iron culvert.	120	Linear feet..	20.00	2,400
10	Furnish and install 48-inch corrugated iron culvert.	40	do.....	30.00	1,200
11	Construct trestle (42 linear feet).....	1	Lump sum..	6,000.00	6,000
12	Furnish and place riprap.....	4,000	Cubic yards.	7.50	30,000
13	Furnish and install main line track (complete).....	11,616	Linear feet..	8.00	92,928
14	Furnish and install sidetrack (complete).....	2,336	do.....	8.00	18,688
15	Furnish and install No. 9 turnouts (complete).....	2	Each.....	1,500.00	3,000
16	Bridge (location of bridge to be determined by mining operations) <sup>1</sup> .	500	Linear feet..	1,000.00	500,000
	Total.....				804,216

<sup>1</sup> Inasmuch as this data is based only on reconnaissance, the figure of 500 feet of steel bridge to cross Cripple Creek is based on a unit cost estimate of \$1,000 per lineal foot. After a more complete study is made, perhaps a wooden trestle could be utilized rather than a steel bridge, and the cost of such construction would be approximately \$150 per lineal foot, or \$75,000, which would reduce the total cost to \$379,216.

Source: The Alaska Railroad, Engineering Department, Jan. 20, 1953.

## MILE 8.8 TO MILE 10.3 (CRIPPLE CREEK MINE TO COAL CREEK)

[Based on 1952 reconnaissance]

4	Clearing and grubbing.....	20 <sup>1</sup>	Acres.....	\$150.00	\$3,000
6	Excavation for roadbed.....	24,000	Cubic yards.	1.00	24,000
8	Furnish and install 36-inch corrugated iron culvert.	100	Linear feet..	20.00	2,000
10½	Furnish and install 60-inch corrugated iron culvert.	70	do.....	38.00	2,660
11	Construct trestle (42 linear feet).....	1	Lump sum..	5,000.00	5,000
12	Furnish and place riprap.....	2,000	Cubic yards.	7.50	15,000
13	Furnish and install main line track.....	7,884	Linear feet..	8.00	63,072
14	Furnish and install sidetrack.....	2,336	do.....	8.00	18,688
15	Furnish and install No. 9 turnouts.....	2	Each.....	1,500.00	3,000
	Total.....				136,420

## EXHIBIT Z

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington 25, D. C., August 4, 1953.

REGIONAL ADMINISTRATOR, REGION VII, BLM,  
Anchorage, Alaska:

Re our TT June 10 (MM:AHF) concerning Fairbanks 010449. Please advise railroad that permission to proceed with construction of line is suspended pending further notice from this office.

(Signed) EDWARD WOOLEY,  
Administrator.

## EXHIBIT AA

OCTOBER 11, 1954.

Mr. LOWELL M. PUCKETT,  
Area Administrator, Bureau of Land Management,  
Anchorage, Alaska.

DEAR MR. PUCKETT: Will you please refer to our letter of April 29, 1953, wherein the Alaska Railroad made request upon your organization for the withdrawal of a railroad right-of-way 100 feet on each side of center line of track on our Suntrana Branch from the present end of said branch line at mile 4.2 to mile 10.3.

Initially this request for withdrawal of the proposed right-of-way was occasioned by the possibility of the extension of this branch line being essential to the national defense. Since my recent arrival in Washington, however, I have been informed that the Defense Department does not consider the extension of this branch line essential to the national defense, and it would therefore be appreciated if you would withdraw the request as contained in our letter of April 29, 1953, on this matter.

Sincerely yours,

F. E. KALBAUGH, *General Manager.*

### EXHIBIT BB

#### UNITED STATES DEPARTMENT OF THE INTERIOR

#### BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C., NOVEMBER 2, 1954

### DECISION

#### THE ALASKA RAILROAD

#### Railroad Right-of-Way Application.

#### WITHDRAWAL ACCEPTED. CASE CLOSED

By letter of April 29, 1953, the Alaska Railroad requested that notation of a right-of-way desired under the act of March 12, 1914 (38 Stat. 305; 48 U. S. C. sec. 301), for the extension of its Suntrana branch for a distance of 6.1 miles, be noted upon the records of the Bureau.

The manager of the Fairbanks land office was instructed on May 5, 1954, by the then Regional Chief, Division of Adjudication, to note the right-of-way on his records under the instructions of January 13, 1916 (44 L. D. 513).

By letter of October 11, 1954, the general manager of the Alaska Railroad withdrew the request for the right-of-way, explaining that initially the application was based on the possibility of national defense needs, but that now the extension is not needed for this purpose.

The reason assigned for the withdrawal of the application is satisfactory. The withdrawal is accepted and the case closed.

EDWARD WOOLEY, *Director.*

### EXHIBIT CC

#### MEETING OF THE ALASKA FIELD COMMITTEE'S COAL SUBCOMMITTEE, APRIL 30, 1953

A meeting of the Coal Subcommittee was held April 30, 1953, at 9 a. m., in room 305 of the General Office Building of the Alaska Railroad. Those attending were:

Maj. R. L. Gochenaur, Headquarters, AAC, Elmendorf AFB  
 Mr. P. B. Miller, Headquarters, AAC, Elmendorf AFB  
 Comdr. E. H. Willis, Headquarters, Alaskan Command, Elmendorf AFB  
 Mr. L. G. Anderson, United States Bureau of Mines, Anchorage  
 Mr. Phil Holdsworth, Territorial Department of Mines, Juneau  
 Mr. Wiley Robinson, Territorial Department of Mines, Anchorage  
 Mr. Lowell Puckett, Regional Administrator, Bureau of Land Management, Anchorage  
 Mr. L. H. Saarela, United States Geological Survey, Anchorage  
 Mr. A. Ben Shallit, Cripple Creek Coal Co., Fairbanks  
 Mr. E. J. White, Alaska Road Commission, Anchorage  
 Mr. Elroy F. Hinman, the Alaska Railroad, Anchorage  
 Mr. Irvin P. Cook, the Alaska Railroad, Anchorage

The purpose of the meeting was to discuss the possibility of extending the roadbed up into the Usibelli and Cripple Creek coal properties, with a better access for moving coal.

Mr. L. G. Anderson, chairman, opened the meeting as follows:

MR. ANDERSON. Most of you gentlemen have heard the way the contracts were negotiated this year for military coal procurement; however, I do not believe Mr. Puckett or Mr. Holdsworth are familiar with it, so I will repeat that Mr. Usibelli went to Seattle the week of April 6, accompanied by Mr. Clasby, his attorney.

They informed Lieutenant Fisher of the Coal Procurement Office that Mr. Usibelli would only be able to furnish 100,000 tons of coal to the military for the coming fiscal year. I discussed this with Mr. Usibelli and he informed me that he had made the statement that he could not increase this tonnage unless his RFC loan was approved. However, there were no written statements to this effect, this was all verbal in Seattle.

We had planned approximately 250,000 tons from the Usibelli mine. Prior to the meeting I discussed with the operators of the Healy River district, the tonnages they expected to produce for military. Mr. Shallit told me he was not interested in producing much over 60,000 to 100,000 tons this coming year, preferably around 60,000 or 65,000 tons. Until such time as he had an all-weather road up to Cripple Creek or the railroad built into his property, he did not want to obligate himself to tonnages that would be very doubtful as to whether he could produce under weather conditions as far as scheduling of deliveries according to contract.

When Mr. Usibelli gave Lieutenant Fisher his proposals of 100,000 tons Lieutenant Fisher called Mr. Shallit and asked him for the maximum tonnage he could produce. Mr. Shallit told him 100,000 tons, but he would be willing to negotiate for 150,000 tons if the railroad or the highway would be built up to Cripple Creek before October of this year. On the strength of that and from the meetings we had prior to this meeting with the Navy on negotiating coal contracts this year, we thought it was almost certain that the Alaska Road Commission at least would be able to build a road into Cripple Creek or Roth property, which is just above the Cripple Creek property. Mr. Hinman, has it not been in your budget request to get funds for building this spur?

Mr. HINMAN. It has been in our 6-year program for several years.

Mr. ANDERSON. We were under the impression that the funds would be made available this year. Mr. Shallit said if the program goes through on the road he would be glad to furnish 150,000 tons. The following day after this conference with Mr. Shallit, Mr. Usibelli came in and made two propositions: (1) 140,500 tons at \$8.90; (2) 257,500 tons at \$9.50 (based on getting his loan through).

We asked him the reason for this increase in price with an increase in tonnage, and he explained he would have to increase his facilities, such as bunkhousing, cookhouse, shops, new equipment, and starting an underground operation, et cetera. He suggested that Lieutenant Fisher take proposition No. 1, and Lieutenant Fisher said he would, as it was Usibelli's low bid. Mr. Usibelli also requested a change in the specifications to 26 percent moisture which made him second low on B. t. u. per penny delivered. Therefore, Mr. Shallit was low bidder on 150,000 tons with the stipulation that the road goes through this summer; Usibelli was second, and Healy River third. Therefore, we had to portion the tonnages out as follows: 150,000 tons from Shallit; 140,500 tons from Usibelli; 117,000 tons from Healy River.

Major GOCKENAU. It was also found during the process of negotiating that Mr. Usibelli's proposition to the F. E. Co. and the city of Fairbanks was 50 cents a ton lower than to the military.

Mr. ROBINSON. What was the quantity involved?

Mr. ANDERSON. Between 50,000 and 60,000 tons. We asked him why the higher cost to the Government and he said it cost them more money to do business with the Government because of rejects, et cetera. He said he could cut his price down some if we would put an inspector at the mine to make visual inspection before shipping. I informed him that this was not a government responsibility and that he had agreed to contract specifications and that was the reason for the penalty clause. We are not obligated to put inspectors up at the mines. He had several objections to other parts of the Navy contract. I do not know his reasons. Now the vital point under consideration is how are we going to get the money immediately to build a road up to Cripple Creek? I called George Rogers in Juneau but he was unable to attend this meeting. He expects to go back to Washington and talk to the Secretary as to whether or not it would be possible to get funds for a railroad.

Will this be possible, Mr. Hinman?

Mr. HINMAN. I do not know.

Mr. ANDERSON. I have also discussed this road allocation with Mr. Flakne.

Commander WILLIS. What is the difference between the amount of coal without the road.

Mr. SHALLIT. 50,000 tons.

Commander WILLIS. How important is this extra?

Major GOCKENAU. We are under now by about 12,000 tons of our requirements—figuring that Cripple Creek will take 150,000 tons.

Mr. HINMAN. Cripple Creek does not know how they are going to deliver 150,000 tons unless they get an all-weather road or a railroad this summer.

Major GOCHENAUB. That is why the military is here today. I compiled figures yesterday for our budget planning for the fiscal year 1955 for the Air Force (I do not know the requirements of the Army). We will have at Eielson roughly 225,000 tons; at Ladd, 300,000 tons, and at Elmendorf, 140,000 tons. These are conservative figures. The main power plant at Eielson at full capacity is capable of burning 50 or 60 tons an hour. Figures from the plant superintendent, based on full capacity, would be around 50 tons an hour. An average consumption during mild weather is 7,000 tons a month.

Mr. MILLER. Approximately that. They have had some operational problems, but that will be ironed out soon.

Mr. PUCKETT. Mr. Shallit, was your bid based upon the construction of the road by someone else?

Mr. SHALLIT. Yes, it was.

Mr. HINMAN. I believe Mr. Shallit did say he had some funds.

Mr. SHALLIT. I had \$30,000 set aside for road construction this year.

Mr. ANDERSON. Is there some legal way that the Government can overcome road right-of-way protests by Mr. Usibelli?

Mr. PUCKETT. The issuance of a permit presumable gives the person the right to go ahead. The decision was made, I believe, over a protest of Mr. Usibelli. In that case he has right of appeal. Maybe that is the status of it now.

Mr. SAARELA. That is right, and it is being appealed.

Mr. PUCKETT. If Mr. Usibelli's protest is turned down, of course, Mr. Shallit could start to build the road. Whether or not Mr. Usibelli would try to get an injunction on him and the Government, I don't know.

Mr. SHALLIT. The road right-of-way which has been granted is not a road right-of-way I could use 12 months out of the year; it is only suitable for summer hauling.

Mr. HINMAN. With that road you could not produce 150,000 tons?

Mr. SHALLIT. No, sir, but it might be possible for me to reschedule deliveries during the winter. This poses a problem for the railroad and the military to handle coal during extreme cold weather in the Fairbanks area, during which time costs of handling are materially higher to the Government. Also the combination of snow and coal in alternate layers makes it subject to spontaneous combustion. Therefore, during the summer it would be cheaper and safer to stockpile and during the extreme cold weather schedule deliveries according to actual consumption of the power plants.

Mr. ANDERSON. Another very important point insofar as the military is concerned is the scheduling of the production so that it can be handled economically at the various bases with their unloading facilities. In the Fairbanks area, during the cold months of December, January, and February, the coal has to be dumped into the boiler room from the car. They cannot clamshell coal in extreme cold weather. If the coal producers fail to comply with scheduled deliveries as per their Navy contracts and overship to their bases causing delays in handling at the bases the cost of demurrage enters into the picture, which in the past has been absorbed by the military, and when added to the price of coal it is unbelievably high.

Mr. SAARELA. You might say prohibitive.

Major GOCHENAUB. It was about \$14,000 at one time. In fact our figures show now that the cost of our coal into Ladd alone, figuring transportation, demurrage and all, is more than it would be for oil.

Mr. ANDERSON. That is correct and if we wish to develop the coal industry we must work together to keep the price and quality of coal competitive with oil.

Mr. HINMAN. So far as the demurrage is concerned, we could not possibly haul the coal unless we could get the cars unloaded without undue delays.

Mr. ANDERSON. That is right, but I am trying to bring out the importance of scheduling production with the unloading facilities at the military bases taking weather into consideration—to get away from demurrage and tying up of cars. We all realize there are a limited number of cars on the railroad and if properly used and handled there will be no great shortage but otherwise it will work a hardship on both the railroad and the military, as well as the producer.

Major GOCHENAUB. In contracts written this year we have stipulated one clause which specifies that the using agency would notify the railroad and the mines by the 20th of the preceding month of the type of cars and the amount of tonnage required the following month. This was not done previously. There was such a clause but it did not make it mandatory. The tonnage being so irregular

we need gondolas one month and other months we need hopper types. By doing that it gives the railroad and also the mining company a chance to do some planning.

Mr. SAARELA. Has this money for constructing the railroad to Cripple Creek and Roth ever been asked from Congress?

Mr. HINMAN. We have programed it. In our budget estimates for fiscal year 1953 we included an amount of \$2,350,000 for improvements to and extension of the Suntrana branch. This was approved by the Interior Department reduced to \$1 million by the Bureau of the Budget, and entirely deleted in Congress when final action was taken on the appropriation bill. Right now the Alaska Railroad is prepared to and will commit itself to furnish and install the rail and fastenings in a very short period, probably 1 month, if the grade is provided. No appropriation would be necessary to install the railroad if the grade is provided. It would be necessary that a grade be ready not later than the middle of August.

Mr. SAARELA. Why couldn't the military take the stand that this railroad is essential or necessary? A couple of years ago I wrote to the commanding general and tried to get it ironed out so there would be some statement from the military as to the essentiality of the road or railroad, but I got a refusal. I think the situation has come to pass now that we are not going to meet the demand and it is mainly a problem of transportation. Therefore, I think it would seem reasonable that as it is a military problem and that a statement could be made by the military as to the essentiality of the railroad, so that the Alaska Railroad could go ahead and make the request. The hauling of 140,000 tons 3 miles by Mr. Usibelli and 150,000 tons 6 miles by Mr. Shallit will cost the Government approximately \$300,000 this year.

Mr. HINMAN. More than they would pay if there was a railroad extension.

Mr. SAARELA. That is what hauling the coal to the present rail head is going to cost. The spur has been estimated at approximately \$500,000. This situation is going on year after year. Mr. Shallit has hauled out 100,000 tons. I do not know how much that has cost the Government, but certainly it has cost them directly.

Mr. SHALLIT. Last year I figured it \$1.24 per ton.

Mr. COOK. Mr. Saarela, the cost of building the rail spur up to the Cripple Creek property would be closer to a million dollars. The grade would be about \$500,000.

Mr. ROBINSON. Would this include the bridge?

Mr. COOK. No, because we do not know what access would be necessary for the Cripple Creek property.

Mr. SAARELA. If it is necessary to take the Roth property out of the reserve and split these contracts up, some additional leasing of acreage will be necessary, but I believe at the present time the survey feels there is enough production facilities in the Healy field. In view of this constant bottleneck of getting coal out because of the lack of transportation it may be necessary to release additional acreages to get other small operators. Two years ago we received a letter from the commanding general stating that the military did not think the road was essential. I think the situation has changed drastically. The whole coal supply depends upon the the solution of this problem. The military is not going to countenance this continual harassment. One of these days the military is going to throw up its hands and put in a pipeline.

Mr. HINMAN. On the transportation part of it the railroad does not have the funds to build the extension.

Mr. ANDERSON. The essentiality of the access road into that mining area should be set up in the budget, and be backed by the military.

Major Gochenaur. What was the conversation, Mr. Anderson, you had with Mr. Flake when you went back to Washington? It was my understanding that the Department of the Interior was back of that road. After the conversation I had with you, Lieutenant Fisher said he laid it in the hands of the Interior Department and they would put it through.

Commander WILLIS. I would also like to ask the question if the Alaska Road Commission has ever set this up in the budget?

Mr. WHITE. No; it has never been itemized as such.

Mr. SAARELA. There has been a good deal of pressure to open up Lignite Creek and I would like to point out that we have a transportation problem to Lignite Creek also, and I think Mr. Cook will bear this out. A conservative estimate for this would be at least \$2 million. We have the problem of crossing the Nenana River and also going up Lignite Creek. I think ARC did do some engineering work as to the feasibility of opening Lignite Creek, but I think we

should develop and open up one area first before going into another area. The cost of opening up Lignite Creek is going to be at least \$2 million, plus the problem of mining, which is an unknown factor over in the Lignite Creek area.

Mr. PUCKETT. Cost to whom?

Mr. SAARELA. The cost to build a railroad including a bridge across the Nenana River.

Mr. ANDERSON. I concur with Mr. Saarela's statement, and I wish to state further that I have held the same line of reasoning for the past 10 years in regard to coal production from this area. From a military-security standpoint, I recommended in 1946 to Charles Kurtz, consulting coal-mining engineer from the Quartermaster General's office, Washington, D. C., that the Roth property be put in a reserve. At present, the only sound, economical plan is to build a railroad from the Healy River mine to the Roth property as the quality of coal in this property is far superior to any other coals reasonably accessible to transportation. Production from the Roth property, due to geological formations, and from a mining standpoint, would make it possible to produce considerable tinnage in a short time in case of an emergency.

Mr. HINMAN. You ask if ARC had ever asked for funds to build a road. I am sure they have not. There is no reason to build a road when it should be a railroad. If you are going to ask for money, ask for funds to construct a railroad.

Major GOCHENAUR. I do not think the price of coal would go down if a railroad is put in there. The highest price was received from Healy, who has the railroad at their back door.

Mr. SAARELA. Healy River is conducting an underground operation which is a higher-cost operation than a strip operation.

Major GOCHENAUR. How much is coming out of strip?

Mr. SAARELA. Very little.

Major GOCHENAUR. That has changed since I was up there.

Mr. SAARELA. Stripping never produced more than twenty or twenty-five thousand tons a year.

Mr. ANDERSON. Their strip operation at Healy have been very small compared to underground operations.

Mr. SHALLIT. With that type of operation for Cripple Creek, we believe that in a balanced operation our costs will be considerably less with a combination of underground and surface. We have a peculiar advantage in developing underground mines. Actually we can do a great deal of our operations on a tax-free basis.

Mr. ANDERSON. At lot of Healy River Coal Co.'s additional costs are due to mine fires. By properly planned development and effective ventilation, the hazards of mine fires in this particular area could be practically eliminated.

Mr. ROBINSON. Speaking of cost, Ludlow made a statement in opening the meeting of getting competition into the Territory in coal mining. I think that is one point that would mean more to the production cost than any other one point, plus the railroad—and you have to get transportation. Mines are working 6 days a week and some in emergencies work 7 days. Your miner's wages (this is a penalty on cost)—the 6th day he makes \$45. If he works Sunday he makes \$60; that is \$105 for 1 man's wages for 2 days. If he works 5 days on straight time without penalty he makes \$150 a week. If he works Saturday and Sunday, \$255 a week. If your mining operations supplied the demand your contract would call for 5 days a week with no penalty. So I cannot see where you are meeting the demand in the Territory as long as you are paying a penalty for operating it a 6th or 7th day, or 10 or 12 hours a day. It looks to me like your cost rests a lot on your shortage of production.

Mr. ANDERSON. I think, by the scheduling that the Navy has in their new contracts, it should be possible for each operator to plan his operation so as to avoid working the 6th or 7th day.

Major GOCHENAUR. I am giving you the figures that face the military and when you see the price this year and realize it was necessary for me to go back and ask for an additional \$753,000 to meet the increased costs of coal over our original budget it placed me in an embarrassing predicament.

Mr. ANDERSON. If we ask for an appropriation for this particular construction we must show Interior or Bureau of the Budget that it is an economical expenditure as well as a military necessity.

Mr. HOLDSWORTH. At a previous meeting I think it was agreed for expediency that a road be put in first and a railroad would follow.

Mr. MILLER. This year would have to settle for a road, but it would be a road-bed for a railroad.



Mr. SHALLIT. My costs this year were based on hauling 5 miles over an all-weather road. When I get underground I think the cost would be reduced. The price of coal has been going up but it is merely a coincidence that our costs are about the same this year. This year we had a big raise in miners' rates. Now all the mines in the Territory are on the same contract. I do not see how wages can be forced up any more. I feel the price I bid was high for 150,000 tons but in order to put that out it is necessary for me to get a large loan from RFC and I have to pay that back at a certain rate. In the future I do believe that the price of coal will have to go down to compete with oil.

Mr. ANDERSON. Phil, to get back to you, if the Governor calls a special session, what could the Territory do in regard to building a road up to Cripple Creek—possibly not right up to grade, but on a railroad survey?

Mr. HOLDSWORTH. It is a possibility, but there are no territorial road funds now available. It would require a special session and appropriation of funds for a road.

Mr. SAARELA. I do not see how you could justify the Territory spending money on an Interior project. It is public land administered by the Interior Department.

Mr. ANDERSON. This suggestion comes from Joe Flakne. I am asking you to think about it as a possible solution. Joe Flakne and I spent about three-quarters of an hour in Assistant Secretary Lewis' office and gave him the whole picture, stressing the importance of this railroad up there, consequently, he is familiar with the immediate necessity of the construction of this project. I do not know what can be done; however, George Rogers will take this information to Washington and perhaps talk it over with the Governor, point out that it is a military necessity.

Mr. ROBINSON. Is it going to accomplish your aim if Ben gets the highway in there and not the railroad—can you load 150,000 tons?

Mr. SHALLIT. If it will hold up during the summer, I can. It will be much more expensive, of course, but I have added that in. If 150,000 tons is required by the Air Force, it would be physically possible for me to load out that coal. If the railroad and the services can cooperate so that they will supply me with as many cars as I need and the Army can unload it, I will try to get it out during the winter.

Commander WILLIS. This extra tonnage talked about being essential—don't you think the military could give on the schedule. You are working out a fine schedule now which is best for the railroad, the operators, and the military. If there is a stepped-up production—have you thought about that?

Major GOCHENAUR. We have thought about that.

Mr. HOLDSWORTH. We thought it was all cleared up in January and the correspondence came back indicating the matter was going to be taken care of, but it looks to me as though no specific requests have been made for funds by either agency. Until that is done and justified by the military, I do not see how we can get the money.

Mr. SAARELA. What about the letter from Mr. Ghiglione to Mr. Flakne? Mr. White, you were at the meeting?

Mr. WHITE. It looks now that the biggest trouble of the whole project is the fact that Mr. Usibelli is reluctant to have traffic through his property.

Mr. SAARELA. He said he would contribute \$50,000 for a railroad. That shows his desire.

Mr. COOK. I might point out that some of the greatest expenditure required to build a grade up to the Usibelli property is in the first half mile, where two channel changes in the Healy River are necessary. When those are started it is going to be very difficult to keep from blocking Cripple Creek on their haul road.

Mr. SHALLIT. Our schedule does not require delivery until the 1st of September.

Mr. COOK. If we could start in immediately it would be easy to complete the grade by that time. Another physical problem is in July when the water starts rising and you get flash floods, which makes construction quite difficult. Right now would be a very desirable time to be in there making channel changes and developing the roadbed. We have filed now with the Bureau of Land Management for 100 feet on each side of centerline on that entire survey we projected. Our projection through Usibelli property passes through G bed. I think it probably could be solved by some statement from the military.

Commander WILLIS. I am charged with the job of transportation and coal. If I would recommend something to the general along that line I would have to know more about it than I do now.

Mr. PUCKETT. It would have to be done in a hurry.

**Major GOCHENAUR.** There is one factor—we are merely sitting in as representatives of the Alaskan Command and Air Command. The authority and push should come from the procuring agency. That push you ask for could very well be assured upon the necessary papers going to that Department in Seattle. They are conscious of this. They are the central procuring agency for the coal procurement for Alaska.

**Mr. SAARELA.** At the last meeting I think we discussed getting it at as high a level as possible. I made the suggestion myself that it be taken up as high an echelon as possible. Everyone knows what the problem is. The recommendation is in the field committee minutes with an underline as to its importance. I think at the last January meeting we went over the situation and it was decided that it would be taken up and recommended to the Secretary's Office through the Alaska field committee. That is where it stands today.

**Mr. ANDERSON.** Lieutenant Fisher and I certainly stressed the importance of having this railroad built.

**Mr. SAARELA.** Correspondence from Rogers would indicate that everything was squared away.

**Commander WILLIS.** It becomes essential that we get coal out. Yet at the same time we now have no request for money in either for a road or a railroad. It seems to me that it is about 2 years late or 2 years early, as far as essentiality. I think it is late at this particular time, but we are going to have to move. In the first place we are going to have to get a request in for money properly substantiated.

**Mr. SAARELA.** In my files I still have my correspondence with the commanding general. At that time (1951) they were reluctant, but this is 1953 and the problem is entirely different now.

**Mr. MILLER.** In 1951 there were no anticipated coal demands or steam production.

**Mr. SAARELA.** If you are going to continue to burn coal the demand will be firm and will increase until probably 1956 when construction is complete.

**Mr. ROBINSON.** Right now, unless we get a railroad to Cripple Creek mine to take care of 150,000 tons, the military is going to be at least 50,000 tons short. If the military is going to use coal, it will be shipped in from the States?

**Major GOCHENAUR.** We will just burn oil.

**Mr. MILLER.** That is 50,000 tons this year; next year it may be closer to 150,000 tons; two from now it will increase in direct proportion to 1955.

**Mr. SHALLIT.** It became sort of a personal problem for Cripple Creek. Unless a decision is made to get a railroad in the near future, I do not think we are warranted in the expansion program we are setting up. With the possibility of converting to oil, it would be better to hold off. I think everyone here will agree that Cripple Creek has possibilities of putting out production.

**Mr. HOLDSWORTH.** Should we ask for the railroad to request funds only, or should the ARC request funds?

**Mr. ANDERSON.** It was our thought previously that the ARC ask for funds to build a road up to Cripple Creek as near as feasible on railroad survey, but the request was not made. Is that correct?

**Mr. WHITE.** That is correct.

**Mr. COOK.** As far as the railroad ever making a request for funds, we are operating under a directive as to the method to proceed, which calls for the location of a feasible line, and then that is to be forwarded to Washington for further action. That was completed last fall. I believe the intent from then on was whether it was feasible to build a railroad up there, or a highway, depending on tonnage. But as the necessity for coal has developed by leaps and bounds the outlook now is that the railroad would be more desirable.

**Mr. ROBINSON.** The railroad is the only thing.

**Mr. COOK.** As soon as the Department of the Interior is persuaded that the railroad is the mode of transportation that should be used, then a request will be made.

**Mr. SAARELA.** What division of the Department?

**Mr. COOK.** The survey is all made and now it is just the money.

**Major GOCHENAUR.** If it takes that long for action, there is not going to be a road in. Mr. Shallit is about to sign a contract, which I presume he will not sign based on the prediction that the road will not go in.

**Mr. SHALLIT.** I will accept 100,000 tons, if they will schedule during the winter.

**Major GOCHENAUR.** We are at capacity to take the balance during that period.

Mr. ROBINSON. What would this make us ship under present setup without either road?

Major GOCHENAUR. Between fifty and seventy thousand tons—sixty-two thousand to be accurate.

Mr. SHALLIT. It is not so much this year, but it will be the same next year.

Major GOCHENAUR. We are going to have to do that to get by this year. The time element is now.

Mr. SHALLIT. What I would like to do is sign for the minimum with the possibility of adding if the road could go through.

Commander WILLIS. I think you could probably do that, as far as the Navy is concerned with the one exception of this undetermined factor of the road, which would require us to start looking around for another source of supply.

Major GOCHENAUR. We could probably get by without that 62,000 tons but we would go into our stockpile and we cannot afford not to have a stockpile. There are too many acts of God in Alaska that you have to be prepared for.

Mr. SHALLIT. The Roth property up there—I believe the survey has set up about a half million tons of strippable coal. In one season you could have it ready to go.

Major GOCHENAUR. It is no good in a stockpile at the mine, Mr. Shallit.

Mr. ROBINSON. When you talk about increasing tonnage from Roth or any other you are speaking of strip coal, Ben?

Mr. SHALLIT. Yes.

Mr. PUCKETT. Is this matter of right-of-way one of the most unimportant things?

Mr. SHALLIT. Yes; that is right. I am not being interfered with now. We have never been held up. The railroad has their own application for right-of-way and it is tentatively understood that I will use the right-of-way until the rails are laid. Is that right?

Mr. COOK. The railroad has no objection.

Mr. SAARELA. There has been no action on the last request with underline. I think there should be another approach, if anybody has any ideas.

Mr. ANDERSON. We have done all that is humanly possible to expedite matters from this level.

Mr. SHALLIT. Would it be possible to start some work that would be of benefit next year without any appropriation?

Mr. COOK. You would have to go in there with rooters and draglines and get a camp set up. The setting up would probably run as much as you have to put into it.

Mr. SHALLIT. Would the ARC be able to get anything done in this?

Mr. WHITE. We would be in the same position—not enough money to move in on the job. We are faced with another problem now. The AGC has placed another rider on our bill limiting us to 12½ percent of actual work which might necessitate doing all this by contract.

Mr. COOK. As far as the railroad is concerned it would have to be done by contract. We do not have equipment available at this time.

Major GOCHENAUR. I think the recommendation as it stands should go to Mr. Rogers, but am not on the committee.

Commander WILLIS. Perhaps there is money in Interior that could be diverted instead of going through Congress.

Mr. SAARELA. I would like to make a motion that the same motion made in the previous coal committee meeting in January in regard to construction of a railroad spur be again brought to the attention of the various Interior officials through Mr. Rogers of the Alaska Field Committee and copies of letters from various Interior agencies requesting this construction be made part of the record with the motion.

The following resolutions were unanimously passed by the Alaska Field Committee, Subcommittee on Coal:

1. That Mr. George Rogers (Chairman of the Alaska Field Committee, inquire into the status of the request of Ben Shallit for a permit for a highway right-of-way which has been granted, but which, it is understood, is on appeal to the Washington office of the Bureau of Land Management or to the Secretary's Office, by Emil Usibelli of the Usibelli Coal Co. It is the suggestion of the subcommittee that Mr. Rogers urge that action be taken to resolve the problem if it is still undecided in Washington.

2. That steps be taken at once to finance the construction of an extension of the Railroad from the Healy River mine to the Cripple Creek and Roth properties. This spur to be completed or partially so before October 1, 1953.

3. That the extension of the Healy River spur to the Roth property is vital to the security of military installations this coming fiscal year of 1954, and in the future, and to the development and prosperity of the coal industry as a whole in Alaska.

4. That by the extension of the Healy River spur to the Roth property would mean a substantial savings to the government in the price of coal and this savings to the government should amortize the cost of construction within 3 or 4 years.

5. That shipment of coal by rail transportation is the only logical solution to the presently existing critical situation.

Meeting adjourned at 11:15 a. m.

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EXHIBIT DD

[From Jessen's Weekly, October 22, 1953]

TO REQUEST RELEASE OF ESKA COAL RESERVE

A request to release the Esko coal reserve in the Matanuska coal fields near Anchorage will be made by Gov. B. Frank Heintzleman in Washington, D. C.

Charles W. Connor, who headed a three-man coal-survey team in Alaska last summer, said that coal-mine operators in the Territory will be able to supply all anticipated needs for the next several years and that proposed oil pipeline from Haines will probably not handle grades of oil that will compete with coal.

He recommended construction of a railroad spur to the two coal mines now operating in the Healy River field.

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EXHIBIT EE

MEMORANDUM

OCTOBER 1, 1954.

To: Director, Bureau of Land Management.

From: Assistant Secretary, Public Land Management.

Subject: Right-of-way application by Alaska Railroad.

There is at present in the office of the Solicitor an appeal by the Usibelli Coal Mine, Inc. and Emil Usibelli from the Bureau of Land Management decision in connection with the right-of-way application of A. Ben Shallit, Fairbanks 08832. This dispute was investigated in Alaska by the Alaskan Coal Survey Group, which submitted a report on November 12, 1953. A copy was sent to the Associate Director of the Bureau of Land Management. The group suggested that the opposing parties might reach an amicable solution. Following this suggestion, representatives of Mr. Shallit and of the Usibelli interest have been consulting with each other in an attempt to reach such a solution. Meantime, of course, action on the appeal has been suspended.

In a letter of September 3, Mr. Northcutt Ely, attorney for the Usibelli interest, of the Solicitor's Office, Mr. Kalbaugh, General Manager of the Alaska Railroad, to cross the Usibelli leasehold for the purpose of reaching the Shallit mine and possibly other deposits in the area. Mr. Ely points out that the railroad right-of-way would cover a different route than the right-of-way applied for by Mr. Shallit, and he contends that the railroad right-of-way would seriously damage the Usibelli operations. He states that the Usibelli interests are reluctant to conclude an amicable agreement with Shallit for one right-of-way, while the railroad right-of-way is still pending.

Without passing on the merits of this contention, I do think that the Bureau of Land Management and the Alaska Railroad should examine the situation promptly. If possible, an amicable agreement with Mr. Usibelli regarding this line, if it is still to be built, should be reached. Since the Bureau of Land Management has the railroad's application before it, I expect the Bureau to take the initiative in this matter. Copies of the correspondence are being sent to the Alaska Railroad. The Manager of the Alaska Railroad will be in Washington until October 19, 1954, and is, therefore, available for consultation on this problem.

ORME LEWIS, Assistant Secretary.

## EXHIBIT FF

## MEMORANDUM

OCTOBER 14, 1954.

To: Assistant Secretary, Public Land Management  
 From: Director, Bureau of Land Management  
 Subject: Right-of-way application, Alaska Railroad.

Reference is made to your memorandum dated October 1, 1954, relating to the application, Fairbanks 010449, of the Alaska Railroad for right-of-way for an extension of its Suntrana branch for a distance of 6.1 miles with a view to reaching the A. Ben Shallit coal mine and possibly other deposits. This extension would go through the camp area of the Usibelli Coal Mine, Inc., operated by Emil Usibelli in connection with mining his coal lease area in the vicinity.

Mr. Shallit has pending a truck road right-of-way application Fairbanks 08832. This truck road right-of-way also crosses the Usibelli interests. This application is in the Solicitor's office on appeal by Usibelli.

I held a meeting yesterday at 2 p. m. at which your Solicitor was represented. Mr. Kalbaugh, the General Manager of the Alaska Railroad, was present also. Mr. McCarty representing Usibelli was at the meeting. Mr. Barash, Shallit's attorney, was absent.

Mr. Kalbaugh filed with the record a copy of his withdrawal dated October 11, 1954, of the right-of-way application, Fairbanks 010449, of the Alaska Railroad. The withdrawal itself was forwarded to our area administrator, area 4. It will be accepted very shortly. So, the Alaska Railroad right-of-way application no longer presents a problem.

At the meeting Mr. McCarty stated that the relations between his client and Mr. Shallit were better, that Mr. Barash and he were engaged in preparing a form for a stipulation and agreement between Usibelli and Shallit which would provide for the mutual operation of one truck road only through the Usibelli interests, instead of the present 2 roads, 1 Usibelli's and the other Shallit's. As soon as this agreement is signed and filed with the record of the appeal, Fairbanks 08832, your Solicitor expects to dispose of the appeal and thus close the entire case.

EDWARD WOOLEY, *Director.*

## EXHIBIT GG

DECEMBER 23, 1954.

Re Alaska Railroad right-of-way application Fairbanks 010449.

Hon. EDWARD WOOLEY,  
*Director, Bureau of Land Management,  
 Department of the Interior, Washington, D. C.*

DEAR MR. WOOLEY: Early in November I received a copy of your decision of November 2, 1954, accepting a withdrawal filed by the Alaska Railroad of its application Fairbanks 010449 for right-of-way.

Recently I had occasion to examine the record of Fairbanks 010449 in connection with a presentation I am preparing which will urge the Department of the Interior to extend the Suntrana branch of the Alaska Railroad to coal lease Fairbanks 07350 of my client, A. Ben Shallit, Cripple Creek Coal Co. In that record is a memorandum dated October 14, 1954, from you to the Assistant Secretary, Public Land Management, calling attention to a meeting which was held in your office at 2 p. m., on October 13, at which were present representatives of the Solicitor's Office, Mr. Kalbaugh, General Manager of the Alaska Railroad, and Mr. McCarty of the office of the Northcutt Ely, Esq., representing Usibelli Coal Mine, Inc. The same memorandum contains the statement, "Mr. Barash, Shallit's attorney was absent."

I don't know that my presence at the meeting in your office on October 13 would have contributed in any way to the discussion that took place, but it seems appropriate to point out that my absence from that meeting was due solely to the fact that I was not invited and actually knew nothing thereof until my examination of the record of Fairbanks 010449. I shall appreciate very much this letter being made part of the record of Fairbanks 010449 so that there may be no misunderstanding in the future as to the reasons for my absence from the meeting of October 13, 1954.

Sincerely yours,

MAX BARASH.

## EXHIBIT HH

CRIPPLE CREEK COAL CO.,  
Fairbanks, Alaska, October 19, 1954.

Mr. A. F. GHIGLIONE,  
Commissioner of Roads for Alaska,  
Alaska Road Commission, Juneau, Alaska.

DEAR GHIG: Since you are probably already making your estimates on next year's requirements, I believe that it is appropriate at this time to again request that some consideration be given construction of a road between Suntrana and Cripple Creek.

Since you are entirely familiar with our problem, there is no point in repeating the factors involved. I would like to point out that the road that we are now using and for which we have a tentative right-of-way, was destroyed three times this year, requiring rebuilding at a cost in excess of \$40,000.

Our present road is considerably better than any we had previously built, but the section through the Usibelli lease is still subject to destruction during every period of high water.

I would appreciate your giving consideration to the possibility of the Road Commission obtaining a right-of-way at least through that section since we have not been able to make any progress in obtaining a right-of-way on which we can construct a permanent road.

This is the same problem we have been fighting for the last 5 years, and I believe it will not be solved until your Department takes some direct action. The road is used by all 3 mine companies, 2 companies cutting timber, hunters, tourists, and a considerable portion of the people living around Suntrana and Healy. The road is beginning to take on most of the aspects of a public highway, and we believe that, as such, you should accept some responsibility for it.

I would appreciate an opportunity to discuss this with you during your next trip to Fairbanks, or in Juneau if you believe that anything can be accomplished by my meeting with you there.

With best personal wishes,

Sincerely yours,

A. BEN SHALLIT.

## EXHIBIT II

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
Juneau, Alaska, October 29, 1954.

Mr. A. BEN SHALLIT,  
Cripple Creek Coal Co., Fairbanks, Alaska.

DEAR MR. SHALLIT: Reference is made to your letter of October 19, 1954, requesting information regarding the status of the access road between Suntrana and Cripple Creek, and requesting assistance in its construction and maintenance. I am sorry to advise that the Alaska Road Commission has been unable to initiate action toward assuming this responsibility and the status of the project remains unchanged since the policy decisions were made by the Department of the Interior over a year ago.

As you know, the Department has decided that proper access to the Healy River coal fields may best be provided by the railroad spur extension. As a result of this decision, the Railroad has proceeded to obtain the necessary right-of-way and has filed necessary maps and instruments with the Bureau of Land Management for this purpose.

When the decision was finally made to encourage railroad access to the Healy River coal properties, the Alaska Road Commission was precluded from sponsoring further road projects for this purpose. As you will recall, a subsequent attempt was made to obtain funds for construction along the Alaska Railroad right-of-way in an effort to provide temporary relief for your problem. This attempt met with failure, again because the project was considered one for the Alaska Railroad and therefore any request for funds to implement the project should be initiated by that agency.

You are also aware that our forces are now completing a short tote road between the Nenana River crossing and Suntrana, which project has been accomplished in cooperation with the Healy River Coal Corp. It is presumed that this road extension will somewhat assist in relieving your problems.

I recognize that this information is of little value to you and may be discouraging, however, I can only suggest that you contact the Alaska Railroad in an effort to expedite their development of the railroad spur further up the Healy River.

Sincerely yours,

A. F. GHIGLIONE,  
*Commissioner of Roads for Alaska.*

# EXHIBIT JJ

CRIPPLE CREEK COAL CO.,  
*Fairbanks, Alaska, November 4, 1954.*

Mr. A. F. GHIGLIONE,  
*Commissioner of Roads for Alaska,  
United States Department of the Interior,  
Alaska Road Commission, Juneau, Alaska.*

DEAR MR. GHIGLIONE: Thank you for your letter of October 29 advising us that the Alaska Road Commission was unable to initiate action in providing an access road to the Healy River coalfields because of a decision by the Department of the Interior to provide such access by the extension of the Alaska Railroad spur.

For your information, this situation was recently discussed with officials of the Alaska Railroad, and we were advised that they had no immediate plans for the construction of such a spur. Under the circumstances, we believe that unless an actual directive was issued to you, precluding the construction of a road, it would still be in order for you to consider this project. If, however, you have been officially advised that the Alaska Railroad alone is to be responsible for the construction of this spur, we will appreciate a copy of this directive so that we may act accordingly.

In your letter of October 29, you will also note that a road has been completed between the Nenana River crossing and Suntrana, which was built in cooperation with the Healy River Coal Corp. You "presume that this road extension will somewhat assist in relieving our problems." It is conceivable that this road may be of assistance to the Healy River Coal Corp., the Suntrana Mining Co., and probably the Usibelli Coal Mines, Inc., but it is difficult to see where it is of any value to the Cripple Creek Co.

On the other hand, construction of your road will allow the people living at Healy to drive to Suntrana, and from there on it is presumed that they will continue on to Cripple Creek via our private road, thus further increasing the public nature of our road which is already used by the two other coal companies and the people living at Suntrana.

It is also noted in a recent newspaper release that you have just completed a new all-weather gravel road from Palmer to the Houston coal mine. Since the Houston coal mine has a very questionable future as compared with that of the Cripple Creek Coal Co., it is difficult to understand why that construction was completed without giving more consideration to our problems.

Please accept my personal apologies for continuing to bother you with this problem, but as you know, we have been attempting to resolve this matter for 5 years and have now decided to bring it to a head.

With best personal regards,

A. BEN SHALLIT.

# EXHIBIT KK

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
*Juneau, Alaska, November 8, 1954.*

Mr. A. BEN SHALLIT,  
*Cripple Creek Coal Co., Fairbanks, Alaska.*

DEAR MR. SHALLIT: This will acknowledge receipt of your letter of November 4, 1954, which further discusses the possibilities of the Alaska Road Commission's participation on the Healy River Road to serve your coal properties. In spite of the many factors outlined in your letter which tend to justify this project as a public necessity, I am still unable to offer assistance since no funds are presently available to the Alaska Road Commission for this work.

The road to serve the Houston coal mine, which you have noted in your letter, was built with Territorial funds at the request of the Territorial board of road commissioners. This was not a Federal project. By the same reasoning, it is possible that you could obtain assistance from the Territorial board, and it is suggested that you contact Mr. Irving Reed, Territorial highway engineer.

The situation along Healy River, insofar as access by railroad in preference to highway has been determined as policy by the Interior Department; has not been resolved in the form of a directive to the Alaska Road Commission. However, since all requests for funds must be processed through the Interior Department before reaching the Bureau of the Budget and Congress, it is obvious that the policies of the Department must be adhered to.

Sincerely yours,

A. F. GHIGLIONE,  
*Commissioner of Roads for Alaska.*

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EXHIBIT LL

CRIPPLE CREEK COAL CO.,  
*Fairbanks, Alaska, October 21, 1954.*

Mr. FRANK KALBAUGH,  
*General Manager, The Alaska Railroad,  
Anchorage, Alaska.*

DEAR MR. KALBAUGH: During my last visit to Washington, I discussed with Mr. Strand the advisability of including a request for an appropriation in the next budget to build a spur line from Suntrana to Cripple Creek.

As you know, our efforts on behalf of accomplishing this purpose through the Healy River Spur, Inc., was nonproductive. Although the coal requirements for the next fiscal year will probably not be much larger than those requested this year, we have been advised that future requirements may be a great deal larger. Under the circumstances, it would appear that it would be in order to request an appropriation at the next budget hearings, in order that the spur could be completed in time to meet the increased demand.

Sections of our road were destroyed three times this year, pointing to the necessity of obtaining less vulnerable right-of-way on which a permanent road can be constructed. Assistance from an appropriate agency of Government, who can obtain a right-of-way through their powers of eminent domain appears to be the only way in which such a road can be built through the intervening leases.

It is therefore, again, respectfully requested that consideration be given to the extension of the existing spur to Cripple Creek, and that if it is not believed advisable to construct a spur at this time, to at least survey and obtain a right-of-way for such a spur, and allow the Cripple Creek Coal Co. and the general public the right to use this right-of-way, until such time as a spur is constructed.

Although we have gone over this problem many times, I would appreciate an opportunity to meet with you again to consider any possibilities that might have been overlooked since I plan to be in Washington again prior to the budget hearings.

Any suggestions that you could make that would assist us in solving our problem would be very much appreciated.

Very truly yours,

A. BEN SHALLIT.

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EXHIBIT MM

UNITED STATES DEPARTMENT OF THE INTERIOR,  
THE ALASKA RAILROAD,  
*Anchorage, Alaska, November 5, 1954.*

Mr. A. BEN SHALLIT,  
*Cripple Creek Coal Co., Fairbanks, Alaska.*

DEAR MR. SHALLIT: On my return to Anchorage received your letter of October 21, 1954, concerning the Alaska Railroad requesting an appropriation for the extension of our Suntrana Branch.

As we discussed in our several conversations on this matter, the Alaska Railroad is required to be self-sustaining, and any such large expenditures as you have proposed by the railroad would have to be economically justified and, as we also discussed, such economic justification cannot be made by the railroad in support of this track extension.



Inasmuch as the Defense Department has indicated that they cannot lend support to your proposed track extension, it appears to us that your next best bet would be to endeavor to procure an all-year road from your property to the present railhead at Suntrana, and, of course, such a road would not be under the jurisdiction of the Alaska Railroad. Therefore, you may wish to consider the possibility of having the Alaska Road Commission undertake such action as would be necessary for such a roadbuilding program.

I regret very much our inability to be of more concrete assistance to you, and am looking forward to seeing you in the not-to-far-distant future.

Sincerely yours,

F. E. KALBAUGH,  
General Manager.

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EXHIBIT NN

UNITED STATES DEPARTMENT OF THE INTERIOR,  
ALASKA ROAD COMMISSION,  
Juneau, Alaska, December 21, 1954.

Mr. A. BEN SHALLIT,  
Fairbanks, Alaska.

DEAR MR. SHALLIT: Reference is made to your letter of December 15 regarding the possibility of obtaining funds for construction of an all-year road from Suntrana to Cripple Creek. I am surprised at Mr. Kalbaugh's statement regarding the appropriation of funds for this project, since all previous departmental policy has been in support of extension of the railroad spur in preference to the highway, and obviously no funds will be appropriated by Congress without the support of the Interior Department.

In reviewing our previous estimates for this project, I find that several factors enter into the cost of the road, and, therefore, any estimate must be qualified. Our last estimate, made in April 1953, for construction of the road from Suntrana to Cripple Creek, totaled \$420,000. This estimate was based upon the alignment following the present Alaska Railroad line within their right-of-way, since at that time Mr. Usibelli had refused consideration of a road easement either over his road or through his property, excepting on the railroad line. His refusal was always based on the contention that any such easements would conflict with future development of his property. The \$420,000 estimate was also based upon the assumption that the road would be constructed by Alaska Road Commission forces and equipment. Recent departmental policy requiring such work to be handled by contract will, in our thinking, increase the cost of the job. Therefore, a round estimate of \$500,000 would be a safer figure to use in your negotiations.

The Bureau of Land Management has advised that the Alaska Road Commission could construct along the present Alaska Railroad right-of-way, however, if you consider it necessary to leave this right-of-way in order to reduce the project cost, it would be necessary that new easements be obtained from property owners. Such action might result in a stalemate, since most of the line would be on Usibelli property.

I would be pleased to furnish any additional information or more details if you so desire, and I will look forward to meeting with you in Washington in the latter part of January.

Sincerely yours,

A. F. GHIGLIONE,  
Commissioner of Roads for Alaska.

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CRIPPLE CREEK COAL CO.,  
Fairbanks, Alaska, January 15, 1953.

Re Fairbanks 07350.

Mr. LEO H. SAARELA,  
Regional Mining Supervisor, United States Geological Survey,  
Anchorage, Alaska.

DEAR SIR: Pursuant to your request, we are submitting for your consideration, a status report and generalized operating plan for mining coal on our leasehold.

*Location*

The leasehold contains approximately 1,120 acres in the Nenana Coal Field, Territory of Alaska, described as follows: T. 12 S. R. 6W Fairbanks meridian, Alaska; sec. 15, all; sec. 16, N $\frac{1}{2}$ , SE $\frac{1}{4}$ .

*Lease*

Preference right mining lease of coal lands in Alaska, effective as of July 5, 1950, between the United States of America, lessor, and A. Ben Shallit, Fairbanks, Alaska, lessee, for a period of 50 years.

*History of operation*

Permanent camp construction and development work was started in August 1950, following an extensive prospecting program carried out under our coal prospecting permit.

Production was started in November 1950, from our strip pit on the No. 1 bed, left limit of Cripple Creek. Subsequent production was from strip pits on the No. 1 and No. 3 beds. All development work was done during the summer months. All coal was mined during the winter when truck haulage conditions were favorable. During the summer of 1952 a portal site was established for the No. 6 bed, right limit of Cripple Creek, preparatory to development of that bed by underground methods.

Present camp facilities consist of a combination garage and powerhouse, a 15-man bunkhouse, mess hall, storehouse, office, wanigan, and several smaller buildings. A semiportable loading grizzly at the pit site, 6 miles of main haulage road, 4 bridges, loading ramp, and an air strip have also been constructed. A crushing plant tippie powered by a 50-kilowatt diesel unit was constructed at the mouth of Cripple Creek in the fall of 1951, but not used during the winter of 1952.

*Production by months since the start of operations*

	<i>Tons</i>
November 1950-----	1,784.0
December 1950-----	7,992.45
<b>Total 1950-----</b>	<b>9,776.45</b>
January 1951-----	11,575.25
February 1951-----	8,827.05
March 1951-----	9,699.20
April 1951-----	9,500.05
May 1951-----	871.15
November 1951-----	2,873.9
December 1951-----	5,421.15
<b>Total 1951-----L-----</b>	<b>48,767.75</b>
January 1952-----	3,277.0
February 1952-----	5,285.16
October 1952-----	7,756.3
November 1952-----	16,560.5
December 1952-----	8,750.0
<b>Total 1952-----</b>	<b>41,628.96</b>
<b>Total to date-----</b>	<b>100,173.16</b>

*Reserves*

Over 5 million tons of "probable" coal are partially blocked out above Cripple Creek drainage level. Of this amount, about 500,000 tons can be mined by open-pit methods. These reserves do not take into account probable reserves of underground coal on the left limit of Cripple Creek, or any of the reserves below Cripple Creek drainage level. Reserves below the Cripple Creek drainage, but within the present economic limits of mining probably exceed 50 million tons.

*Long-range planning*

Our future mining plans presuppose a continuation of present market conditions for 5 years, an extension of the Alaska Railroad spur to at least the mouth of Cripple Creek, and our ability to obtain adequate financing. Any deviation from these basic factors will result in a modification of our planning.

Under favorable conditions, we plan to increase our annual production from less than 50,000 tons at present, to 100,000 tons during the fiscal year 1953-54; 150,000 tons in 1954-55; and 200,000 tons thereafter.

Eighty thousand tons of the 1953-54 production is to come from surface operations and 20,000 from underground. One hundred thousand tons of the 1954-55 production is to come from the surface and 50,000 from underground. Half of the 1955-56 production will be from the surface and half from underground. By 1958 all tonnage will be produced from underground operations.

By 1958 it is planned to have at least three fully equipped underground mines, each independent of the other operations. Under very competitive market conditions it is conceivable that only the most efficient unit would be operated. Under increased demands production could be stepped up from all units, and additional beds developed.

It is planned to expand surface facilities only as rapidly as other conditions justify. Preference in expenditures will be given to underground development work as soon as 100,000 tons of surface coal has been developed. Future surface development including a coal treatment plant, but most especially employee housing and recreational facilities, will be deferred until justified by developed reserves and market conditions.

#### *Sequence of mining*

Reference is made to the leasehold map for the planned mining schedule beginning April 1953. The year shown on the map is the year during which the coal is to be mined. Most blocks will be developed during the previous year.

#### *Schedule—beginning April 1953*

1953:

	<i>Tons</i>
Complete stripping (left limit No. 1, surface)-----	60,000
Complete stripping (left limit No. 2, surface)-----	20,000
Complete gangway and counter (No. 6, underground)-----	20,000
<b>Mine</b> -----	<b>100,000</b>
Prestrip (left limit No. 1, surface)-----	30,000
Right limit No. 1 (surface)-----	50,000
No. 6 Healy River (surface)-----	20,000
Possible (No. 1 high bench, surface)-----	50,000

1954:

Complete 1953 prestrip program-----	100,000-150,000
Complete No. 6 gangway, etc.—Develop east end block on retreat (underground)-----	40,000
Start No. 1 gangway (underground)-----	10,000
<b>Mine</b> -----	<b>150,000</b>
Prestrip (No. 1 high bench)-----	100,000

1955:

Complete 1954 prestrip (surface)-----	100,000
Drive No. 3 gangway and counter (underground)-----	30,000
Drive No. 1 gangway and raise (underground)-----	20,000
Develop block No. 6 on retreat (underground)-----	50,000
<b>Mine</b> -----	<b>200,000</b>
Prestrip (No. 1 high bench)-----	100,000

1956:

Complete 1955 prestrip (surface)-----	100,000
Develop No. 6 on retreat (underground)-----	50,000
Develop east end block on retreat No. 3 (underground)-----	30,000
Complete development gangway No. 1 mine (underground)-----	20,000
<b>Total</b> -----	<b>200,000</b>
Prestrip (No. 1 high bench)-----	100,000

1957:

	<i>Tons</i>
Complete 1956 prestrip (surface)-----	100,000
Develop No. 6 on retreat (underground)-----	50,000
Develop No. 3 on retreat (underground)-----	50,000
Total-----	200,000

Preliminary development No. 2 upper and lower beds.

1958: Complete tonnage to be mined from underground.

*Summary schedule (tons)*

	Strip Mine	Underground
1953-----	80,000	20,000
1954-----	100,000	50,000
1955-----	100,000	100,000
1956-----	100,000	100,000
1957-----	100,000	100,000
1958-----		200,000

*Strip mining method*

Strip mining will be continued as at present, using a combination of bulldozer and hydraulics to remove overburden. The fine material is washed down the creek and carried away by Healy River. The coarser alluvium is stacked sufficiently beyond the limits of the bed so that it is not rehandled. So far it has not been necessary to drill or blast the overburden. Advantage is taken of natural agencies for thawing and disintegration of the gravels. This may require preliminary work as much as 3 years in advance of complete development.

Most of the strip coal will be mined by standard open pit methods using electric auger drills for blasting, and bulldozer and ramp, or shovel, for loading. Coal will be transported by truck to the railroad for direct loading as pit run, or processed through our tippie if sizing is required.

The 300,000 tons of strip coal being developed on the No. 1 bed on the high bench, right limit of Cripple Creek, will be stripped by bulldozer. After breaking, the coal will be bulldozed into a chute to be driven in the No. 1 bed from a haulage level on Cripple Creek. The coal will be transferred on the haulage level from the chute to cars or a conveyor belt, and then directly to trucks for railroad loading.

*Underground mining*

Plans for actual underground mining are still in the formative stage. A comparison is being made of the cross-pitch system now being tried at the Evan-Jones mine, and a modification of the Healy River mine system. A study will also be made of the methods now being tried in pitching beds in the States. No firm decision as to the method of mining or the type of equipment to be used will be made until after the preliminary development work has been completed.

It is planned to furnish all coal for our markets from our surface pits during the development of the underground mines, except for such coal as is produced from the development headings.

A gangway and counter with connecting raises for ventilation will be driven by conventional methods on the No. 6 bed right limit of Cripple Creek at our present portal site. It is planned to drive these headings to our eastern boundary and mine in retreat, pulling all pillars to the counter level. It is planned to save the gangway for the development of the bed below drainage level if such an operation appears feasible at that time. The actual method of pulling the blocks above the counter, in retreat, will be submitted for your consideration and approval prior to any actual mining. Some experimental work may be done in developing the No. 6 bed in order to work out the most efficient system for the developing and mining of other beds.

Financing, markets, and the availability of equipment may influence our mining system, but our basic plan calls for a cautious development of the underground workings, so that by the time our easier surface coal has been exhausted, we will have sufficient fully developed underground reserves to meet all competition.

*Conclusion*

The mining plan as herewith submitted is obviously too generalized to warrant your serious consideration. It is being presented, however, in order to keep you informed as to our long-range planning.

The most important single factor that would prevent our increasing production in 1953 would be the failure of the Alaska Railroad to extend their spur as now planned, from present rails' end at Suntrana. Under present hauling conditions, we would not plan to mine more than 60,000 tons during any year, and would be forced to confine our deliveries to the winter months only.

Respectfully submitted.

A. BEN SHALLIT.

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EXHIBIT PP

RECONSTRUCTION FINANCE CORPORATION,  
Washington 25, D. C., August 16, 1954.

Mr. A. BEN SHALLIT.

*President, Healy River Spur, Inc.,  
Fairbanks, Alaska.*

DEAR MR. SHALLIT: As you have previously been advised your application for a loan of \$1,754,839.50 under section 302 of the Defense Production Act was submitted on March 16, 1954, to the Office of Defense Mobilization for determination regarding the issuance of a certificate of essentiality as required by Executive Order No. 10281.

In this connection, there is enclosed for your information copy of a letter we have received from the Office of Defense Mobilization.

For reason that no certificate of essentiality will be issued further consideration of the application is precluded. The files on this matter are, therefore, being closed.

Very truly yours,

M. W. KNARR, *Secretary.*

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EXHIBIT QQ

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF DEFENSE MOBILIZATION,  
Washington 25, D. C., August 11, 1954.

Re Healy River Spur, Inc., Fairbanks, Alaska, loan applied for, \$1,754,840,  
DPC-930

Mr. G. W. BRODIE.

*Chief, Business Loans Division, Office of Loans,  
Reconstruction Finance Corporation, Washington, D. C.*

DEAR MR. BRODIE: This refers to your letter of March 16, 1954, requesting that we make a determination of essentiality to the national defense of the section 302 application of the Healy River Spur, Inc., for a loan of \$1,754,840.

The proceeds of this loan will be used to build a spur track connecting with the Alaska Railroad at Suntrana, Alaska.

The Department of Defense has advised it does not feel the proposed addition to the existing spur track is essential to the national defense.

In view of the above, this Office will not issue a certificate of essentiality for this application at this time.

Very truly yours,

F. L. PARNELL,  
*Chief, Finance Division, Production Area.*

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EXHIBIT RR

## ANALYSIS OF TRUCK HAULAGE COSTS

The savings to the coal mine operator by direct railroad versus short haul trucking to the railroad has been generally estimated at about \$1 per ton of coal hauled (exhibits W and AA). In a competitive market this savings would be passed on to the consumer in lower coal prices. Since the Government buys about 80 percent of the coal produced in Alaska the taxpayer would be the principal beneficiary.

The Cripple Creek Coal Co. has produced 263,614 tons of coal from 1950, when it was organized, through 1954. During the same period the Usibelli Coal Mine, Inc. has produced 943,815 tons. The total production of these 2 mines alone was 1,207,429 tons, which at a savings of \$1 per ton would have already paid for the construction of the spur. Every future ton of coal to be hauled from pit to present railhead will continue to be an additional unwarranted expense to the consumer.

Cripple Creek Coal Co.'s own experience substantiates the estimated savings of \$1 per ton on the basis of its present approximate costs as follows:

Basic contract price per ton-----	\$0. 80
Gas, oil, lubricants, antifreeze, shop-----	. 10
R/T freight on trucks-----	. 04
Board loss-----	. 02
Road maintenance-----	. 08
Annual road and bridge repair-----	. 50

Total, per ton----- 1. 54

Use of company-owned trucks would reduce costs by \$0.12 per ton, and by eliminating the freight charge on trucks and effecting other savings, an additional \$0.08. This would leave the presently estimated cost of truck haulage at \$1.34 per ton.

In 1953, the Usibelli Coal Mine, Inc. proposed to haul coal for the Cripple Creek Coal Co. on a contract basis. Their proposal, when submitted, was so much higher than Cripple Creek's costs, even after the addition of 15 percent for contractor's profit, that it was refused. In explaining their higher costs, Usibelli's accountant showed where their average cost was increased by their summer haul over unfrozen roads. This resulted in expensive maintenance to roads and excessive maintenance and wear on trucks. Under these circumstances, it is believed reasonable to assume comparable costs per ton between coal companies hauling by truck on a year-round basis and those hauling a greater distance, but only over winter roads.

Although most of the \$1.34 haulage cost would be eliminated by direct loading into railroad cars from underground operations, and particularly favorable pit locations, much of the future tonnage from the field will require short haul truck or conveyor loading. An estimate of the cost of short haul truck loading a maximum of 1 mile from pit to railroad tippie site over a standard year-round road follows:

Direct hauling—labor, repairs, etc-----	\$0. 17
Indirect—interest, depreciation, etc-----	. 07
Gas, oil, lubricants, etc-----	. 03
Road maintenance-----	. 05
Miscellaneous and contingencies-----	. 03

Total, per ton----- . 35

Thus, the estimated overall savings in the haulage cost would be about \$1 per ton.

#### APPENDIX B

##### ANSWER TO THE SHALLIT PETITION FILED BY MCCARTY & DUNCAN, WASHINGTON LAW FIRM

USIBELLI COAL MINE, INC.,  
Washington, D. C., May 12, 1955.

Re Petition of A. Ben Shallit d.b.a. Cripple Creek Coal Co.

HON. HENRY M. JACKSON,

*Chairman, Subcommittee on Territories and Insular Affairs, Committee on Interior and Insular Affairs, United States Senate, Washington, D. C.*

DEAR SENATOR JACKSON: We appreciate the opportunity to comment upon the Shallit petition, which asks that your committee investigate the reasons why the Interior Department has not constructed a railroad beyond the present railhead in the Healy River Valley, Alaska. The railroad Mr. Shallit seeks would cut the heart out of the Usibelli mine to serve a claimed but disproven military demand. Our comments will center on these points. It will be necessary also

to comment on the scandalous and unwarranted innuendo throughout the petition directed at the Usibelli Coal Mine, Inc.

### I. THE AREA INVOLVED

Attached is a United States Geological Survey map of the area involved. We have located in the location of the various coal properties, including the Arctic Coal Co., Inc., on Lignite Creek.

The coal properties referred to in the petition are adjacent to one another on Healy Creek. This creek, or river as it is more commonly known, joins the Nenana River at the town of Healy, which is on the main line of the Alaska Railroad. Fairbanks lies about 100 miles northeast of Healy—Anchorage is some 250 miles to the southwest.

Of the 3 mines on Healy Creek, Suntrana Mining Co., Inc., is the closest to the town of Healy, being about  $3\frac{1}{2}$  miles distant. The Suntrana branch of the Alaska Railroad presently extends to this mine and has since about 1922. Mr. Shallit's mine (Cripple Creek Coal Co.) is about  $8\frac{1}{2}$  miles from Healy. (Next upstream from the Shallit lease is the Army coal reserve known as the Roth property.) In between the Suntrana and Shallit mines is the Usibelli Coal Mine, Inc. The lease being developed by the Usibelli mine lies on both banks of the Healy River. The petition does not mention the Arctic Coal Co., Inc. This mine, opened last year, is several miles up Lignite Creek, which parallels Healy River some 4 miles to the north and which also empties into the Nenana River.

The Healy River is in the foothills of the Alaska Range only about 40 air-miles from 20,000-foot Mount McKinley. The stream is narrow and winding. The rugged terrain it cut is laced with coal seams, all part of the public domain. Any passageway up the Healy River must stay close to the riverbank. And any passageway must traverse the full length of the Usibelli leasehold.

### II. THE USIBELLI COAL MINE, INC.

Mr. Emil Usibelli, president of this mine, formerly worked for the Healy River Coal Corp., the predecessor company of what is now Suntrana Mining Co., Inc. He has been a miner all his life.

In 1943 Mr. Usibelli began mining coal on his present lease under a use permit issued by the United States Army. In 1946 he applied for a lease on the so-called Roth property. It was rejected on the ground that this property was to remain in reserve. Accordingly, Usibelli was offered in lieu of the Roth property a lease on the property now being developed by the Usibelli Coal Mine, Inc.

Since that time progress and development have been steady and sure. The investment in plant and equipment is now about \$2 million. This mine is presently equipped to mine and ship a minimum of 500,000 tons of coal a year. This could be boosted to 700,000 tons within a few months and beyond that should the demand for coal warrant it. There is a new bunkhouse, built in 1953 in conformity to Territorial mining-camp regulations, which accommodates some 70 men. There are 15 modern individual family dwellings, a school building for the valley children, 2 washhouses, messhall, warehouse, machine shop, powerhouse, boilerhouse, commissary, and other buildings. The most recent developments are the installation of a coal washer, the opening of the underground mine, and the acquisition of storage and distribution facilities in Fairbanks in order to compete for the civilian market. There is an airstrip, built by the Usibelli mine, and maintained by it in excellent condition. A plane from Fairbanks lands regularly with mail, medicines, passengers, and other materials transportable in a four-place light plane, which may be needed quickly.

In 11 years this mine has become the best in the Territory. All earnings over the years have been plowed back into the business to achieve this. No dividends have ever been declared. Salaries to management are modest.

### III. RESPONSE TO THE SHALLIT PETITION

This petition overlooks at least two points of major significance. They are—

(1) The military demand, upon which heavy production is dependent, does not justify the present extension of the Suntrana branch of the railroad, or a public road.

(2) The route selected would destroy the economic development of the Usibelli mine.

We will treat these two points below. First, we want to make clear that we favor the eventual extension of the Suntrana branch of the Alaska Railroad, assuming that greatly increased coal needs are clearly evidenced. But we want to make it equally clear that we do not intend to sit by while a competitor maneuvers in every possible way—the most recent being this petition—to get a railroad or a road built at public expense on a route which will cut the heart out of our mine.

We were not consulted when the Alaska Railroad made its survey in the spring of 1953. We were not consulted when Mr. Shallit filed his Healy River Spur, Inc., proposal with the Government in 1954 asking for a loan of \$1,594,000—without a dime of equity money—using the identical map surveys of the Alaska Railroad. We protested the proposed location of the railroad in August 1953 to Edgar Hart, the engineer in charge of the survey, and to Messrs. Connor, Plein, and Newman, then in Alaska to survey the coal industry for the Secretary of the Interior, as well as to the Interior Department in Washington. We protested Mr. Shallit's Healy River spur proposal to RFC, ODM, and the Department of Defense in May 1954.

The letters we wrote in connection with the Healy River Spur, Inc., proposal are cited by date at page 69 of Mr. Shallit's petition. Copies are attached hereto (see exhibits 1, 2, and 3). He says copies were not furnished to him. We will remind him that he did not furnish us with a copy of his proposal, and only learned of it some time after it was submitted, although the proposal itself suggested that we utilize the spur for the transporting of our coal and that the coal operators in the Healy field be invited to serve on the board of directors.

The reasons for our opposition to Mr. Shallit's Healy River Spur, Inc., proposal were identical with those set forth above. Briefly, they relate to the demand for coal and the route of the proposed railroad. We think our objections are sound. Neither is met by the Shallit petition. With respect to "demand" he relies on generalizations which events of the past 2 years have proven false. "Route" he neglects entirely.

Before going on to these two points, we want to make a further observation, and that concerns the matter of the Shallit right-of-way over the Usibelli leasehold. Mr. Shallit filed a right-of-way map in June 1951. He was immediately given a construction permit although we protested the route and asked for a hearing under oath as to its location. The hearing was not granted and the road was constructed. The Bureau of Land Management, in September 1952, upheld the right-of-way. We appealed, still asking for a hearing. The Interior Department urged some agreement and ultimately a stipulation was achieved between the parties which was incorporated in a decision of the Interior Department dated November 4, 1954. This stipulation, signed by Mr. Shallit, was in effect an agreed statement of operating conditions under which both mines presumably could work together. It recognized the development of the Usibelli leasehold as the dominant use. We thus thought this matter was finally at rest because the right-of-way so formalized was approximately the same as that applied for by Mr. Shallit in 1951 and in use by him since that time. Then came the petition, making it abundantly clear that Mr. Shallit has never contemplated building a road which he could use all year around. He wants a railroad and he wants the Government to build it.

(1) The military demand, upon which heavy production is dependent, does not justify the present extension of the Suntrana branch of the railroad, or a public road.

The Alaska Range, capped by Mount McKinley, separates Fairbanks and Anchorage. It also separates the Nenana coalfield, in which the Suntrana, Usibelli, Shallit, and Arctic properties are situated, and the Matanuska coalfield, some 30 miles from Anchorage.

Two military bases lie north of the Alaska Range. They are Ladd Air Force Base, at Fairbanks, and Eielson Air Force Base, some 26 miles from that city. The mines in the Nenana field are looked to to supply the requirements of these bases. Two military bases are south of the range. They are Elmendorf Air Force Base, 4 miles from Anchorage, and Fort Richardson, some 7 miles from that city. The Matanuska field, with only one mine of any size, is looked to for the principal supply of these bases.

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Thus, as far as the military is concerned, competition among the coal operators in the northern field is mainly for the tonnage required at Ladd and Eielson. What have been the recent requirements at those bases?

In fiscal 1953, 335,000 tons were delivered. In fiscal 1954 the ultimate orders were for 377,500 tons. In fiscal 1955, 142,000 tons were initially ordered. This was later increased by 90,000 tons in order to keep all of the mines operating although this increment was not essential, by reason of heavy stockpiling. The total thus ordered for fiscal year 1955 was 232,000 tons. As of this moment the operators are awaiting word as to the requirements for fiscal year 1956. We do not know what they will be but all of the operators are on notice that the low pattern of the last year must be anticipated. This, we understand, is in furtherance of the effort to bring the stockpiles to a workable size.

In any event, we estimate that military needs north of the Alaska Range, even with all of the projected power units on the line, will not exceed 450,000-500,000 tons per year. At least this much coal can be provided with the existing facilities of our mine, let alone the four mines in the field. Yet the petition demands public expenditures for a railroad or public road as essential to the national defense.

Assume for the purposes of argument that a railroad were built, on whatever route, to the Usibelli mine tomorrow. The mine's tippie is located at the present railhead. In order to make use of a railroad to the camp, the Usibelli mine would have to move its tippie. Moving the tippie, which will in fact involve constructing a new one, is expected to cost in the vicinity of \$200,000.

Production and improvements at the mines are of course dependent upon demand. The Usibelli mine is now carrying a heavy load in the effort to pay off RFC loans, which funds were put into the most recent improvements. Unless there is an appreciable jump in demand, hardly indicated now, it will be several years at least before the Usibelli mine is able, financially, to rebuild its tippie. And until the tippie is moved (several years hence at present demand) this mine will continue to truck its production to its present tippie.

Both the Usibelli and Shalit strip operations would need trucks to get the coal from constantly moving pits to a railroad, even though extended. The petition concedes this (p. 72), yet claims that \$1 per ton could be saved on haulage costs if a railroad were extended to these two mines. Just a year ago, in his Healy River Spur, Inc., proposal, Mr. Shalit estimated the saving would be 70 cents a ton (exhibit C (b)). In that same proposal he said the cost of the railroad would be \$1,600,000, yet in his present petition alleges that at his estimated saving of \$1 per ton of haulage cost, the Government over the past 5 years would have saved \$1 per ton or \$1,200,000, "the entire cost of constructing the railroad spur" (p. 75). We are unable to reconcile these changing figures.

It should be noted that Mr. Shalit does not take into consideration the cost of maintenance of a railroad in figuring the "saving" to the Government although he is careful to include the cost of maintenance of a road in his estimates that 70 cents or \$1 would be saved. Nor does he include any figure for maintenance of railroad rolling stock, annual railroad roadbed and bridge repair or board loss, all of which he takes into consideration in connection with trucks and truck roads. We submit that if a figure were arrived at for these costs in connection with a railroad, that Mr. Shalit's "savings," whether he chooses to set it at 70 cents or \$1 per ton, would prove to be fictional. And in the very demonstration of these figures, whichever he chooses, he explodes the idea that a public road or a truck route would save anything.

Although we do not for a moment concede the "saving" Mr. Shalit presupposes, let us assume for argument it would be \$1. Let us also assume a military demand of 500,000 tons and an extension of the railroad as desired by Mr. Shalit, which would cost, on estimates he has used, some \$1,600,000. To start with, Mr. Shalit would be the only real user of the railroad, because Suntrana is already on it (and has been for over 30 years) and Usibelli could not use it. If Mr. Shalit got all the tonnage, the railroad would be paid for in something over 3 years, exclusive of maintenance costs, which Mr. Shalit ignores. Suntrana and Usibelli would be out of business. So would Arctic, which has significant transportation problems of its own. Such a result, which would eliminate the 2 most significant producers and 1 new mine, would hardly be in the interests of national defense, yet this is the basis upon which the railroad is urged.

The point is that there does not exist a military demand justifying this railroad and this conclusion cannot be avoided. Mr. Shalit relates an elaborate history, in none of which we participated, in support of his contentions. These conferences and correspondence took place before the actual military needs were known. The low military requirement of 142,000 tons north of the range, published in

March 1954, brought reality into the picture. It was only after months of still further conferences that the Suntrana and Shallit mines received an additional 90,000 tons, split between them, which was granted to keep them operating. This, together with military realization that the full capacity figures for the powerplants (cited p. 41 of the petition—estimated prior to the installation of the major plants) were simply not working out in actual operations, burst the bubble entirely. The figures quoted at page 41 for fiscal year 1955 total 525,000 tons for the 2 bases north of the range, Ladd and Eielson. What was actually ordered in fiscal year 1955? Only 235,00 tons (or a little more than two-fifths of the estimate made in April 1953), and that exceeded by 90,000 tons what the military authorities indicated would be actually required. Ninety thousand tons were ordered on a relief basis, one-half of it to help Mr. Shallit, not because it was currently needed.

We do not rejoice that military needs are proving to be less than heating engineers may have estimated. There are a number of reasons, not the least of which is an improved quality of coal giving more heat per ton than anticipated. But the realities have to be faced squarely. Recognition of them leads to only one conclusion: the extension of the Suntrana branch of the Alaska Railroad or a public road are not essential to the national defense.

(2) The route selected would destroy the economic development of the Usibelli mine.

As has been shown, 1 of the 4 mines in the Nenana coalfield, Suntrana Mining Co., Inc., is already on the Alaska Railroad. Another mine, Arctic Coal Co., Inc., is 4 miles over the hills and could not possibly be served by the railroad for which the petition asks. Thus the railroad desired will affect only two mines, Usibelli and Shallit. Of these two, the Usibelli mine would be affected adversely by reason of the route for which Mr. Shallit contends.

When operations were started at the Usibelli mine, the first development was to take the strippable coal from No. 1 seam. This seam lies along the north bank of the river, immediately below the promontory where the Usibelli camp has been built, and continues on a straight line across the promontory until again hitting the riverbank, at which point it bends across the river and reappears on the Usibelli lease on the south bank of the river. Tailings from the mining of this coal were used in the construction of the airstrip between the No. 1 cut and the river.

What was left was a broad, deep drainage ditch. Bridges were installed at both ends of the airstrip to permit drainage to the river. This was by design, as the long range mining plans call for overburden from the five seams lying parallel to and above the No. 1 seam to be sluiced, hydraulically, down the steep hillside and into the river via the No. 1 cut. These five seams constitute the major portion of the Usibelli reserves. Mining a considerable portion of them by hydraulic sluicing is the cheapest and most efficient way to produce coal. Working the lower part of these seams by underground mining has started. This underground development work is expensive.

When Mr. Edgar Hart, surveyor for the Alaska Railroad, made his survey in 1953 he plotted the line directly through the No. 1 cut. The location of a railroad or a road in this cut would destroy its use for drainage and render the planned economic development of the mine impossible. We protested emphatically, at the time that Mr. Hart and the Connor group were in Alaska in August 1953, and to the Interior Department in Washington. Mr. Hart and the Connor group told us that they would recommend that a feasible alternate route, skirting the camp to the right, be surveyed. The Interior Department advised us that the matter would be held in abeyance until Mr. Connor's report had been received and considered. (For this letter see exhibit 3.)

In 1954 Mr. Shallit filed his Healy River Spur, Inc., proposal. The survey maps he used were identical with those filed in 1953 by the Alaska Railroad. Exhibits 1, 2, and 3 tell our reaction to this and need not be repeated here. These exhibits show that by this time in 1954, however, the military requirements for fiscal 1955, amounting to 142,000 tons, had been published. Thus to our only objection in 1953, namely that if a railroad was to be built in the interests of national defense it should not be built so as to destroy the Usibelli mine, was added the belief that the railroad was simply not essential to that same national defense.

The petition ignores the question of route entirely. Yet if the railroad is to be constructed for \$1,200,000 as the petition suggests, it must obviously take the shortest and most direct route which could be devised, and still could not be

constructed for that sum if the figure of \$1,600,000 in Mr. Shallit's Healy River spur proposal is correct. In any event, such a route would be through our No. 1 cut. This cut, which we made, is essential to our mine. If it were used as a transportation artery we might as well close the mine.

After 2 years of objections to this route it should be abundantly clear to Mr. Shallit and to anyone else interested that we will fight it every time it is proposed. We cannot do otherwise.

#### IV. CONCLUSIONS

We have absolutely nothing to hide in this matter. We are volunteering herewith, as exhibits, letters hinted at darkly by the petition. Mr. Usibelli's letter to the Senate committee of April 14 offers every cooperation, including the opening of the company records should your committee desire to go further into this matter. That letter also mentions other developments in Alaska such as the possibility of opening the Gubik gas field, the intensified search for oil and the opening of coal beds on Lignite Creek—as possibly having some effect upon decisions among the Government departments against Mr. Shallit's proposals.

We would have been happy to have joined in some of the conferences which Mr. Shallit enjoyed, as shown by his petition. Contrary to the petition's inference that influence was somehow exerted by Usibelli, a reading of the petition and its exhibits makes the Usibelli mine quite conspicuous by its absence from the many meetings and conversations which Mr. Shallit discloses that he had with Department officials, all having considerable impact on the Usibelli operation.

Mr. Shallit says that "powerful pressures" were brought to bear to halt the railroad. If protests to the agencies of Government concerned, charged with the responsibility of protecting all citizens, based on a right-of-way filing that would have cut the development potential of the Usibelli mine to ribbons, can be characterized as "pressure," what defenses are left? We decry this whispering of scandal in the effort to get the Congress to build something the Government departments have rejected on the basis of cold fact.

We can only speculate what reasons have prompted the Government to reject the Shallit proposals. We have urged two reasons with vigor. Mr. Shallit's record shows equal vigor in the urging of his proposals. Our reasons are "demand"—which at its expected rate would make a railroad constructed to our camp tomorrow practically useless and which does not justify the proposals under the color of the national defense; and "route"—which as has been proposed would kill us.

We submit that the combination of these factors justifies the action taken by the Government. We feel the agencies involved are earnestly attempting to bring some stability into the coal procurement picture. We feel that should the demand picture change sharply in the next several years that they will again consider a railroad. We are hopeful, when and if that time comes, that our development will be considered in connection with its route.

We do not feel that any purpose would be served through the holding of a hearing by your committee. If such is to be held, however, we definitely want to be heard. We are also available to you to provide any further information which may be desired.

Respectfully submitted.

WILLIAM I. WAUGAMAN,  
General Manager, Usibelli Coal Mine, Inc.

#### EXHIBIT 1

WASHINGTON 5, D. C., May 17, 1954.

RECONSTRUCTION FINANCE CORPORATION,  
Washington 25, D. C.

GENTLEMEN: We understand that an application has been filed with your agency by Mr. Ben Shallit, of the Cripple Creek Coal Co., Suntrana, Alaska, involving a loan to be used for the extension of a spur line of the Alaska Railroad from the present railhead at Suntrana for some distance up the Healy River Valley, such loan to be amortized from the proceeds of coal tonnage moved on this railway. We have been advised that this matter has been referred to ODM for processing.

We represent the Usibelli Coal Mine, Inc., also of Suntrana, Alaska, which corporation mines the lease between the holding of the Suntrana Mining Co. (at which camp the railroad is now located) and that of the Cripple Creek Coal Co.

The Usibelli mine has not been consulted by the proponents of this proposed railroad, and there are at least two reasons why we should be:

1. The nature of the terrain is such that any roadway, rail or otherwise, must traverse the entire length of the Usibelli leasehold.

2. Presumably Usibelli tonnage will be expected to use this line and assist in amortizing the loan. It will be several years before Usibelli will be able to use this line.

We would like to elaborate on these points as follows:

#### *I. What is the route for this railroad?*

The Healy River is a winding stream which cuts through a narrow valley or gorge laced with coal seams. The river lies within the foothills of the Alaska Range, and empties into the Nenana River some 4 miles downstream from Suntrana and about 8 miles down the Nenana from Mount McKinley National Park.

The terrain is rugged. Any roadway up the Healy River Valley must stay close to the river bank.

Your attention is invited to the appended map. It will be seen that not only must any passageway traverse the Usibelli lease, but must also pass close by the Usibelli camp area.

The extension of the line beyond its present railroad has been under consideration by the Alaska Railroad for some time. A survey of a proposed extension was filed in the Fairbanks Land Office on behalf of the Alaska Railroad on May 11, 1953 (Fairbanks serial 010499). The route covered in this filing passes between the Usibelli camp and the mine, a route which would seriously impair the development of the large portion of Usibelli's coal reserves. This was thoroughly discussed with Edgar C. Hart, engineer in charge of the survey for the Alaska Railroad, together with officials of the Interior Department, at a meeting at the Usibelli mine on August 11, 1953. It was agreed at that meeting that a recommendation would be made to the Alaska Railroad to permit a survey of a route between the camp and the river believed by Mr. Hart to be entirely feasible. Such a survey has not been made. Our understanding of the reason for this is that the Interior Department elected not to ask Congress for funds for the construction of this spur at the present time thus making a final survey unnecessary. We further understand that the Interior Department has suspended the filing of the survey made by Mr. Hart so that no survey remains as a matter of official record at the present time.

A route between the mine and the river will restrict the use of the leasehold enough as it is. It will curtail expansion of the camp area. It may make the airstrip unsafe, if usable at all. It will pass within 40 feet of a newly constructed dormitory and generally rim the camp area which contains some 20 permanent structures, including individual family dwellings, workshops, powerhouse, etc. The dormitory alone, constructed last summer to replace an overcrowded bunkhouse, cost some \$142,000. The total plant and equipment for this mine represents an investment of well over \$1,500,000.

We do not know what route may be planned by the application submitted to you. A route is presumably definitely planned for otherwise a cost estimate would be unrealistic.

In view of the stake our people have in this valley, we believe they are entitled to have complete information and an opportunity to present views on a matter which will so obviously affect their operation.

#### *II. Who will pay for this railroad?*

An extension would bring the railroad to only two mines—Usibelli and Cripple Creek. Presumably the output of both would be looked upon to support operation and maintenance as well as amortization costs.

At the present time, Usibelli is mining seams on the south bank of the river. This is a strip operation. The coal is loaded into trucks for the trip to the Usibelli tipple, located at the railroad some  $3\frac{1}{2}$  miles from present operations. Trucking would be necessary to a strip operation, even if a railroad ran right through the camp.

This spring, Usibelli will construct a washing plant and start an underground operation. Over \$600,000 is committed for these developments. They are expected to make available a more desirable product and were prompted by an understanding that the military demand would steadily increase together with the fact that development of the underground operation to insure a stable, year-around source, has long been urged by the Interior Department. These expenditures will, however, make it necessary to delay, for several years, moving the tippie from its present site at the railroad to the camp area. Moving the tippie, which will in fact involve constructing a new one, will be a costly project.

Until the tippie is moved, Usibelli will of necessity continue to truck his coal to the present tippie. In brief, he could not make use of a railroad for hauling coal if it were constructed to his camp tomorrow. Obviously, Usibelli tonnage, which for fiscal year 1953 amounted to almost 300,000 tons, cannot be looked to support this proposal.

The time factor in moving the tippie will depend largely upon the demand for coal and the financing which an expanding production would make available. The complete uncertainty on this score is demonstrated by the fact that orders at Ladd and Eielson Air Force Bases which last fiscal year totaled 419,000 tons, have this year been reduced to less than 150,000 tons, with indications that this reduction will extend into fiscal year 1956 as well. It is understood that this cut is to permit stockpile reductions and that demand will return eventually to a higher figure. But we cannot make further large capital expenditures on this assumption. Since the military is by far the largest coal buyer in Alaska, their reductions this year will have a very heavy impact on the industry.

In the present circumstances the Usibelli mine does not believe it would be in a position to move its production over any railroad extension for the next several years. This should be clearly understood by any agency advancing funds for a railroad in the expectation that two mines will use it to haul coal and will pay for it from tonnage so hauled. As far as Usibelli is concerned, only one mine, the Cripple Creek Mine, will haul its coal on such a railroad for several years at least.

#### GENERAL COMMENT

The Usibelli Mine would gladly join in any program which would make the continued development of the mines a more definite matter. A railroad in the valley is considered desirable, but the primary consideration must be need. If the need is present and the venture worthwhile, why should not the Alaska Railroad finance and construct the line, as they have the rest of the trackage in the Territory?

We would appreciate an opportunity to review the proposal which has been made to you and to be heard in connection with it. We regret the necessity of this extended letter, but since we have heard only vague representations in connection with this matter and have no information on which we can make specific comment, we have no other alternative.

Respectfully,

NORTHCUTT ELY.

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#### EXHIBIT 2

WASHINGTON, D. C., May 19, 1954.

The honorable the SECRETARY OF DEFENSE,  
Department of Defense,

The Pentagon, Washington, D. C.

(Attention of Mr. George A. Grimm, Chief, Utilities Division, ASD  
(Properties and Installations).)

DEAR MR. SECRETARY: We have enclosed a copy of a letter directed to RFC with a copy to ODM in connection with the application of Mr. Ben Shallit for a loan for the purpose of constructing an extension of the Suntrana branch of the Alaska Railroad.

We are advised by Mr. Pilson, of ODM, that this matter has been referred to the Department of Defense for a recommendation. As you will note from the enclosure, we have substantial interests which would be affected by this proposal, and several serious questions with regard to it. We desire to have the opportunity to present our views in connection with this matter before any action is taken by you.

Mr. Waugaman, general manager of the Usibelli Coal Mine, Inc., is in Washington at the present time, and is available, as we are, for a discussion of this proposition with you.

Respectfully,

NORTHCUTT ELY.

### EXHIBIT 3

USIBELLI COAL MINE, INC.,  
Suntrana, Alaska, May 26, 1954.

HON. THOMAS P. PIKE,  
Assistant Secretary of Defense,  
Department of Defense,  
Washington 25, D. C.

(Attention of Mr. Earl B. Smith, Director, Transportation and Communications.)

DEAR MR. SECRETARY: Reference is made to Mr. Ely's letter of May 19 to the Secretary of Defense, attention of Mr. George Grimm (ASD, P&I), and the enclosure, dated May 17, addressed to the Reconstruction Finance Corporation, relating to a proposal for a defense loan to construct an extension of the Suntrana branch of the Alaska Railroad.

At the time of the above letter we had not seen a copy of the proposal. This opportunity was afforded us by Mr. Grimm. On May 25 we met with representatives of your Department, together with Army, Navy, and Air Force officials concerned. The purpose of this letter is to summarize the material presented at that conference.

We want to state at the outset that we favor the eventual extension of the Suntrana branch. We cannot, however, subscribe to any part of the proposal now before you.

Our letter of May 17 raised two main questions: First, what is the route for this proposed spur? Second, who is to pay for it? Our inspection of the proposal indicates that these questions remain the basic ones. The following is a discussion of these issues in the context of the proposal itself, referencing exhibits A, B, and C, which constitute the essence of the proposition before you, in turn.

#### I. COMMENTS ON EXHIBIT A

It is acknowledged that the proposed railroad would make the Roth reserve more accessible. Mining of that reserve, however, should await a military need not now apparent. Accordingly, this present proposal, in actuality, affects only 2 mines and affects the Usibelli mine, as the larger of these 2, adversely.

It is stated that "transportation of coal over this spur would materially reduce the cost of production and place all of the coal operations on a competitive basis." The proposal recognizes that trucking would be necessary, in any event, to a strip operation. It estimates a saving of about 70 cents per ton. The Usibelli mine has a shorter haul. Accordingly the saving would probably be less. But, of primary importance, Usibelli would not be able to use such a railroad for several years, until coal demand makes the cost of moving the present tipple financially feasible and economically sound. Accordingly, such a railroad would represent no saving to this mine for several years at least.

With respect to placing all of the coal operations on a competitive basis, the Suntrana Mining Co. is now on the railroad and there is no problem in competing with them. In addition, the coal formations are such that costs of production by stripping are cheaper on the Cripple Creek property than on the Usibelli lease, and would probably be even less on the Roth reserve. Thus, in this factor alone there is an important leveling feature from the standpoint of competition.

The only mine which does not ship on a year-round basis is the Cripple Creek mine. If that mine constructed a proper truck road it, too, could ship 12 months of the year.

In our opinion, the 3 mines in this valley can produce far more than present or foreseeable military and civilian needs for the area north of the Alaska range. The Usibelli mine alone is presently capable of shipping 500,000 tons per year with existing facilities. This is three times more than is being ordered by the military for the bases north of the range this coming fiscal year, and is probably close to twice what the military will order for these same bases for fiscal year 1958.



This proposed spur, in our view, will not assure the availability of coal at points of need in the event of a military emergency. Of the some 350,000 tons being ordered by the military for fiscal 1955, over 200,000 tons are for the 2 bases in the Anchorage area south of the Alaska range. There is only 1 dependable coal mine in this area as opposed to 3 neighboring mines over 300 miles away, north of the range, accessible only by a single-track railroad.

Accessibility to a possible fourth neighboring mine on the Roth property military reserve will not assure coal for the Anchorage area. We can see a great military need for a second dependable mine near Anchorage. We cannot see such a need for accessibility (and that is all that this proposal would provide, at a tremendous expense) to a possible fourth mine on the Healy River.

## II. COMMENTS ON EXHIBIT B

Exhibits B (a) and B (b) detail estimated costs of construction, and the amount of the loan desired.

The total is \$1,754,000 if it includes interest for 2 years only, and \$1,594,000 if it does not.

We desire to highlight two points:

1. Whichever of these totals one may take, \$641,588 or more than one-third of the total, is for the sole purpose of building a bridge and spur to the Cripple Creek tippie improvements which can only be used by that mine.

2. This estimate is for the construction of a railroad on the route partially surveyed by the Alaska Railroad. This route goes through the heart of the Usibelli operation. It traverses a considerable length of Usibelli's all-weather road, goes up the center of the airstrip, and passes through our excavation in No. 1 bed, cutting off the development of our most significant stripping reserves immediately to the north of this excavation.

In this connection reference must be made to a letter dated March 3, 1954, from Mr. Kalbaugh of the Alaska Railroad (exhibit D (i) 4, 5, 6 of the proposal). Mr. Kalbaugh states that the survey made has been on file 8 months, and no objections, to his knowledge, have been made to the locations. Our letter of May 17, 1954, to RFC details the conference held at the Usibelli mine on August 11, 1953, at which objections were made at length to Mr. Charles Connor, Mr. Leo Plain and Mr. Andrew Newman (sent by Interior Secretary McKay to review and report on the coal situation in Alaska), and Mr. Hart, the engineer who supervised the survey for the Alaska Railroad.

Objections were also made to the Interior Department in Washington, and Assistant Secretary Orme Lewis advised, by letter dated August 10, 1953:

"I am informed by the Administrator for Land Management that on August 4 he teletyped the regional administrator at Anchorage to advise the railroad that permission to proceed with the construction of the line is suspended pending further notice from his office.

"The matter will be held in abeyance until Mr. Connor's report has been received and considered."

Mr. Kalbaugh's letter itself contradicts his statement that no objections have been made, for the same letter says that Mr. Usibelli has objected "quite violently" to the passage of the line through "G" bed. We estimate some 200,000 tons of coal immediately available in this bed for processing through the washer to be constructed this spring. But the major objection, which Mr. Kalbaugh overlooks entirely, is that a railroad on the route surveyed will make stripping on Nos. 2, 3, 4, 5, and 6 seams impossible.

Mr. Kalbaugh says that there is one alternate location past the Usibelli Mine, by skirting the camp to the right, which would apparently be agreeable to Usibelli because "he felt he would receive protection from stream erosion which affects his camp during runoff periods and cloudbursts." We want it unmistakably understood that a railroad through this property is going to have a restricting effect on operations—that it will be least restrictive if it skirts the camp to the right—and that we do not need a railroad, and have not for 10 years of operations, to protect the camp. The true reason for desiring that a railroad pass to the right, if there must be any railroad, is far too obvious to anyone who seriously considers a route least damaging to the development potential of the Usibelli mine to permit of the gratuitous comments made in Mr. Kalbaugh's letter.

It should be noted that although this route will cut through the Usibelli fuel dump (two 8,000-gallon tanks, one 12,000-gallon tank, with pipeline), traverse at least a mile of Usibelli's all-weather road and run through the center of the

entire length of the airstrip, not one dollar is included in the cost estimates for the relocation of these facilities.

### III. COMMENTS ON EXHIBIT C

This section deals with repayment of the loan.

Usibelli's tipple is so located that he cannot use this spur for several years, at least. Accordingly, no repayment funds for some time will come from Usibelli production.

The proposal notes that the Cripple Creek mine saving by the use of this spur would be 70 cents per ton and that this will be used, less the actual cost of maintenance, to amortize the loan.

As previously pointed out, \$641,588 of the proposed loan can only be used for the benefit of the Cripple Creek mine. At 70 cents a ton, and this allows no money for maintenance) Cripple Creek would have to ship 916,550 tons of coal in order to pay for the bridge and spur alone to be used solely by it.

Overall, in order to pay off a \$1,700,000 loan at 70 cents per ton (and again this ignores any charge for maintenance) some 2,428,500 tons of coal would have to be shipped over this spur. Assuming military demand north of the range were 500,000 tons per year (and it is less than 150,000 tons for fiscal 1955), it would take 5 years to pay out this loan. At that, this assumes all of the military demand being supplied by only the 2 miles which will eventually use the spur. It assumes that both users will pay 70 cents, even though Usibelli will use less than one-third of the trackage. It assumes all proceeds being devoted to repayment of capital costs, with no deduction for maintenance and no deduction for interest. Surely someone will have to pay interest on this loan at least equal to the cost of money to the Federal Government.

The proposal says each user should be able to reduce the price of his product after the spur is paid for. On the repayment schedule set up, it will be a good many years before the Government can look forward to this. Once again, at the most only 2 mines are involved, out of the 4 dependable mines now in the Territory.

Under the proposal freight rates will not be increased unless there is an actual increase in the operating costs to the Alaska Railroad, after the line is paid for and turned over to them, in which case this expense will be passed on to the shipper. Thus, if an abutment goes out on the proposed bridge across the Healy to serve the Cripple Creek mine, Usibelli, as well as Cripple Creek, will pay a freight increase. Coal is sold f. o. b. This gives the Alaska Railroad carte blanche to charge maintenance against Usibelli and Cripple Creek forever. This feature alone, in a river valley where maintenance costs will be significant annually, is enough to make this proposal a highly doubtful business proposition to either of the 2 mines that the spur would serve.

Note should be taken of the statement in Mr. Kalbaugh's letter that "this location (skirting the camp to the right) is not as desirable from our standpoint because of the curvature and the cost of construction." The curvature would be modest compared to that evident on the face of the survey for the trackage leading up to and through the Usibelli fuel dump near the present railhead. But more pertinent to the present discussion is the inference that the cost of construction would be higher. It is our opinion that an estimate of this higher cost of construction must be obtained and made available before the Government agencies involved can make a proper judgment on this proposal.

One final observation on this section: There is not one dime of equity money involved. The Government is to put up all of the money, to be repaid in indefinite amounts for an indefinite period on an indefinite demand for coal.

### IV. GENERAL OBSERVATIONS AND CONCLUSIONS

(a) If this proposal is worthwhile financially and the railroad is necessary now in the interests of national defense, why should not the Alaska Railroad build this spur, as it has, to our knowledge, the rest of the trackage in the Territory. We feel it illusory to say that this would provide a rail line to the Government without cost to it. This proposal in effect builds a floor under coal prices until the loan is paid off. If any resultant saving is to be obtained, it could become immediately available if the Alaska Railroad built the line. There would be no waiting for X years of pay-out period. If this matter can qualify for a defense loan, surely it could be justified and be allotted funds before the Appropriations Committees of Congress.

(b) If coal is what is desired, why should this line be planned so as to cut off the economic development and production potential of the major producer in

Alaska? The U'sibelli plant, conservatively, represents a \$1,500,000 investment. Its present facilities, without the hamstringing this route would impose, can turn out 500,000 tons per year.

(c) What military needs have been demonstrated to justify this proposition? We do not presume to tell the military what steps would most assure availability of coal at points of need in the event of an emergency in Alaska. We do respectfully point out, however, that of the 4 dependable mines, only 1 is in the Anchorage area. The other 3 are within 6 miles of each other, 300 miles distant. If eventual requirements indicate the need for a fifth mine, it would seem that the development of a second dependable producer near Anchorage should be fostered, rather than a new source just 2 miles from the 3 mines now in the northern field.

In summation, we consider the eventual extension of the Suntrana branch of the Alaska Railroad to be desirable. We want to take part in this improvement but say that if it is to be built by Government funds, there must be a demonstrated need, not now apparent; and that whenever and by whomever built, it must not be on a route which will choke off the production potential of our mine. We were not consulted in connection with the proposal now before you. The projected route is totally unacceptable, and even if it were not, we could not use the railroad nor participate in repayment for several years, based on the present demand outlook.

We want the Federal agencies which must pass on this proposal to have this material, and we stand ready to answer any further queries you may have. We greatly appreciate the courtesies extended by officials of your Department and of the Army, Navy, and Air Force in hearing us on this matter.

Respectfully,

WILLIAM I. WAUGAMAN.

#### APPENDIX C

##### STATUTES PERTINENT TO SHALLIT HEARING

I. Section 1 of the Alaska Railroad Act (1912) (38 Stat. 305; 48 U. S. C. A. 301) :

"The President of the United States is empowered, authorized, and directed \* \* \* to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska \* \* \* to be so located as to connect one or more of the open Pacific Ocean harbors \* \* \* with a coal field or fields so as best to aid in the development of the \* \* \* resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy \* \* \*."

II. Section 2, act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 411) grants railroads a right-of-way through lands of the United States in Alaska. Said right-of-way extends 100 feet on each side of the center line of said road. The second proviso states that all mining operations within the limits of such right-of-way shall be under the control of the Secretary of the Interior, and mining operations shall "be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right-of-way."

III. Section 11 of the act of October 20, 1914 (38 Stat. 744; 48 U. S. C. 446) :

"Any lease, entry, location, occupation or use (under the Alaska coal lands laws) shall reserve to the government of the United States the right to grant or use such easements in, over, through, or upon the land \* \* \* as may be necessary or appropriate to the working of the same or other coal lands by or under the authority of the government \* \* \*."

#### APPENDIX D

Subsequent to the hearings the acting chairman of the subcommittee wrote the following letters to the Defense and Interior Departments:

JUNE 24, 1955.

HON. THOMAS P. PIKE,

*Assistant Secretary of Defense,*

*The Pentagon, Washington, D. C.*

DEAR SECRETARY PIKE: My somewhat belated thanks to you and the Department of Defense for the appearance before the Subcommittee on Territories of Col. Darrell G. Welch in our inquiry into the Alaska coal lands situation. Colonel Welch was most cooperative and his testimony is helpful to us.

During the hearing, it was brought out that bids had been submitted just the day before or so for supplies of coal to the military in Alaska. In view of the

interest of the committee in the development of Alaska's resources, and in keeping a competitive situation alive among the coal producers in the Fairbanks area, would you be good enough to inform the subcommittee of the contracts that the Defense Department has awarded, or proposes to award, as a result of the bidding? Also, will you give us your views as to whether such proposed awards will in fact permit the present competitive situation to continue?

Please convey my thanks to Colonel Welch.

Sincerely yours,

ALAN BIBLE,  
*Special Chairman, Territories Subcommittee.*

JUNE 29, 1955.

HON. CLARENCE A. DAVIS,  
*Acting Secretary of the Interior,  
Department of the Interior,  
Washington 25, D. C.*

DEAR SECRETARY DAVIS: Somewhat belatedly, I wish to express my thanks to you and to members of your Department for appearing and testifying before the Subcommittee on Territories on the petition of A. Ben Shallit, Cripple Creek Coal Co., Fairbanks, Alaska, regarding extension of the Alaska Railroad to serve the coal properties in the Healy River Valley. However, I have wanted opportunity to read over the rather extensive record of our hearing and supplementary material.

Your testimony, as well as the testimony of officials of your Department, makes it clear that Railroad access to the Cripple Creek Coal Co. property and to the Roth coal reserve would be deemed warranted were it not for the sharp reduction in anticipated military requirements. I am not convinced that the statute establishing the Alaska Railroad (48 U. S. C., 1955 ed., secs. 301 et. seq.) requires that construction of branch lines be predicated upon whether they will be self-sustaining or self-amortizing. There appears strong legal basis for the position that the primary consideration should be whether a branch line would result in development of the mineral resources of its area.

Be that as it may, it appears to me that the written correspondence from the Alaska Road Commission and the Alaska Railroad to Cripple Creek Coal Co. from 1951 to October 1954, when the railroad right-of-way was withdrawn, was such that Mr. Shallit was fully justified in believing that railroad or highway access would be provided. On the strength of that correspondence which led to the Alaska Railroad filing a right-of-way and making a survey of the proposed line, Cripple Creek Coal Co. proceeded with the development of its coal lease on its understanding that year-round access would be available.

At the hearing the thought was expressed several times that there was no reason why Cripple Creek Coal Co. should not be permitted to use the same all-weather road which is being used by Usibelli Coal Mines, Inc., to truck coal to the railroad siding at Suntrana. This road is a right-of-way across public lands of the United States and as I read section 446 of title 48 United States Code, and related sections, the United States reserves the right in every coal upon the land leased, entered, located, occupied, or used as may be necessary or appropriate to the working of the same or other coal lands by or under authority of the Government and for other purposes \* \* \*." It would appear, therefore, that the Department of the Interior has ample authority to permit Cripple Creek Coal Co. to utilize the existing roads across the Suntrana and Usibelli leases.

Would you be good enough to give me for submission to the committee your views as to what can be done to make all-weather, year-round access available, on a practical basis, to the Cripple Creek mine? In view of the facts stated at the hearing as to the need for Cripple Creek to be able to bid on an all-year basis if it is to share in the market this coming winter and thus maintain the competitive situation which your letter points out is highly desirable, as prompt a reply as possible will be appreciated. Prompt action also will of course be necessary.

Again thank you personally and the Department for your cooperation with the committee in this matter.

Sincerely yours,

ALAN BIBLE,  
*Special Chairman, Territories Committee.*

Alaska? The Usibelli plant, conservatively, represents a \$1,500,000 investment. Its present facilities, without the hamstringing this route would impose, can turn out 500,000 tons per year.

(c) What military needs have been demonstrated to justify this proposition? We do not presume to tell the military what steps would most assure availability of coal at points of need in the event of an emergency in Alaska. We do respectfully point out, however, that of the 4 dependable mines, only 1 is in the Anchorage area. The other 3 are within 6 miles of each other, 300 miles distant. If eventual requirements indicate the need for a fifth mine, it would seem that the development of a second dependable producer near Anchorage should be fostered, rather than a new source just 2 miles from the 3 mines now in the northern field.

In summation, we consider the eventual extension of the Suntrana branch of the Alaska Railroad to be desirable. We want to take part in this improvement but say that if it is to be built by Government funds, there must be a demonstrated need, not now apparent; and that whenever and by whomever built, it must not be on a route which will choke off the production potential of our mine. We were not consulted in connection with the proposal now before you. The projected route is totally unacceptable, and even if it were not, we could not use the railroad nor participate in repayment for several years, based on the present demand outlook.

We want the Federal agencies which must pass on this proposal to have this material, and we stand ready to answer any further queries you may have. We greatly appreciate the courtesies extended by officials of your Department and of the Army, Navy, and Air Force in hearing us on this matter.

Respectfully,

WILLIAM I. WAUGAMAN.

#### APPENDIX C

##### STATUTES PERTINENT TO SHALLIT HEARING

I. Section 1 of the Alaska Railroad Act (1912) (38 Stat. 305; 48 U. S. C. A. 301):

"The President of the United States is empowered, authorized, *and directed* \* \* \* to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska \* \* \* to be so located as to connect one or more of the open Pacific Ocean harbors \* \* \* with a coal field or fields so as best to aid in the development of the \* \* \* resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy \* \* \*."

II. Section 2, act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 411) grants railroads a right-of-way through lands of the United States in Alaska. Said right-of-way extends 100 feet on each side of the center line of said road. The second proviso states that all mining operations within the limits of such right-of-way shall be under the control of the Secretary of the Interior, and mining operations shall "be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right-of-way."

III. Section 11 of the act of October 20, 1914 (38 Stat. 744; 48 U. S. C. 446):  
 "Any lease, entry, location, occupation or use (under the Alaska coal lands laws) shall reserve to the government of the United States the right to grant or use such easements in, over, through, or upon the land \* \* \* as may be necessary or appropriate to the working of the same or other coal lands by or under the authority of the government \* \* \*."

#### APPENDIX D

Subsequent to the hearings the acting chairman of the subcommittee wrote the following letters to the Defense and Interior Departments:

JUNE 24, 1955.

HON. THOMAS P. PIKE,

*Assistant Secretary of Defense,  
 The Pentagon, Washington, D. C.*

DEAR SECRETARY PIKE: My somewhat belated thanks to you and the Department of Defense for the appearance before the Subcommittee on Territories of Col. Darrell G. Welch in our inquiry into the Alaska coal lands situation. Colonel Welch was most cooperative and his testimony is helpful to us.

During the hearing, it was brought out that bids had been submitted just the day before or so for supplies of coal to the military in Alaska. In view of the

interest of the committee in the development of Alaska's resources, and in keeping a competitive situation alive among the coal producers in the Fairbanks area, would you be good enough to inform the subcommittee of the contracts that the Defense Department has awarded, or proposes to award, as a result of the bidding? Also, will you give us your views as to whether such proposed awards will in fact permit the present competitive situation to continue?

Please convey my thanks to Colonel Welch.

Sincerely yours,

ALAN BIBLE,

*Special Chairman, Territories Subcommittee.*

JUNE 29, 1955.

HON. CLARENCE A. DAVIS,

*Acting Secretary of the Interior,*

*Department of the Interior,*

*Washington 25, D. C.*

DEAR SECRETARY DAVIS: Somewhat belatedly, I wish to express my thanks to you and to members of your Department for appearing and testifying before the Subcommittee on Territories on the petition of A. Ben Shallit, Cripple Creek Coal Co., Fairbanks, Alaska, regarding extension of the Alaska Railroad to serve the coal properties in the Healy River Valley. However, I have wanted opportunity to read over the rather extensive record of our hearing and supplementary material.

Your testimony, as well as the testimony of officials of your Department, makes it clear that Railroad access to the Cripple Creek Coal Co. property and to the Roth coal reserve would be deemed warranted were it not for the sharp reduction in anticipated military requirements. I am not convinced that the statute establishing the Alaska Railroad (48 U. S. C., 1955 ed., secs. 301 et. seq.) requires that construction of branch lines be predicated upon whether they will be self-sustaining or self-amortizing. There appears strong legal basis for the position that the primary consideration should be whether a branch line would result in development of the mineral resources of its area.

Be that as it may, it appears to me that the written correspondence from the Alaska Road Commission and the Alaska Railroad to Cripple Creek Coal Co. from 1951 to October 1954, when the railroad right-of-way was withdrawn, was such that Mr. Shallit was fully justified in believing that railroad or highway access would be provided. On the strength of that correspondence which led to the Alaska Railroad filing a right-of-way and making a survey of the proposed line, Cripple Creek Coal Co. proceeded with the development of its coal lease on its understanding that year-round access would be available.

At the hearing the thought was expressed several times that there was no reason why Cripple Creek Coal Co. should not be permitted to use the same all-weather road which is being used by Usibelli Coal Mines, Inc., to truck coal to the railroad siding at Suntrana. This road is a right-of-way across public lands of the United States and as I read section 446 of title 48 United States Code, and related sections, the United States reserves the right in every coal upon the land leased, entered, located, occupied, or used as may be necessary or appropriate to the working of the same or other coal lands by or under authority of the Government and for other purposes \* \* \*." It would appear, therefore, that the Department of the Interior has ample authority to permit Cripple Creek Coal Co. to utilize the existing roads across the Suntrana and Usibelli leases.

Would you be good enough to give me for submission to the committee your views as to what can be done to make all-weather, year-round access available, on a practical basis, to the Cripple Creek mine? In view of the facts stated at the hearing as to the need for Cripple Creek to be able to bid on an all-year basis if it is to share in the market this coming winter and thus maintain the competitive situation which your letter points out is highly desirable, as prompt a reply as possible will be appreciated. Prompt action also will of course be necessary.

Again thank you personally and the Department for your cooperation with the committee in this matter.

Sincerely yours,

ALAN BIBLE,

*Special Chairman, Territories Committee.*



# RED WILLOW DAM, NEBRASKA

UNIVERSITY  
OF MICHIGAN

JUL 15 1955

MAIN  
READING ROOM

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
IRRIGATION AND RECLAMATION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION

ON

**S. 1194**

A BILL TO PROVIDE FOR CONSTRUCTION BY THE SECRETARY OF THE INTERIOR OF RED WILLOW DAM AND RESERVOIR, NEBRASKA, AS A UNIT OF THE MISSOURI RIVER BASIN PROJECT

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JUNE 22, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1955



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GOODRICH W. LINEWEAVER, <i>Committee Assistant for Reclamation</i>	

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**III**



# RED WILLOW DAM, NEBRASKA

WEDNESDAY, JUNE 22, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION OF  
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
Washington, D. C.

The subcommittee met at 10:10 a. m., pursuant to call, in room 224, Senate Office Building, Hon. Thomas H. Kuchel, presiding.

Present: Senators Kuchel, California; Millikin, Colorado; and Watkins, Utah; and Anderson, New Mexico.

Also present: Stewart French, chief counsel and staff director; Goodrich W. Lineweaver, Elmer K. Nelson, and Platt Wilson, committee assistants on reclamation; and N. D. McSherry, assistant chief clerk.

Senator KUCHEL. The meeting will come to order.

I have been delegated by Hon. Clinton Anderson, Senator from New Mexico and chairman of the Subcommittee on Irrigation and Reclamation, to act as chairman, by reason of his required attendance at another committee.

Senator ANDERSON. Maybe I just ought to say that you can never tell when the Atomic Energy Commission, these days, is going to have to have a full-scale hearing, and this day is one of them, again.

Senator KUCHEL. With Senator Anderson's permission, I will call the meeting to order.

The first item on the agenda this morning is S. 1195, to authorize construction of Red Willow Dam, Nebr., by the Bureau of Reclamation, instead of by the Corps of Engineers. The bill is offered by Senators Curtis and Hruska of Nebraska. S. 1194 will be inserted in the record at this point.

[S. 1194, 84th Cong., 1st sess.]

A BILL To provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebraska, as a unit of the Missouri River Basin project.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That Red Willow Dam and Reservoir, Nebraska, a unit of the Missouri River Basin project (Act of December 12, 1914, 58 Stat. 887, 891) shall be constructed, operated, and maintained by the Secretary of the Interior for the principal purposes of making available a regulated supply of water for irrigation and of assisting in the control of floods. The Secretary shall cause this unit of the Missouri River Basin project to be coordinated and integrated, physically and financially, with the other Federal works constructed or authorized to be constructed under the comprehensive plans approved by section 9 of the Act of December 12, 1944, aforesaid, as amended, and supplemented.

Senator KUCHEL. Senator Curtis is present. Senator?

**STATEMENT OF HON. CARL T. CURTIS, UNITED STATES SENATOR  
FROM THE STATE OF NEBRASKA**

Senator CURTIS. Mr. Chairman, my appearance here is in behalf of Senator Hruska as well as myself.

The bill that we have introduced does not call for a new authorization. This is not a new project.

The Missouri River development, which proceeded from the Flood Control Act of 1944, called for the development of that river basin by the Army engineers and the Bureau of Reclamation. One of the important tributaries of the Kansas River, which in turn is a tributary of the Missouri River, is the Republican River Basin. That river extends—in fact, the Missouri as well as the Kansas and the Republican—from an arid and semiarid territory down to an area of ample rainfall.

As a result, the many dams to be constructed throughout the entire basin were divided, some of them allocated to the Army and some to the Bureau of Reclamation.

In the Republican River Basin, the Army engineers constructed a project in Harlan County known as the Harlan County Reservoir. Generally speaking, west of that was the jurisdiction of the Bureau of Reclamation. They have already constructed, in that area, the Cambridge Dam, the Enders Dam, the Trenton Dam, and considerable irrigation works in addition to it.

As a matter of practicality, as a matter of convenience, as a matter of economical operation, the Red Willow Dam should be carried forth by the Bureau of Reclamation instead of the Army. It is located just a few miles, probably 15 or 16, from McCook, Nebr., where there is the district headquarters of the Bureau of Reclamation.

The Army agreed to that. We introduced a bill which would in effect transfer Red Willow Dam from the Army to the Bureau.

It is now developed that it will be an exchange of dams. Wilson Dam in the State of Kansas is now authorized to the Bureau, and it is to be transferred to the Army. It is my understanding that all of the interested departments, Interior, the Department of the Army, and the Bureau of the Budget, are agreeable to this bill.

So if the committee will report it favorably—and I urge them to do so—it is suggested that the bill as introduced be taken with the language after the enacting clause being stricken out and the amendments as suggested by the departments inserted; because that makes the complete trade of 1 dam from the Bureau to the Army and 1 from the Army to the Bureau.

I know of no opposition to this from any source.

Senator KUCHEL. Thank you very much, Senator.

Will the representatives of the Bureau of Reclamation discuss the costs involved?

Senator CURTIS. Yes.

Senator KUCHEL. Without objection, the record will remain open throughout tomorrow for receipt from the two Senators from Kansas of any statement which they may care to make in support of your legislation.

Senator CURTIS. Mr. Chairman, there are a lot of very busy people around here, and I have nothing further to state unless there are questions. The Bureau can supply the figures that you're interested in and that I think should be carried in the record.

Senator KUCHEL. Senator Millikin, do you have any questions?

Senator MILLIKIN. I have none.

Senator KUCHEL. The acting chairman is delighted to note the presence of the Commissioner of Reclamation, Mr. W. A. Dexheimer. However, I understand that on this proposed legislation Mr. N. B. Bennett of the Bureau will be the witness.

**STATEMENTS OF NEWCOMB B. BENNETT, CHIEF, PROJECT DEVELOPMENT DIVISION, BUREAU OF RECLAMATION; AND WILBUR A. DEXHEIMER, COMMISSIONER, BUREAU OF RECLAMATION**

Mr. DEXHEIMER. That is correct, Mr. Chairman.

Senator KUCHEL. Mr. Bennett, will you proceed?

Mr. BENNETT. Yes, Mr. Chairman. You have received the letter of June 21, 1955, from Assistant Secretary Aandahl, giving the views of the Department of the Interior on this bill and transmitting with that letter a proposed substitute for S. 1194.

Senator KUCHEL. Which is the proposal that the Senator has offered to the subcommittee.

Mr. BENNETT. Yes, sir; that draft of bill has been approved by the Secretary, and I understand also by the Defense Department, and it has been approved by the Bureau of the Budget.

Red Willow Dam was authorized to the Corps of Engineers in the 1944 Flood Control Act. The original plan called for the construction of a dam which would create about a 46,800 acre-foot reservoir, some 14 miles above the junction of the river.

Continuing investigations by both the Corps and the Bureau of Reclamation in connection with the Frenchman-Cambridge division of the Missouri River Basin project indicate that storage on Red Willow Creek would not only regulate floodwaters rising above the dam site, but could also provide a water supply for irrigation of about 10,000 acres in the Red Willow unit of the Frenchman-Cambridge division.

It is particularly important to note, Mr. Chairman, that the Red Willow Dam, as indicated on that map in gray, is practically in the middle of a system composed of the Medicine Creek Dam, Trenton Dam, and Enders Dam. The lands there in green and in cross-hatched blue are currently under irrigation as a part of the Frenchman-Cambridge division. The land in yellow just below Red Willow Dam cannot receive a water supply for irrigation without construction of Red Willow. The land in blue, under the Barkley Canal, is now receiving a water supply out of the combination of Enders and Trenton. But that is only temporary. As the yellow lands upstream come into development, the Barkley unit must rely upon Red Willow for its water supply. And it is essential that Red Willow be operated in conjunction with the other three reservoirs.

It is estimated that Red Willow will cost somewhere between 7 and 8 million dollars. Detailed investigations have not been completed, so we cannot give you an exact figure, but at the present time it looks like between 7 and 8 million dollars. The Corps of Engineers estimates that the annual flood-control benefits will be \$176,000. We have not yet been able to estimate the irrigation benefits, although there are some 6,000 acres remaining there not yet irrigated.

A good part of the lands to be irrigated are already included within the Frenchman-Cambridge Irrigation District, although they are not within the present repayment contract with that district.

Senator KUCHEL. Is it contemplated that they will be?

Mr. BENNETT. We will have to have a contract with the district before we can serve them with water.

Senator KUCHEL. Proceed.

Mr. BENNETT. Wilson Dam, which is not indicated on that particular map, but is on the small one which you have before you, was authorized for construction by the Bureau of Reclamation in the same Flood Control Act of 1944. It is in central Kansas on the Saline River.

At the present time, it looks like the dam would form a reservoir of about 559,000 acre-feet, the major part of which would be devoted to flood control. The Corps estimates there that the flood-control benefits would be approximately \$800,000 a year.

The cost of the structure would be approximately \$15 million.

We had originally contemplated irrigating about 18,000 acres near Salina, Kans., but our detailed investigations cut that to approximately 2,200. Therefore, the flood-control aspects became paramount in that reservoir.

There is some possibility of irrigating about 20,000 acres in the St. George unit downstream, but that is by no means firm at this time.

It is because of these two factors that it is believed advisable that the authorizations on these two reservoirs be switched.

I have no further direct testimony, Mr. Chairman. If you have any questions, we will be happy to try to answer them.

Mr. LINEWEAVER. Mr. Chairman, let me say that I have not yet been able to get in touch with Senator Schoeppel as to whether he has been advised of the proposal to switch the authorization of Wilson Dam in Kansas from the Bureau of Reclamation to the Corps of Engineers, but Senator Carlson's office indicated that there was no opposition. I will notify Senator Schoeppel.

Senator KUCHEL. We have here a question of jurisdiction which the bill contemplates correcting, and in which both the Department of the Interior and the Department of the Army join.

Mr. LINEWEAVER. I also want to say, Mr. Chairman, that I advised the Public Works Committee, which is the successor to the Senate committee that reported out the Flood Control Act of 1944, of this hearing this morning and of this bill, so that there would not be any question of committee jurisdiction.

Senator KUCHEL. I am glad you did that, Goodrich. There will not be, and should not be, any conflict under that state of the record.

The acting chairman will insert in the record the letter from the Department of Interior from Hon. Fred Aandahl and the letter from Hon. Robert T. Stevens, Secretary of the Army, both in support of the proposed language which Senator Curtis previously introduced, and the letter from the Bureau of the Budget. The proposed language will also appear in the record at this point.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C.

MY DEAR SENATOR MURRAY: A report from this Department has been requested on S. 1194, a bill to provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebr., as a unit of the Missouri River Basin project.

Construction of Red Willow Dam and Reservoir was proposed by the Corps of Engineers in House Document No. 475, 78th Congress, and was authorized by the Flood Control Act of 1944. The original plan called for the construction of a dam that would create a 46,800-acre-foot reservoir on Red Willow Creek about 14.5 miles above its junction with the Republican River in Nebraska. Continuing investigations by both the Corps of Engineers and the Bureau of Reclamation in connection with the Frenchman-Cambridge division of the Missouri River Basin project indicate that storage on Red Willow Creek would not only regulate floodwaters rising above the dam site but could also provide a water supply for irrigation of about 10,000 acres in the Red Willow unit of the Frenchman-Cambridge division. Although about 6,000 of these acres are now being served on a temporary basis through facilities of the Frenchman-Cambridge division, permanent service to these lands and to the remainder of the area requires storage on Red Willow Creek and the construction of the other facilities mentioned below. Minor changes in the proposed storage capacity of Red Willow Dam and changes in its estimated cost since the project was authorized result in a need for reappraisal before construction.

In order to make full use of the irrigation water supplies that would be made available by construction of Red Willow Dam, additional facilities, such as the diversion dams, canals, and distribution and drainage works contemplated for the Bureau of Reclamation's Red Willow unit, would be required. It is believed that the construction and operation of Red Willow Dam and Reservoir should be coordinated with that of these closely affiliated facilities and that this can best be accomplished by assigning responsibility therefor to the Department as proposed in S. 1194.

Construction responsibility for the Red Willow Dam was originally assigned to the Corps of Engineers on the theory that the primary purpose of the dam was flood control. The primary justification for its construction must still be based on flood control, but the need for regulation of streamflow for irrigation and the need for coordination of its operation with that of the other features of the Frenchman-Cambridge division make it necessary that normal operation of the dam be for irrigation.

A somewhat analogous situation has developed in connection with Wilson Dam, which was authorized for construction by the Bureau of Reclamation on Smoky Hill River in central Kansas. In this case detailed investigations have revealed that a smaller acreage of land than was originally anticipated is actually suited for irrigation development. At the same time, it has been found that a reservoir at the Wilson site would be valuable for flood-control purposes. Representatives of the Department of the Interior and the Department of the Army have discussed the possibility of exchanging construction responsibilities on Red Willow and Wilson Dams. A draft of a bill in the nature of a substitute for S. 1194 which both agencies feel will serve the desired purposes has been prepared. This draft is enclosed for your consideration, and we recommend its enactment.

The Bureau of Reclamation has not yet calculated the costs and benefits involved in construction of the Red Willow unit but, based upon recently revised figures furnished by the Corps of Engineers and statements concerning the economic feasibility of the unit made by representatives of the Chief of Engineers, we have reason to believe that the unit may be economically justified.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,  
Assistant Secretary of the Interior.



DEPARTMENT OF THE ARMY,  
Washington 25, D. C.

HON. JAMES E. MURRAY,  
Chairman, Committee on Interior and Insular Affairs,  
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to the request of the acting chairman of the committee for the views of the Department of the Army with respect to S. 1194, 84th Congress, a bill to provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebr., as a unit of the Missouri River Basin project.

The Department of the Army has considered the above-mentioned bill, the purpose of which is stated sufficiently in its title.

The Red Willow Reservoir, to be located on a tributary of the Republican River, was authorized by the Flood Control Act approved December 22, 1944, as a Corps of Engineers project in the comprehensive plan for the development of the Missouri River Basin. As presently planned, the reservoir would have a total capacity of approximately 51,500 acre-feet, of which 25,000 would be allocated to flood control with the remainder available for irrigation and sedimentation storage.

The Corps of Engineers has had under discussion with the Bureau of Reclamation the desirability of a change in authorization whereby the Bureau of Reclamation would undertake construction of Red Willow Reservoir. This transfer would appear appropriate in view of the current local desire in the area for irrigation and in view of the relatively small flood-control storage involved. These same discussions have pointed to the desirability of the corps having authority to construct Wilson Reservoir on the Saline River, now under the jurisdiction of the Bureau of Reclamation. This latter reservoir, as presently visualized by the Bureau of Reclamation, would have a total capacity of 559,000 acre-feet, of which 315,000 acre-feet would be allocated to flood control. The Saline River is a major flood contributor to the Kansas River and there is no other reservoir having a large-scale flood-control potential, existing or authorized, for this stream.

In view of the foregoing, the Department of the Army recommends that S. 1194 be modified to provide both for the transfer of authorization of Red Willow Reservoir and for the transfer of Wilson Reservoir. Substitute language to accomplish this purpose is attached. The Department of the Army recommends adoption of the modified bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,  
Secretary of the Army.

A BILL To provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebraska, and construction by the Secretary of the Army of the Wilson Dam and Reservoir, Kansas, as units of the Missouri River Basin project

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Red Willow Dam and Reservoir, Nebraska, a unit of the Missouri River Basin project (Act of December 22, 1944, 58 Stat. 887, 891) shall be constructed, operated, and maintained by the Secretary of the Interior for the principal purposes of making available a regulated supply of water for irrigation and of assisting the control of floods.

SEC. 2. The Wilson Dam and Reservoir, Kansas, also a unit of the Missouri River Basin project (Act of December 22, 1944, aforesaid) shall be constructed, operated, and maintained by the Secretary of the Army for the principal purposes of flood control and assisting in making available a regulated supply of water for irrigation and low flow regulation.

SEC. 3. Both the Secretary of the Interior and the Secretary of the Army shall cause these units of the Missouri River Basin project to be coordinated and integrated physically and financially, with the other Federal works constructed or authorized to be constructed under the comprehensive plans approved by section 9 of the Act of December 22, 1944, aforesaid, as amended and supplemented.

SEC. 4. Notwithstanding any other provisions of this Act, the Secretary of the Army shall, in the case of the Red Willow Dam and Reservoir, be responsible for flood-control regulation as provided in section 7 of the Act of December 22, 1944, and the Secretary of the Interior shall, in the case of Wilson Dam and Reservoir, be responsible for the disposal of water for irrigation or space reserved for this purpose in accordance with the Federal reclamation laws.

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., June 21, 1955.

Hon. JAMES E. MURRAY,  
Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your request of February 25, 1955, for the views of this office on S. 1194, a bill to provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebr., as a unit of the Missouri River Basin project.

This bill, if enacted, would have the effect of transferring from the Department of the Army to the Department of the Interior the former's existing authority to construct Red Willow Dam. It is our understanding that such a transfer would not change the purpose of the project as authorized by the Flood Control Act of 1944 (58 stat. 887-891).

The Department of the Army, in a report which it proposes to submit to your committee on this bill, recommends its modification to provide also for the transfer of authorization of Wilson Reservoir to the Corps of Engineers. The Department of the Interior likewise recommends this modification.

Accordingly, there would be no objection to enactment of S. 1194 with the modification recommended by the Department of the Army and concurred in by the Department of the Interior.

Sincerely yours,

DONALD R. BELCHER, Assistant Director.

Senator KUCHEL. Mr. Page, will you proceed?

**STATEMENT OF CARTER PAGE, CORPS OF ENGINEERS,  
DEPARTMENT OF THE ARMY**

MR. PAGE. Mr. Chairman, there is very little more that I can add.

My name is Carter Page. I am Chief of the Planning Division, Civil Works, Office of the Chief of Engineers.

There is very little I can add to what Mr. Bennett has said. We are in complete agreement with this. We feel, as he has pointed out, that the Wilson Reservoir would be a useful part of our flood-control plan for the Kansas. It is on the Saline River and is the only dam available to control that stream.

So we concur in the proposed trade.

Senator KUCHEL. Any questions, Senator Millikin?

Senator MILLIKIN. Does this involve any interstate questions?

Mr. BENNETT. No, sir.

Senator MILLIKIN. Is it necessary to consult with any other States?

Mr. DEXHEIMER. No, sir. If the Kansas congressional delegation is agreeable to the change—and I have no reason to believe that they would not be—there is no question of interstate waters, or interstate problems involved in this, as I understand it, at all. It is just a question of who builds these reservoirs.

Mr. Chairman, I think it would be appropriate at this point, if we could do so, to ask the Army representatives if they concur in the general estimated cost and flood-control benefits that we have used.

Mr. PAGE. Yes, I think we do, Mr. Dexheimer. You presented the flood-control benefits, and we estimated, ourselves, I believe, and the cost estimate presented by Mr. Bennett was also prepared by us.

Mr. DEXHEIMER. I wanted that particularly, Mr. Chairman, because we have not had a chance to study the costs or the flood-control or irrigation benefits up to this time.

Senator KUCHEL. On Red Willow?

Mr. DEXHEIMER. Yes. Because we did not have authority to do so.

Mr. LINEWEAVER. Mr. Chairman, at the suggestion of Senator Anderson, last Friday afternoon Senator Millikin presided at a hearing on the Ainsworth project, and at that time the question was brought up as to the participation of irrigation units like Ainsworth and Red Willow in Nebraska in the Missouri River Basin power revenues beyond the ability of water users to repay and outside of flood-control benefits. The Ainsworth report has this paragraph, which would be applicable to these two units also, especially the unit being transferred to the Bureau of Reclamation:

The Ainsworth unit is an integral component of the comprehensive Missouri River Basin project. A pay-out analysis of the Missouri River Basin project as a whole discloses that there are sufficient basinwide net revenues to pay all the reimbursable costs, including those of the Ainsworth unit, in a period of time well within the useful life of the works.

I make this statement, Mr. Chairman, for this reason. At the hearings of the House Public Works Appropriation Subcommittee, in their report, members raised questions about initiating any other new construction in the Missouri Basin until this pay-out analysis was available. The House, however, overruled the Appropriations Committee and reinstated the funds, and the language. However, it was the view that the Bureau or the Department should use their influence to get this report released. And in order to protect the agencies in appearing before the Appropriations Committee in the future, and also this committee, with respect to the feasibility of these projects from a financial standpoint, it was urged that the Department of the Interior use its influence to complete this analysis at as early a date as possible, so that there would not be these recurring questions with the appropriations and legislative committees. And members of this committee have indicated they want to know more about the financial analysis and the power revenue pay-out on the Missouri Basin.

You understand that a substantial amount of the irrigation cost will be repaid by power revenues from the entire Missouri River Basin power system. And therefore, although there is no power or very little in Nebraska, and none in Kansas, yet these irrigation projects down there share in overall net revenues from the power system.

Mr. DEXHEIMER. Mr. Chairman, I might clarify that a little bit. We have been making a concerted effort to analyze the Missouri River Basin project and possible additions to it that we can foresee in the reasonably near future. And that analysis, while it is not completed nor approved at this time, and we are not ready yet to make it an official document, does very definitely show that there will be sufficient power revenues from the Missouri River Basin project to carry the cost that is not repaid by water users in this development of irrigation projects, including the Ainsworth and the Red Willow, and any others that are now authorized and foreseeable in the next 20 or 25 years without the necessity for raising the cost of power sold from those projects. And we do feel that the question that has been raised is premature; that there are plenty of revenues available for supporting these additional projects. And this reanalysis of the Missouri River Basin project has been done in line with the agreement made between the various executive agencies of the Government concerned with water and power development, so that it will be consistent throughout the various agencies as to how we allocate costs and analyze the benefits, and so on.

Senator KUCHEL. Are you able to make any comment on the basis of the Department's knowledge and information on the rates in the area, Commissioner?

Mr. DEXHEIMER. Nothing further, Mr. Chairman, other than that the rates at which we now are marketing the power in the Missouri River Basin will be sufficient not only to pay back the power investment with interest, but to assist in the repayment of the irrigation investment for all of the projects we are recommending and for a good many more in the future.

Mr. LINEWEAVER. Does that mean the 5.5 mill rate will be maintained?

Mr. DEXHEIMER. Without any change.

Mr. LINEWEAVER. That was an interim rate, as you know.

Mr. DEXHEIMER. Yes. It won't be necessary, as we see it, to change that rate if our analysis is finally approved in the way we are presently working it out.

Senator KUCHEL. Senator Millikin, any questions?

Senator MILLIKIN. No questions, thank you.

Senator KUCHEL. Unless there is anything further on the bill offered by the two Senators from Nebraska, the hearing on it will be closed, subject to the Chair's earlier announcement that any statements which either or both of the Senators from Kansas desire to make will be received today or tomorrow.

(Mr. Lineweaver subsequently advised the committee that Senators Schoepfel and Carlson of Kansas, had been advised of the pending bills and reports. Neither had any objection to the construction of Wilson Dam by the Corps of Engineers.)

(Whereupon, at 10:44 a. m., the hearing was adjourned.)

X



# **VENTURA RIVER RECLAMATION PROJECT, CALIFORNIA**

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**HEARING**  
**BEFORE THE**  
**SUBCOMMITTEE ON**  
**IRRIGATION AND RECLAMATION**  
**OF THE**  
**COMMITTEE ON**  
**INTERIOR AND INSULAR AFFAIRS**  
**UNITED STATES SENATE**  
**EIGHTY-FOURTH CONGRESS**  
**FIRST SESSION**  
**ON**  
**S. 926**  
**A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR**  
**TO CONSTRUCT, OPERATE, AND MAINTAIN THE VENTURA**  
**RIVER RECLAMATION PROJECT, CALIFORNIA**

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**JUNE 22, 1955**

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**Printed for the use of the Committee on Interior and Insular Affairs**



**UNITED STATES**  
**GOVERNMENT PRINTING OFFICE**  
**WASHINGTON : 1955**



# RED WILLOW DAM, NEBRASKA

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UNIVERSITY  
OF MICHIGAN

JUL 15 1955

MAIN  
READING ROOM

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
IRRIGATION AND RECLAMATION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
S. 1194

A BILL TO PROVIDE FOR CONSTRUCTION BY THE SECRETARY OF THE INTERIOR OF RED WILLOW DAM AND RESERVOIR, NEBRASKA, AS A UNIT OF THE MISSOURI RIVER BASIN PROJECT

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JUNE 22, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



UNITED STATES  
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# RED WILLOW DAM, NEBRASKA

WEDNESDAY, JUNE 22, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION OF  
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met at 10:10 a. m., pursuant to call, in room 224, Senate Office Building. Hon. Thomas H. Kuchel, presiding.

Present: Senators Kuchel, California; Millikin, Colorado; and Watkins, Utah; and Anderson, New Mexico.

Also present: Stewart French, chief counsel and staff director; Goodrich W. Lineweaver, Elmer K. Nelson, and Platt Wilson, committee assistants on reclamation; and N. D. McSherry, assistant chief clerk.

Senator KUCHEL. The meeting will come to order.

I have been delegated by Hon. Clinton Anderson, Senator from New Mexico and chairman of the Subcommittee on Irrigation and Reclamation, to act as chairman, by reason of his required attendance at another committee.

Senator ANDERSON. Maybe I just ought to say that you can never tell when the Atomic Energy Commission, these days, is going to have to have a full-scale hearing, and this day is one of them, again.

Senator KUCHEL. With Senator Anderson's permission, I will call the meeting to order.

The first item on the agenda this morning is S. 1195, to authorize construction of Red Willow Dam, Nebr., by the Bureau of Reclamation, instead of by the Corps of Engineers. The bill is offered by Senators Curtis and Hruska of Nebraska. S. 1194 will be inserted in the record at this point.

[S. 1194, 84th Cong., 1st sess.]

A BILL To provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebraska, as a unit of the Missouri River Basin project.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Red Willow Dam and Reservoir, Nebraska, a unit of the Missouri River Basin project (Act of December 12, 1944, 58 Stat. 887, 891) shall be constructed, operated, and maintained by the Secretary of the Interior for the principal purposes of making available a regulated supply of water for irrigation and of assisting in the control of floods. The Secretary shall cause this unit of the Missouri River Basin project to be coordinated and integrated, physically and financially, with the other Federal works constructed or authorized to be constructed under the comprehensive plans approved by section 9 of the Act of December 12, 1944, aforesaid, as amended, and supplemented.*

Senator KUCHEL. Senator Curtis is present. Senator?

**STATEMENT OF HON. CARL T. CURTIS, UNITED STATES SENATOR  
FROM THE STATE OF NEBRASKA**

Senator CURTIS. Mr. Chairman, my appearance here is in behalf of Senator Hruska as well as myself.

The bill that we have introduced does not call for a new authorization. This is not a new project.

The Missouri River development, which proceeded from the Flood Control Act of 1944, called for the development of that river basin by the Army engineers and the Bureau of Reclamation. One of the important tributaries of the Kansas River, which in turn is a tributary of the Missouri River, is the Republican River Basin. That river extends—in fact, the Missouri as well as the Kansas and the Republican—from an arid and semiarid territory down to an area of ample rainfall.

As a result, the many dams to be constructed throughout the entire basin were divided, some of them allocated to the Army and some to the Bureau of Reclamation.

In the Republican River Basin, the Army engineers constructed a project in Harlan County known as the Harlan County Reservoir. Generally speaking, west of that was the jurisdiction of the Bureau of Reclamation. They have already constructed, in that area, the Cambridge Dam, the Enders Dam, the Trenton Dam, and considerable irrigation works in addition to it.

As a matter of practicality, as a matter of convenience, as a matter of economical operation, the Red Willow Dam should be carried forth by the Bureau of Reclamation instead of the Army. It is located just a few miles, probably 15 or 16, from McCook, Nebr., where there is the district headquarters of the Bureau of Reclamation.

The Army agreed to that. We introduced a bill which would in effect transfer Red Willow Dam from the Army to the Bureau.

It is now developed that it will be an exchange of dams. Wilson Dam in the State of Kansas is now authorized to the Bureau, and it is to be transferred to the Army. It is my understanding that all of the interested departments, Interior, the Department of the Army, and the Bureau of the Budget, are agreeable to this bill.

So if the committee will report it favorably—and I urge them to do so—it is suggested that the bill as introduced be taken with the language after the enacting clause being stricken out and the amendments as suggested by the departments inserted; because that makes the complete trade of 1 dam from the Bureau to the Army and 1 from the Army to the Bureau.

I know of no opposition to this from any source.

Senator KUCHEL. Thank you very much, Senator.

Will the representatives of the Bureau of Reclamation discuss the costs involved?

Senator CURTIS. Yes.

Senator KUCHEL. Without objection, the record will remain open throughout tomorrow for receipt from the two Senators from Kansas of any statement which they may care to make in support of your legislation.

Senator CURTIS. Mr. Chairman, there are a lot of very busy people around here, and I have nothing further to state unless there are questions. The Bureau can supply the figures that you're interested in and that I think should be carried in the record.

Senator KUCHEL. Senator Millikin, do you have any questions?

Senator MILLIKIN. I have none.

Senator KUCHEL. The acting chairman is delighted to note the presence of the Commissioner of Reclamation, Mr. W. A. Dexheimer. However, I understand that on this proposed legislation Mr. N. B. Bennett of the Bureau will be the witness.

**STATEMENTS OF NEWCOMB B. BENNETT, CHIEF, PROJECT DEVELOPMENT DIVISION, BUREAU OF RECLAMATION; AND WILBUR A. DEXHEIMER, COMMISSIONER, BUREAU OF RECLAMATION**

Mr. DEXHEIMER. That is correct, Mr. Chairman.

Senator KUCHEL. Mr. Bennett, will you proceed?

Mr. BENNETT. Yes, Mr. Chairman. You have received the letter of June 21, 1955, from Assistant Secretary Aandahl, giving the views of the Department of the Interior on this bill and transmitting with that letter a proposed substitute for S. 1194.

Senator KUCHEL. Which is the proposal that the Senator has offered to the subcommittee.

Mr. BENNETT. Yes, sir; that draft of bill has been approved by the Secretary, and I understand also by the Defense Department, and it has been approved by the Bureau of the Budget.

Red Willow Dam was authorized to the Corps of Engineers in the 1944 Flood Control Act. The original plan called for the construction of a dam which would create about a 46,800 acre-foot reservoir, some 14 miles above the junction of the river.

Continuing investigations by both the Corps and the Bureau of Reclamation in connection with the Frenchman-Cambridge division of the Missouri River Basin project indicate that storage on Red Willow Creek would not only regulate floodwaters rising above the dam site, but could also provide a water supply for irrigation of about 10,000 acres in the Red Willow unit of the Frenchman-Cambridge division.

It is particularly important to note, Mr. Chairman, that the Red Willow Dam, as indicated on that map in gray, is practically in the middle of a system composed of the Medicine Creek Dam, Trenton Dam, and Enders Dam. The lands there in green and in cross-hatched blue are currently under irrigation as a part of the Frenchman-Cambridge division. The land in yellow just below Red Willow Dam cannot receive a water supply for irrigation without construction of Red Willow. The land in blue, under the Barkley Canal, is now receiving a water supply out of the combination of Enders and Trenton. But that is only temporary. As the yellow lands upstream come into development, the Barkley unit must rely upon Red Willow for its water supply. And it is essential that Red Willow be operated in conjunction with the other three reservoirs.

It is estimated that Red Willow will cost somewhere between 7 and 8 million dollars. Detailed investigations have not been completed, so we cannot give you an exact figure, but at the present time it looks like between 7 and 8 million dollars. The Corps of Engineers estimates that the annual flood-control benefits will be \$176,000. We have not yet been able to estimate the irrigation benefits, although there are some 6,000 acres remaining there not yet irrigated.

A good part of the lands to be irrigated are already included within the Frenchman-Cambridge Irrigation District, although they are not within the present repayment contract with that district.

Senator KUCHEL. Is it contemplated that they will be?

Mr. BENNETT. We will have to have a contract with the district before we can serve them with water.

Senator KUCHEL. Proceed.

Mr. BENNETT. Wilson Dam, which is not indicated on that particular map, but is on the small one which you have before you, was authorized for construction by the Bureau of Reclamation in the same Flood Control Act of 1944. It is in central Kansas on the Saline River.

At the present time, it looks like the dam would form a reservoir of about 559,000 acre-feet, the major part of which would be devoted to flood control. The Corps estimates there that the flood-control benefits would be approximately \$800,000 a year.

The cost of the structure would be approximately \$15 million.

We had originally contemplated irrigating about 18,000 acres near Salina, Kans., but our detailed investigations cut that to approximately 2,200. Therefore, the flood-control aspects became paramount in that reservoir.

There is some possibility of irrigating about 20,000 acres in the St. George unit downstream, but that is by no means firm at this time.

It is because of these two factors that it is believed advisable that the authorizations on these two reservoirs be switched.

I have no further direct testimony, Mr. Chairman. If you have any questions, we will be happy to try to answer them.

Mr. LINEWEAVER. Mr. Chairman, let me say that I have not yet been able to get in touch with Senator Schoeppel as to whether he has been advised of the proposal to switch the authorization of Wilson Dam in Kansas from the Bureau of Reclamation to the Corps of Engineers, but Senator Carlson's office indicated that there was no opposition. I will notify Senator Schoeppel.

Senator KUCHEL. We have here a question of jurisdiction which the bill contemplates correcting, and in which both the Department of the Interior and the Department of the Army join.

Mr. LINEWEAVER. I also want to say, Mr. Chairman, that I advised the Public Works Committee, which is the successor to the Senate committee that reported out the Flood Control Act of 1944, of this hearing this morning and of this bill, so that there would not be any question of committee jurisdiction.

Senator KUCHEL. I am glad you did that, Goodrich. There will not be, and should not be, any conflict under that state of the record.

The acting chairman will insert in the record the letter from the Department of Interior from Hon. Fred Aandahl and the letter from Hon. Robert T. Stevens, Secretary of the Army, both in support of the proposed language which Senator Curtis previously introduced, and the letter from the Bureau of the Budget. The proposed language will also appear in the record at this point.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington 25, D. C.*

MY DEAR SENATOR MURRAY: A report from this Department has been requested on S. 1194, a bill to provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebr., as a unit of the Missouri River Basin project.

Construction of Red Willow Dam and Reservoir was proposed by the Corps of Engineers in House Document No. 475, 78th Congress, and was authorized by the Flood Control Act of 1944. The original plan called for the construction of a dam that would create a 46,800-acre-foot reservoir on Red Willow Creek about 14.5 miles above its junction with the Republican River in Nebraska. Continuing investigations by both the Corps of Engineers and the Bureau of Reclamation in connection with the Frenchman-Cambridge division of the Missouri River Basin project indicate that storage on Red Willow Creek would not only regulate floodwaters rising above the dam site but could also provide a water supply for irrigation of about 10,000 acres in the Red Willow unit of the Frenchman-Cambridge division. Although about 6,000 of these acres are now being served on a temporary basis through facilities of the Frenchman-Cambridge division, permanent service to these lands and to the remainder of the area requires storage on Red Willow Creek and the construction of the other facilities mentioned below. Minor changes in the proposed storage capacity of Red Willow Dam and changes in its estimated cost since the project was authorized result in a need for reappraisal before construction.

In order to make full use of the irrigation water supplies that would be made available by construction of Red Willow Dam, additional facilities, such as the diversion dams, canals, and distribution and drainage works contemplated for the Bureau of Reclamation's Red Willow unit, would be required. It is believed that the construction and operation of Red Willow Dam and Reservoir should be coordinated with that of these closely affiliated facilities and that this can best be accomplished by assigning responsibility therefor to the Department as proposed in S. 1194.

Construction responsibility for the Red Willow Dam was originally assigned to the Corps of Engineers on the theory that the primary purpose of the dam was flood control. The primary justification for its construction must still be based on flood control, but the need for regulation of streamflow for irrigation and the need for coordination of its operation with that of the other features of the Frenchman-Cambridge division make it necessary that normal operation of the dam be for irrigation.

A somewhat analogous situation has developed in connection with Wilson Dam, which was authorized for construction by the Bureau of Reclamation on Smoky Hill River in central Kansas. In this case detailed investigations have revealed that a smaller acreage of land than was originally anticipated is actually suited for irrigation development. At the same time, it has been found that a reservoir at the Wilson site would be valuable for flood-control purposes. Representatives of the Department of the Interior and the Department of the Army have discussed the possibility of exchanging construction responsibilities on Red Willow and Wilson Dams. A draft of a bill in the nature of a substitute for S. 1194 which both agencies feel will serve the desired purposes has been prepared. This draft is enclosed for your consideration, and we recommend its enactment.

The Bureau of Reclamation has not yet calculated the costs and benefits involved in construction of the Red Willow unit but, based upon recently revised figures furnished by the Corps of Engineers and statements concerning the economic feasibility of the unit made by representatives of the Chief of Engineers, we have reason to believe that the unit may be economically justified.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*



DEPARTMENT OF THE ARMY,  
Washington 25, D. C.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to the request of the acting chairman of the committee for the views of the Department of the Army with respect to S. 1194, 84th Congress, a bill to provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebr., as a unit of the Missouri River Basin project.

The Department of the Army has considered the above-mentioned bill, the purpose of which is stated sufficiently in its title.

The Red Willow Reservoir, to be located on a tributary of the Republican River, was authorized by the Flood Control Act approved December 22, 1944, as a Corps of Engineers project in the comprehensive plan for the development of the Missouri River Basin. As presently planned, the reservoir would have a total capacity of approximately 51,500 acre-feet, of which 25,000 would be allocated to flood control with the remainder available for irrigation and sedimentation storage.

The Corps of Engineers has had under discussion with the Bureau of Reclamation the desirability of a change in authorization whereby the Bureau of Reclamation would undertake construction of Red Willow Reservoir. This transfer would appear appropriate in view of the current local desire in the area for irrigation and in view of the relatively small flood-control storage involved. These same discussions have pointed to the desirability of the corps having authority to construct Wilson Reservoir on the Saline River, now under the jurisdiction of the Bureau of Reclamation. This latter reservoir, as presently visualized by the Bureau of Reclamation, would have a total capacity of 559,000 acre-feet, of which 315,000 acre-feet would be allocated to flood control. The Saline River is a major flood contributor to the Kansas River and there is no other reservoir having a large-scale flood-control potential, existing or authorized, for this stream.

In view of the foregoing, the Department of the Army recommends that S. 1194 be modified to provide both for the transfer of authorization of Red Willow Reservoir and for the transfer of Wilson Reservoir. Substitute language to accomplish this purpose is attached. The Department of the Army recommends adoption of the modified bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,  
*Secretary of the Army.*

A BILL To provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebraska, and construction by the Secretary of the Army of the Wilson Dam and Reservoir, Kansas, as units of the Missouri River Basin project

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Red Willow Dam and Reservoir, Nebraska, a unit of the Missouri River Basin project (Act of December 22, 1944, 58 Stat. 887, 891) shall be constructed, operated, and maintained by the Secretary of the Interior for the principal purposes of making available a regulated supply of water for irrigation and of assisting the control of floods.*

SEC. 2. The Wilson Dam and Reservoir, Kansas, also a unit of the Missouri River Basin project (Act of December 22, 1944, aforesaid) shall be constructed, operated, and maintained by the Secretary of the Army for the principal purposes of flood control and assisting in making available a regulated supply of water for irrigation and low flow regulation.

SEC. 3. Both the Secretary of the Interior and the Secretary of the Army shall cause these units of the Missouri River Basin project to be coordinated and integrated physically and financially, with the other Federal works constructed or authorized to be constructed under the comprehensive plans approved by section 9 of the Act of December 22, 1944, aforesaid, as amended and supplemented.

SEC. 4. Notwithstanding any other provisions of this Act, the Secretary of the Army shall, in the case of the Red Willow Dam and Reservoir, be responsible for flood-control regulation as provided in section 7 of the Act of December 22, 1944, and the Secretary of the Interior shall, in the case of Wilson Dam and Reservoir, be responsible for the disposal of water for irrigation or space reserved for this purpose in accordance with the Federal reclamation laws.

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., June 21, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your request of February 25, 1955, for the views of this office on S. 1194, a bill to provide for construction by the Secretary of the Interior of Red Willow Dam and Reservoir, Nebr., as a unit of the Missouri River Basin project.

This bill, if enacted, would have the effect of transferring from the Department of the Army to the Department of the Interior the former's existing authority to construct Red Willow Dam. It is our understanding that such a transfer would not change the purpose of the project as authorized by the Flood Control Act of 1944 (58 stat. 887-891).

The Department of the Army, in a report which it proposes to submit to your committee on this bill, recommends its modification to provide also for the transfer of authorization of Wilson Reservoir to the Corps of Engineers. The Department of the Interior likewise recommends this modification.

Accordingly, there would be no objection to enactment of S. 1194 with the modification recommended by the Department of the Army and concurred in by the Department of the Interior.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

Senator KUCHEL. Mr. Page, will you proceed?

**STATEMENT OF CARTER PAGE, CORPS OF ENGINEERS,  
DEPARTMENT OF THE ARMY**

MR. PAGE. Mr. Chairman, there is very little more that I can add.

My name is Carter Page. I am Chief of the Planning Division, Civil Works, Office of the Chief of Engineers.

There is very little I can add to what Mr. Bennett has said. We are in complete agreement with this. We feel, as he has pointed out, that the Wilson Reservoir would be a useful part of our flood-control plan for the Kansas. It is on the Saline River and is the only dam available to control that stream.

So we concur in the proposed trade.

Senator KUCHEL. Any questions, Senator Millikin?

Senator MILLIKIN. Does this involve any interstate questions?

MR. BENNETT. No, sir.

Senator MILLIKIN. Is it necessary to consult with any other States?

MR. DEXHEIMER. No, sir. If the Kansas congressional delegation is agreeable to the change—and I have no reason to believe that they would not be—there is no question of interstate waters, or interstate problems involved in this, as I understand it, at all. It is just a question of who builds these reservoirs.

MR. CHAIRMAN, I think it would be appropriate at this point, if we could do so, to ask the Army representatives if they concur in the general estimated cost and flood-control benefits that we have used.

MR. PAGE. Yes, I think we do, Mr. Dexheimer. You presented the flood-control benefits, and we estimated, ourselves, I believe, and the cost estimate presented by Mr. Bennett was also prepared by us.

MR. DEXHEIMER. I wanted that particularly, Mr. Chairman, because we have not had a chance to study the costs or the flood-control or irrigation benefits up to this time.

Senator KUCHEL. On Red Willow?

MR. DEXHEIMER. Yes. Because we did not have authority to do so.

Mr. LINEWEAVER. Mr. Chairman, at the suggestion of Senator Anderson, last Friday afternoon Senator Millikin presided at a hearing on the Ainsworth project, and at that time the question was brought up as to the participation of irrigation units like Ainsworth and Red Willow in Nebraska in the Missouri River Basin power revenues beyond the ability of water users to repay and outside of flood-control benefits. The Ainsworth report has this paragraph, which would be applicable to these two units also, especially the unit being transferred to the Bureau of Reclamation:

The Ainsworth unit is an integral component of the comprehensive Missouri River Basin project. A pay-out analysis of the Missouri River Basin project as a whole discloses that there are sufficient basinwide net revenues to pay all the reimbursable costs, including those of the Ainsworth unit, in a period of time well within the useful life of the works.

I make this statement, Mr. Chairman, for this reason. At the hearings of the House Public Works Appropriation Subcommittee, in their report, members raised questions about initiating any other new construction in the Missouri Basin until this pay-out analysis was available. The House, however, overruled the Appropriations Committee and reinstated the funds, and the language. However, it was the view that the Bureau or the Department should use their influence to get this report released. And in order to protect the agencies in appearing before the Appropriations Committee in the future, and also this committee, with respect to the feasibility of these projects from a financial standpoint, it was urged that the Department of the Interior use its influence to complete this analysis at as early a date as possible, so that there would not be these recurring questions with the appropriations and legislative committees. And members of this committee have indicated they want to know more about the financial analysis and the power revenue pay-out on the Missouri Basin.

You understand that a substantial amount of the irrigation cost will be repaid by power revenues from the entire Missouri River Basin power system. And therefore, although there is no power or very little in Nebraska, and none in Kansas, yet these irrigation projects down there share in overall net revenues from the power system.

Mr. DEXHEIMER. Mr. Chairman, I might clarify that a little bit. We have been making a concerted effort to analyze the Missouri River Basin project and possible additions to it that we can foresee in the reasonably near future. And that analysis, while it is not completed nor approved at this time, and we are not ready yet to make it an official document, does very definitely show that there will be sufficient power revenues from the Missouri River Basin project to carry the cost that is not repaid by water users in this development of irrigation projects, including the Ainsworth and the Red Willow, and any others that are now authorized and foreseeable in the next 20 or 25 years without the necessity for raising the cost of power sold from those projects. And we do feel that the question that has been raised is premature; that there are plenty of revenues available for supporting these additional projects. And this reanalysis of the Missouri River Basin project has been done in line with the agreement made between the various executive agencies of the Government concerned with water and power development, so that it will be consistent throughout the various agencies as to how we allocate costs and analyze the benefits, and so on.

Senator KUCHEL. Are you able to make any comment on the basis of the Department's knowledge and information on the rates in the area, Commissioner?

Mr. DEXHEIMER. Nothing further, Mr. Chairman, other than that the rates at which we now are marketing the power in the Missouri River Basin will be sufficient not only to pay back the power investment with interest, but to assist in the repayment of the irrigation investment for all of the projects we are recommending and for a good many more in the future.

Mr. LINEWEAVER. Does that mean the 5.5 mill rate will be maintained?

Mr. DEXHEIMER. Without any change.

Mr. LINEWEAVER. That was an interim rate, as you know.

Mr. DEXHEIMER. Yes. It won't be necessary, as we see it, to change that rate if our analysis is finally approved in the way we are presently working it out.

Senator KUCHEL. Senator Millikin, any questions?

Senator MILLIKIN. No questions, thank you.

Senator KUCHEL. Unless there is anything further on the bill offered by the two Senators from Nebraska, the hearing on it will be closed, subject to the Chair's earlier announcement that any statements which either or both of the Senators from Kansas desire to make will be received today or tomorrow.

(Mr. Lineweaver subsequently advised the committee that Senators Schoepfel and Carlson of Kansas, had been advised of the pending bills and reports. Neither had any objection to the construction of Wilson Dam by the Corps of Engineers.)

(Whereupon, at 10:44 a. m., the hearing was adjourned.)

X



# **VENTURA RIVER RECLAMATION PROJECT, CALIFORNIA**

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**HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
IRRIGATION AND RECLAMATION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
S. 926**

**A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR  
TO CONSTRUCT, OPERATE, AND MAINTAIN THE VENTURA  
RIVER RECLAMATION PROJECT, CALIFORNIA**

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**JUNE 22, 1955**

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**Printed for the use of the Committee on Interior and Insular Affairs**



**UNITED STATES  
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# VENTURA RIVER RECLAMATION PROJECT, CALIFORNIA

WEDNESDAY, JUNE 22, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION OF  
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met at 10:45 a. m., pursuant to call, in room 224, Senate Office Building, Hon. Thomas H. Kuchel presiding.

Present: Senators Kuchel, California; Millikin, Colorado; and Watkins, Utah.

Also present: Stewart French, chief counsel and staff director; Goodrich W. Lineweaver, committee assistant on reclamation; Elmer K. Nelson and Platt Wilson, consultant engineers; and N. D. McSherry, assistant chief clerk.

Senator KUCHEL. The next item on the agenda is S. 926, which will be inserted in the record at this point, together with reports from the Bureau of the Budget and the Department of the Interior.

[S. 926, 84th Cong., 1st sess.]

A BILL To authorize the Secretary of the Interior to construct, operate, and maintain the Ventura River reclamation project, California

*Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,* That, for the purpose of supplying water for the irrigation of lands in Ventura County, California, and for municipal, domestic, and industrial use therein, and for other incidental beneficial purposes, the Secretary of the Interior is authorized to construct, operate, and maintain the Ventura River reclamation project comprising, as its principal works, Casitas Dam and Reservoir on Coyote Creek, Robles diversion dam on Ventura River, a canal to carry water from the Robles diversion dam to Casitas Reservoir, and other conduits and related facilities to deliver water to the lands and area to be served by the project.

SEC. 2. (a) In constructing, operating, and maintaining the Ventura River project, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) except as is otherwise provided in this Act.

(b) In furnishing water for irrigation and for municipal, domestic, and industrial uses from the Ventura River project the Secretary shall charge rates with the object of returning to the United States during a fifty-year payment period all of the costs incurred by it in constructing, operating, and maintaining the project which the Secretary finds to be properly allocable to the purposes aforesaid and of interest, as hereinafter provided, on the portion of the construction cost which is allocated to municipal, domestic, and industrial water.

(c) Any contract entered into under section 9, subsection (d), of the Reclamation Project Act of 1939 (53 Stat. 1187, 1193; 43 U. S. C., sec. 485 (h)) for payment of those portions of the costs of constructing, operating, and maintaining the Ventura River project which are allocated to irrigation and assigned to be paid by the contracting organization may provide for the repayment of the portion of the construction cost of the project assigned to any project contract unit or, if the contract unit be divided into two or more irrigation blocks, to any

such block over a period of not more than fifty years or as near thereto as is consistent with the adoption and operation of a variable payment formula, which, being based on full repayment within the period stated under normal conditions, permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay.

(d) Notwithstanding any other provision of law to the contrary, all net revenues derived by the Secretary from the furnishing of water for municipal, domestic, and industrial use shall be applied first to the amortization of that portion of the cost of constructing the Ventura River project which is allocated to that purpose with interest on the unamortized balance thereof at the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long-term securities outstanding on the date of this Act and thereafter to the amortization of that portion of the cost of constructing the project which is allocated to irrigation but which is beyond the ability of the irrigation water users or their contracting organization to repay as provided above.

(e) The Secretary is authorized, subject to such rules and regulations as he may prescribe, to turn over to any contracting organization or to an organization which is designed by it for that purpose and which is satisfactory to the Secretary the care, operation, and maintenance of such portions of the Ventura River project as are used solely or principally for the benefit of that organization.

(f) Minimum basic facilities may be provided for the accommodation of the visiting public at Casitas Dam and, if responsible local interests agree to assume the operation and maintenance thereof, at the project reservoirs. The costs of such facilities shall be nonreimbursable.

SEC. 3. There is hereby authorized to be appropriated for construction of the Ventura River project the sum of \$27,600,000 plus such amounts, if any, as may be required by reason of changes in construction costs as may be indicated by engineering cost indices applicable to the types of construction involved herein and, in addition thereto, such sums as may be required to operate and maintain the project.

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., February 18, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Senate Office Building,  
Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of February 7, 1955, requesting the views of the Bureau of the Budget on S. 926, to authorize the Secretary of the Interior to construct, operate, and maintain the Ventura River reclamation project, California.

The Department of the Interior has not yet submitted its final report on this proposed project to the Bureau of the Budget under procedures prescribed in Executive Order 9384. Until such a report is received, this Bureau has no basis for appraising the merits of the proposed Ventura River project.

Accordingly, it is recommended that the committee defer action on S. 926 until a project report has been submitted under established procedures.

Sincerely yours,

DONALD R. BELCHER,  
*Assistant Director.*

---

UNITED STATES DEPARTMENT OF THE INTERIOR,  
Washington 25, D. C., June 13, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR MURRAY: You have requested from us a report on S. 926, a bill to authorize the Secretary of the Interior to construct, operate, and maintain the Ventura River reclamation project, California.

This Department's proposed planning report on the Ventura River project (a copy of which is attached for your information) was sent on March 16 to the State of California and to the interested Federal agencies for review under the Flood Control Act of 1944, the act of August 14, 1946, and outstanding

interagency agreements. Until their comments have been received and reviewed, we will not be in a position to make any firm recommendation with respect to enactment of this bill. We likewise defer until that time any recommendations for its amendment. This interim report, therefore, is confined to a summary statement concerning the nature of the proposed project, its cost, its economic feasibility, and its repayment prospects.

The Ventura project area, which encompasses the city of Ventura and a relatively long, narrow strip of land west of the city, is on California's southern coast in Ventura County, about 60 miles northwest of metropolitan Los Angeles. There has been a rapid expansion of population in the project area. The project is multiple-purpose in character, involving primarily the storage of water from Ventura River and Coyote Creek in the proposed Casitas Reservoir for irrigation and municipal and industrial water. In addition, it would provide important fish and wildlife and recreational benefits and incidental flood-control benefits.

Rainfall is deficient in the project area during the growing season. Runoff of streams is erratic and the area is subjected to prolonged droughts. Many of the lands currently irrigated experience serious shortages of water. The city of Ventura has outgrown a reliable water supply and is now frequently forced to pump water from three wells located along the oceanfront which are subject to salt-water intrusion. There is, in short, need for stream regulation to provide additional water to stabilize the present economy, to irrigate new lands, to supply new industries, and in general to provide for a rapidly expanding economy.

The proposed project would aid the general situation by providing an addition to the area's water supply of 27,800 acre-feet annually, including 800 acre-feet to be obtained from the existing Matilija Reservoir. It is estimated this supply will be adequate to supply area needs during the 50 years following initial operation of the project.

During the first 50-year period of project operation it is estimated that 60 percent of the total water made available would be used for irrigation and 40 percent for municipal and industrial purposes. At the end of the first 20-year period of project operation it is estimated that maximum irrigation development will have been reached and 15,000 acre-feet will be needed at that time for that purpose. At the same time 5,000 acre-feet would be utilized for municipal and industrial purposes. Urban and industrial water use would continue to increase and use for irrigation would gradually decrease until at the end of a 50-year period 15,600 acre-feet would be used for municipal and industrial purposes and 12,400 acre-feet for irrigation. Lands to be served by the project consist of about 20,200 acres. Under full development it is estimated that 12,600 acres would be irrigated and 7,600 acres would be utilized for municipal and industrial development. Under present conditions about 4,000 acres are irrigated; approximately 5,900 acres are developed for urban and industrial uses; and over 10,300 acres are used for grazing, are dry-farmed or are idle.

The project facilities that would be constructed by the Federal Government are Casitas Dam and Reservoir on Coyote Creek, a tributary to the Ventura River; Robles diversion dam on the Ventura River; Robles-Casitas Canal; and the main conduit system consisting of 33 miles of pipelines, 7 pumping plants, and 6 balancing reservoirs. The Robles diversion dam would divert surplus flows through the Robles-Casitas Canal for storage and regulation in the Casitas Reservoir. Water would be released as required from the reservoir into the main conduit system for delivery to distribution systems. Some of the distribution facilities are existing; others needed would be constructed by the water users and would not be financed by Federal funds. Operation of the existing Matilija Reservoir located upstream on the Ventura River would be coordinated with operation of Casitas Reservoir.

Based on the contemplated development, full use of the water that would be made available by construction of the recommended project would not be realized for a number of years after completion of the project works. As a result, the possibility of initial construction of a smaller dam and reservoir with provision for future enlargement as water needs increased was investigated. After careful consideration of the technical and economic factors involved, it was concluded that initial construction of a reservoir of 250,000 acre-feet capacity is the most desirable plan. Other considerations such as the more rapid growth of the project area than contemplated, the probable extension of the service area boundaries, the probable future urban and suburban expansion into nonirrigable foothill areas which areas have not been considered in the studies for future water requirements, and possible heavier industrial demands than estimated

all tend to support the decision to construct initially to the 250,000 acre-foot capacity.

The cost of the Ventura River project based on January 1954 prices, which are approximately the same as current prices, is estimated to be \$27,669,000, including \$169,000 for minimum recreation facilities as estimated by the National Park Service. The \$169,000 figure includes \$67,500 for the acquisition of 675 acres of land required for minimum basic facilities in addition to land otherwise to be acquired for project purposes. Further detailed studies, in accordance with the act of August 14, 1946 (60 Stat. 1080), remain to be made of the fish and wildlife resources affected by the project and of measures required for their preservation and propagation. The cost of these measures is not included in the above estimate.

The \$27,669,000 project construction costs tentatively are allocated to municipal and industrial water, to irrigation and to recreation in the amounts of \$11,403,000, \$15,319,000 and \$169,000, respectively. The balance of \$778,000 has been or is now being contributed by the Ventura River Municipal Water District for preliminary and advanced planning for the project.

Studies indicate that project revenues from the sale of irrigation and municipal and industrial water together with receipts from an ad valorem tax levy in the project area would repay the municipal and industrial water allocation at 2.5 percent interest in 40 years and the irrigation allocation in 50 years including a 10-year development period.

The ratio of direct benefits to project cost is 1.76 to 1 and the ratio of total benefits to cost is 4.25 to 1. For these ratios, the benefits for an acre-foot of municipal and industrial water were assumed equal to the benefits for an equivalent amount of irrigation water. Even if municipal and industrial water benefits are said to be measured by the cost of the cheapest alternative method of providing an equivalent water supply the total project benefits would be well in excess of project costs with a benefit-cost ratio for municipal and industrial water of about 1.4 to 1.0 and a ratio of direct irrigation benefits to costs of 1.56 to 1.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your Committee.

Sincerely yours,

FRED G. AANDAHL,  
*Acting Secretary of the Interior.*

Senator KUCHEL. Because of the busy schedule of my friend and colleague, the senior Senator from California, Senator Knowland, I am going to interrupt the procedure of the committee in order to ask the Senator to speak on the project which he and I have introduced, the Ventura project in the State of California.

I would like to assuage any apprehension that my senior brother from California may have by telling him at the outset that the legislation before us now has nothing to do with the waters of the Colorado River.

#### STATEMENT OF HON. WILLIAM F. KNOWLAND, A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA

Senator KNOWLAND. Mr. Chairman, I will say that my statement will not take as much as 5 minutes, I believe. And I appreciate the courtesy, because I have some other meetings scheduled.

I want to first of all express my sincere appreciation to the chairman and members of this subcommittee for scheduling committee consideration of S. 926, legislation introduced by my colleague, Senator Kuchel and myself, to authorize the construction of the Ventura River reclamation project.

During the fall of 1954 I paid a special visit to Ventura and inspected the existing plans for the Ventura River municipal district's project. At that time, I was favorably impressed with the efforts put forward by the citizens of the communities involved, to activate the

fullest development of their water resources in that area. As a result of my studies and observations during that visit, I concluded that this project would have my complete support and this led to my joining with Senator Kuchel in the introduction of S. 926 on February 4 of this year.

I am pleased to find that the confidence I expressed in the project at that time has been substantiated by the Bureau of Reclamation's studies on the subject which evidence a cost-benefit ratio of 4.25 to 1. This ratio clearly indicates to me and, I hope, to the satisfaction of this committee, the economic justification and desirability of early construction of the Ventura River project.

The district involved covers an area in excess of 20,000 acres of irrigable, urban, and industrial lands, situated in Ventura County, 60 miles northwest of Los Angeles, off the southern coast of California. This area, seldom inflicted with freezing temperatures, offers a favorable climate for agricultural development. The increased activities of agriculture and industry, encouraged by a rapidly expanding population, have already brought about a distressing situation that has exhausted existing water supplies.

The district is currently experiencing a 10-year drought period which, if the history of the general rainfall pattern for the area continues, will be followed by a period of above-normal rainfall years. It is necessary that the water-storage facilities contemplated by the legislation pending here, be constructed early enough to permit storage of this surplus runoff, to be used in subsequent dry years.

It is contemplated that the population growth of Ventura County which has approximately doubled in the past 10 years, will be continued in the future, which only emphasizes the urgent necessity for prompt construction of the Ventura River projects. The legislation pending here carries out the recommendations of the Bureau of Reclamation, and the project calls for the construction of the Casitas Dam, the Robles diversion dam, the Robles-Casitas Canal and main conduit system. The project has the approval of the Bureau of Reclamation, the Department of the Interior, the State of California, and it is expected that the Bureau of the Budget's favorable report on the project will be before this committee within the next few days.

Construction of the Ventura project calls for complete reimbursement of Federal expenditures over a 50-year period, and contract negotiations between the Government and local Ventura officials are being conducted at the present time.

Companion legislation to S. 926 has been introduced in the House by Representative Charles Teague and it is expected that early action will be taken on this project by that body.

Mr. Chairman, among the many letters and other communications I have had on this project, no criticism of the water facilities contemplated by this legislation has been received by me. Complete cooperation on the project has been obtained from local governing officials, State authorities, the press, and representatives of industry, agriculture, and other interests involved.

I would like to request that representative communications from some of these be inserted at this point in my remarks.

Senator KUCHEL. Without objection, they will be inserted.

(The material referred to follows:)

VENTURA, CALIF., June 20, 1955.

HON. WILLIAM F. KNOWLAND,  
United States Senator,  
Senate Office Building, Washington, D. C.:

In the interests of our Ventura County populace and fully cognizant of the grave importance of speedy and definite approval and authorization of Senate bill 926 and House bills 3427 and 3488 for the purpose of a Federal reclamation undertaking of the Ventura River project and in view of the continued drought conditions and critical water shortage in the Ventura and Ojai areas we humbly request your honorable support in the forthcoming committee meeting. We further humbly beseech you to keep in session until this vital legislation has a favorable chance to clear the Congress. Ventura River project is our life's blood. Please don't let us down.

VENTURA COUNTY BOARD OF REALTORS.  
THOMAS C. LEFORS, *President*.

VENTURA, CALIF., May 24, 1955.

Senator WILLIAM F. KNOWLAND,  
Senate Office Building, Washington, D. C.:

Because of increasingly severe water shortage in district, authorization of Ventura River project in present session of Congress urgently required. We request your cooperation in bringing about hearings at early date.

VENTURA CHAMBER OF COMMERCE.  
GORDON K. LINDSAY, *President*.

OIL, CHEMICAL, AND ATOMIC WORKERS  
INTERNATIONAL UNION C. I. O.,  
VENTURA LOCAL 1-120,  
Ventura, Calif., May 31, 1955.

HON. C. F. ENGLE,  
House of Representatives,  
House Office Building, Washington, D. C.

DEAR SIR: We have written you in the past urging your favorable consideration and support of a water project of considerable importance to the people of the Ojai-Ventura area administered by the directors of Ventura River Municipal Water District. We wish to thank you for your efforts in promoting this project.

However, it has been brought to our attention that further progress on this very vital project is being delayed by failure of the Bureau of the Budget to approve this project for hearings by appropriate committees of the Congress.

We would like to point out that approval of this project has been given by all State and Federal agencies concerned, including a high commendation by Secretary of Interior McKay. So, again, we call on you, together with our Congressman from the 13th California District, to use your good offices in prevailing on the Bureau of the Budget to approve this project for hearing during the present sessions of Congress in order that there be a minimum of delay in getting an adequate water supply for our district.

Again thanking you for your past help, we remain,  
Yours truly,

WM. A. BERTLES,  
*Secretary-Treasurer*.

[From the Ventura County (Calif.) Star-Free Press, May 3, 1955]

#### STATE GRANTS APPROVAL OF CASITAS DAM PROJECT

#### REPORT URGES QUICK ACTION ON RESERVOIR

The State of California today gave its full approval for the construction of a 250,000-acre-foot reservoir at the Casitas site on the Ventura River "at the earliest possible date."

Director of Public Works Frank Durkee telephoned the Star-Free Press today to say that the State's comments on the proposed \$20 million Bureau of Reclamation project on the Ventura River were being airmailed to Secretary of the Interior Douglas McKay.

Construction of the Casitas Reservoir with a capacity of 250,000 acre-feet is not inconsistent with the objectives of the California water plan for the full development of the water resources of the State, Durkee informed Secretary McKay.

The recommendation on the capacity of any reservoir to be constructed, Durkee said, rests with the board of directors of the Ventura River Municipal Water District, the local agency acting for the taxpayers of the district. Secretary McKay, on last March 22, forwarded to Durkee the proposed report of the Secretary of the Interior on the Ventura project with a request that it be reviewed by the department of public works through its division of water resources.

"I concur," Durkee, said, "particularly in the recommendation that the Ventura River project be adopted and approved and an appropriation made for its construction at the earliest possible date, subject to execution of any necessary contracts between the United States and local interests. It is requested that the report be considered as expressing the views and recommendations of the State of California on your proposed report on the Ventura River project."

The estimated cost of the reservoir with a capacity of 250,000 acre-feet is \$20,304,000. Cost of the distribution system is estimated at about \$7 million.

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[From Ventura County (Calif.) Star-Free Press, May 4, 1955]

#### STATE OF CALIFORNIA GIVES STRONG SUPPORT

We're one more step closer today to that Ventura River water project. The State of California has approved it officially, fully, and, we'd say, with a showing of genuine enthusiasm. And has done so in about one-third of the time legally allotted for such comments.

Frank Durkee, Governor Knight's director of public works, has sent Secretary of the Interior Douglas McKay his report, an act which pretty much clears the way for congressional hearings on the project preliminary to a vote on the authorization bill.

The proposed 250,000 acre-foot storage undertaking on the Ventura River is found to be consistent "with the objectives of the California water plan for the full practicable development of the water resources of the State," which, of course, any local water plan ought to be.

Mr. Durkee recognizes the time-urgency, the need for early construction which the district's acute present water shortage presents, for he adds:

"I concur, particularly in the recommendation that the Ventura River project be adopted and approved, and an appropriation made for its construction at the earliest possible date, subject to the execution of any necessary contracts between the United States and local interests. It is requested that this report be considered as expressing the views and recommendations of the State of California on your proposed report on the Ventura River project."

In light of the strong factual case presented, the State of California could hardly do other than approve this project. However, it might have responded in a perfunctory manner. Governor Knight and Public Works Director Durkee, by voluntarily urging its construction at the earliest possible date, which the situation certainly calls for, have contributed further strong support. The people of the Ventura River Municipal Water District should appreciate their interest and help.

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#### BOARD RESOLUTION COMMENDS VRMWD

##### TEXT OF RESOLUTION

Whereas through investigations by the State division of water resources and by the United States Bureau of Reclamation it has been determined that the Ventura River Municipal Water District area (zone 1 of Ventura County flood-



control district) will eventually require some 30,000 acre-feet of supplemental water annually; and

Whereas such a supply can be made available through the construction of the Ventura River project with a 250,000 acre-foot reservoir on Coyote Creek as recommended by the Bureau of Reclamation; and

Whereas because of the erratic rainfall pattern of the south coast area which is characterized by periods of subnormal precipitation lasting several years followed by similar periods of above normal precipitation, it is essential that water-storage facilities be provided well in advance of the actual need for water; and

Whereas only one good reservoir site exists in the watershed area; and

Whereas there appears to be no other system of surface storage works which could be constructed on the Ventura River or on any other water course in Ventura County whereby such a supply of water could be developed at a comparable cost; and

Whereas investigations show that critical water supply deficiencies particularly for agricultural use also exist in other areas of Ventura County; and

Whereas it appears that substantial quantities of water developed through the construction of the Ventura River project may for a number of years be in excess of the supplemental requirements of the Ventura River area and can be made available to, and utilized on an interim basis by, other water deficient areas of Ventura County until additional facilities are constructed to more fully utilize local supplies available from Santa Clara River watershed or until the Feather River project as contemplated by the State of California or other system of works for the importation of water to this area is constructed; and

Whereas because of the above considerations it appears that the interests of Ventura County would best be served through the construction of water development facilities on Ventura River to the maximum practicable size: Now therefore, upon motion of Supervisor Ax and Supervisor Andrews and duly carried, be it

*Resolved by the Board of Supervisors of Ventura County.* That construction of the Ventura River project with a 250,000 acre-foot Casitas Reservoir as recommended by the Bureau of Reclamation be endorsed; and be it further

*Resolved,* That the Board of Directors of Ventura River Municipal Water District be commended for its actions to date to further plans for this construction and that said Board of Directors be urged to continue its efforts to effect construction of these greatly needed water development facilities at the earliest possible date.

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#### KIWANIS CLUB OF SAN BUENAVENTURA, CALIF.

#### RESOLUTION URGING AUTHORIZATION OF VENTURA RIVER PROJECT AS A RECLAMATION PROJECT

Whereas the assured water supply in the Ventura area is insufficient to meet present needs or provide a basis for natural growth in the area; and

Whereas plans developed for construction of the Ventura project by the Bureau of Reclamation appear to present the best means of developing an adequate water supply for the protection and continued development of agriculture and industry; Be it

*Resolved by the board of directors of the Kiwanis Club of San Buena Ventura, Calif.,* That it urge the Congress of the United States to authorize the Ventura River project at its present session.

Passed and adopted June 6, 1955.

KIWANIS CLUB OF SAN BUENAVENTURA, CALIF.,

By WM. P. BRADFORD, *President*.

STATE OF CALIFORNIA,

*County of Ventura, ss:*

I, William Lowe, secretary of the Kiwanis Club of San Buena Ventura, Calif., hereby certify that the above is a true and correct copy of a resolution adopted by unanimous vote of the board of directors of the Kiwanis Club of San Buena Ventura in their regular meeting held on June 6, 1955.

WILLIAM LOWE.

Subscribed and sworn to before me this 7th day of June 1955.

[SEAL]

HELEN CRAIG,

*Notary Public in and for Said County and State.*

Senator KNOWLAND. Mr. Chairman and members of the committee, in view of the facts set forth and the other testimony this committee will receive, I earnestly urge prompt and favorable consideration of this water development project. I wish to thank the committee for its attention.

**STATEMENT OF HON. THOMAS H. KUCHEL, A UNITED STATES  
SENATOR FROM THE STATE OF CALIFORNIA**

Senator KUCHEL. The Chair will state for the record that the incessant growth of California makes it necessary for the people of my State to keep looking ahead, planning, and building in order to meet the ever-expanding needs of our increasing population. This is especially true with regard to the demand for water supplies.

The bill which you are considering today, S. 926, which I introduced in company with my colleague, Senator Knowland, is designed to relieve a situation which is becoming more acute each year and provide for the future development of an area that is mushrooming agriculturally, indusrially, and residentially.

This bill would authorize the Ventura project to remedy present inadequacy and maldistribution of present water supplies, counteract threatened salt-water intrusion of wells, now the source of much of the supply, and provide a firm yield of 28,000 acre-feet annually. The works to be constructed include Casitas Dam, a structure 275 feet high and 2,050 feet long, on Coyote Creek to store 250,000 acre-feet of water, Robles diversion dam on the Ventura River, and a 5¼-mile canal from Robles Dam to Casitas Reservoir. They are expected to meet the demands of the area to be served for the next half century.

This project has been thoroughly investigated and definite assurances of required local participation have been given.

The Ventura project is designed to meet the needs of the city of Ventura and a number of neighboring communities in the coastal area about 60 miles northwest of Los Angeles. This area now is supplied from the Ventura River and three supplemental deep wells near the beach. The present supplies are subject to great fluctuation so that even if this section had not been experiencing great growth of population, in common with the rest of southern California, there is urgent need for constructive action to improve the existing conditions.

The cost of this project is well within the capacity of water users to repay. The estimates of the Bureau of Reclamation are that it can be built for \$27,600,000 and the cost-benefit ratio is exceptionally high, being 4.25 to 1. The Ventura Municipal Water District already has paid 50 percent of the investigation cost and has entered a contract to advance the money for preconstruction work, including preparation of designs and specifications estimated to run above \$700,000.

The growth of this section of California has been substantial in the past two decades and every available index indicates it will continue. The area embraces important oil fields and has attracted chemical and related industries. There is a mounting need for food supplies. The soil and climate are peculiarly adapted to specialty

crops of generally high value. Among these are fruits and nuts, including oranges, lemons, avocados, walnuts, and grapes. It is expected that nearly one-fifth of the agricultural land will be devoted to truck crops.

This project is overwhelmingly justified by all tests of feasibility and local cooperation and is essential for the sound growth of a thriving section of my State.

So, on that basis, the acting chairman will recommend favorable consideration by the subcommittee, by the committee, and by the Senate.

Appearing here today, among others, is the able member of the House of Representatives from the area which includes the county of Ventura, the Honorable Charles Teague.

Mr. Teague is intimately acquainted with the problems of water in that community, and I will ask him for any statement which he cares to make at this time.

#### **STATEMENT OF HON. CHARLES M. TEAGUE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Representative TEAGUE. Thank you, Mr. Chairman. I will be very brief.

Mr. Chairman and Senator Millikin, I should like to state first that I, of course, have introduced an identical bill in the House to that which you and Senator Knowland introduced in the Senate. Congressman Clair Engle, chairman of the House Committee on Interior and Insular Affairs, also introduced an identical bill. Hearings were held yesterday before the House subcommittee on those bills of Congressman Engle's and mine.

I do live in the area. I know by first-hand knowledge of the urgent and critical nature of the water shortage.

I should like to point out again the very remarkable fact, I think, of the splendid job which has been done by the local community in the matter of cooperating and getting this project moving toward, we hope, a successful conclusion. As Senator Kuchel has stated, over \$750,000 of local funds have been invested to date in the matter of securing reports, preliminary planning, preconstruction work, and so forth.

I should like to also point out that we have no problem here of power. There is no power feature in this project. I find that is sometimes a matter of some difference of opinion among people as to who should operate the power facilities, and we are not involved with that here. I would like to have the record so show.

Another matter which I would like to have made perfectly clear is that the agricultural areas which will be benefited by this project are not areas which produce crops which are in surplus or are a part of the Government-support program. So we are not involved with that problem.

I have received scores, hundreds, I think I may say, of letters, resolutions, telegrams, from all sorts of organizations, communities, chambers of commerce, city councils, labor organizations, local grange, farm bureau, and so forth, urging the support of this project. I have received only one communication—and that was several months ago—questioning in anyway the advisability of the program.

So I think it is very clear that we have a well-united local feeling in support of the project.

I should like, Mr. Chairman, if I may, to make this suggestion. We have several people here from Ventura who are available for questions, if the committee members desire to question them. It is suggested—and I believe it is in accordance with your plans—that two of our members, representatives from Ventura, give very brief statements; but I should like to introduce the others, if I may. They have come all the way from California. I should like you to know who they are and what particular place they have in this program. With your permission, may I do that?

Senator KUCHEL. The Chair will be delighted to have you introduce those representatives of the area who are here in support of the legislation.

Representative TEAGUE. Thank you.

First, Mr. George Purvis, who will testify later. Mr. Purvis is the president of the Ventura River Municipal Water District.

Next, Mr. Charles Pedit, who is the mayor of the city of Ventura, which is the principal city involved in this proposed project, and he is also a director of the water district.

Mr. Robert Willard, who is general counsel for the district.

Mr. Leland Bennett, who is engineering manager for the district.

Dr. Thomas Bailey, who is a director and also a leading geologist and engineer in the area.

Mr. Neil Ensich, who is an agriculturist who is here to testify briefly on agricultural problems involved.

Dr. J. S. Flynn, who is a member of the board of directors.

And Mr. Roy Pinkerton, who is now at the press table, who is the publisher of the Ventura County Star-Free Press, which is the largest newspaper in the area.

Thank you very much for your courtesy, Mr. Chairman.

Senator KUCHEL. Thank you.

The next witness that the Chair will call is the able Commissioner of Reclamation, the Honorable W. A. Dexheimer.

### STATEMENT OF W. A. DEXHEIMER, COMMISSIONER OF RECLAMATION

Mr. DEXHEIMER. Mr. Chairman, as Congressman Teague has told you, we had hearings on this project before the House subcommittee yesterday, and I think there was no opposition developed at all. I had the opportunity of also visiting this project and was very much impressed not only with the critical situation on the water, but with the very aggressive attitude on the part of the local people in pushing for the project and putting up the money to do it; and also the value of the property and farming crops that are produced in that area, and which are not in any way under price supports nor in surplus supply.

So this is, I am happy to report, one of the best, if not the best, project both from the angle of local support and prospects for payout, and it certainly is the best from the standpoint of benefit-cost ratio that we have had to propose to the Congress since I have been Commissioner.

It is a pleasure to appear before you again to present information on the potential Ventura River project, California.

As yet, we are not in a position to submit a planning report on the project with final recommendations but hope to do so in the near future. The report of the Department of the Interior is currently being considered by the Bureau of the Budget. Until we receive that agency's comments and the report is transmitted to the Congress, we will not be in a position to officially present the administration's views. We can, however, present information on the results of our studies to date and we have with us Mr. John S. Hamilton, chief, development division, Santa Barbara Area Projects Office, Goleta, Calif., to present technical details on the plan of development and to provide other information that members of the committee may desire.

The Ventura project is located on the southern coast of California in the general vicinity of the city of Ventura. The area concerned is composed of the valley of the Ventura River and its tributaries including the city of Ventura and a relatively long, narrow strip of land extending along the coast west of the city.

This is a multiple-purpose project primarily for irrigation and municipal and industrial water supply. Our investigations were initiated on a cooperative basis at the request of the inhabitants of the area. So anxious are these people to obtain this project at the earliest possible time, they have furnished in addition to matching funds for the feasibility investigations all of the funds so far used for advanced planning. By the time the advanced planning and preconstruction activities are completed, they will have furnished over three-quarters of a million dollars of their own funds for project investigations and plans. This is truly an outstanding record of local interest and participation.

The project facilities that are proposed for construction by the Federal Government are principally Casitas Dam and associated diversion and conveyance works. New distribution system facilities required would be constructed by the water users. The project facilities would provide 27,800 acre-feet of additional water supply annually on a firm basis to meet the area's needs.

The estimated cost of the proposed Federal works is \$27,669,000, including \$778,000 being contributed by the water users for planning and preconstruction purposes. All of the Federal investment would be reimbursable except \$169,000 for minimum basic recreation facilities which could be nonreimbursable. Ad valorem taxes collected by the local municipal water district would be used to supplement the revenues received from the water users in meeting the repayment schedules. The \$11,403,000 allocated to municipal and industrial water supply would be repaid to the Treasury at 2½ percent interest in 40 years after construction. The \$15,319,000 allocated to irrigation would be repaid without interest in 40 years following a 10-year development period. Revenues from sale of municipal and industrial water would assist in the return of costs allocated to irrigation after repayment of the costs allocated to municipal and industrial water.

Continuing studies, as contemplated in our planning report, will probably show that a repayment schedule with smaller initial payments and graduated increases, based primarily on the estimated water use over the repayment period, in lieu of the equal annual amounts shown in the report, with certain prescribed minimum annual payments, will be more acceptable to the contracting agency. I am

confident that a satisfactory contract can be negotiated. Benefits exceed costs in the ratio of 4.25 to 1.

The Venture project has all of the essentials of a successful reclamation undertaking. There is urgent need for this development to meet expanding requirements for municipal, industrial, and agricultural water in the rapidly growing project area. Estimated benefits exceed estimated costs by a wide margin, full repayment of reimbursable costs within a 40-year period is in prospect, and there is exceptionally strong local interest and support for the project and willingness to assume financial responsibility. The Ventura project will make a valuable contribution to the economic development of the West and the Nation as a whole.

Senator KUCHEL. I am sure, Mr. Dexheimer, that the people of the area are grateful to you for your description of the project and for your testimony here today.

Senator MILLIKIN, are there any questions?

Senator MILLIKIN. No. I would just like to ask: The Ventura River is a flashflood stream? They have big floods out there whenever the spring runoff comes, do they not?

Mr. DEXHEIMER. Yes, sir; it is typical of the Southwest streams. They are almost dry at some times, and they have flash floods in heavy rain seasons.

Senator MILLIKIN. I spent quite a little time in Ventura one time, and I thought I had a memory of the habits of the stream.

Senator KUCHEL. The next witness will be Mr. John Hamilton, the planning engineer of the Bureau of Reclamation. His headquarters are in Santa Barbara.

Mr. Hamilton?

Mr. DEXHEIMER. Mr. Chairman, if there are no further questions, might I be excused at this time?

Senator KUCHEL. Yes. Thank you very much, Mr. Dexheimer. I repeat my gratitude to you.

Mr. DEXHEIMER. Thank you.

Representative TEAGUE. Mr. Chairman, before Mr. Hamilton gets started, I would like to offer into the record a letter from Governor Knight, addressed to me. I will not read it.

Senator KUCHEL. Very well.

(The letter referred to follows:)

STATE OF CALIFORNIA,  
GOVERNOR'S OFFICE,  
Sacramento, June 14, 1955.

HON. CHARLES M. TEAGUE,  
Member of Congress,  
House Office Building, Washington, D. C.

DEAR CONGRESSMAN TEAGUE: I have learned that the subcommittee of the Senate Interior and Insular Affairs Committee plans a hearing June 22 on the Ventura River project calling primarily for storage of water from the Ventura River and Coyote Creek in the proposed Casitas Reservoir for irrigation and municipal and industrial use. I also have learned that a similar House committee hearing is pending.

In view of the urgent and immediate need for supplementary water in the Ventura River Basin, I hope that you will give your support to this project and that you will urge that appropriation be made for construction at the earliest practicable date.

I further urge that the capacity of the reservoir to be constructed meet with the desires of the board of directors of the Ventura Municipal Water District.

which is acting for the taxpayers of the district in seeking full, practicable development of its water resources.

I know that the proponents of the project are desirous of starting construction at the earliest possible date in view of the urgency of the situation in Ventura County, and I join them in expressing the hope that the present session of Congress will act favorably upon their request.

With the kindest personal regards,

Cordially,

GOODWIN KNIGHT, *Governor.*

Senator MILLIKIN. Mr. Chairman, may I interrupt? The Commissioner tells me that the Bureau of the Budget is expected to render an approving report within the near future.

Senator KUCHEL. Yes. I might say I do have to submit subsequently the Budget Bureau's memorandum to the committee and other documents, which I will insert, with the understanding that the subsequent letter from the Bureau of the Budget will be inserted.

Will you proceed, sir?

#### STATEMENT OF JOHN S. HAMILTON, PLANNING ENGINEER, RECLAMATION BUREAU, SACRAMENTO, CALIF.

Mr. HAMILTON. My name is John S. Hamilton. I am chief of the development division of the Santa Barbara area project office. The basic investigation for the Secretary's report, which is now being processed, was prepared in that office.

I would like to request permission, Mr. Chairman, to submit a prepared statement, and I will attempt to be very brief in my comments on that statement.

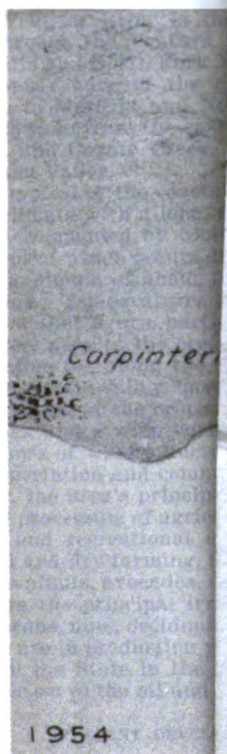
Senator KUCHEL. Without objection, the statement which you have prepared will be made a part of the record.

(The statement referred to follows:)

#### STATEMENT OF JOHN S. HAMILTON, UNITED STATES BUREAU OF RECLAMATION

My name is John S. Hamilton. I am Chief of the Development Division, Santa Barbara Area Projects Office, Bureau of Reclamation, at Goleta, Calif. The detailed studies and initial draft of the feasibility report on the Ventura River project now under consideration by your committee were prepared in that office.

The Ventura River project is a proposed multiple-purpose development that will create economic opportunities for the Ventura River area of southern California and provide optimum conservation and utilization of the water and related resources of the Ventura River Basin. This project, as shown on the frontispiece, involves essentially the same area as that of the Ventura River Municipal Water District and is situated in Ventura County on California's southern coast about 60 miles northwest of metropolitan Los Angeles. This development is needed to meet present water shortages and future requirements of an area considered in the report of the Secretary of the Interior on the Ventura River project that includes some 20,000 acres of irrigable, urban, and industrial lands within the boundaries of the Ventura River Municipal Water District. Subsequent to the completion of that report about 1,000 acres of additional irrigable land have been annexed to the district. Since this addition will increase the ultimate water requirements by only 5 percent, the following project information is based on the project area covered in the report as submitted to you by the Secretary of the Interior. No significant changes in project plan will be required in order to serve this area. The investigations of the area's water problems leading to this proposed project and looking toward early construction of the needed water supply facilities were made at the request of and in cooperation with the Ventura River Municipal Water District and represent an outstanding example of local participation in water resource development. The report of the Secretary of the Interior, prepared in accordance with Federal reclamation laws, recommends the construction of a storage



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reservoir, diversion works, and a conveyance system, all at an estimated cost of \$27,500,000, which, when integrated operationally with existing water supply facilities, will assure the area of a dependable supply to meet its needs.

Of this \$27,500,000 estimated cost, the district has already paid one-half the cost of the feasibility investigation and is currently paying all of the cost of the preconstruction work by the Bureau of Reclamation leading to and including the preparation of plans and specifications, at a total cost to the district of \$778,000. The estimated primary benefits to be obtained by the construction of these new works will exceed costs in the ratio of 1.76 to 1.00; on the basis of total benefits, the ratio would be 4.25 to 1. All of the costs of the project are reimbursable, with the exception of \$169,000 not included in the above total for minimum recreational development. Those portions of project costs allocated to municipal and industrial water service would be repaid with interest on the invested capital. This interest would be returned to the Federal Treasury and would not be credited to the repayment of the irrigation allocation.

#### THE SETTING

Essentially, the Ventura River Basin is composed of rugged mountains of the Coast Range, with elevations up to 6,000 feet above sea level, one main river valley, the Ventura River, and several side valleys which were formed by streams tributary to it. Included also in the project area are a relatively long, narrow strip extending along the coast west of Ventura, lying outside but contiguous with the drainage area of the Ventura River, as well as an area recently annexed to the district in the extreme westerly portion.

The Ventura River is the major stream in the area. It flows about 16.5 miles through the Ventura River Valley from its formation at the confluence of Matilija and North Fork Matilija Creeks to its mouth at the Pacific Ocean near the westerly edge of the city of Ventura. Its two principal tributaries, in addition to Matilija and North Fork Matilija Creeks, are San Antonio Creek, which flows in from the east draining Ojai, Upper Ojai, and San Antonio Creek Valleys, and Coyote Creek, which enters from the west after flowing through Santa Ana Valley.

As is typical of the coastal region of southern California, the project area has a mild climate with a long, dry, warm summer season and a shorter, wet winter period accompanied by cooler temperatures. The mean seasonal precipitation, 75 percent of which occurs during the months of December through March, varies from a minimum of about 15 inches at Ventura on the coast to 32 inches in the mountains. Temperatures average about 61° F. but range considerably above and below that figure, particularly in the more inland areas. The proximity of the project area to the ocean provides a moderating effect on the climate, with considerable fog along the coast and above-freezing temperatures all year long except in certain valley "pockets." This favorable climate creates a long growing season. Some of the crops are raised during the entire year. The absence of a snow pack and a wide variation in both monthly and annual rainfall result in streamflows of widely fluctuating magnitude.

Transportation and communication facilities for the area are excellent.

Today, the area's principal economic development is centered around agriculture and processing of agricultural crops, oil and gas production, and commercial, service, and recreational activities. The agricultural industry includes both irrigated and dry farming, together with processing of farm products. Oranges, lemons, walnuts, avocados, deciduous fruits, irrigated hay and pasture, and vegetables are the principal irrigated crops. Dry-farmed crops include grain hay, barley, beans, nuts, deciduous fruits, and grapes. Three major and several minor oil fields are in production with the largest, the Ventura Avenue oil field, ranking second in the State in the quantity of crude oil produced. Various important industries serve the oil and gas production industry directly and indirectly.

#### PRESENT DEVELOPMENT OF LAND AND WATER RESOURCES

Within the boundaries of the Ventura River project are about 21,170 acres of arable land, including 1,050 acres recently annexed to the project area in the extreme westerly portion of the district. Most of this land lies in the Ojai and Upper Ojai Valleys; the remainder borders the Ventura River, its tributaries, and the ocean shore. The city of Ventura, which is part of the district area, is expanding rapidly to the east of the district and looks to the Ventura River Municipal Water District for future water supplies to sustain this expansion.

The present use of the land within the district, exclusive of the Rincon annexation, is shown in the following tabulation:

<i>Present land use</i>		<i>Acres</i>
Grazing, dry-farmed, and idle.....		10, 290
Irrigated farms.....		3, 960
Urban and suburban.....		5, 600
Industrial.....		270
<b>Total arable.....</b>		<b>20, 120</b>

The water used for the presently irrigated lands, as shown in green on plate 1, is obtained primarily by pumping from ground-water basins, including stream gravels. A smaller quantity is diverted by gravity directly from streamflows. The largest quantity of ground-water pumping occurs in the Ojai Valley, with smaller quantities in the Ventura River Valley, and negligible amounts along the tributary streams. In 1953 an estimated 9,200 acre-feet of water were obtained for agricultural use.

Use of water for municipal and industrial purposes is concentrated largely in the city of Ventura and its environs. The other towns and scattered industrial developments require a smaller quantity of water. The city of Ventura obtains its water supply from Ventura River near Foster Park both by gravity and pumping from the river gravels; in addition it has three relatively deep wells along the ocean beach. During 1953 a total of 6,250 acre-feet was taken from these 2 sources, nearly 80 percent of which was supplied from the river. In excess of 2,000 acre-feet of the city's total supply was used by the industrial area in or near the Ventura Avenue oilfield. Over the last 10 years nearly 15 percent of the city's supply has been used for irrigation below Foster Park. This quantity is included in the irrigation use indicated in the preceding paragraph. Use of water by the other towns, including the suburban areas and industrial developments, outside of the city of Ventura's service area is estimated to approximate 1,500 acre-feet annually.

Water for irrigation and municipal and industrial uses now is obtained and distributed within the area by individuals, the city of Ventura, and several other types of organizations. Included in this latter group is the Ventura County Flood Control District which owns and operates the existing Matilija Dam, the only storage reservoir in the Ventura River Basin, and a pipeline to Ojai Valley. Water from that reservoir of 7,000 acre-feet capacity is released either for replenishment of the ground-water basin along Ventura River or conveyed through the pipeline for agricultural use or for ground-water replenishment in Ojai Valley.

#### NEED FOR ADDITIONAL WATER

Development of an additional firm water supply is urgently needed in the Ventura River project area for stabilization of present agricultural and other economic activities, for new irrigated lands, for new industries, a rapidly expanding population, and for new economic opportunities. Present water supplies are inadequate both for agricultural use and for municipal and industrial purposes. Many irrigated areas now experience serious shortages including the lands around the edge of Ojai Valley normally adequately supplied from ground water but where wells went dry during the recent drought. The city of Ventura already has outgrown its water supply. Normally pumping and gravity diversion from the Ventura River supply about 6,000 acre-feet of the city's water requirement but the amount available from this source has dropped as low as 1,500 acre-feet or about 25 percent of the need. This means that the city has to rely heavily on its three beach wells, as a standby source of supply. When these wells were drilled about 6 years ago, it was known that this temporary source would become unusable from salt water encroachment under continued pumpage. Thus because of the precarious supplemental supply that the beach wells provide, and the wide range in the quantity obtainable from the river, the city of Ventura has an immediate need for a firm supplemental water supply.

In addition to the needs of the present irrigated area and those of the city of Ventura, the area above Foster Park and the coastal strip need more water for additional irrigation, and municipal and industrial developments. Within the project area this would include all presently dry-farmed or idle land that could be irrigated if a water supply were available, and used for

expansion of existing communities, and commercial and industrial activities. This expansion is continuing now and will continue in the future. Ventura County is receiving more than its proportionate share of the State's growing population. People are attracted by its close geographical location to the metropolitan centers of southern California, its agricultural, industrial, and commercial opportunities, and its moderate climate and scenic attributes. This recent population growth is exemplified by the city of Ventura which constitutes about 60 percent of the population within the project area, and which has increased in size from about 16,000 to 25,000 in the last 10 years. Studies made during this investigation indicate that during the next 50 years the population of the city may increase to more than 80,000, accompanied by rapid growth throughout the remainder of the project area. The growth in population as well as the increase in irrigated agriculture and industry is dependent, however, on the availability of an adequate supply of water, which need the Ventura River project would provide. In the future, if an adequate water supply is developed it is anticipated that 12,580 acres, including small suburban farm plots would be in irrigated agriculture and approximately 7,600 acres would be in municipal and industrial development including suburban uses having similar water requirement characteristics. As the city of Ventura continues to expand to the east, it is estimated that within 50 years an additional 5,000 acres will be served through water made available by the project. Crops expected to be grown in the future on the irrigated lands include citrus, avocados, walnuts, grapes, deciduous fruits, irrigated pasture, alfalfa, and truck crops.

The total supplemental water requirement estimated at the end of the 50-year period of analysis for agriculture, municipal, and industrial purposes would be about 28,000 acre-feet per year. In about 20 years the supplemental water requirement will total at least 20,000 acre-feet annually. It is estimated that by then the projected irrigated acreage which would use about three-fourth of the 20,000 acre-foot requirement will be fully developed. By the end of 50 years it is expected that municipal and industrial requirements will begin to exceed the use for irrigation. Averaged over the 50-year analysis period, however, irrigated agriculture would require approximately 60 percent of the total supplemental water supply while the municipalities and industries would take about 40 percent.

Considering the history of comparable areas, the potential for growth inherent in the project area, and the very rapid growth in other southern California areas when a water supply became available, the increase in use of water in the Ventura River project area may be even more rapid than anticipated. The probable extension of the service area boundaries, future use of lands that are not now considered usable, and possible heavier industrial demands are additional considerations indicating that the need for more water may become more acute even sooner than present estimates contemplate. Plate 2 depicts the estimated water demand buildup. The acreage and water requirement figures given above are those on which the recommended project was based. As mentioned on page 1, since that time the addition of 1,000 acres in the Rincon addition at the extreme westerly end of the district has increased the anticipated water demand by 1,400 acre-feet.

As illustrated by plate 3 the runoff of streams in the Ventura River Basin varies widely from year to year and is characterized by a series of drought years. Since the lower streamflows of the basin are presently being used and because of the extreme vagaries in streamflow, storage of water in reservoirs is permitted only during the high-flow periods. The intermittent occurrence or cyclic characteristics of high streamflows necessitates that the required reservoir capacity be constructed and placed in operation as rapidly as possible in order to take full advantage of whatever favorable runoff years may occur during the time that the buildup of the demand for use of water is taking place in the project area. This approach to timing of construction and operation is of prime importance in providing the needed opportunity for the storage of water that may become available during wet years in order that the probable safe yield available from the reservoir may meet the supplemental water requirements of the area. This is particularly important prior to the time the reservoir is completely filled for the first time. In the Ventura River Basin only one good site for a large reservoir exists, namely the Casitas site on Coyote Creek, a tributary of the Ventura River. Proper development of this site to meet the area's annual water needs of about 28,000 acre-feet would require the construction of a reservoir with a capacity

of 250,000 acre-feet. A 250,000 acre-foot reservoir together with other project features would be mutually advantageous for providing both supplemental water for irrigation use and for additional municipal and industrial water supply. Dual purpose use of both the reservoir site and other necessary project facilities would make it possible to serve the area in the most economic and completely effective manner. Development of the only good storage site without full consideration of both irrigation and municipal and industrial water uses should not be undertaken as there are no alternative potential feasible developments within the area that could provide an alternative water supply in as economical a manner.

#### PLAN OF DEVELOPMENT

The recommended plan for providing a water supply for the Ventura River projects area includes a storage reservoir to conserve the erratic streamflows and hold water over a period of several dry years, diversion works to divert water into the reservoir, and a conduit system to convey the water to points of use. The project works necessary to accomplish these objectives include:

(a) Casitas Dam and Reservoir, impounding 250,000 acre-feet of water, located on Coyote Creek, a tributary of the Ventura River. The dam would be an earth-fill structure rising about 275 feet above streambed and would have a crest length of 2,050 feet. Two small earthfill saddle dams having a maximum height of about 25 feet and a total combined crest length of about 1,215 feet would also be required.

(b) Robles diversion dam on the Ventura River to divert storable flows into the Robles-Casitas Canal would be a rockfill structure about 7 feet high and 25 feet long.

(c) Robles-Casitas Canal would carry Ventura River water from Robles diversion dam to Casitas Reservoir and comprises a concrete-lined canal section, a pipe section, and a rectangular chute section, with a capacity of 500 cubic feet per second and a combined length of about 5 miles.

(d) The main conduit system would convey the conserved water from Casitas Reservoir to the points of use and would involve 33 miles of pipelines with capacities ranging from about 80 to 3 cubic feet per second. Also required in the main conduit system would be 7 pumping plants with total dynamic heads of 150 feet to 930 feet and capacities of 52 cubic feet per second to 3 cubic feet per second, and 6 balancing reservoirs with capacities of 20 to 80 acre-feet.

In addition to the foregoing works, an irrigation distribution system would be required to distribute the water from the major delivery points to actual places of use. A portion of this system is existing and as now planned, the necessary additions would be constructed over a period of several years by the Ventura River Municipal Water District as the need for water develops. Likewise any drainage facilities (expected to be of minor significance in this area due to the favorable natural drainage that exists) would be constructed by the district. No electric generating facilities are contemplated as a part of the Ventura River project; studies showed such facilities to be economically unjustified, principally because of the small and erratic streamflow and operational requirements to meet other water use demands.

As schematically illustrated on plate 4, under the proposed method of project operation water would be diverted from the Ventura River at Robles diversion dam and would flow through the Robles-Casitas Canal to Casitas Reservoir for storage and subsequent use. Inflow from Coyote and Santa Ana Creeks also would be stored in the reservoir. Due to the periods of low streamflow, Casitas Reservoir would require operation on a long-term carryover basis. Assuming a repetition of historical conditions of runoff, the period 1918-44 was found to be the most critical from a water supply standpoint. As shown by the heavy dashed lines in the lower right-hand corner of plate 3, during this critical period the project as proposed would meet an annual demand of 27,800 acre-feet, and after allowance for an average annual evaporation of 3,400 acre-feet, an average of some 6,300 acre-feet annually would spill to the ocean. In these computations an allowance has been made for an average annual prior use of water of 3,000 acre-feet.

Plate 5 illustrates the buildup and depletion of the long-term carryover storage in the reservoir, assuming a repetition of the historical runoff for the period 1918-52. It should be noted that the period prior to 1918 was a wet one, so that the reservoir would have been full in that year. Sufficient runoff available for

storage should occur following construction of the reservoir to permit the safe yield obtainable during the period of reservoir filling to meet the increase in demands for project water. This determination, made on the basis of a study of the past 87 years of precipitation or runoff records, would be correct in all cases with the single exception of the possible, but unlikely, occurrence of a drastic drought period similar to 1948-52 shortly after initiation of reservoir operation. Inasmuch as southern California is now experiencing a dry period, which has extended over an 11-year period, and since the average length of dry period appears to be approximately 14 years, it is probable that a series of wet years would be in the offing by the time the storage facilities were constructed, assuming an early start of construction. It is because of this necessity for long-term carryover storage of water from the flood years, combined with the critical need for additional water supply, that the Ventura River Municipal Water District has felt that the investment of \$720,000 in advance preparation of designs and specifications for the project was justified, in order to take the maximum advantage of the impending wet period.

From the reservoir, water would be conveyed through the main conduit system, including pressure pipelines, pumping plants, and balancing reservoirs, to various points of delivery throughout the project area. The main conduit system would interconnect with the existing pipeline from existing Matilija Reservoir in order to properly integrate the operation and effectiveness of the two systems.

Casitas Reservoir, operated in conjunction with the other recommended features and integrated with the existing Matilija Reservoir, would provide a safe annual yield of 28,000 acre-feet. The project yield of 28,000 acre-feet would meet the estimated requirements except for the Rincon addition for water during the 50 years after initiation of project operation. The chemical quality of the water from the proposed Casitas Reservoir would be superior to that now obtained for both irrigation and municipal use because of the diluting effect of the larger portion of the streamflows which would be stored. In the future, possibly 50 years or more, when the requirements approach the yield or sedimentation prevented effective operation of the existing Matilija Reservoir, a reservoir of about 10,000 acre-feet should be constructed on the Ventura River at the Nordhoff site, a short distance upstream from Robles diversion dam site. This would permit the safe yield at that time to be increased to about 30,000 acre-feet.

#### RECREATION, FISH AND WILDLIFE, AND OTHER CONSIDERATIONS

The Ventura River project would provide the opportunity for obtaining important incidental uses in addition to serving the area's water supply needs. The reservoir and its shorelands would offer opportunity for recreation and development of a sports fishery. In addition a small incidental flood-control benefit might result. Watershed conservation and protecting the quality of the water supply would be corollary to these incidental benefits.

A study made by the National Park Service of the Department of the Interior shows that Casitas Reservoir would be used extensively for recreation. Although most of the patronage, estimated at 376,000 annual visitor days on the basis of 1953 populations, would come from a 50-mile radius, a considerable visitation also would come from the Los Angeles area. Basic recreational facilities totaling approximately \$500,000 will be needed over a period of years according to the National Park Service. Of this amount, \$160,000 is for minimum basic recreational facilities and could be nonreimbursable. The Service recommended, however, that additional, more detailed studies be made and that a Ventura County Park Agency be established to develop and operate the recreational facilities. It is estimated that, as a minimum, annual benefits of \$47,000 attributable to project construction would result from use of Casitas Reservoir for recreation.

According to the findings of an investigation made by the Department of the Interior, Fish and Wildlife Service, a valuable fishery may be anticipated in Casitas Reservoir. A minimum annual angling use of 10,000 fisherman days may be expected according to the Service. Construction of recreational facilities and improving access to the reservoir would increase the use. On the basis of the minimum use alone an annual benefit value of \$100,000 is estimated. The Fish and Wildlife Service recommended that Federal lands and leases of Federal lands provide that the area be open to hunting and fishing whenever practicable considering public safety, efficient operation, and protection of public property. It also recommended that more detailed studies of fish and wildlife resources affected be conducted as necessary following project authorization.

The Department of the Army, Corps of Engineers, recognized, in its flood-control survey report prepared in 1940, that potential damages from floods existed along portions of Ventura River and Coyote Creek, in addition to those which the construction of recommended levees, now completed, would prevent. Flood-control works to avoid these potential damages were not considered economically justified. Although the proposed Ventura River project would be operated for conservation purposes, it should have some incidental flood-control benefits of a minor nature, but an evaluation of them has not been made in this analysis.

Nearly 85 percent of the total watershed area of the Ventura River project above the proposed Robles diversion dam and Casitas Reservoir is within the Los Padres National Forest. The type of terrain and the inflammable cover during the dryer months of each year make an effective watershed-management program essential. An investigation made by the Department of Agriculture in 1953 recommended an integrated watershed-conservation program, including increased fire protection, control of active sediment source areas, and stream-channel improvement. That program would benefit the proposed project primarily by reducing sedimentation damage which otherwise would occur both to Casitas and Matilija Reservoirs.

Public health and sanitation aspects of the proposed project have been investigated by the Public Health Service of the Department of Health, Education, and Welfare in collaboration with State and local health and pollution-control agencies. The Public Health Service made several recommendation that would insure that the project water supply will be of satisfactory quality for domestic use and suggested that construction be so conducted as to eliminate mosquito breeding areas. These recommendations and suggestions will be helpful in developing a safe, dependable water supply.

#### CAPITAL AND ANNUAL COSTS

The estimated capital cost of the Ventura River project, on the basis of January 1954 prices, is \$27,500,000, plus \$169,000 for minimum recreational facilities. Probable savings in construction costs already indicated in the preconstruction designs being financed by the Ventura River Municipal Water District will offset minor increase of estimated cost of the line to serve the coastal strip as a result of the Rincon area annexation. For this reason, the present estimated cost of the project remains at \$27,500,000, as covered in the report of the Secretary of the Interior. This estimate was made from preliminary designs of the proposed features and includes costs for construction, contingencies, investigations, engineering, general expense, land and rights, relocation of existing property, clearing, and construction facilities. Annual operation, maintenance, and replacement costs of project features, including costs for water treatment and electric energy for water conveyance, are estimated to average about \$262,400 over the 50-year period of analysis following construction. A summary of the estimated capital and average annual costs is shown in the following tabulation:

Project feature	Capital cost <sup>1</sup>	Average annual operation, maintenance, and replacement costs
Casitas Dam and Reservoir.....	\$17,624,000	\$36,900
Robles diversion dam.....	362,000	1,500
Robles-Casitas Canal.....	1,585,000	16,200
Main conduit system.....	7,804,000	<sup>2</sup> 207,800
General property.....	125,000	
<b>Total.....</b>	<b>27,500,000</b>	<b><sup>3</sup> 262,400</b>

<sup>1</sup> Estimated capital costs based on January 1954 prices.

<sup>2</sup> Includes estimated average annual costs for electric energy and water treatment expenses.

<sup>3</sup> Estimated costs based on current prices. Replacement costs included in this estimate are computed on an interest-free basis for repayment purposes; the sinking-fund method was employed to determine replacement costs for benefit-cost analysis.

#### ECONOMIC JUSTIFICATION

A comparison of annual equivalent benefits and costs is depicted graphically on plate 6. The economic justification of the Ventura River project has been

determined by benefit-cost analyses comparing annual equivalent benefits with annual equivalent costs. The benefits for water service from the project were measured at the point of delivery from the main conduit system. Therefore, only the costs of the proposed project features necessary to convey water to the delivery point were included in the benefit-cost analyses. Distribution system costs beyond the delivery point were deducted from the benefits before computing the benefit-cost ratios. The estimated recreation and fishery benefits associated with the project were included in the benefit-cost evaluation.

Annual equivalent Federal costs for the Ventura River project consist of the amount necessary to amortize the net project investment over a 50-year period at 2.5 percent interest plus the annual operation, maintenance, and replacement expenses. Proper adjustment was made in the annual costs for the estimated construction period and for the long-term price outlook over the 50-year period. The resulting annual equivalent costs are as follows:

Amortization of net project investment.....	\$850,000
Operation, maintenance, and replacement.....	<sup>1</sup> 178,000
<b>Total.....</b>	<b>1,028,000</b>

<sup>1</sup> Replacement costs included in this estimate were computed on a sinking-fund basis with interest at 2.5 percent.

Annual equivalent benefits were computed on the basis of water uses expected to develop during the 50-year period following initiation of operation of the project. The portion of the benefits creditable to prospective irrigation use was adjusted for the long term projection of agricultural prices. The estimated annual equivalent benefits, both primary and total, are summarized as follows:

	Annual equivalent benefits	
	Primary	Total
Irrigation.....	\$978,000	\$2,541,000
Municipal and industrial.....	684,000	1,776,000
Other secondary uses <sup>1</sup> .....	147,000	147,000
<b>Total.....</b>	<b><sup>2</sup> 1,809,000</b>	<b><sup>2</sup> 4,464,000</b>

<sup>1</sup> Includes recreation and fishery benefits; primary and total benefits are considered to be identical.

<sup>2</sup> Excludes any benefits due to yield of the existing Matilija Reservoir operated under nonproject conditions and at a non-Federal cost.

The total annual equivalent benefits of \$4,464,000 exceed the annual equivalent Federal costs of \$1,028,000 by a ratio of 4.25 to 1. A similar comparison using only the primary annual equivalent benefits of \$1,809,000 results in a favorable benefit-cost ratio of 1.76 to 1. These benefit-cost ratios indicate clearly the economic justification and desirability from the national standpoint of constructing the Ventura River project.

#### COST ALLOCATION AND REPAYMENT

The cost allocation and repayment are depicted graphically on plate 7. The financial feasibility, or probable repayment, of the Ventura River project has been determined by allocating the project costs between the two functional water uses and then analyzing the repayment potentials. No project costs were allocated to secondary functions, recreation, and fish and wildlife, although benefits from those sources are indicated. The capital-cost allocation employed the separable costs-remaining-benefits method.

In the report of the Secretary of the Interior on this project, a possible method of repayment was presented based essentially on 40 equal installments respectively for irrigation and for the municipal and industrial allocations. However, as stated in that report, further consideration of repayment arrangements was contemplated, pursuant to existing reclamation law. Although formal repayment negotiations have not yet been entered into, the Ventura River Municipal Water District and the Bureau of Reclamation have discussed the repayment aspects. A resolution was recently adopted by the board of directors of that



district indicating a preference for a graduated repayment schedule which would roughly parallel the estimated buildup of the demand for the project water over a 50-year payment period. The amounts shown graphically on plate 7 are based on this type of repayment. It would increase the total interest payments on the municipal and industrial water supply allocation and at the same time alter slightly the schedule of payments on the irrigation costs. It would not change the period of payout.

In order to recover the capital cost with interest plus operation and maintenance costs, it is estimated that the total district cost for water for municipal and industrial purposes would be \$95 per acre-foot. Although this cost of water is high as compared with that in other communities more favorably located, it is within the repayment ability of the municipal and industrial water users. In a like manner, the estimated cost of irrigation water delivered at the farm without interest on the project investment would be \$48 per acre-foot. This rate is sufficiently within the estimated repayment capacity of \$60 per acre-foot for lands without a present supply to produce an incentive for development. However, in common with the usual practice, rates to the water users would be reduced through ad valorem taxes in order to encourage more rapid development.

#### PUBLIC APPROVAL

Local interest in a new dependable water-supply development in the Ventura River area has been evidenced for many years by repeated requests for investigations. On October 17, 1952, the Ventura River Municipal Water District was formed for the purpose of investigating and solving the water-supply problems existing within its boundaries. The investigation and plan of development was made on a cooperative basis under a contract with the district bearing one-half the cost. By resolution dated March 24, 1954, the board of directors of the district requested the Bureau of Reclamation to expedite this report for the purpose of obtaining the earliest possible authorization of the project by Congress, and also requested reclamation to submit a form of agreement for advanced planning and preconstruction work by reclamation at district expense. On July 29, 1954, a contract was executed providing the financial arrangements for this work which is now proceeding.

In addition to local interest and cooperation expressed through the Ventura River Municipal Water District, the Board of Supervisors of Ventura County, acting in its capacity as the board of directors of the Ventura County Flood Control District, has expedited the proposed project with a formal agreement on May 26, 1954, providing for the operation and maintenance of Matilija Reservoir and all appurtenant facilities by the Ventura River Municipal Water District upon completion of the proposed project. At the same time the flood-control district assigned to the Ventura River Municipal Water District its several applications for unappropriated water in the Ventura River Basin, for which permits have not been issued. The executed agreement relating to operation of Matilija Reservoir assures that integrated operation of the two reservoirs, as proposed, can be effected upon completion of Casitas Reservoir. The action in regard to assignment of the applications for appropriation of water likewise is important as it cleared the way for the Ventura River Municipal Water District to file its recent applications, with the State engineer of California, specifically covering the water needed for the proposed Ventura River project. A further expression of local interest was made by a resolution adopted on October 26, 1954, by the Board of Supervisors of Ventura County in which the supervisors endorsed the construction of the Ventura River project and commended the board of directors of the Ventura River Municipal Water District on its efforts to effect early construction of these greatly needed water-development facilities.

#### CONCLUSIONS

The investigations covered in the report of the Secretary of the Interior support the following conclusions:

(a) A critical need for an additional water supply within the project area exists now and this need will become increasingly acute;

(b) The requirement for irrigation water would reach nearly three-fourths of the total requirement by the 20th year of project operation; municipal and industrial water use would comprise the remainder, but this proportion would shift and by the end of the 50-year period following construction the municipal and industrial needs probably would exceed slightly those of irrigation;

(c) The water supply works proposed in this report are feasible from an engineering standpoint and constitute the most practicable and least costly means of meeting the needs of the area for possibly 50 years after construction of the project;

(d) Project operation would be beneficial to other uses, notably development of a sports fishery and recreational opportunities;

(e) The project is economically justified as measurable benefits exceed costs by a ratio of 4.25 to 1; considering primary benefits only, the ratio would be 1.76 to 1;

(f) All Federal costs are reimbursable except those for minimum recreational facilities and as allocated between irrigation, and municipal and industrial uses can be repaid in accordance with the provisions of Federal reclamation laws;

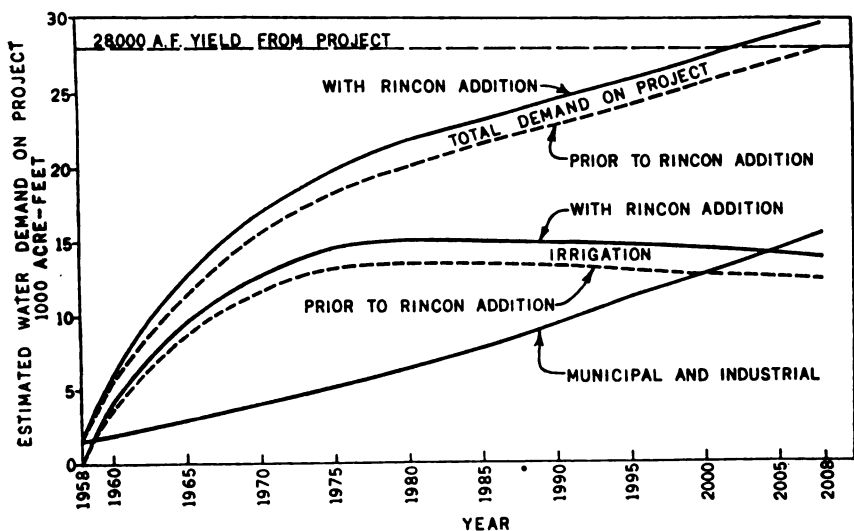
(g) The local interests, represented by the Ventura River Municipal Water District and the board of supervisors of Ventura County, have approved the proposed project and desire early construction as a Federal reclamation development; and

(h) The Ventura River Municipal Water District has completed an agreement with Ventura County relating to the operation of the existing Matilija Reservoir upon completion of the project; this important action assures operational integration of Matilija Reservoir with the proposed project.

(A map accompanying this statement is not susceptible of reproduction and is on file with the committee.)

PLATE 2

## ESTIMATED WATER DEMAND BUILDUP VENTURA RIVER PROJECT



MAY 1955

767-208-56

## PLATE 3

# ESTIMATED TOTAL RUNOFF OF MATILAJA CREEK AND COYOTE CREEK AVAILABLE FOR STORAGE IN CASITAS RESERVOIR

## VENTURA RIVER PROJECT

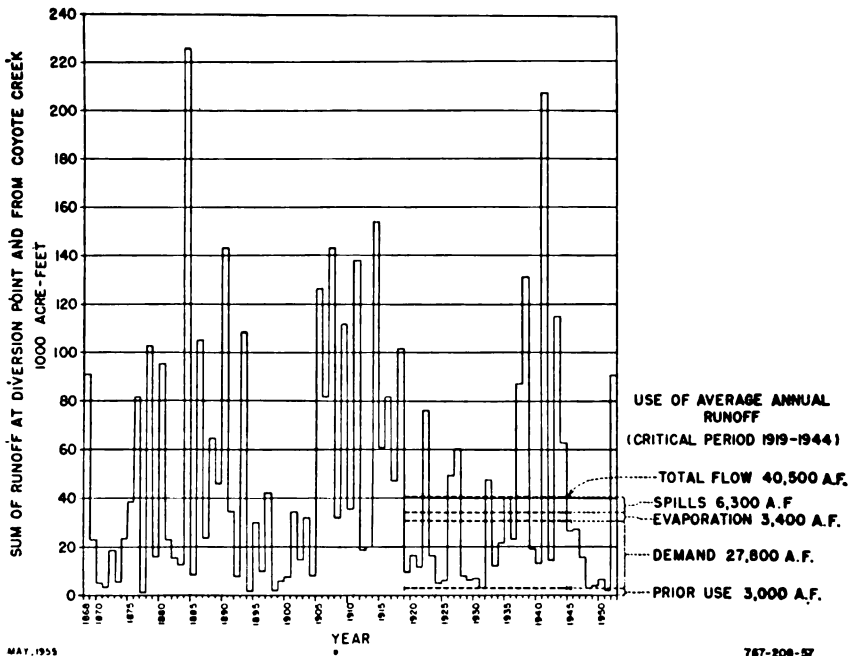


PLATE 4

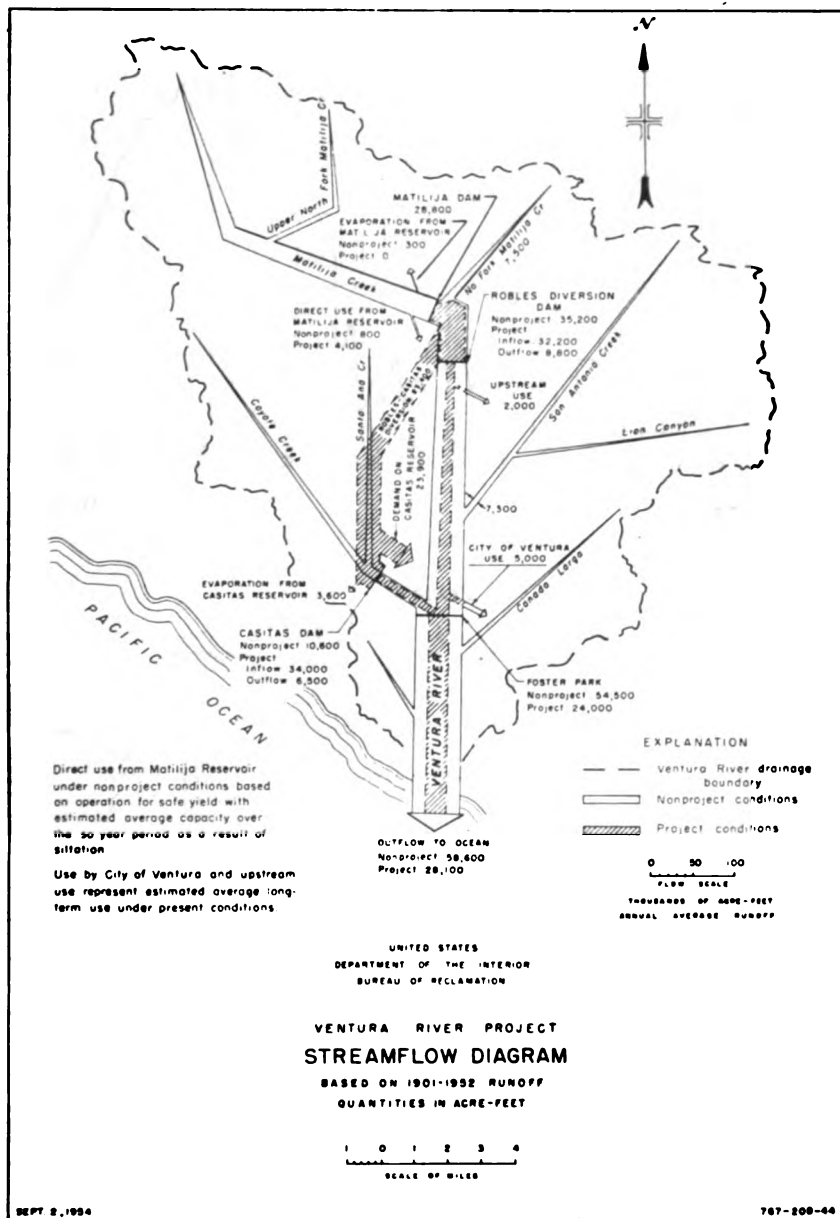


PLATE 5  
**CASITAS RESERVOIR OPERATION**  
 VENTURA RIVER PROJECT



PLATE 6  
 COMPARISON OF ANNUAL  
 EQUIVALENT BENEFITS AND COSTS  
 VENTURA RIVER PROJECT

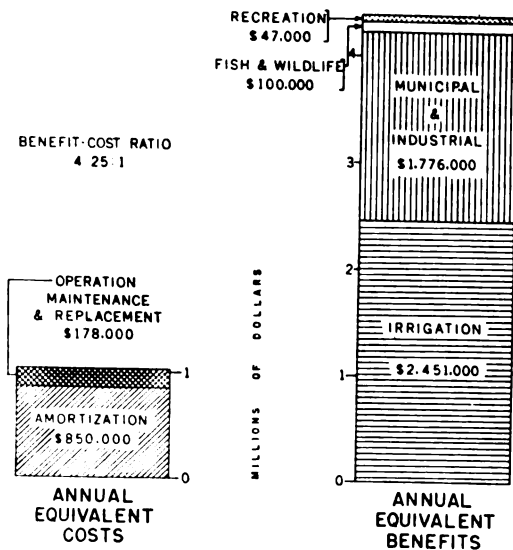
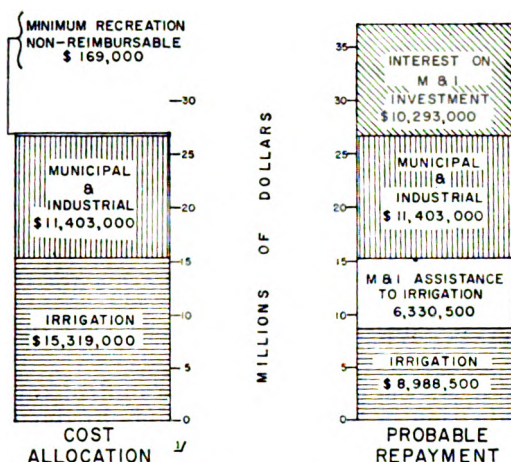
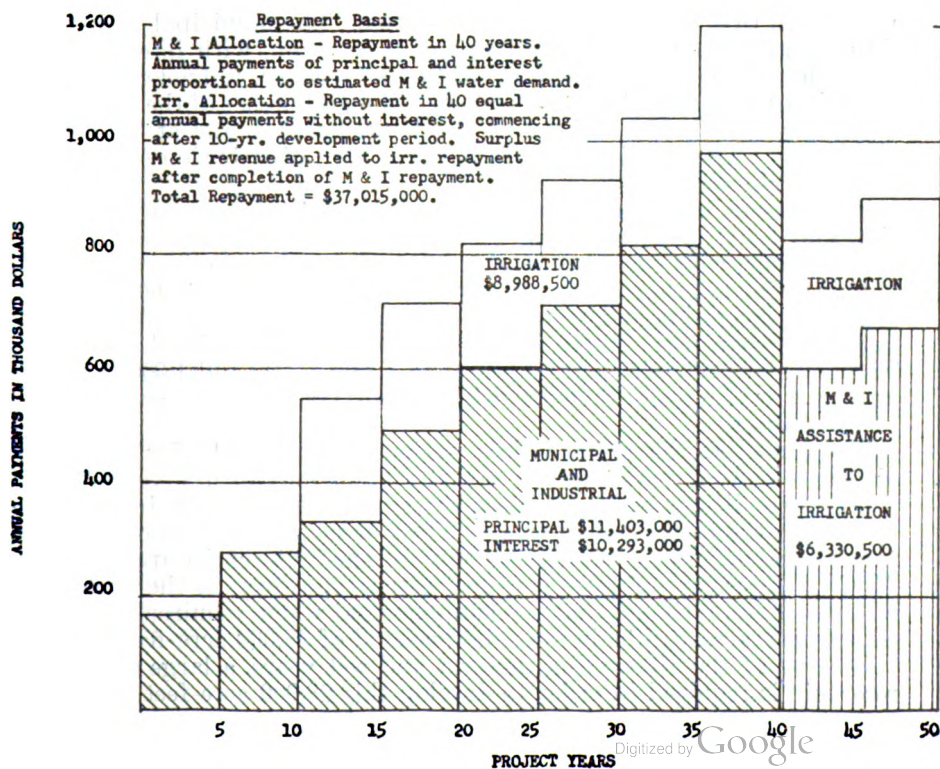


PLATE 7  
COST ALLOCATION AND PROBABLE REPAYMENT  
VENTURA RIVER PROJECT



1/ THE \$26,722,000 ALLOCATED FEDERAL COST EXCLUDES \$778,000 ADVANCED BY LOCAL INTERESTS.

PLATE 8  
ANNUAL PROJECT PAYMENTS



Mr. HAMILTON. This project, of course, has been pretty well outlined by the individuals who have spoken before to you, Senator, so I will try to eliminate duplications.

It is obviously a multiple-purpose project to furnish irrigation and municipal and industrial water. It is to provide a supply for present and future uses of that nature for an area of some 26,000 acres. All costs are reimbursable except for a possible \$169,000 for minimum recreational facilities.

Over the repayment period, 60 percent of the water is estimated to be for irrigation use and 40 percent of the water for municipal and industrial use. It is contemplated that there will be a 40-year repayment period for both municipal and industrial allocation and for the irrigation allocation.

Senator MILLIKIN. Mr. Chairman, may I ask a question, please?

Senator KUCHEL. Senator Millikin.

Senator MILLIKIN. What are the oil activities out there at the present time?

Mr. HAMILTON. At the present time, the oilfields are quite active. The assessed valuation in those fields amounts to about \$160 million. Those fields have passed their peak, and the reserves are now being depleted. It is estimated that within a 20-year period they will be down to rather small production.

Senator MILLIKIN. How near are they to the city of Ventura?

Mr. HAMILTON. They immediately adjoin the city of Ventura to the north and west.

Senator MILLIKIN. Thank you very much.

Mr. HAMILTON. The irrigation allocation would be repaid in 40 years with this 10-year development period. The municipal and industrial allocation would also be paid in 40 years, with interest on the Federal investment to be returned to the Treasury, and not credited to the irrigation allocation. Operation and maintenance of the project will be by the district and not by the United States, and at the district's cost. The district plans to build its own distribution systems, and supervise such construction.

The present land use in the area consists of 4,400 acres in irrigation and 5,300 acres in urban use. The balance of the area is in dry farming; with considerable grazing in the mountains.

It is estimated that under ultimate project conditions, 13,000 acres will be in irrigation and approximately an equal number of acres devoted to urban use. There is no excess land problem in this area. Estimates of probable excess land range between 300 and 1,000 acres, against a total acreage of 26,000, which would not affect the feasibility of the project.

There are, at the present time, serious requirements for water; although in wet years there is actually a surplus, in dry years the drought conditions not only affect the agricultural supply, but they also affect the municipal supplies. There is no way to iron out that surplus and deficiency, because the only storage in the entire area is the Matilija Reservoir of 7,000 acre-feet capacity, a drop in the bucket. We, therefore, estimate that the supplemental water requirement for this project area will be in the neighborhood of 28,000 acre-feet.

Because of the alternating drought and wet years, a large storage reservoir is required in order to develop this 28,000 acre-feet a year.

We have recommended a storage reservoir of a capacity of 250,000 acre-feet.

Senator, if you will permit me, I will step up to the map and explain briefly the method of operation.

I might outline the project works. The main reservoir is located in this area here in the foothills. Unfortunately, it is at a low elevation of about 300 feet—

Senator KUCHEL. Let me interrupt you for the purpose of orienting my colleagues. Ventura County is immediately north and west and is adjacent to the county of Los Angeles. And farther on up the Pacific Ocean is the county of Santa Barbara.

Senator MILLIKIN. How far is the reservoir from the town of Ventura?

Mr. HAMILTON. The reservoir will be approximately 7 miles from the city of Ventura.

Senator MILLIKIN. Thank you.

Mr. HAMILTON. This reservoir is recommended to have a capacity of 250,000 acre-feet. There is an existing reservoir of 7,000 acre-feet capacity here, and our plan of operation contemplates the integration of those two. There is a proposed diversion dam and canal of 500 second-foot capacity to lead over from the river into this reservoir. From the reservoir there would be a conveyance system consisting of 32 miles of pipeline, 7 pumping plants and 6 regulating reservoirs to carry the water from the reservoir for wholesale delivery into the various parts of the service area.

It is quite an interesting operation, in that the proposed method would be to keep this reservoir on the upper tributary dry during the wintertime, and whenever the floods came, hold them back temporarily, and then release them, so that they can be transported through the canal to the reservoir.

During the most critical dry period on record, had the reservoir been built it would have been almost empty. However, the following wet period would have filled it completely. That was the basis for our method of operation. Even in the most critical cycle of wet years and dry years, some 6,000 acre-feet annually on the average would have still flowed out to the ocean.

Senator KUCHEL. Senator Watkins?

Senator WATKINS. I would like to ask if there is any interest-free money on this project.

Mr. HAMILTON. Yes, there is, a matter of \$15 million.

Senator WATKINS. I am sorry I did not get to hear the first part of your testimony. You are not opposed to interest-free money, are you?

Mr. HAMILTON. I am a Reclamation employee.

Senator WATKINS. What is that?

Mr. HAMILTON. I am sorry, sir. I cannot express a policy opinion.

Senator MILLIKIN. I do not know anyone who is opposed to interest-free money on a reclamation project.

Senator WATKINS. I understand the same group who are asking for this project have spoken against the upper Colorado River project.

Senator MILLIKIN. Oh, they have temporary foolishness, yes. We cannot measure the interest in projects by strict consistency. Maybe they will learn better as time goes on.



Senator KUCHEL. I think that is an admirable statement for you to make, Senator.

Senator MILLIKIN. It is an admirable statement, and I wish the view were universally held.

Senator KUCHEL. I endeavored to allay any evanescent fears of our colleague from Colorado earlier, Senator Watkins, by indicating that this project has nothing to do with waters in the Colorado River.

Senator WATKINS. It might get different treatment if it had, I assume.

Senator KUCHEL. I merely wanted the record to indicate that here is an area in the State which is pretty much dependent, so far as its continued water supply is concerned, on what Congress might do in this area, and that no Colorado River water is involved in the thirst of the citizens there.

Representative TEAGUE. I was out when the Senator came in. I am Congressman Teague, Senator.

I just wanted to be sure there was no misunderstanding. If you mean by "this group" the Ventura Municipal Water District, they have not in any way gone on record against the Colorado River project.

Senator WATKINS. I was advised to the contrary. I am very glad of that.

Representative TEAGUE. The representatives are here, and they are going to testify later, and that is the fact.

Senator WATKINS. Well, it is their perfect right to go against it if they wish, but I would want them to explain how they could come in here and ask for the same kind of treatment they are opposing.

Representative TEAGUE. Well, they have not been in opposition at all, sir.

Senator MILLIKIN. Are you referring to the Ventura Municipal Water District?

Representative TEAGUE. The Ventura Municipal Water District, yes.

Senator MILLIKIN. You say they have not made any resolutions against the upper Colorado River project?

Representative TEAGUE. That is quite correct.

Senator MILLIKIN. My information is that they have. We will get at that. It is not important one way or the other.

Representative TEAGUE. Both the president and several of the directors are here and will testify later.

Senator MILLIKIN. The chairman has emphasized that this has nothing to do with the Colorado. So why that particular district should be sticking its nose into extraneous matters puzzled me a little bit. But beyond puzzling me, it has no importance.

Senator KUCHEL. Apparently, Senator, those canards are baseless, and may I offer my personal regret that they have come to your attention; and to yours, too, Senator Watkins.

Senator MILLIKIN. I would like to find out about it through curiosity, not because it makes the slightest difference.

Senator WATKINS. That is what prompted me—curiosity.

Mr. HAMILTON. The allocation of cost was 57 percent to irrigation and 43 percent to municipal and industrial, as to the estimated water use over the period, and the allocation was made by the separable costs remaining benefit method. The direct benefits exceed costs on irriga-

tion by a ratio of 1.56 to 1, and on municipal and industrial, at a ratio of 1.71 to 1. Total benefits to cost are on a ratio of 4.25 to 1 for the project, indicating economic feasibility and justification.

I won't touch on repayment, other than to stress the fact that these local people have indicated that they are agreeable to entering into a repayment contract on this project before the start of construction. They have also indicated, since the preparation of our report, that they would prefer that the municipal and industrial allocation be paid in installments which are made proportional to the estimated buildup of the municipal and industrial demand. Since they would still continue to pay interest on the unpaid balance of the municipal and industrial allocation, no added cost would be incurred by the Federal Government; during the early years of the repayment period the tax load on the district would be raised to an extreme point if it were necessary to pay off the municipal and industrial allocation in equal annual installments.

Those are all the remarks I have.

Senator KUCHEL. Any questions, Senator Millikin?

Senator MILLIKIN. No.

Senator KUCHEL. Senator Watkins?

Senator WATKINS. What proportion of the costs allocated to irrigation do the water users pay? Do they pay it all, in this case?

Mr. HAMILTON. Just behind you, Senator, is a chart that illustrates that. There would be municipal and industrial assistance to irrigation in the last 10 years of the payout period in the amount of \$6,330,000. That is the amount to be secured by water sales revenues.

Senator WATKINS. What is the answer to my question?

Mr. HAMILTON. There is assistance from municipal and industrial water sales. There will also be tax assistance.

Senator WATKINS. According to some people, that would be a subsidy. I do not necessarily agree, but I just call attention to the fact that that is the language that has been used around here, that that all becomes a subsidy.

The people who live in the city are also owners of the farms, too, are they not?

Mr. HAMILTON. To a very limited extent.

Senator WATKINS. The people live on the farms in this area?

Mr. HAMILTON. Yes, sir.

Senator WATKINS. And how do the industrial users come into the picture?

Mr. HAMILTON. Because they have some need for the water. However, they happen to be a part of the District and furnish a very substantial tax base, which will be of considerable assistance in making the irrigation development possible.

Senator WATKINS. You do not see any objection to having the municipalities and the industrial users pay a part of the cost of the water which will go on the farms, do you?

Mr. HAMILTON. As I am a technical man, I cannot comment on that personally. I am the engineer who is in charge of the preparation of the report at the field level.

Senator KUCHEL. I am going to ask Mr. Lineweaver to bring out certain things for the record.

Mr. LINEWEAVER. Mr. Hamilton, this information is in your statement, but to point it up for the record and for the information of all concerned and where the members of the committee can readily have it, I wish you would make a brief statement as to the cost of the water per acre-foot for irrigation and for municipal and industrial uses.

Mr. HAMILTON. The cost of water for municipal and industrial uses will average, over the repayment period, including operation and maintenance, repayment, interest cost and repayment, \$95 an acre-foot. Agricultural water will average, over the repayment period, not including assistance, \$61 an acre-foot. The effect of the assistance I referred to, Senator, from municipal and industrial water sales in the last 10 years of the project will reduce that average cost by \$13. There will be tax assistance, which it is estimated will further reduce the delivered cost of the water to \$36 an acre-foot, which will put it within the repayment capacity.

Mr. LINEWEAVER. You mean that is the irrigation cost?

Mr. HAMILTON. Yes, as finally sold to the farmer it is expected to be in the range of \$36 an acre-foot delivered out to the farm.

Senator WATKINS. That is per year?

Mr. HAMILTON. Per acre-foot, each acre-foot, Senator.

Senator WATKINS. I know, but is that the overall cost for the whole project, or so much per year? It could not be \$36 a year, could it?

Mr. HAMILTON. No, it is the average cost per year for the 500,000, roughly, acre-feet, which would be delivered over the 50-year period.

Senator WATKINS. And what is your operation and maintenance?

Mr. HAMILTON. The operation and maintenance is included in those figures. Those were overall costs including distribution.

Senator WATKINS. How much would the farmer have to pay per acre-foot per year?

Mr. HAMILTON. Per acre-foot per year, he would pay \$36, sir.

Senator WATKINS. That is what I started to bring out. What is the total cost per acre-foot in buying the right?

Mr. HAMILTON. The total cost in buying the right is \$32 per year. That is the repayment cost.

Senator WATKINS. You mean to say they pay \$36 per year?

Mr. LINEWEAVER. The Senator means over the repayment period.

Mr. HAMILTON. Oh. Approximately \$1,200.

Senator WATKINS. \$1,200 per acre-foot?

Mr. HAMILTON. Yes, sir.

Senator WATKINS. What crops do you grow there?

Mr. HAMILTON. Lemons, avacados, oranges, walnuts.

Senator WATKINS. What is the price per acre of land without trees on it, without the groves?

Mr. HAMILTON. At the present time, \$1,000 an acre on anticipation of the project. Prior to that time it was about \$200 an acre.

Mr. LINEWEAVER. How does that figure of \$32 an acre-foot annually compare with any other costs, first, say, on reclamation projects, or, second, otherwise, on general agricultural water, in California?

Mr. HAMILTON. First, as pertaining to reclamation projects, the adjoining Coahuma project has a rate for the farmers that is close to \$35 an acre-foot.

Senator WATKINS. Approximately the same.

Mr. HAMILTON. Approximately the same. Local water rates on many of the supplies within the Ventura River area are close to about the same amount, \$25 to \$35 per acre-foot delivered at the farm.

Senator WATKINS. Some of that is pumping?

Mr. HAMILTON. Some of that is pumping, pumped from considerable depths. There are some areas in which rates are more favorable. But they are able to pay \$35 an acre-foot and make a profit.

Senator MILLIKIN. I did not get that. What is the capital cost per acre of irrigated land allocated?

Mr. HAMILTON. I am having to be approximate, Senator. Probably somewhere between \$1,200 and \$1,400 an acre.

Senator MILLIKIN. The farmers are willing to pay that?

Mr. HAMILTON. We have the expressed willingness on the part of the board of directors, and we think the farmers have also expressed willingness to the extent it has been developed so far. Let's say there has been no opposition, although they know the water rate will be high.

Senator MILLIKIN. Do the farmers get a chance to vote on these things?

Mr. HAMILTON. Yes. The district will put this up for an election.

Senator MILLIKIN. You feel confident the farmers will approve the plan?

Mr. HAMILTON. In the absence of opposition, I am confident that they will.

Senator MILLIKIN. Well, I do not know about "in the absence of opposition." Will they approve it whether there is or is not opposition?

Mr. HAMILTON. The farmers, Senator, have not expressed themselves officially yet. All I can go on is the feel of the public pulse.

Senator MILLIKIN. They are the ones who in the end will pay for this, are they not?

Mr. HAMILTON. They will pay for it, but they are going to have assistance from the general taxpayers of the entire area.

Senator MILLIKIN. But whatever they have to pay, they have to pay it, and they will have a voice in the matter some place, will they not?

Mr. HAMILTON. Yes, sir.

Senator KUCHEL. We have a farmer or two who will testify for the farming group, Senator.

Any further questions?

Senator WATKINS. I have some more questions.

Now, the \$1,200 per acre-foot that you are talking about is for only 1 acre-foot?

Mr. HAMILTON. Yes, sir.

Senator WATKINS. How many acre-feet per acre do they need for irrigation?

Mr. HAMILTON. One and a half.

Senator WATKINS. Around \$1,800, then, per acre?

Mr. HAMILTON. Yes, sir.

Senator WATKINS. That is the sum that the farmers are going to pay?

Mr. HAMILTON. Ultimately; yes, sir.

Senator WATKINS. That is over and above the so-called help they get from the industrial municipal users?

Mr. HAMILTON. No; that was total on the entire project.

Senator WATKINS. Now, we are getting at it. How much of that will be paid by the industrial and the municipal users?

Mr. HAMILTON. Actually, the district has not taken a complete position on how much the distribution will be, but apparently, depending on just how one credits the tax, whether it is credited to operation, maintenance, or repayment, the effect of the municipal help in any event, the general tax help, appears to be contemplated in the amount of about \$12 an acre-foot, which would bring it down to \$20.

Senator WATKINS. You mean the municipalities and the industrial users will pay \$12 per acre-foot per year as a help to the farmers?

Mr. HAMILTON. Yes, sir.

Senator WATKINS. That will cut it from \$36 down, whatever that takes off.

Mr. HAMILTON. Yes.

Senator WATKINS. Now, is it true that you have around \$6,330,500 that will lie unpaid for 40 years of this interest-free money?

Mr. HAMILTON. I think that is correct; yes, sir.

Senator WATKINS. And it will not bear interest during that full period?

Mr. HAMILTON. No, sir.

Senator WATKINS. That is of the interest-free money?

Mr. HAMILTON. Yes, sir.

Senator MILLIKIN. And then it will be paid off at the end by power revenue?

Mr. HAMILTON. By water revenues, municipal and industrial sales.

Senator MILLIKIN. Mr. Chairman, is that not the very formula that you have had quite a little complaint about in the Senate?

Senator KUCHEL. My dear friend, I think you will find, if you review my comments, both in committee and on the floor of the Senate, that the position I took with regard to the legislation to which you refer was based upon the interpretation of the compact. I doubt very much that you will find any comments of mine which would be deemed by you as offensive.

Senator MILLIKIN. I did not deem any comment that you are making now or any comment that I could imagine you to be making as offensive. But I do have a rather distinct recollection that you had considerable criticism of that method of paying off. But I do not hold you to strict consistency. It might be all right in this project and not all right elsewhere.

Senator KUCHEL. No, to the contrary, Senator, I think you will find I was silent on some of those points which you are commenting on now.

Senator WATKINS. At least you did not attack it.

Senator KUCHEL. You will find there are a good many reasons why your junior colleague from California is growing old rapidly in the public service.

Senator WATKINS. I think we know what you mean.

Senator KUCHEL. Are there any further questions?

Senator WATKINS. I have not quite finished.

Senator KUCHEL. Senator Watkins.

Senator WATKINS. What formula do you use to get that sort of an arrangement whereby \$6,330,500 will lie idle for 40 years without in-

terest? What is the name of that formula? Has it been called the collbran formula?

Mr. HAMILTON. It has been called that by some people. However, we just refer to it as municipal and industrial assistance.

Senator WATKINS. I think that is all.

Senator KUCHEL. Are there any further questions of Mr. Hamilton?

The next witness is Mr. George Purvis, the president of the Ventura Municipal Water District.

As you are preparing to testify, Mr. Purvis, I want to offer into and to accept for the record the letter from the State government of California, or 2 letters from the State government of California, 1 from the Governor, Hon. Goodwin J. Knight, 1 from the Honorable Frank B. Durkee, director of public works; also a letter from the Ventura Chamber of Commerce; and also a resolution from the board of supervisors of the county of Ventura; also sundry letters of recommendation which the acting chairman has received. Letters from the Bureau of the Budget and an interim report from the Department of the Interior are already in the record.

(The material referred to follows:)

VENTURA, March 12, 1954.

VENTURA RIVER MUNICIPAL WATER DISTRICT.

GENTLEMEN: La Avenida Grange 655 thanks you for your action accepting the Bureau of Reclamation. We approve the Bureau handling the project.

Sincerely,

CORA BELL, *Secretary.*

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OJAI VALLEY GRANGE 659,

Route 2, Box 300, Ojai, Calif., March 6, 1954.

DIRECTORS OF VRMWD,  
480 North Ventura Avenue, Ventura, Calif.

DEAR SIRS: The Ojai Valley Grange wishes to commend the directors of the VRMWD for their thorough investigation and prompt decision to ask the Bureau of Reclamation to finance and build the proposed Casitas project.

We regret that a countywide survey by the Bureau wasn't authorized.

Sincerely yours,

CAROLINE FROST, *Secretary.*

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BOARD OF SUPERVISORS, COUNTY OF VENTURA,  
Ventura, Calif., March 15, 1954.

Mr. LELAND G. BENNETT,  
*Engineer-Manager, Ventura River Municipal Water District,*  
480 North Ventura Avenue, Ventura, Calif.

DEAR LEE: Although it was impossible for me to attend your board meeting on March 10, because of a previous engagement, I am anxious to inform your board that I am wholeheartedly in favor of the action taken at the meeting on March 3, 1954.

As you illustrated in the report to your board of directors, the Bureau of Reclamation seems by far to be our most logical answer to completion of the Casitas Dam.

I believe the taxpayers of this district should be grateful for your board's decisive actions and sound planning, and I feel that finally we are taking steps toward county water development that will set a precedent for the rest of the county to follow.

Very truly yours,

C. H. (BOB) ANDREWS,  
*Supervisor, Third District, County of Ventura.*

VENTURA CHAMBER OF COMMERCE,  
Ventura, Calif., September 17, 1954.

VENTURA RIVER MUNICIPAL WATER DISTRICT,  
Ventura, Calif.

GENTLEMEN: The board of directors of the Ventura Chamber of Commerce wish to extend their sincere thanks and appreciation to you for the untiring efforts you have put forth in this area.

Our efforts in securing industry for Ventura are continually confronted by the lack of water. The need for water is still more urgent and the continual activity of the VRMWD in seeing the Casitas Dam project through deserves the sincere support and cooperation of every community organization.

We stand ready and willing to assist you in any way possible.

Cordially,

LLOYD McCAMPRELL,  
President, Ventura Chamber of Commerce.

BOARD OF SUPERVISORS, COUNTY OF VENTURA, STATE OF CALIFORNIA

Tuesday, October 26, 1954, at 9 a. m.

Present: Supervisors Edwin L. Carty, chairman pro tempore, presiding; A. C. Ax, Robert W. Lefever and C. H. Andrews; L. E. Hallowell, clerk; by Shirley Weeks, deputy; absent: Supervisor L. A. Price.

RESOLUTION

Whereas through investigations by the State division of water resources and by the United States Bureau of Reclamation it has been determined that the Ventura River Municipal Water District area (zone 1 of Ventura County Flood Control District) will eventually require some 30,000 acre-feet of supplemental water annually, and

Whereas such a supply can be made available through the construction of the Ventura River project with a 250,000 acre-foot reservoir on Coyote Creek as recommended by the Bureau of Reclamation, and

Whereas because of the erratic rainfall pattern of the south coast area which is characterized by periods of subnormal precipitation lasting several years followed by similar periods of above normal precipitation, it is essential that water-storage facilities be provided well in advance of the actual need for water, and

Whereas only one good reservoir site exists in the watershed area, and

Whereas there appears to be no other system of surface storage works which could be constructed on Ventura River or on any other water course in Ventura County whereby such a supply of water could be developed at a comparable cost, and

Whereas investigations show that critical water supply deficiencies, particularly for agricultural use also exist in other areas of Ventura County, and

Whereas it appears that substantial quantities of water developed through the construction of the Ventura River project may for a number of years be in excess of the supplemental requirements of the Ventura River area and can be made available to, and utilized on an interim basis by, other water deficient areas of Ventura County until additional facilities are constructed to more fully utilize local supplies available from Santa Clara River watershed or until the Feather River project as contemplated by the State of California or other system of works for the importation of water to this area is constructed, and

Whereas because of the above considerations it appears that the interests of Ventura County would best be served through the construction of water-development facilities on Ventura River to the maximum practicable size.

Now, therefore, upon motion of Supervisor Ax, seconded by Supervisor Andrews, and duly carried, be it

*Resolved by the Board of Supervisors of Ventura County, That construction of the Ventura River project with a 250,000 acre-foot Casitas Reservoir as recommended by the Bureau of Reclamation be endorsed; and be it further*

*Resolved, That the board of directors of Ventura River Municipal Water District be commended for its actions to date to further plans for this construction and that said board of directors be urged to continue its efforts to effect construction of these greatly needed water development facilities at the earliest possible date.*

STATE OF CALIFORNIA,

*County of Ventura, ss:*

I, L. E. Hallowell, county clerk and ex officio clerk of the board of supervisors of the County of Ventura, State of California, hereby certify the above and foregoing to be a true and correct copy of an excerpt from the minutes of said board for the meeting of the date first above indicated. In witness whereof, I have hereunto set my hand and caused the seal of said board to be affixed this 26th day of October 1954.

[SEAL]

L. E. HALLOWELL, *Clerk,*  
By SHIRLEY WEEKS, *Deputy.*

LOCAL UNION No. 2042,  
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
*Ornard, Calif., August 23, 1954.*

VENTURA MUTUAL WATER CO.  
*Ventura, Calif.*

DEAR SIR: This Local Union No. 2042 United Brotherhood of Carpenters and Joiners of America have agreed by referendum vote, to endorse the Ventura Mutual Water Co. for a large full-size dam, as recommended by the Bureau of Reclamation.

Sincerely yours,

R. L. ROGERS,  
*Recording Secretary.*

VENTURA CENTRAL LABOR UNION,  
*Ventura, Calif., July 28, 1954.*

Mr. GEORGE PURVIS,  
*Chairman, Ventura River Mutual Water District,*  
*Ventura, Calif.*

DEAR MR. PURVIS: This letter is to inform you and the members of the district board that this council reaffirms its support to your efforts to bring about the creation of the Casitas Dam project.

It is sincerely hoped that in view of the necessary steps that must be taken, all in some relation time-consuming elements, every future act of your board will be that of expediency in arriving at its ultimate goal.

We are deeply appreciative of your hard, earnest, and sincere work for the people, not only of the district, but Ventura County as well.

Sincerely,

GEORGE F. BONNER,  
*Secretary-Treasurer.*

VENTURA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,  
*Ventura, Calif., July 28, 1954.*

Mr. GEORGE PURVIS,  
*Chairman, Board of Directors,*  
*Ventura River Municipal Water District,*  
*Ventura, Calif.*

DEAR SIR: The Ventura County Building and Construction Trades Council, wishes to go on record as opposing any further delay in the development of the Casitas Dam project, as planned by your honorable body.

We have supported the district since its inception, and feel you should not be stymied now by useless wrangling and delays. We feel confident that your representation of all the people of the district will not be influenced by minority pressure groups.

It is our belief the Bureau of Reclamation report should be accepted, and the preconstruction contract signed, so that necessary work in connection with this project can proceed immediately.

Thanking you in advance for your consideration, I am,

Yours very truly,

RONALD BENNER, *Recording Secretary.*



OIL WORKERS INTERNATIONAL UNION,  
VENTURA LOCAL, No. 120,  
Ventura, Calif., March 10, 1954.

VENTURA RIVER MUNICIPAL WATER DISTRICT,  
Ventura, Calif.

GENTLEMEN: The members of local No. 120, OWIU-CIO, have noted with interest the actions taken by directors of Ventura River Municipal Water District.

We were pleased to read in the Ventura County Star-Free Press of action of your board approving a resolution recommending the construction of Casitas Dam and conveyance works by Federal financing.

The membership voted unanimously to approve the action taken by your board as reported in the Ventura Star-Free Press recently.

Yours truly,

WM. A. BERTLES, *Secretary.*

Senator KUCHEL. Mr. Purvis?

### STATEMENT OF GEORGE M. PURVIS, PRESIDENT, VENTURA RIVER MUNICIPAL WATER DISTRICT

Mr. PURVIS. Mr. Chairman and gentlemen, my name is George Purvis, and I am president of the Ventura River Municipal Water District.

We have a prepared statement to submit, but if the chairman is willing, I should like to submit that and summarize my remarks more briefly.

Senator KUCHEL. Without objection, the record will include the complete text of Mr. Purvis' statement.

(The statement referred to follows:)

#### STATEMENT OF GEORGE M. PURVIS

Mr. Chairman, my name is George M. Purvis. I am president of Ventura River Municipal Water District.

#### VENTURA RIVER MUNICIPAL WATER DISTRICT

From our district's name the impression is given that we are a city or municipal utility. That is not correct.

Our district covers approximately 90,000 acres of land in the northwestern portion of Ventura County, of which approximately 21,000 acres are arable. Taking account of probable future developments with an adequate water supply, it is estimated that the urban area comprising the cities of Ventura and Ojai and several small unincorporated communities would occupy about one-third of the arable land. The remainder would be used for agricultural purposes. Therefore, while we are deeply concerned with providing an assured water supply for domestic and industrial use, we have an equal, if not greater concern with development of water for maintenance and expansion of agriculture through irrigation.

When our district was formed in 1952 we had a choice of several types of public water agencies under which to organize. In California there are water districts, waterworks districts, irrigation districts, conservation districts, utility districts, and others. After detailed study, the organization committee chose the Municipal Water District Act of 1911, as rewritten in 1951. This was the most up-to-date enabling act available, and it seemed to fill our needs. Since the act was rewritten in 1951 most of the new water development districts formed in California have been organized under its provisions.

This type of district has broad powers essential to obtaining a water supply for all beneficial purposes. These include the authority to levy taxes, issue bonds, and contract with the United States and other public agencies.

The word "municipal" in our district name is required by State law as identification of the act under which the district was formed, and is not a descriptive adjective indicating our purposes or authority.

My purpose in appearing before you today is twofold. First, I should like to stress the need for development of an assured water supply in the area of our

district. Second, I want you to know that our people favor this particular project for construction by the Bureau of Reclamation and are willing to pay for it.

#### NEED FOR WATER

In our area there is only a very limited amount of underground water storage. Except for the Ojai Basin, which cannot store enough water for its own needs, the drainage is steep and shallow. When rains come the water runs off to the ocean. There are no deep gravels to hold and store it in for future use. Such storage can be provided only by surface reservoirs. Our only surface reservoir is a 7,000 acre-foot reservoir created by Matilija Dam. We have dry periods of several years between the wet periods of heavy rainfall, which limits Matilija Reservoir to a present safe average annual yield of less than 2,000 acre-feet. That is woefully inadequate.

Therefore, under present conditions of irrigation and municipal and industrial development a shortage of water exists. Ground water and surface runoff are used extensively for both irrigation and municipal and industrial purposes. The present demands on these sources are exceeding the long range safe yield which can be obtained from them. A critical water supply situation for these uses exists under present water supply development conditions whenever a dry year occurs, and an extremely critical shortage exists under a series of dry years. Increase in irrigated acreage, therefore, will depend upon the development of an adequate additional water supply. Likewise, municipal and industrial expansion would require relatively large amounts of additional water.

In an effort to keep up with the demand for water the city of Ventura has drilled several wells near the ocean. These wells are about 1,500 feet deep and pump from below sea level. For the past several years, these wells have been the principal source of water for the city during the summer months. The water is not very good and there is always danger of salt-water intrusion. We are literally mining water stored many years ago. These wells do not afford a permanent water supply and it would appear desirable that they be maintained to serve the purpose for which they were originally drilled, the provision of an emergency supply only.

The proposed Ventura River project will provide holdover storage sufficient to meet increasing demands for agricultural and domestic purposes in dry periods as prolonged as the worst drought covered by our records.

#### BACKGROUND OF REQUEST FOR RECLAMATION PROJECT

As early as 1925 consultants were employed by local groups to consider our ever-increasing water problem and develop a solution. All investigators agreed that there was need for water-conservation facilities and each recommended the construction of some system of storage and conveyance works designed to conserve surplus water in wet cycles for use during the inevitable periods of drought. During those early years the need for water was not as great as it is now, and none of the plans was brought to fruition.

In 1944, the Ventura County Flood Control District was formed by a special act of the California State Legislature. Under that act the county was divided into several zones. Zone 1 is roughly coextensive with Ventura River Municipal Water District. The Flood Control District in 1948 constructed Matilija Dam, providing a 7,000 acre-foot reservoir. While Matilija water has contributed to the supply of water available to the Ventura River area, its safe annual yield of less than 2,000 acre-feet supplies only a small fraction of the need.

By 1951 a popular demand became evident for the formation of an independent water agency with adequate authority to provide for the needs of our area. A steering committee of interested people was organized, an election was held, and by a two-thirds majority vote the Ventura River Municipal Water District was established on October 17, 1952.

In March 1953 the district entered into a contract with the Bureau of Reclamation for a study of its water problems. Each of the parties paid half of the costs involved. The study and report which you have before you was completed in July 1954.

Submission of the report put before our district the problem of how to proceed. The two practical alternatives available for consideration were (a) design and construction by private contract, financed by a general obligation bond issue, or (b) authorization and construction as a Federal reclamation project, the costs to be repaid by the district in accordance with reclamation law.

Two principal reasons convinced us that we should seek a reclamation project. First, we and our constituents had confidence that the Bureau of Reclamation would design and execute complete plans for a water project that was physically safe, adequate to meet requirements, and economically sound.

They were acquainted with the businesslike way the Bureau of Reclamation was completing the Cachuma project in our neighboring county, Santa Barbara. Consequently, the Bureau of Reclamation was in a position to inspire the confidence of the people of our district.

Our second reason is related to our basic needs for water. The cost of water is not a major part of the budget of most industrial or municipal users, and they will procure what they need regardless of the cost. The same, of course, is not true with respect to irrigation users. The cost of water to them is a major item of expense and the amount they can afford to pay is definitely limited.

If this project is authorized and constructed under reclamation law the agricultural allocation, amounting to 57 percent of project costs, will be repaid without interest within a period of 50 years. If the project were financed by a local bond issue the agricultural allocation would have to be repaid with interest on a maximum period of 40 years from the date the money was advanced. Our studies indicate that the difference in cost between these alternatives is very substantial.

The general taxpayers, who are the indirect beneficiaries of the project, recognize the equity of and are agreeable to paying a portion of the agricultural water cost. With interest-free financing of the irrigation facilities, the difference between the cost of water and the amount the farmers can be expected to pay is not great. However, with bond financing this difference becomes unreasonable. Consequently, without reclamation financing the financial feasibility of the project becomes questionable.

After considering in detail this basic problem of how to proceed, the board proposed that the report of the Bureau of Reclamation be processed for authorization of the project as a reclamation project, and through the press and special public meetings sought the people's reaction. Endorsements of our action came pouring in from farm organizations, labor unions, civic groups and individuals. We feel that it is particularly significant that the overwhelming sentiment in our district favors this proposed reclamation project and that there is no substantial opposition.

#### REPAYMENT

If the Ventura River project is authorized for construction as a reclamation project, our district will contract to operate the facilities and return to the Government an amount equal to the costs of construction. Payments would be made over a period of years with interest on the portion of the costs allocated to municipal and industrial purposes.

It is estimated that the demand for project water will be small in the early years of project operation, but will increase steadily throughout the repayment period. In these circumstances the benefits from the project, both direct and indirect, will be greater in the later years of the repayment period. With this situation in mind our board of directors feels that repayment obligations should be geared to water use so that the principal burden of repayment will fall on those persons who are to derive the principal benefit. This is the basis of repayment we hope to secure when the contract between the district and the United States is negotiated. Attached hereto is a copy of a resolution which our board adopted some time ago relating to this subject.

#### CONTRACT

It is our understanding of procedure that when this project is authorized the district and the Bureau of Reclamation will be in a position to negotiate a contract for operation of the project and return to the Government of its investment (together with interest on the municipal and industrial allocation) pursuant to reclamation law. Before we execute such a contract we intend to submit the matter to the popular vote of the people in our district. We do not expect the Federal Government to commence construction of this project until our district, with the consent of its people, has bound itself to repay the costs involved.

However, we feel that it is urgent that construction be commenced at the earliest practicable date. To this end our district is currently financing pre-construction work, including the preparation of final design and specifications. In July of 1954 we entered into a contract with the Bureau of Reclamation under

which they commenced this work wholly financed with district funds at an estimated cost of \$720,000. While we understand this procedure is unusual it will lead to conclusion of this preconstruction work on the dam and reservoir by the end of this calendar year and permit actual construction as soon as the project is authorized and funds are available.

# CONCLUSION

The current drought period has now continued for some 10 years. It is reasonable to expect a period of normal rainfall to commence before very many more years pass. We need to have a reservoir ready to conserve that runoff.

Mr. Chairman, we sincerely request approval of the authorization bill and thereafter that all possible action be taken to assure the construction of the Ventura River project at the earliest possible date.

## VENTURA RIVER MUNICIPAL WATER DISTRICT, RESOLUTION No. 65

### RESOLUTION OF POLICY CONCERNING PAYMENT OF CAPITAL COSTS

Whereas it appears that the Congress of the United States of America during its present session may authorize the Ventura River project for construction by the Bureau of Reclamation as a Federal reclamation project; and

Whereas the Bureau of Reclamation has indicated that as soon as such authorization is obtained negotiation of a repayment contract between the United States and the Ventura River Municipal Water District will be appropriate; and

Whereas section 22 of the Municipal Water District Act of 1911, under which the Ventura River Municipal Water District was organized, provides that, "The board of directors, so far as practicable shall fix such rate or rates for water as will result in revenues which will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by the district, and provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt of the district, and provide a sinking or other fund for the payment of the principal of such debt as it may become due"; and

Whereas it is the intention of the board in complying with this provision of the Municipal Water District Act of 1911 to attain as equitable a distribution of project costs as possible; and

Whereas it is the opinion of this board that a repayment schedule based upon and proportional to the estimated annual use of water to be developed by said project will attain such equitable distribution of project costs: Now, therefore, be it

*Resolved by the Board of Directors of Ventura River Municipal Water District, That, in the event the construction of said project is authorized by the Congress of the United States of America, the declared intention and purposes of the board shall be:*

1. To establish a schedule of resale rates which, being consistent with the ability of water users to pay, will result in the greatest practicable portion of project costs being borne by water users.

2. To negotiate with the Bureau of Reclamation for a repayment contract which shall provide either:

(a) That the United States of America furnish water to this district at such rates as will produce revenues during a 50-year period sufficient to cover the costs of construction of such dam and related facilities; or

(b) That, if a repayment obligation type contract be made, the annual payments by this district to the United States of America to repay the costs of construction shall be made over a period of 50 years and shall be proportional to the estimated annual use of water to be developed by such project.

Passed and adopted the 11th day of May 1955.

GEORGE M. PURVIS,  
*President of Ventura River Municipal Water District.*

Attest:

CHARLES W. PETIT,  
*Secretary of Ventura River Municipal Water District.*

Senator MILLIKIN. Mr. Chairman, we might lay one ghost that has appeared at this hearing. Has your organization made any official statements, or have any of its officers made any unofficial statements, condemning the upper Colorado?

Mr. PURVIS. Senator, they certainly have not.

Senator MILLIKIN. That is false, is it? You have no mental reservations on that?

Mr. PURVIS. I have no mental reservations. None of our group.

Senator MILLIKIN. We have heard otherwise. What did you call it, a canard?

Senator KUCHEL. A rather base canard, Senator.

Senator WATKINS. Have any of your communities passed any such resolutions?

Mr. PURVIS. If the Senator is willing, I think I could bring that point out a little later in my testimony and shall be glad to cover it as far as I know anything about it.

Senator WATKINS. Well, I am perfectly willing to develop it as you like.

Senator MILLIKIN. It does not make the slightest difference to me whether you did or did not. Let me make that clear. But I just wondered how foolish people could get to be when they are asking for something themselves, if they are narrow enough and foolish enough to condemn what somebody else is trying to do. Because there are some people who do not like that kind of business. I am a kind of a fool, and it does not make any difference to me.

Mr. PURVIS. Sometimes people are very shortsighted.

Senator MILLIKIN. That is very true.

Senator KUCHEL. Do you want to proceed on this? Do you want to develop this thought-control matter, Senator?

Senator MILLIKIN. I am tired of these canards.

Senator KUCHEL. All right. Proceed, Mr. Purvis.

Mr. PURVIS. One of the problems that our community has had to face—and it has been covered to some extent already—is the nature of the erratic rainfall. We either have a feast or a famine. We have these dry creekbeds labeled rivers, and most of the time, if you have driven through California, you will know they are dry. But at other times they have a great deal of water in them.

Our communities got along with this trick of nature up until about 1925. By that time, the demands from agriculture and the municipalities had become so great for water that they could not suffer in silence any longer, and they agreed they would have to do something about it. So they hired an engineer, a Mr. Lippincott, I believe, to try to find a solution for it.

He made a survey, and he found that they were getting from the ground all of the water that could be practically pumped. And the only way they could develop new water was to take care of the runoff that was wasting to the ocean. He assured them that there was sufficient water there, and that was the only way they could lick their problem.

They accepted the report. But I suppose the next year it rained. There are occasional good rains. At least nothing constructive followed the survey.

The years drifted along, and occasional reports again were made. A bond issue was brought up at one time, but the day of the election

a good rain came and the bond issue failed. By 1944, the people realized that they must do something definite. So they formed, throughout the county of Ventura, the Ventura County Flood Control District. I have a map which indicates this district.

They divided the county into zones. The district that I am representing here [points to map] at the present time is located within zone 1. Another was zone 2, and another one zone 3. These were the important ones. The lands that were thought to require no development were placed into zone 4. So the important ones were these three [indicating].

These three zones were operated by the county board of supervisors, acting as a flood-control district—a unique situation, in that each zone could function by itself, while the whole board directed the affairs of the district. Each zone could levy taxes, build dams, pipelines, and so forth independently of the others.

Eight years slipped by, and nothing of any significance had been accomplished. The people in this area, again (that I represent), said, "This must not be the answer. It appears that this vehicle is not going to take us where we want to go." Meetings were held through our area again, and finally they said, "We will have to set up a new water district, a district that is designed for water development alone, with directors who are interested in water development alone, whose interests do not go into other fields, as the board of supervisors necessarily have to do."

They had three reasons for coming to this conclusion. One reason is that zone 2 had already come to that conclusion 2 or 3 years before and practically had withdrawn from the overall district by setting up a water district of their own.

The second reason was that during this 8 years, the supervisors had built one little 7,000-acre-foot reservoir up here [indicating], with many attendant unfortunate details that left a bad taste in the people's mouths—a bad taste as far as any kind of water development was concerned.

So our people said, "We had better form a water district for the sole purpose of developing water." Labor, industry, the Grange, all the people, got together, and organized under a good act called the Municipal Water District Act of California.

As soon as we were organized, our directors got together. We had no money. We had no office. We had no staff. We had only one thing. We had a determination to do something as quickly as possible.

A canvass of the sentiment in the district as to ways that we might proceed resulted in the conclusion that our community would best be served through the efforts of the Reclamation Bureau.

Senator MILLIKIN. Mr. Chairman, may I ask:

How many people have you in Ventura at the present time?

Mr. PURVIS. In the city of Ventura, we have approximately 25,000 people. In the district, we have about 45,000, at the present time.

Senator MILLIKIN. How far out from Ventura is the district?

Mr. PURVIS. It is not a large district. This distance from Ventura, which is approximately in this location [indicating] would go up possibly 15 miles.

Senator MILLIKIN. How many people did you say are in the district?

Mr. PURVIS. About 45,000.

This was in the spring of 1953, when the Reclamation Bureau got started on the investigation.

Again, they had no money set aside for this, and neither did we, but we borrowed \$30,000 and got them started on the feasibility studies immediately.

By constant cooperation between our district and the Bureau of Reclamation, they were able to bring out results of their studies 1 year later, which is about 50 percent of the time they originally contemplated would be necessary for the study. They said, "You have plenty of water wasting away if you would save it. You have the ability to pay for it. We recommend a 250,000-acre-foot reservoir, at a cost of \$27½ million."

And then our question was: "What do we do now?"

Their answer was that the report had to be written up, that it had to be submitted to all the agencies, and that it would take several months before we could be ready to come to you gentlemen for authorization.

So, knowing the urgency of our situation, we said, "What is there that we can do to speed our project along? Is there not some way we can telescope these activities?" Then we came up with the idea of preconstruction work.

Now, we had no money for such work. Nor would the Bureau match funds on such work. But we borrowed the money, which we have been able to repay by taxes. And we have not paid all of this \$720,000. We had to stretch it over a 2-year period in order to be able to pay for it. But we are having that work done at the present time, and it has been going on for several months.

Senator MILLIKIN. What is the nature of that work?

Mr. PURVIS. The nature of the work is to go into the reservoir area and to make many test holes to test further the depth to which the footings, and so on, will have to be made; drifts back into the mountain to discover the nature of the soil and rock; and testing to find out what borrow materials can be used to build the dam. Then assembling of this information and a final design of the dam and the pipelines and regulating reservoirs would complete the work.

Senator MILLIKIN. It looks like you made a very intelligent effort to get that thing started.

Mr. PURVIS. We thought so; although not everybody agreed. Some thought we were going out on a limb, that we were going too fast, that maybe there would be a hitch in the project and that we would lose our money. We knew that, too. But because of the urgency of the situation, we thought we were justified in doing so.

That brings us up to the present time. We have all of our reports in to the Bureau of the Budget. You have heard the recommendations of Mr. Dexheimer, who has been good enough to visit our project, as has Senator Kuchel, Senator Knowland, and of course, Congressman Teague. They are beginning to share the same urgency that we feel about our project.

So we leave it now in your hands. We sincerely hope that authorization will come this session, and that by the next session with our preconstruction work done, you may have an appropriation that will enable us to get under way at once.

As has been pointed out, we have gone through a dry period. Another year or so may bring an extremely wet period. In 1941, 250,000 acre-feet wasted away from the Ventura River into the ocean; enough water, if it were impounded in this large reservoir, to fill it in 1 year.

I am not saying it is possible to fill in 1 year, even if such a rain came again, because of the nature of the conduit that goes across there [indicating]. Even in good years, it would take approximately 5 years to fill. During a dry period, the Bureau estimates the reservoir would fill in 20 years.

If I may, Mr. Chairman, I should just like to show some of the results of water shortages in our area; and, again, what we could do if we had sufficient water.

I was traveling in the Ojai Valley a short time ago, and I saw something that was even a surprise to me—a citrus orchard completely lost because of lack of water. I would not give you the idea that the Ojai Valley is a barren valley. It is a beautiful valley. It has many fine citrus orchards. But nevertheless, this drought condition has crept in, and we are beginning to lose our investments, as you can see. Cattle are grazing in 60 acres of oranges.

You ask about the price of our better citrus land? Well, recently 40 acres changed hands for \$167,000.

To the left of this picture is also some fine potential avocado land. It looks just like a dry field and a barren hillside. But it happens to be in a relatively frost-free area. That hillside could be planted to avocados, one of our coming valuable crops.

Here is a closeup that may give a little better idea of what these dead trees look like.

Note on the right-hand side the valve and the pump, which is unable to serve this area because of the drought—no water to pump. Let me show you the idea that that is all we have, let me show you some of our fine orchards from which we get high production. This is the thing we could have if we had water [indicating].

Senator KUCHEL. Thank you very much, Mr. Purvis.

Are there any questions?

Senator WATKINS. I would like to inquire of the witness why it is not possible for the people in that area to handle it as an ordinary development proposition, by organizing properly and issuing bonds and getting the money that way. Why, in other words, do you have to come to the Federal Government?

Mr. PURVIS. I do not blame you for asking that question, and I think if I were in your place I would be asking the same question. I think possibly if you were in my place, you would be saying the same thing that I am here.

Senator WATKINS. I could; only I would have to say peaches and apples, and that sort of thing, up in my area. We have had lots of orchards abandoned there because of lack of water, drought. Fields of alfalfa, pastures—I could go on for half an hour describing the effects in my State that droughts have had on farms that have been developed at great costs. I can understand full well what a drought means. I have been through them many times. You say I can say the same thing. I can if you will just change the names of the crops.



Mr. PURVIS. I think I might point out 2 or 3 reasons why I feel that Federal financing is justified.

No. 1 is the problems that we have involved in getting our people together to take some concerted action. We have had some difficulties under private development, as I started to point out, with the Ventura Flood Control District. Our people seem to have an apathy for this type of development.

Now, maybe they are to blame for that. Maybe that is inexcusable. But we know that that is just the situation—that to get our people to take some concerted action for a bond issue would be extremely difficult.

Senator WATKINS. May I ask you this question: I understand your difficulties in organizing. I had the same difficulties, because I was the general counsel for a project in my own State, and I took a long time to convert them to the point that they had to do something on their water supply.

You have a difficulty selling your own people, where you know they will benefit. But from the standpoint of financing, do you have enough values there that this could be financed by the people themselves, on an ordinary commercial transaction?

Mr. PURVIS. That is right. That was one of our problems.

Now, the second one is this: that we could finance it from a municipal and industrial angle—

Senator WATKINS. And pay for the entire project?

Mr. PURVIS. For municipal and industrial use. But according to what our engineers tell me, we cannot make a going proposition of providing water for agriculture, because of the high costs of the water for that alone. Our interest rate would cause the costs of agricultural water to practically double, and we just simply could not make a go of it from that point of view. And as a result, our agriculture would have to get along as they are now doing.

For the third reason, and I guess this just gets into a matter of philosophy, the reclamation law makes these things available to us. I suppose those Congressmen who put these laws on the books felt that it was a good thing for the country. And I agree. It is. It makes this project possible for us, where it would not otherwise be possible.

We can make this country really come to fruition if we have water. If we do not have water our lands and people will suffer.

Senator WATKINS. What you are trying to say, then, is this: that the cities and the industrial users, the municipalities and the industrial users, could bond that and take care of their own water supply. They could do that all right.

Mr. PURVIS. I believe they could.

Senator WATKINS. There is no particular difficulty in finding people to buy the bonds, and they would be able to pay back the entire cost for the water that they would need.

Mr. PURVIS. That is my understanding.

Senator WATKINS. But the farmer end of it, the agricultural end—you could not do that there. That is beyond your capacity to do and your ability to pay.

Mr. PURVIS. That is the way it is, yes.

Senator WATKINS. Is that the fact? Is that the fact, that it is beyond your ability to do?

Mr. PURVIS. As far as I know, it is, yes.

Senator WATKINS. There ought to be some basis to show that. Because ordinarily the reclamation program was adopted for the purpose of doing those necessary things for the people that they could not do for themselves. That is the reason I am asking these questions. And that ought to be one of the tests for a reclamation project.

Mr. PURVIS. Senator, if you would like to go into this a little further, our engineer, Mr. Bennett, is here, and I believe he knows these details better than I do, and he would be glad to testify.

Senator WATKINS. You are one of the board of directors, the president of it, are you not?

Mr. PURVIS. Yes.

Senator WATKINS. You know whether or not it would be possible for you to go out and bond that area, put in your canals and reservoirs for the use of the farmers. You know whether it would be possible to get the money privately or through the ordinary business channels.

Mr. PURVIS. Our district has pretty good credit.

Senator WATKINS. Well, they could have good credit for the smaller things, but how about the total cost of a project of this kind? Could you build a project just for the agriculturists alone?

Mr. PURVIS. Oh, no. We could not do that. That is out of the picture. You see, we have pumping costs—

Senator WATKINS. Why is it that you are not getting the help? Because you cannot pay it, or because they just do not want to help you out?

Mr. PURVIS. As Mr. Hamilton pointed out, even with the benefits of reclamation, we still have to ask the municipal and industrial areas to help out the agricultural end of it to some extent.

Senator WATKINS. That means that you are paying all you can, and if you paid all you could possibly pay you could not pay enough to pay the costs of that, even when they joined with you and took part of the water themselves.

Mr. PURVIS. That is right.

Senator WATKINS. That is what I am trying to find out, if that is the situation. I thought with that rich ground down there you farmers might have a type of project that would be financially feasible without the help of the Federal Government.

Mr. PURVIS. It just could not be.

Senator WATKINS. Well, now, that is the kind of projects we have. So you come in within our class, where we need the help, and we do not hesitate to come in and say we will pay it all back. We cannot finance it ourselves, so we come in and ask the Federal Government to take it under the reclamation law, which was designed for that very purpose.

Mr. PURVIS. I would like to explain just one thing further, that I sidestepped a few moments ago, and that was your question with regard to, let me say, some offensive resolution.

I have intimated that a number of our problems on our water development arose from some actions of the Flood Control Board. They are the ones that introduced this resolution.

Senator WATKINS. Which resolution?

Mr. PURVIS. At least I heard some reference to it, some problem here. We have had no part of that. We are sympathetic to the interests and the needs for water in areas in our State and out of our State, and we are certainly not taking any steps to oppose the project in other States.

I want to make that very clear for myself, for the men who are here, and for the community at large. Our editor, Mr. Pinkerton, has written editorials, particularly after Congressman Aspinall visited our area, and indicated our sympathy with his problems.

Senator MILLIKIN. Mr. Chairman, I would like to ask the witness: Tell us a little bit about your water district. Under the law of California, how do you organize a district of that kind?

Mr. PURVIS. Senator, when we want to organize a district of that sort, first of all, we have to have community interest. We hold meetings. In this case, we had labor that really initiated some of the early meetings. And a group of people got together and decided that some action should be taken.

We circulated petitions calling for an election. Then, at a stated time, an election was held, and the people in the community had the opportunity to vote as to whether they wanted to form this particular district. The district was approved by a 2 to 1 vote.

Senator MILLIKIN. What opportunity will the people have to vote on what you are proposing to do here?

Mr. PURVIS. As soon as this project is authorized, we expect to negotiate a repayment contract stating just how we expect to bind ourselves to the repayment of the debt. Then we will submit that to a vote of the people. We are very sure that our people will approve the contract that we negotiate.

But we will not enter into anything and will not sign anything until it has been submitted to the people.

Senator MILLIKIN. Who has the authority to levy the taxes?

Mr. PURVIS. The board of directors.

Senator MILLIKIN. And they will levy the taxes necessary to see that a repayment is made of the contract that is entered into; is that right?

Mr. PURVIS. They will.

Senator MILLIKIN. That is all I wanted to know. You have no doubt about the willingness of the people to approve that kind of a plan?

Mr. PURVIS. I have no doubt at all.

Senator MILLIKIN. That is all, Mr. Chairman.

Senator WATKINS. I have one further question, there.

It was indicated, I think, by the previous witness that you people were willing to sign a contract for repayment before construction begins.

Mr. PURVIS. That was our intention. We would not want to spend the money that would bind the people to anything until the people had had a chance to decide for themselves that that was what they wanted to do.

Senator WATKINS. I do not think the Bureau of Reclamation would accept a contract unless it had been submitted to your property owners within the district. As I understand it, the usual program of the Bureau is to obtain a repayment contract on all of these projects before construction begins. So that would just be following the regular

pattern, in doing this. However, in Central Valley, I think that was not the case.

Mr. PURVIS. I understood there had been exceptions.

Senator WATKINS. But when any project started, we had to have a repayment contract signed.

Mr. PURVIS. We have assured our people that we will not enter into a contract without submitting it to them for a vote.

Senator WATKINS. I notice you said something about flood control in that area. Was there an attempt to get a flood control project there?

Mr. PURVIS. No; there was not. It just happens to be a title to the act under which the district organized.

Senator WATKINS. If you could have got a flood control act, you would not have had to pay any of it back?

Mr. PURVIS. We are going to pay it all back.

Senator WATKINS. I do not have any further questions.

Senator KUCHEL. Congressman Teague?

Representative TEAGUE. I just think the record ought to be absolutely clear on one thing. The statement Mr. Purvis and I made was a thousand percent correct, that this Ventura Municipal Water District has entered into no resolution nor taken any action in opposition to the upper Colorado River project.

But apparently, I am now informed, the Board of Supervisors of Ventura County, saw fit to pass such a resolution. That is probably what the Senator had in mind.

Senator WATKINS. Do you know whether the board of supervisors are now in favor of the Ventura project?

Representative TEAGUE. Oh, yes.

Senator WATKINS. And do we have their resolution?

Senator KUCHEL. I just made it a part of the record.

Senator WATKINS. Well, we are glad to know they are in favor of one reclamation project.

Senator MILLIKIN. I want to say again: It does not make a bit of difference to me whether they did or did not pass such a resolution. I think people can be perfect fools in rendering disservice to their own interests, and you have to save them against that when they do it.

Mr. PURVIS. Thank you, Senator.

Senator KUCHEL. That is your usual broadminded and statesman-like approach to a problem of this kind, Senator.

Senator WATKINS. May I say that I have great sympathy for this community, because I know what they go through. We have gone through in our State identical situations. But I am probably not in the best mood this morning. I have just been talking to some Californians about seeing whether they would not support a project in my State and the upper basin States. They were not friendly. So I had the wrong mood when I came in here. However, you are getting me mellow now.

Senator KUCHEL. We have one more witness, Mr. Neil Ensich, a farmer of the area.

Mr. Ensich, we have a little time problem, so will you expedite your statement as much as possible?

**STATEMENT OF NEIL ENSCH, FARMER, OJAI, CALIF.**

Mr. ENSCH. I will keep it brief, Mr. Chairman.

Mr. Chairman and gentlemen, my name is Neil Ensich. I am the managing partner of a farming company at Ojai. We have 18,000 trees, ranging from 2 to 45 years of age, and our problem is water. I don't want to be repetitious, so I will give you a few comparisons and stop.

We acquired the ranch in 1937. We had 2 wells on the ranch then, both less than 300 feet deep. Now we have 6 wells. The deepest is 740 feet. We cannot drill more. There is no use to drill more. We do not put more water in the basin by drilling. And we have not found that we increased our water supply greatly by drilling the additional wells.

The water costs are high. We cannot go ahead and plan future development. The trees cannot be put in cold storage, when we have a drought cycle. During the present cycle we have been fortunate enough to have had a wet year once in awhile that pulled us out of a bad situation.

Our low point in production was 1951. That was a dry year, when several of our farmer neighbors were out of water entirely. We had some. Our production that year was 36,000 field boxes of oranges—which is red ink. The following year, the winter of 1951-52, was a wet winter, and the trees came back, and we had production of 59,000 field boxes, which was like it should be.

The year after that, the production was 76,000 boxes—which indicates that it is a good area, good for citrus. We have the soil and the climate. If we had the water, there would be no question but what we could go ahead and run our business as industry and other lines of economy do.

The difference, possibly, between some segments of agriculture is the annual crops or the row crops. If you lose a crop, you can plant another one. Or if you know the year is going to be dry, or if you are in a dry cycle, you do not do anything.

With ours, we are stuck with our life's work. And many of these neighbors of mine have worked hard and have done the work themselves, and now they are old, and they see a probability of losing their entire life's work just because of lack of water.

Now, there is plenty of surplus water, as the witnesses have said, during periods of rainfall. And if this could be stored to take us over the dry cycles, we would have a stable economy.

The crops, principally citrus, in the area, certainly are not in surplus supply nationally, and I know of no crops in the area that are.

There is an area to be developed, and I would like to submit a picture, quickly, which shows a lemon grove. The Senator from California will appreciate this. This grove a couple of years ago produced 13,000 boxes from 10 acres. That is 1,300 boxes an acre. The price of that fruit grossed well over \$2. It probably netted over \$2 a box.

Senator WATKINS. How many boxes per acre?

Mr. ENSCH. 1,300 boxes. He has water. There is this place across the street. I am at present clearing it. And as soon as I know there can be water, I will do the same with this [indicating].

People have asked me why? I don't know. It is in your blood. If you are a farmer, you are foolish. You can make a lot more money in other lines of endeavor, but farming is what you like to do.

And I am here today not only for myself, but my neighbors. Our grove is the largest in the area. There are a few of them that are 60 acres. The rest are 40, 30, 10, and some 5. And all of us ask you to take the politics out of it. We are asking for survival. Because an orange tree without water cannot exist. And if we are to continue to exist and further develop the area, it will be necessary to store these surplus waters.

Senator WATKINS. How long have you lived there in Ventura County, Mr. ENSCH?

Mr. ENSCH. We acquired the grove in 1937.

Senator WATKINS. In your judgment, can you state what the feeling among the farming population of the area is with respect to this proposal?

Mr. ENSCH. Very definitely.

Senator WATKINS. In favor of it?

Mr. ENSCH. Very definitely. What else is there? We are out on a limb a mile long. And it is a terrific investment; your life's work.

Senator WATKINS. Why did you plant those farms if the water supply was as scarce as you said it was? Was it overextended?

Mr. ENSCH. It was overextended.

Senator WATKINS. Just because of some change in the natural situation there as compared to what it was when the orchards were planted?

Mr. ENSCH. That is true. A dry cycle. And planting more acres before we knew.

Senator WATKINS. Why should they plant more acres when you are already short of water?

Mr. ENSCH. Well, that is the American way. As I say, we go ahead and do these things. This agriculture is the least exact science of any that I know. And it does not make sense, but you do it. You get a wet year and everybody feels wonderful, and they want to do something. And you go ahead and do it. It is silly, Senator. Sometimes I wonder why I ever got up there.

Senator WATKINS. I think I can understand your situation. I have a couple of fruit farms that my family has been arguing about for years. I think it does get in the blood.

Mr. ENSCH. I am sure you can understand.

Senator WATKINS. I think you described it better than it has been described, as a sort of foolishness.

Mr. ENSCH. Well, this is serious. With us it is tragic. It really is. We cannot go on much longer.

Senator KUCHEL. Senators, I think you will be interested. The large city is the city of, as it used to be called, San Buena Ventura. How old is that city?

Mr. ENSCH. It was founded by the Padres of 1780, I believe.

Representative TEAGUE. The mayor says 1782, Mr. Chairman.

Senator KUCHEL. So they have been up there, you know, quite a little while, gentlemen. This runs back to the days before the country was founded.

Any questions from the members of the committee?

Thank you very much.

Mr. LINEWEAVER. Mr. Fred W. Peel, an attorney in this city, asked permission, Mr. Chairman, to file a statement possibly next week on behalf of the Hoffman-Casitas Ranch.

Senator KUCHEL. In opposition to the bill?

Mr. LINEWEAVER. No, he does not say he is in opposition. He just wants permission to file a statement.

Senator KUCHEL. Well, now, I do not know when the subcommittee will meet. I assume it will meet shortly.

Is he here in the room? Is the gentleman present?

Mr. PEEL. Yes, sir.

Senator KUCHEL. How long would it take you to formulate the statement?

Mr. PEEL. Just a few days. Actually, I could tell you what they want to make a statement on, or what they presently plan to make a statement on, and that is a request that the 160-acre limitation be removed. I do not have sufficient data on it, and that is the reason I do not want to file a statement now. But I gather that that will affect them particularly, and they are the people whose ranch will be flooded by such a project.

Senator KUCHEL. You may file such a statement. I would like to have the record closed as soon as possible. Would it be reasonable for you to prepare it and present it to the staff of the committee by Friday of this week?

Mr. PEEL. I believe so.

(Mr. Peel subsequently advised the committee, his clients would not file a statement.)

Senator KUCHEL. Thank you, sir.

Senator MILLIKIN. Mr. Chairman, is the Senate bill exactly the same as the House bill?

Senator KUCHEL. Yes.

Mr. LINEWEAVER. Is Mr. Bennett here?

Have you any idea how soon the Budget Bureau is going to clear this with any suggested amendments?

Mr. BENNETT (Elmer Bennett, Legislative Counsel, Interior Department). There is some material before the Bureau of the Budget, and I am not able to advise when clearance will be secured. However, I will convey the committee's desire to the Department, with the view of expediting clearance.

(The following letter and enclosure were later received for the record:)

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., June 9, 1955.

Re Ventura River project.

SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
Suite 224, Senate Office Building,  
Washington 25, D. C.

GENTLEMEN: Enclosed herewith is a resolution from the Ojai Valley Business Association regarding the Ventura River project, with the request that it be made a part of the hearings to be held on this matter.

Sincerely yours,

CHARLES M. TEAGUE, M. C.

OJAI VALLEY BUSINESS ASSOCIATION

OJAI, CALIF.

RESOLUTION

Whereas the needs and demands for water in the Ojai Valley for agricultural and domestic purposes exceeds the water supply now available; and

Whereas this situation is imperilling our orange orchards and our other agricultural pursuits, preventing planting and stopping the development of new homes; and

Whereas construction of the Casitas Dam as outlined by the Bureau of Reclamation will provide the most economical and possible solution to this problem: Now, therefore, be it

*Resolved*, That we, the business, professional and agricultural people of the Ojai Valley hereby go on record as favoring the authorization of construction of the Casitas Dam by the Bureau of Reclamation at the earliest possible date.

BOARD OF DIRECTORS,  
OJAI VALLEY BUSINESS ASSOCIATION,  
GEORGE E. MEINIG, *Chairman*.  
HAROLD M. RIDER, *Secretary-Manager*.

Dated May 20, 1955.

(The reports of the Department of the Interior and Bureau of the Budget ordered printed are as follows:)

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., July 12, 1955.

HON. SAM RAYBURN,  
*Speaker of the House of Representatives,*  
Washington 25, D. C.

MY DEAR MR. SPEAKER: My report on the Ventura project, California, is transmitted herewith pursuant to the provisions of section 9 (a) of the Reclamation Project Act of 1939 (53 Stat. 1187).

The report presents a plan for furnishing an average of 27,800 acre-feet of water annually for irrigation and for municipal and industrial purposes in Ventura County in the vicinity of the city of Ventura. The project works would consist primarily of Casitas Dam and Reservoir, Robles diversion dam, Robles-Casitas Canal, and a main conduit system for carrying the water to the various service areas. The project is urgently needed to permit expansion of irrigation and industry and to serve the municipal requirements of this rapidly growing, water-scarce area.

The estimated cost based on January 1954 prices, which are approximately the same as current prices, is \$27,869,000. A total of \$778,000 will have been contributed by the water users prior to construction of the project, if authorized, for investigations and for preconstruction activities. The remainder, except for \$169,000 which could be assigned to minimum basic recreational facilities is allocated to irrigation and to municipal and industrial water supply and will be repaid within a 50-year period including a 10-year development period. As is customary, repayment of costs allocated to municipal and industrial water purposes would include interest. Total benefits are estimated to exceed costs in the ratio of 4.25 to 1.0, with primary benefits exceeding costs by a margin of 1.76 to 1.0.

Copies of the proposed report of the Secretary of the Interior were transmitted to the State of California and to the Secretary of the Army for their views and recommendations in accordance with the provisions of section 1 of the Flood Control Act of December 22, 1944, and to the agencies represented on the Interagency Committee on Water Resources for their information and comments. Copies of all comments which have been received are enclosed with the report.

The report and copies of all comments received were transmitted to the President. Enclosed is a copy of the letter of comments of June 29, 1955, from Assistant Director, Bureau of the Budget, Donald R. Belcher.

Sincerely yours,

DOUGLAS MCKAY,  
*Secretary of the Interior.*

Identical letter to Hon. Richard M. Nixon, President of the Senate, United States Senate, Washington 25, D. C.



EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., June 29, 1955.

The honorable the SECRETARY OF THE INTERIOR.

MY DEAR MR. SECRETARY: This will acknowledge receipt of Acting Secretary Davis' letter of June 14, 1955, requesting advice concerning the relationship to the program of the President of your proposed report on the Ventura River project, California.

The report recommends a multiple-purpose project involving the storage of water primarily for irrigation and municipal and industrial uses. The estimated total cost, based on January 1954 prices, is \$27,669,000, of which \$26,891,000 is Federal and \$778,000 is non-Federal. The report states that \$26,722,000 of the Federal cost, consisting of \$15,319,000 for irrigation and \$11,403,000 for municipal and industrial supply purposes, is reimbursable, and \$169,000 for recreational facilities is nonreimbursable. The non-Federal cost consists of a contribution of \$778,000 by the Ventura River Municipal Water District formed in October 1952.

The average annual total benefits are \$4,374,000, of which \$1,809,000 are primary and \$2,565,000 are secondary. The annual cost is estimated at \$1,028,000. The overall project benefit-cost ratios are 4.25 based on total benefits and 1.76 based on primary benefits. Corresponding benefit-cost ratios for irrigation are 3.90 and 1.56, respectively, and for municipal and industrial water are 4.44 and 1.71, respectively.

The report indicates that project revenues from the sale of irrigation and municipal and industrial water, together with receipts from an ad valorem tax levy on the district's assessed valuation, presently estimated to be \$185 million, will repay the municipal and industrial water allocation at 2.5 percent interest in 40 years and the irrigation allocation in 50 years, including a 10-year development period.

It is noted that definite contractual arrangements for repayment of reimbursable costs have not been completed but that the Ventura River Municipal Water District, representing the project water users, contemplates repayment of these costs by a combination of water tolls and tax assessments. The water users would repay \$3,227,000 for irrigation and \$11,243,500 for municipal and industrial water or a total of \$14,470,500. The balance, including interest on the municipal and industrial water investment, of \$19,403,113 would be repaid through a general tax levy which would involve a maximum annual rate of approximately \$0.30 per hundred dollars of assessed valuation.

The report recommends that a study be made of fish and wildlife resources after project authorization and that such modification in the authorized project facilities as may be found appropriate to preserve and propagate these resources be made by the Secretary of the Interior. The Department contemplates that any additional costs for this purpose would be nonreimbursable.

The Department of Agriculture questions whether farmers will make necessary investments to expand irrigation to the full project potential in view of annual water charges of \$25 per acre-foot or an average of more than \$50 per acre annually. The State of California is in agreement with the objectives of the project.

The Bureau of the Budget believes that—

(1) In view of the possibilities that irrigation may not expand to the extent anticipated in the report, and in order to protect the Federal investment, construction of the project, if authorized, should be contingent upon the Ventura River Municipal Water District assuming financial responsibility for the project and executing a repayment contract with the Federal Government for the repayment of all reimbursable costs within a period of 50 years.

(2) Where proposed recreational facilities are not of national significance, as in the case of the Ventura River project, they should not be included in the project report unless States and local governments agree to repay the costs. However, such minimum basic facilities and services, as may be needed for the general protection and operation of the project area and for the accommodation or protection of the visiting public, should be considered necessary adjuncts to construction and operation, and their costs should be allocated to the major purposes of the project.

(3) With respect to fish and wildlife, the costs for correcting any damages to fish and wildlife caused by the project should be treated as part of the construction costs and allocated to the various purposes in the same manner as

other damages, including relocations. To the extent that works to be constructed would be in the nature of an expansion of the fish and wildlife resources of the area they would fall into either of two classes. On those of a purely local nature the cost should be fully reimbursed by States, local governments, or local interests. If of national significance they should be authorized and financed as a part of the regular fish and wildlife program or authorizing language should be submitted to the Congress stating the maximum amount of such costs which would be borne by the Federal Government.

Your proposed report presents a very beneficial water resource project for the Ventura River Basin. The benefit-cost ratios based only on their direct benefits are favorable for both the irrigation and the municipal and industrial water features. Also, the analysis given in your report shows the project to be sound financially, with full repayment of the Federal reimbursable investments scheduled within a period of 50 years, including a 10-year development period for irrigation.

Accordingly, you are advised that (1) subject to your consideration of the above comments there would be no objection to the submission of your report to the Congress, and (2) we would recommend that any legislation authorizing the proposed project incorporate the conditions set forth above concerning the financial responsibility for repayment of all reimbursable costs within a period of 50 years, and the provision of recreational and fish and wildlife facilities. No commitment, however, can be made at this time as to when any estimate of appropriation would be submitted for construction of the project, if authorized by the Congress, since this would be governed by the President's budgetary objectives as determined by the then prevailing fiscal situation.

We would appreciate having a copy of this letter included with your report when it is submitted to the Congress.

Sincerely yours,

DONALD R. BELCHER,  
*Assistant Director.*

Senator KUCHEL. Thank you very much, gentlemen. The hearing is concluded and a further report of the Department with comments of the Bureau of the Budget thereon will be incorporated in the record when received.

(Whereupon, at 12:15 p. m., the hearing was adjourned till the call of the Chair.)

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**TRINITY RIVER DIVISION—CENTRAL  
VALLEY PROJECT, CALIFORNIA**

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AUG 5  
MAIN  
READING ROOM

**HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
IRRIGATION AND RECLAMATION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
H. R. 4633**

**AN ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR  
TO CONSTRUCT, OPERATE, AND MAINTAIN THE TRINITY  
RIVER DIVISION, CENTRAL VALLEY PROJECT, CALI-  
FORNIA, UNDER FEDERAL RECLAMATION LAWS**

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**JULY 14, 1955**

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**Printed for the use of the Committee on Interior and Insular Affairs**



**UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1955**

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# TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT, CALIFORNIA

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THURSDAY, JULY 14, 1955

UNITED STATES SENATE  
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The subcommittee met, pursuant to call, at 10 a. m., in the committee room, 224 Senate Office Building, Hon. Clinton P. Anderson (chairman of the subcommittee) presiding.

Present: Senators Clinton P. Anderson, New Mexico; Eugene D. Millikin, Colorado; and Arthur V. Watkins, Utah.

Also present: Senators James E. Murray, Montana, chairman, and Alan Bible, Nevada, and Thomas H. Kuchel, California, members, committee on Interior and Insular Affairs.

Also present: Stewart French, chief counsel and staff director; Goodrich W. Lineweaver, Elmer K. Nelson, and Platt Wilson, professional staff members; and N. D. McSherry, assistant chief clerk.

Senator ANDERSON. The meeting will be in order.

This is a hearing on the Trinity River division of the Central Valley project of California, covering S. 178 and H. R. 4663, Trinity division.

We do not intend at this session to take any testimony on the San Luis unit of the West San Joaquin division, as no report from the Department was available at the time this meeting was scheduled.

We are very happy to have Senator Kuchel here today, from California, and also Congressman Engle and the other members of the California delegation.

Mr. LINEWEAVER. Mr. Chairman, Senator Knowland phoned and said it was impossible for him to be here, and he sent a statement over that he would like to have inserted in the record. His administrative assistant, Mr. Gleason, is here.

Senator ANDERSON. Very well.

We will start by putting in a copy of the bill.

Are the sections of the Senate and House bills at all comparable?

Senator KUCHEL. The House bill, Mr. Chairman, does have a number of amendments in it to which I will allude, and I am sure my colleague, Congressman Engle, will also allude to them. I would ask the Chair to consider, in these hearings, the provisions of the House bill alone.

Senator ANDERSON. The House bill alone?

Senator KUCHEL. Yes, sir.

Senator ANDERSON. Thank you. We have to know which way we are going. So we will put in H. R. 4663 and the reports from the Department and the Bureau of the Budget at this point.



(The material referred to is as follows:)

[H. R. 4668, 84th Cong., 1st sess.]

**AN ACT** To authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, for the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to and an integral part of the Central Valley project, California, the Trinity River division consisting of a major storage reservoir on the Trinity River with a capacity of two million five hundred thousand acre-feet, a conveyance system consisting of tunnels, dams, and appurtenant works to transport Trinity River water to the Sacramento River and provide, by means of storage as necessary, such control and conservation of Clear Creek flows as the Secretary determines proper to carry out the purposes of this Act, hydroelectric powerplants with a total generating capacity of approximately two hundred thirty-three thousand kilowatts, and such electric transmission facilities as may be required to deliver the output of said powerplants to other facilities of the Central Valley project and to furnish energy in Trinity County: *Provided*, That the Secretary is authorized and directed to continue to a conclusion the engineering studies and negotiations with any non-Federal agency with respect to proposals to purchase falling water and, not later than eighteen months from the date of enactment of this Act, report the results of such negotiations, including the terms of a proposed agreement, if any, that may be reached, together with his recommendations thereon, which agreement, if any, shall not become effective until approved by Congress. The works authorized to be constructed shall also include a conduit or canal extending from the most practicable point on the Sacramento River near Redding in an easterly direction to intersect with Cow Creek, with such pumping plants, regulatory reservoirs, and other appurtenant works as may be necessary to bring about maximum beneficial use of project water supplies in the area.

SEC. 2. Subject to the provisions of this Act, the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available: *Provided*, That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty cubic feet per second for the months July through November and the flow of Clear Creek below the diversion point at not less than fifteen cubic feet per second unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; the Secretary shall also allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the costs of constructing the Trinity River development and of operating and maintaining the same, such costs to be nonreimbursable: *Provided further*, That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users.

SEC. 3. The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for

the other purposes specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable.

SEC. 4. Contracts for the sale and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws: *Provided*, That a first preference, to the extent of 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Trinity County, California, for use in that county, who are ready, able and willing, within twelve months after notice of availability by the Secretary, to enter into contracts for the energy: *Provided further*, That Trinity County preference customers may exercise their option on the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than eighteen months prior to said date.

SEC. 5. The Secretary is authorized to make payments, from construction appropriations, to Trinity County, California, of such additional costs of repairing, maintaining, and constructing county roads as are incurred by it during the period of actual construction of the Trinity River division and as are found by the Secretary to be properly attributable to and occasioned by said construction. The Secretary is further authorized and directed to pay to Trinity County annually an in-lieu tax payment out of the appropriations during construction and from the gross revenues of the project during operation an amount equal to the annual tax rate of the county applied to the value of the real property and improvements taken for project purposes in Trinity County, said value being determined as of the date such property and improvements are taken off the tax rolls. Payments to the public-school districts in the project area affected by construction activities shall be made pursuant to existing law.

SEC. 6. There are hereby authorized to be appropriated for construction of the Trinity River division \$225,000,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein, and, in addition thereto, such sums as may be required to carry out the provisions of section 5 of this Act and to operate and maintain the said development.

Passed the House of Representatives June 21, 1955.

Attest:

RALPH R. ROBERTS, *Clerk*.

(The following is same as letter to Chairman Engle, dated April 12, 1955, on H. R. 105, considered as Department's report on H. R. 4663.)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D. C., May 4, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR MURRAY: You have requested a report from this Department on S. 178, a bill to authorize the Secretary of the Interior to construct, operate, and maintain as additions to the Central Valley project, California, the Trinity River division and the San Luis unit of the West San Joaquin division.

As an interim response to this request, there are enclosed copies of our proposed report on the Trinity River division, Central Valley project, California, dated January 19, 1955, and of two attachments to that report entitled "Supplementary Report, Trinity River Division, Central Valley Project, California" and Addendum to Supplementary Report \* \* \* Trinity River Division, Central Valley

Project, California" dated March 1954 and January 1955, respectively. These documents are now before officials of the States of California and Oregon and of various Federal agencies for review. After their review has been completed and the comments received have been considered here, we will be in a position to advise you more fully than we now can with respect to the Trinity River division portion of S. 178. Our final report on the portion of the bill dealing with the San Luis unit of the West San Joaquin division of the project will necessarily be somewhat further delayed. A planning report on that development is now in preparation. Until it has been completed and reviewed by the State of California and by interested Federal agencies, we will not be in a position to do more than furnish a sketch of this proposed development to your committee.

The physical plan for development of the Trinity River division is set forth in the attached report thereon. It is unnecessary, therefore, to repeat it here. Suffice it to say that the works which would be authorized if S. 178 is enacted in its present form are, for the most part, those contemplated in our report. One exception is the Redding-Cow Creek works covered in S. 178, page 2, lines 16-22. Detailed investigations on the feasibility of these proposed works have not been made. We can only report at this time that such studies as have been made indicate that to provide water service to the area involved at a price the water users could afford to pay would require a considerable but as yet indeterminate amount of financial assistance. Another possible exception is the single-purpose hydroelectric works of the Trinity division. A firm conclusion has not yet been reached on the relative merits of Federal construction and of non-Federal construction of these works. If it should be concluded that it would be more desirable for these works to be undertaken by a non-Federal agency than by the Government, or to leave the question of the proper construction agency to be decided later, the text of S. 178 could be amended accordingly.

The need for the additional water supplies which construction of the Trinity division, either under its existing authorization (H. Doc. 53, 83d Cong.) or under the enlarged authorization contemplated in S. 178 and in our report of January 19 is emphasized by the congressional authorization of the Sacramento Valley canals as part of the Central Valley project (act of September 26, 1950, 64 Stat. 1036). It is anticipated that full development of the Sacramento canals unit, which is now under construction, will require diverted Trinity River division water. This was pointed out in the Department's report on the unit (H. Doc. No. 73, 83d Cong.) wherein it was stated that " \* \* \* the Trinity River division works are required as a physical means of providing the water supply needed over the long run for the Sacramento canals unit" (p. vii) and that " \* \* \* the Sacramento canals unit has engineering feasibility on the basis that the Trinity River division, upon which the canals unit is dependent for a firm water supply \* \* \* will be authorized and constructed" (p. xi). In addition the importance of imported water to the San Joaquin River Basin, where large areas are experiencing an alarming drop in the ground-water table as a result of pumping, cannot be overemphasized.

The following listing shows those facilities which in the presently proposed plan are different from the plan on which the existing authorization was based. All features not listed are essentially the same under the two plans.

Feature	New plan	Previous plan
Trinity Reservoir capacity.....acre-feet.....	2, 500, 000	1, 800, 000
Trinity powerplant, installed capacity.....kilowatts.....	90, 000	75, 000
Steam plant and subsidiary transmission facilities.....do.....	None	70, 000

The changes in the facilities from those previously recommended have resulted from additional information and from suggestions made by public agencies which commented on the earlier report. On an average annual basis, the somewhat expanded plan would divert 704,000 acre-feet of Trinity River water to the Sacramento River Basin. When coordinated with the Central Valley project system, it would provide 1,190,000 acre-feet for additional use in the Central Valley project. (Comparable figures for the previous plan are 660,000 acre-feet and 1,010,000 acre-feet, respectively.) Of these 1,190,000 acre-feet, 665,000 acre-feet would be used to meet the ultimate needs of 205,400 net acres in the authorized Sacramento canals unit of the Central Valley project and 525,000 acre-feet would be available for use on other lands in the Central Valley

such as those of the potential San Luis unit. The new total installed hydroelectric capacity contemplated by S. 178 and our report would be 233,000 kilowatts as compared to 218,000 kilowatts under the old plan. It is expected that this larger installed capacity of 233,000 kilowatts will increase the Central Valley project energy by 1,067 million kilowatt-hours annually.

The Trinity River division would be integrated physically and financially with the Central Valley project. All reimbursable costs would be repaid within 50 years after the last feature of the division is constructed. The estimated cost of the Trinity River division based on January 1954 prices is \$219,280,000, assuming that the Federal Government builds the power facilities. Under the alternative plan for non-Federal construction of these facilities, the Government's cost of constructing the Trinity River division is estimated at approximately \$154,400,000. Substantially these entire amounts would be reimbursable. Both of them include \$215,000 for minimum recreation facilities which we recommended be provided at Trinity and Lewiston Reservoirs but they do not include the amounts required for the acquisition of approximately 1,200 acres of land adjacent to the reservoir areas primarily for recreation purposes and principally in connection with the provision of the minimum facilities. They also include \$47,000 for fish-protection facilities. Both of these items should be treated as nonreimbursable. Further consideration will be given to the fish and wildlife allocation at the time of preparation of the definite plan report in light of the applicable policies and provisions of the act of August 14, 1946 (60 Stat. 1080).

Public hearings have disclosed the large majority of California interests recognize the value of adding the Trinity River division to the Central Valley project and are anxious that the division be constructed. The few opposed interests who reside downstream in the Klamath River Basin are concerned over their future water needs. Our studies, however, indicate that the proposed diversion would utilize only a small percentage of the water now wasting into the Pacific Ocean from the Klamath River watershed. These studies also disclose that the relatively small amount of water that would be diverted would not affect future development of either the Trinity River Basin or the Klamath River Basin downstream since water in those areas would be more than adequate to satisfy future needs. The Trinity division's ratio of primary benefits to total cost is 1.86 to 1. Total benefits resulting from the development would outweigh the cost in a ratio of 3.31 to 1.

The fishery resources of Trinity River are an asset to the Trinity River Basin as well as the whole northern coastal area. Accordingly, the Trinity River development has been and should be planned with a view to maintaining and improving fishery conditions. The schedule of water releases for Trinity River flow below Lewiston diversion dam and for Clear Creek flow below Tower House diversion dam used in House Document No. 53, 83d Congress, was recommended by the Fish and Wildlife Service and accepted by this Department. House Document No. 147, 83d Congress, indicates that the California Department of Fish and Game concurs, in substance, in that recommendation.

The flows set out in House Document No. 53, however, are not the same as those prescribed in section 2 of S. 178. The flow schedule proposed by the Fish and Wildlife Service is predicated on the seasonal needs of the fishery resources. Since flows should vary in accordance with estimated requirements, the Service-proposed flow schedule is preferable to the flat minimum flow requirement for the month of July through November below Lewiston diversion dam prescribed in S. 178, and it is desirable that the minimum flows adopted by the department for other periods of the year be incorporated in the legislation. Room should also be left in any legislation that is enacted for modification in the light of experience. Since the Secretary of the Interior will necessarily be charged with overall responsibility for the project, including particularly its financial aspects, it is our belief that it must also be his responsibility to determine, in accordance with statutory standards laid down by Congress and after consultation with appropriate State officials, what modification if any should be made. We suggest, therefore, that the language of the proviso beginning on page 3, line 23, of the bill be modified to read as follows:

*“Provided, That the Secretary is authorized and directed to adopt, with respect to the Trinity River division, measures which, in his judgment, are appropriate to insure the preservation and propagation of fish and wildlife including, but not limited to, the maintenance of the flow of the Trinity River below Lewiston diversion dam and the flow of Clear Creek below Tower House diversion dam in accordance with schedules set forth on pages 77 and 79 of House Document 53, 83d Congress, unless, after consultation with the Cali-*

fornia Fish and Game Commission, he determines that different flows would be adequate for maintenance of fish life and the propagation thereof. The Secretary shall allocate to the preservation and propagation of fish and wildlife an appropriate share of the cost of constructing the Trinity River development, as provided in the act of August 14, 1946 (60 Stat. 1080), and of operating and maintaining the same, such costs to be nonreimbursable and nonreturnable."

In view of the inclusion of basic recreational facilities in the Trinity River plan, it is suggested that a new section be added to S. 178 after its present section 3 to read as follows:

"SEC. —. The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division and the San Luis unit projects, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for the other purposes specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable."

Section 3 of the bill deals with a preferred right on the part of customers in Trinity County to purchase a portion of the increased output of the Central Valley project made possible by the Trinity River development powerplants. If the San Luis unit is authorized, the energy available for commercial sale from the Central Valley project power system, even including a Government-built Trinity power development, will be decreased below its output without Trinity and San Luis. This decrease will result from the use of energy for San Luis pumping loads. In this circumstance, the preference expressed in section 3 of the bill will be meaningless. If, on the other hand, the San Luis unit is not constructed, there will be a significant increase in the amount of power available for commercial sale and the preference will be important. From an administrative viewpoint, the provision giving Trinity County preference customers a right to exercise an option to purchase project power in each successive fifth year upon 6 months' prior notice would impose restrictions on alternative sales to other markets at firm rates. The 6 months' notice provision should, we believe, be changed to not less than 30 months in order that interim purchasers of power could be provided adequate notice in which to arrange for power from alternative sources.

Section 4 of the bill would provide that appropriations for construction of the Trinity River development and gross revenues from the development shall be available and used for in-lieu-of-tax payments to Trinity County and for payments to the county for certain additional costs of government, including police, school, hospital, and welfare facilities and for the repair, maintenance, and replacement of roads and establishment of new roads. We question the wisdom of some of the items and the desirability of imposing on the Trinity development terms more onerous than or different from those generally applying to other reclamation projects.

More particularly, it appears to us that the matter of payments to Trinity County in lieu of taxes should await consideration by the Congress of general legislation establishing Federal policy with respect to payments to States and local governments on account of real property and improvements thereon. Such legislation is proposed in various bills now pending before the Congress. It will be possible at that time to weigh the general question of the benefits of Federal construction activities to local communities against their added costs. Similarly, we question the provisions of section 4 insofar as they would charge to the Trinity River development, and thus to California water and power users, the cost of new roads that are not required for project purposes or to replace

existing roads damaged or destroyed by the project. Such a requirement would extend the liability of the United States beyond the present requirements of law.

While, as has already been indicated, we are currently preparing a feasibility report on the San Luis unit and cannot recommend its authorization at this time, it may be helpful to your committee to have a sketch of our present information with respect to it.

Our studies to date indicate that, as an addition to the Central Valley project, the San Luis unit is feasible both from an engineering and financial viewpoint. Its water supply would be obtained in part from surplus winter flows of the Sacramento and San Joaquin Rivers that now waste into the ocean and in part from water made available as the result of the Trinity River diversion.

New Federal facilities as presently contemplated would consist of the San Luis Dam, Reservoir, and pumping plant, San Luis Canal, Pleasant Valley pumping plant, Pleasant Valley Canal, relief pumps, and necessary electric transmission system.

San Luis Reservoir, the principal storage facility for the San Luis unit, would be filled primarily by pumping water from the Delta-Mendota Canal during winter months. Water stored in San Luis Reservoir and pumped directly into San Luis Canal would be used to supply 440,000 acres of productive land on the west side of the San Joaquin Valley. Much of this area is now in urgent need of additional water supply because of the rapid lowering of existing ground water supplies. Urgently needed municipal water would also be made available by this development.

It is currently estimated that the required Federal expenditure for the San Luis unit would amount to approximately \$229 million, all of which would be reimbursable. Through financial integration with the Central Valley project, the enlarged project would show payout of all reimbursable features within 50 years after completion of construction of the San Luis features.

The views of the Bureau of the Budget with respect to present enactment of a Trinity River-San Luis bill are expressed in the attached letter dated April 28 on H. R. 105, a companion measure to S. 178.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington 25, D. C., April 28, 1955.

The honorable the SECRETARY OF THE INTERIOR.  
(Attention: Mr. Elmer F. Bennett, 6041 Interior Building.)

MY DEAR MR SECRETARY: This will acknowledge Assistant Secretary Aandahl's letter of April 12, 1955, transmitting copies of a report which has been submitted to the House Interior and Insular Affairs Committee on H. R. 105, a bill to authorize the Secretary of the Interior to construct, operate, and maintain as additions to the Central Valley project, California, the Trinity River division, and the San Luis unit of the West San Joaquin division.

In the absence of final reports on the proposed Trinity River division and San Luis unit and in the absence of a report on the partnership possibilities for the Trinity River division, which it is understood the Department has been exploring, the Bureau of the Budget is not in a position to make a satisfactory evaluation of the proposed Federal developments. While there is no objection to the action of the Department in submitting to the chairman of the House Interior and Insular Affairs Committee a report which it considered appropriate, it is requested that you now advise the chairman that the Bureau of the Budget recommends, in view of the above, that action on this bill by the Congress be deferred until the final project reports have been submitted under established procedures and the partnership possibilities of the Trinity River division have been fully explored. Furthermore, there are certain provisions in the bill and certain recommendations in your report which involve policy issues on which the administration's position has not yet been determined. Deferral of action on the bill will permit further consideration of these matters.

Sincerely yours,

ROGER W. JONES,  
*Assistant Director for Legislative Reference.*

Senator ANDERSON. Now, if I may have Senator Knowland's statement, it will be submitted for the record at this point. We regret he was not able to be here, but he probably will be here shortly. As the session draws to a close, it is pretty rough on the majority and minority leaders, and they are kept very busy indeed.

(The statement of Senator Knowland is as follows:)

STATEMENT OF SENATOR WILLIAM F. KNOWLAND

Mr. Chairman, I appreciate the courtesy of the Senate Committee on Interior and Insular Affairs in providing time in their busy schedule for consideration of the Trinity division legislation. As the members of the committee know, Senator Kuchel and I have pending before the committee S. 178. However, due to the fact that the House of Representatives has already passed legislation sponsored by Congressman Engle of California to authorize the Trinity division, both Senator Kuchel and I believe that that legislation should be given priority approval by the Senate. The expected adjournment of Congress by the end of July precludes any possibility for completed reports on S. 178 being in the hands of the committee in sufficient time for its consideration.

In brief, the legislation will authorize the Secretary of the Interior to construct, operate, and maintain as an addition to the great Central Valley project of California, the Trinity River division. The primary purpose of constructing this addition to the Central Valley project is to meet the urgent requirements for irrigation water in the Sacramento and San Joaquin River Basins. Its secondary purpose is to provide electric energy to meet the expanding power needs in northern California.

The plan of development includes Trinity Dam, reservoir, and powerplant; Lewiston diversion dam, reservoir, and powerplant, and Matheson Tunnel and powerplant. The basic plan provides for the diversion of water from the Trinity River Basin into the Sacramento River Basin of the Central Valley, and the Trinity division would become an integral part of the Central Valley project coordinated with the other features of the Central Valley project. The plan would divert 704,000 acre-feet of Trinity Basin water annually to the Sacramento River Basin and the proposed hydroelectric power capacity would be 233,000 kilowatts.

The State of California has indicated its approval to the plan of diverting water from the Trinity River Basin to the Sacramento Basin and the Bureau of Reclamation and the State have concluded that there is a surplus of water available to the present and future water requirements of the Trinity and Klamath River Basins.

The fishery resources of the river are important to the entire area and the studies show that the water can be diverted from the Trinity River without detrimental effect to this vital industry.

Mr. Chairman, I do not believe it is necessary for me to emphasize to the members of this committee the great water problems of the State of California. Vast areas of land lack an adequate water supply, while at the same time the rivers of the State empty over 70 million acre-feet of water into the Pacific Ocean. The great Central Valley project seeks to do what nature has not done and to redistribute the water of the State. The Trinity division is an important segment of this master plan, and when completed it will provide ample water for areas in need of water by transporting over mountains the surplus waters of a river that would otherwise empty into the Pacific Ocean.

We have other vital water shortage problems in the San Joaquin Valley as well as in southern California and other areas of our State which we hope and expect the Congress will direct its attention toward solving at the next session.

I urge your approval of the legislation under consideration. The Trinity division of the Central Valley project will alleviate some major problems in a section of the State of California which is one of the most important agricultural areas of the United States. Immediate authorization and construction of the Trinity project are required to prevent any further economic losses, as are indicated in seasonal water supply surveys. The Senate of the State of California has authorized a resolution memorializing the Congress to authorize the construction of the project. I hope that the members of this committee will speedily act on this legislation which is of significance to the State and the Nation.

Senator ANDERSON. Senator Kuchel, we would be very glad to hear your statement on this bill.

**STATEMENT OF HON. THOMAS H. KUCHEL, A UNITED STATES  
SENATOR FROM THE STATE OF CALIFORNIA**

Senator KUCHEL. Thank you very much, Mr. Chairman.

I am very grateful to this subcommittee for this opportunity to urge favorable action on another piece of legislation designed to assist my State of California in solving its complex and critical water problems.

As this subcommittee has been advised on many occasions, California is constantly striving to correct the conditions of maldistribution of water and through conservation and redistribution meet the needs of its growing population for water for all purposes: Agricultural, industrial, power generation, and municipal.

The legislation being considered today would authorize construction of another segment of the vast Central Valley project initiated in California about 20 years ago. Specifically, it would make possible the Trinity River division, which involves works to store surplus waters of the Trinity River in the northwestern section of the State, divert them through mountains to the Sacramento River Valley, generate a large amount of additional electric power, and benefit approximately 250,000 acres of agricultural land.

I have been an earnest advocate of the Trinity River project for a long time. In the 83d Congress I introduced a bill authorizing the Trinity project and the San Luis project. As the committee knows, I introduced this year, in company with my colleague, Senator Knowland, S. 178, one of the bills now before you, for the same purpose. Congressmen Engle, Hagen, Moss, and Sisk, of California, introduced similar legislation in the House.

The subcommittee also has before it a bill already passed by the House by a substantial margin to authorize the Trinity River project construction. This is H. R. 4663, which was approved by the House nearly a month ago.

Under normal circumstances, Mr. Chairman, I would appear here to seek a favorable report on the bill of which I am coauthor, S. 178. However, although there are a number of significant differences between the two measures, I now am recommending that your subcommittee approve and recommend the passage of the House bill, which was sponsored by the distinguished chairman of the House Interior and Insular Affairs Committee, Representative Clair Engle of California.

I am taking this course because of a number of influencing circumstances. The need for water in California is so urgent and the time element involved in enacting desired legislation is so great that I believe H. R. 4663 should be approved so that further delay will be avoided in beginning construction of this commendable project.

The Trinity River project, which would be fully integrated with the Central Valley project, and was envisioned years ago as a fundamental feature of that development, has been thoroughly studied and investigated over a period of more than 30 years. It has been approved and endorsed by 2 Federal administrations and 2 State administrations since the detailed plans for construction were com-



pleted in 1952. I wish to point out that the first finding of feasibility was made by Secretary of the Interior Chapman in 1953 and affirmed by former President Truman. The present Secretary of the Interior, Secretary of the Interior, Secretary McKay, early this year recommended immediate construction.

The project also was officially approved by the former Governor of California who is now the Chief Justice of the United States, Earl Warren, and has been endorsed without qualification by his successor, Goodwin J. Knight. Furthermore, only this year both houses of the California Legislature have adopted resolutions formally urging Congress to authorize this construction.

I wish to give a brief outline of the purpose and main features of this development and then mention some of the differences between the Engle bill and the bill of which I am coauthor, about which I spoke. Detailed technical information will be given, of course, by witnesses from the Department of the Interior. And there are representatives of the Governor of California present, Hon. Frank Durkee, Director of Public Works, representing the Governor of California; Hon. George C. Fleharty, the mayor of Redding; Hon. Edwin J. Regan, State senator; and a number of other representatives of California.

The Trinity River project would involve one large storage dam, with capacity of 2,500,000 acre-feet, on the Trinity River, with a powerplant with capacity of 90,000 kilowatts as an integral feature. There would be 2 small diversion dams, and 2 tunnels transporting water through the mountains, and 3 other powerplants with combined capacity of 143,000 kilowatts. The actual water diversion would average in the vicinity of 700,000 acre-feet per year and as a result of the planned integration with the rest of the Central Valley project will make available a total of about 1,190,000 acre-feet annually. The hydroelectric features will add 1,067,000,000 kilowatt-hours annually to the Central Valley project output.

The project has been described as gold plated from the viewpoint of financial feasibility. The primary benefit-cost ratio is 1.86 to 1 and the indirect ratio 3.31 to 1. It would cost approximately \$220 million, according to the latest available Bureau of Reclamation estimates, and all but \$262,000 of this is reimbursable. The power features, which represent approximately three-fourths of the total cost, would be repaid in 26 years, and the cost for electricity is estimated at only 4.6 mills.

The primary object of these works would be to maintain agricultural production. Virtually all new land that might be brought into cultivation would be used for production of crops which are not surplus.

The urgency of this legislation can be illustrated by a statement more than 2½ years ago by former Secretary of the Interior Oscar Chapman. What he said at that time in forwarding the first feasibility report is even more true today. Secretary Chapman stated:

The Central Valley project as conceived by both the State of California and the Federal Government is not a static thing. It must continue to grow with the growth of the great Central Valley. \* \* \* The Trinity River division and the Sacramento canals unit are urgently needed to provide electric energy and water for irrigation. \* \* \* These two developments taken together are a logical extension of the existing Central Valley project.

I wish to point out that the Sacramento canals were authorized in 1930 and now are actually under construction. The Trinity project would provide much of the water they are intended to convey.

The availability of water in the Trinity River is unquestioned. At the present time 13 million acre-feet annually waste into the Pacific Ocean from the Klamath and the Trinity. Only about 17 percent of the flow of the Trinity will be diverted. Furthermore, I want to emphasize that the transmountain diversion is an interbasin operation wholly within the confines of the same State.

The House bill, H. R. 4663, is limited to authorizing the proposed Trinity project. The bill of which I am coauthor, S. 178, would authorize in addition an integrated San Luis Reservoir which is irrelevant to these present hearings. The Department of Interior has not yet filed its proposed final report on feasibility on this project and thus, of course, our State government has been unable, as Federal law requires, to pass judgment on it.

There is a unique feature in the House bill about which I wish to comment. Following President Eisenhower's suggestion that multipurpose projects might be undertaken on a partnership basis, proposals were made to allow a privately owned utility to operate the hydroelectric works included in the Trinity project. Personally I believe in this instance, since all other generating plants in the Central Valley project are federally operated, the Trinity plants should be also. But to permit careful study of the partnership possibility, the Engle bill directs the Secretary of the Interior to continue its studies and negotiations and report with recommendations to Congress in not less than 18 months. I approve of this provision, because it will give Congress a full opportunity to decide whether the Trinity powerplants should be federally or privately operated.

Two other provisions of the House bill which are different from S. 178 should be mentioned. I believe both should be retained but I think one of them might be revised and broadened.

At the instance of Congressman Scudder, whose district embraces the downstream area concerned, the House adopted an amendment which is the last proviso of section 3, the clause which guarantees not less than 50,000 acre-feet annually to Humboldt County and users below the Trinity Dam. This guaranty added to the bill by Congressman Scudder will remove any basis for apprehension that the Trinity project might adversely affect a section of our State where lumbering is an important part of the economy. I concur in this amendment.

Both the House bill and the Senate bill have a rather unique feature which recognizes an almost unparalleled situation encountered in the Trinity project. They make provision for financial support by the Federal Government to Trinity County, where the main reservoir would be located. This is thoroughly justified because this county, sparsely settled, with a 1950 population of only 5,087 and with only 5 townships, already is largely owned by the Federal Government. With an estimated 72 percent of its area presently controlled by the United States, the taking of land for the reservoir will inevitably reduce the tax base from which this county derives its revenues. On the other hand, the construction of this project will bring in a large number of additional residents, which undoubtedly will impose finan-

cial burdens in the form of highway maintenance and additional police, welfare, and health problems.

The House bill authorizes payment of in-lieu taxes—a form of financial aid I firmly believe in and have proposed should be generally provided through a bill of which I am coauthor—but I do not think in these circumstances that provision goes far enough. I doubt if the equivalent in-lieu payments would be sufficient to reimburse the county for additional expenses it will be forced to assume, at least during the construction period. On the other hand, there is an urgent need for this authorizing legislation to be speedily enacted. I do not feel this bill should be delayed by haggling over details of financial aid, particularly since the Congress has already appropriated \$1 million toward the Trinity construction subject to enactment of an authorization. I might add, Mr. Chairman, that that has been done this session, in the 84th Congress.

This legislation will be another constructive move toward solving the most pressing problem which perplexes the entire State of California and will carry forward Federal and State plans for the advancement of all sections of our State.

Senator WATKINS. How does this affect the southern part of the State?

Senator KUCHEL. The Trinity River project, I will say to you, Senator Watkins, is primarily designed to benefit the northern part of the State government. The State government, I might say, over the years has developed its own State water plan, and that water plan is something which we in California will undertake to build ourselves, we hope as speedily as possible, and we will pay for it ourselves. The Trinity project, however, as part and parcel of the Central Valley project, would be designed to be of assistance to the valley areas in the State.

Senator WATKINS. That is all.

Senator ANDERSON. Senator Kuchel, do you not think it would be helpful if someone tried to show us on the map where this is, what is involved in it?

Mr. LINEWEAVER. Mr. Murray of the Bureau of Reclamation will do that, Mr. Chairman.

#### **STATEMENT OF A. N. MURRAY, PLANNING ENGINEER, BUREAU OF RECLAMATION, SACRAMENTO, CALIF.**

Mr. MURRAY. I am A. N. Murray, regional planning engineer, of the Bureau of Reclamation in Sacramento.

Senator ANDERSON. Congressman Engle, I know you are supposed to speak next, but this makes it a whole lot easier, and if you will indulge me I would like to know where this project is.

Representative ENGLE. Surely.

Mr. MURRAY. The main features of the existing Central Valley project are shown on this map. For orientation, the State capital is here about the center of the map at Sacramento. The town of Redding, with a population of around 10,000, is about 160 miles north of Sacramento.

Fresno in the San Joaquin Valley is about the same distance south of Sacramento.

Shasta Dam forms the largest reservoir in California, and it is located just north of Redding. Nine miles below Shasta is Keswick Dam, which acts as an afterbay or reregulatory dam for the releases of water made at Shasta.

Water released from storage in Shasta Reservoir after passing through Keswick, is combined with other waters coming in from tributaries and used down the length of the Sacramento Valley for irrigation of this very large area shown here in green, and will be used in the future for irrigation of additional areas that are shown on the map in yellow. Sacramento River water, commingled with water from other tributaries, enters the delta of the Sacramento and San Joaquin River just south of the town of Sacramento and from there flows out into the San Francisco Bay.

In the delta area, the water is pumped at the Tracy pumping plant, and from there flows a distance of 120 miles to a point on the San Joaquin River known as Mendota pool. This canal was originally designed, and is largely used, to put replacement water into the San Joaquin River at Mendota. It is necessary to do that in connection with the operation of the San Joaquin Valley portion of the existing Central Valley project.

For many years, there had been established rights to use of water from the San Joaquin River for irrigation of large areas along the river below Mendota, and before that water could be stored and diverted at Friant to bring water into the southern San Joaquin Valley, it was necessary to replace it. That is done by means of water brought through the Delta-Mendota Canal.

Senator ANDERSON. What has the Trinity River division got to do with that dam?

Mr. MURRAY. I will try to come to that in just a moment.

Senator MILLIKIN. Did you say "the Fryingpan"?

Mr. MURRAY. The Friant Dam.

Senator ANDERSON. We have a man with a one-track mind over here.

Mr. MURRAY. The main features of the existing project are already completed. The water diverted at Friant Dam is sent into the southern San Joaquin Valley through Friant-Kern Canal and augments the naturally available supplies in that area.

One can see, then, that basically the original Central Valley project was designed to augment irrigation service in the Sacramento Valley and, even more, to bring water into the southern portion of the Central Valley where water is quite deficient.

As a part of the growth of the Central Valley project, to which Senator Kuchel referred, the American River division, consisting of Folsom Dam and Nimbus Dam and the Sly Park unit, are very near completion at the present time. Folsom Reservoir, with a capacity of a million acre-feet, augments the amount of water that is available for use in its immediate local service area and further augments the supply available for the San Joaquin Valley.

The Trinity River division, now being considered by the Congress, is located about 25 or 30 miles west of the Sacramento River in the vicinity of Shasta Dam. Its purpose is to bring an additional water supply into the Sacramento River, thus making it possible to irri-

gate still more land in the Sacramento Valley, and to augment the supply which can be transferred south into the San Joaquin Valley.

Senator ANDERSON. Is that water that would not normally flow into the Sacramento River?

Mr. MURRAY. Yes, sir; that is correct.

Senator ANDERSON. You mean it is a transmountain diversion?

Mr. MURRAY. It is a transmountain diversion.

This map, entitled, "Central Valley Project, Trinity River Division," portrays the entire Klamath River Basin, and adjacent to it the northern part of the Sacramento River Basin. Shasta Dam is located just north of Redding, and Keswick Dam 9 miles below it.

The Klamath River, as you see on the map, originating in Oregon, flows into California and to the ocean near the town of Requa. The Klamath River is joined about 40 miles up from its confluence with the ocean by the Trinity River, which originates in a watershed adjacent to the Sacramento River and flows south roughly parallel to the Sacramento, and finally turns west, north, and then enters the Klamath River.

The works proposed in the Trinity River division legislation consists of a large reservoir shown in red on the map, a smaller reservoir formed by a smaller dam, which would turn water through two tunnels, the water finally entering Keswick Reservoir just below Shasta.

Four powerplants, 1 at Trinity Dam, 1 small one at the Lewiston Dam, and 2 fairly large ones at the tunnels, heading over from the Trinity, would develop the power made possible by bringing the water across and dropping it through around 1,500 feet of head. The water—entering Keswick Reservoir as it does—can there be reregulated in the same way that the releases are at Shasta at the present time. By operating the 2 sections of the Central Valley project, Shasta and Keswick as 1 section and the Trinity River features as the other section, in coordination with one another, we get, of course, a much larger total output from the enlarged project than would be the case if they were operated separately.

Senator ANDERSON. In other words, the dams along the Trinity will actually be of benefit to the Keswick Reservoir in its present output.

Mr. MURRAY. We anticipate a modest increase in electric energy generated at Keswick powerplant by means of the water brought over from Trinity.

Senator ANDERSON. I think that is enough for the present, unless some member wants additional information. Thank you.

Mr. Engle?

#### STATEMENT OF HON. CLAIR ENGLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative ENGLE. Mr. Chairman, I want to express my appreciation to you and to the other members of this committee not only for your expedition in handling this legislation, but the general good cooperation and excellent working relationship between our two committees in this session of Congress, which I believe has been unprecedented in the amity and happy accord that has existed on both ends of the Capitol.

Senator ANDERSON. I just want to say there that we have appreciated it here on this side, Mr. Engle, just as you have. I think we have nearly cleaned our calendar of House bills, and it is a pleasant experience.

Representative ENGLE. I had the pleasure of putting a Senate bill through yesterday, Mr. Chairman, and we intend to try to handle your bills just as fast as we can.

I would like to ask unanimous consent that Congressman Moss, who is otherwise engaged, be given the privilege of filing a statement at an appropriate place in the record; and I would like to request, Mr. Chairman, that I be permitted to revise and extend my own remarks, inasmuch as I intend to make only a brief statement, in deference to the people who have come here from California to testify on this legislation.

Senator ANDERSON. The statement of Congressman Moss will follow yours in the record, and you may be allowed to take your notes that you have this morning and amplify them as much as you wish, so that we may hear the testimony from these people from California.

Representative ENGLE. Senator Kuchel has made an excellent statement with reference to this project. There are several items in the history of it that I think should be mentioned, and I will mention those briefly.

The first is that this project was reported without a dissenting vote by the House committee. The project was initially authorized on January 2d, 1953, by a finding of feasibility under section 9 (a) of the 1939 Reclamation Act by Secretary of Interior Chapman. In other words, this project has the unique distinction of being presently an authorized project, and it is so designated and considered on the official records of the Interior Department. The presence of this bill here I expect to explain in just a minute.

Subsequent to the finding of feasibility, under section 9 (a) of the 1939 act, by Secretary Chapman, and on February 17, 1955, the present Secretary of the Interior, Secretary McKay, approved the Trinity River project in a supplemental report and recommended its immediate construction.

The supplemental report, incidentally, changed some features of the project, mainly in the size of the reservoir and the power production, and we think significantly improved the project. But it is correct to say that this project, therefore, has had the approval both of the present Secretary of the Interior and his predecessor, Secretary Chapman.

The Commissioner of Reclamation, Mr. Dexheimer, is here, and will testify shortly. He appeared before our committee and testified in favor of the project and recommended its immediate construction.

The State engineer of California, on April 9, 1953, approved the original report by Secretary Chapman, and on May 28, 1955, filed a similar recommendation with reference to the supplemental report prepared and filed by Secretary McKay, the present Secretary of the Interior.

Governor Goodwin Knight has vigorously endorsed this project. He sent a telegraphic message to our committee when the project was before us, and I understand he has a message for this committee; and there is present here also Mr. Durkee, the director of public works for the State of California, to appear and present the governor's official views.

Both houses of our State legislature have passed resolutions in the past session recommending the immediate construction of this project.

Senator ANDERSON. Congressman Engle, would you permit me to interrupt you to say that I do have a message from Governor Knight? I failed to bring it with me at this time, but I will insert it in the record at this point. It is a telegram strongly urging construction of the project.

(The telegram referred to is as follows:)

SACRAMENTO, CALIF., July 11, 1955.

HON. CLINTON P. ANDERSON,

*Chairman, United States Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.:*

I wish to reiterate my support of the authorization of the Trinity River division of the Central Valley project, California, pursuant to legislation now pending before your committee and to urge its passage at this session of the Congress. I do not consider that this legislation will in any way be inconsistent with later authorization of the San Luis project, including conditions mutually satisfactory to the United States and the State of California for the integration of San Luis project with the California water plan and the Feather River project, which action I have heretofore and do now support.

GOODWIN J. KNIGHT,  
*Governor of California.*

Representative ENGLE. Thank you very much, Mr. Chairman.

The House Committee on Appropriations, as has been stated by Senator Kuchel, has approved a million dollars in the current public-works appropriation bill for the commencement of construction of this project upon passage of this authorizing legislation.

In the last session of Congress, the Interior Department sent up \$99,000 in a construction item on the Central Valley project. That was stricken out by the Appropriations Committee, because the Appropriations Committee believed that a project of this size should have congressional authorization, and notwithstanding the finding of feasibility made by Secretary Chapman. I thereupon introduced this legislation, and that is why it is before you today.

But this legislation is unique, then, in these particulars: First, technically, this is an authorized project, and on two separate occasions, once by the Interior Department and once by the Appropriations Committee itself, it has been recommended for construction funds. The Bureau of the Budget this year sent up \$400,000 for additional advanced planning on this project, and that amount is included in the million dollars allowed by the Appropriations Committee.

Now, the need for this project is predicated upon a report, a unanimous report, made by our committee after an investigation in California in October of 1951. We took a subcommittee out to California to determine whether or not the water supplies of the Central Valley project were overcommitted for the present supplies.

The committee made a unanimous recommendation in its report, which is on file and available to you, and I will just quote one section of it.

This is what the committee said. And, as I say, this was a unanimous finding by the subcommittee which went out there at that time. They said, and I quote:

For all practical purposes the developed water supplies of the Sacramento River are overcommitted and oversubscribed. Increased uses of water from the Sacramento River from the beginning of project construction in 1935 to the present are about 3 times the expected increase of 300,000 acre-feet which was

estimated by the State of California and the Bureau of Reclamation officials in the original plans for the operation of the Central Valley project.

And the committee proceeded to recommend that, in order to fill the gap between the existing supplies of water and the present uses, steps be taken immediately to proceed to secure additional waters to firm up the water supplies for the Central Valley project.

Now, with reference to the cost-to-benefit ratio, Senator Kuchel has already mentioned the cost-to-benefit ratio, but I want to add this one point, and that is that the Trinity River project can be authorized, constructed, and paid for, and still leave in the Central Valley project \$170 million in profit; that is, profit to the Federal Government. And it must be remembered that this is the last major addition, so far as I know, to the Central Valley project in California.

In other words, if you take the subsidy to irrigation, which is often criticized on these projects, and would add it outright to the cost of this project, there would still be over \$100 million, \$110 million, in profit, in the Central Valley project for the Federal Government.

That is the reason, I think, Mr. Chairman, why this project has had the unanimity of support that it has had throughout the years. And I hope that this committee will pass the bill and that it may be passed in this session of Congress.

That will close my remarks for this time, except for questions.

Senator ANDERSON. Let me ask you this: As chairman of the committee in the House, you have occasion to review a great many projects as they are presented to you. Does this have a comparable benefit ratio, or is it somewhat better than the average?

Representative ENGLE. This is the best project that our committee has ever handled in my experience.

Senator ANDERSON. I realized that a Californian would be modest, but I thought if I tried hard I could get that out of you.

Representative ENGLE. And this is generally recognized even by the traditional opponents of reclamation, that if they are going to vote for any project in the United States, they would vote for this one. And that statement was made on the floor of the House during the debate.

Senator ANDERSON. It struck me that the benefit ratio was very high, and I thought that ought to be very clearly brought out.

(The statement of Representative Moss follows:)

#### STATEMENT OF CONGRESSMAN JOHN E. MOSS RE H. R. 4663

Mr. Chairman, the Trinity River project is the next logical extension of the important Central Valley project which has added so much to the productive capacity of the West. Although the dam and power houses planned to make use of Trinity River water in northern California are not in my congressional district, the water and power developed as part of the project are vital to my district.

The direct importance is indicated by the fact that Trinity River water most likely will be needed for full development of the Sacramento canals unit of the CVP, a project authorized in 1950 and now under construction. These canals will help turn dry-farmed land into productive specialty crop farms; they will help bring food at a lower cost to dining room tables throughout the Nation.

The Trinity project is needed urgently, not only for the future development of the West but to help replace the fast receding underground water tables in northern California. It takes several years to build the water projects. Further delay will have an adverse effect on the economy of the State and the Nation.



Your subcommittee has before it all the factual information on the project, showing, I am confident, both its value and importance. California officials are solidly behind the effort to add the Trinity to the CVP and many local agencies, such as the Sacramento Municipal Utility District, are taking steps to help meet the State's phenomenal growth and corresponding water and power needs.

As you know, the cost of the development in dollars will be repaid to the Federal taxpayers. In addition, an important asset will be gained to help take care of the future growth problems of the West.

I do not want to burden you with unnecessary technical details, but I wish to comment on one point brought up in connection with the Trinity project. The question has been raised whether Trinity power will be sold at less than the cost of production and, thus, be subsidized by the power sold from other units the Central Valley project.

- Power produced at Shasta and Keswick units of the CVP is based on construction costs of some 10 years ago when prices were some 50 percent less than present costs. Naturally, power production costs at the Shasta and Keswick units are less than comparable costs of the Trinity unit.

For integrated Federal multipurpose projects, however, it is the practice to sell project power at the average of the production cost for all units. Trinity power, theoretically, then might be sold at less than production cost while power from the other units integrated into the entire CVP system would be sold at slightly higher than actual production cost. This is a long accepted practice in Federal multipurpose projects just as it is an accepted and approved practice for private utilities.

The importance of the Trinity project is overshadowed only by the need for its completion as soon as possible. I urge the subcommittee to approve the project as passed by the House.

Senator ANDERSON. Congressman Scudder has left a letter, which we will put in the record at this point.

(The letter referred to is as follows:)

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., July 14, 1955.

CHAIRMAN, IRRIGATION AND RECLAMATION SUBCOMMITTEE,  
*Senate Committee on Interior and Insular Affairs, Senate Office Building.*

DEAR MR. CHAIRMAN: You have for consideration H. R. 4663, authored by my colleague from California, Congressman Clair Engle, which would authorize the Secretary of the Interior to construct, operate, and maintain, the Trinity River division—Central Valley project of California, under Federal reclamation law.

The Trinity River originates in Trinity and Humboldt Counties in northern California. The river then flows northerly and westerly through Humboldt County and empties into the Klamath River, which flows northerly into the Pacific Ocean.

When this bill was first proposed, the residents of Humboldt and Del Norte Counties objected to the diversion of this river, as there are water needs in those two counties for a certain amount of the water that flows in the river. There was included in the bill a proviso that would maintain a flow of water in the Trinity River during the months of July through November, sufficient to maintain fish life.

The residents of the counties requested a provision be placed in the bill that would guarantee to them sufficient water to provide for their expanding economy.

You will note the proviso on page 4, line 4, "That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users."

This apparently will satisfy the downstream users, and their objection to the project as originally proposed, has thereby been removed.

I feel that this project, from a power standpoint, is feasible, and that the water diverted to the Central Valley of California will supplement the irrigation needs of the valley.

Respectfully submitted.

HURBERT B. SCUDDER, M. C.

Senator ANDERSON. Congressman Sisk, may we have a statement from you?

**STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF CALIFORNIA**

Representative SISK. Mr. Chairman, I appreciate the opportunity to appear before you to urge your favorable action and authorization of the Trinity Division of the Central Valley project in California. And, Mr. Chairman, as the author of a similar bill, which Senator Kuchel mentioned in his statement, I would like at this time to join with Senator Kuchel in the feelings that he expressed with reference to the bills which you have before your committee and which we have before our committee in the House, a combined bill of the Trinity-San Luis. I feel, of course, that at the present time, due to certain things that have developed, it is well that we proceed with this bill, as proposed by Congressman Engle, for action on the Trinity.

Now, in my opinion, and that of the people of the State of California, this project in the highest degree combines the interests of the Nation and of the State. It has been called the best remaining reclamation project in the West. Its cost-benefit ratio is outstandingly good. It not only will pay its own way, but will add substantially to the Nation's wealth, its income, and its tax revenues. Considered strictly from the viewpoint of economics, the Trinity project is good business and a good investment.

While I am mindful of the value of Trinity development as a sound business venture, I am even more concerned with it in terms of its urgent necessity as an essential step toward the full conservation and utilization of water resources which will vitally affect the living, the happiness, and the future of millions of people.

We cannot live without water and the water to fill our needs is wasting away to the sea. Trinity will save a lot of it and will provide the electric energy to put the water where it is needed. It will do it, not on a handout or subsidy basis but at a profit.

Saving our water and putting it on the land is going to require the combined efforts of the Federal Government, the State, and local agencies. It is going to have to be a cooperative program, and I want to assure this committee that the people of California are not holding back waiting for the Federal Government to help them. Our local districts are going ahead with conservation projects to the limit of their ability and the State of California is developing statewide water plans which will strain the capacity of the State to finance, but which must be carried through if our pressing needs are to be met. Our best engineers are certain these Federal, State, and local projects will physically compliment each other and the compelling necessities insure their coordination for the common benefit.

Authorization of the Trinity development will be a big step forward. Our water needs are urgent and immediate, not primarily to place new land under cultivation, but to save what we have and keep it in production and to raise crops we need rather than those we have in surplus. Even a short delay in authorization, which would be reflected in delayed completion, could seriously jeopardize the welfare of many people.

I most strongly urge your immediate action to approve the Trinity River division and clear the way toward placing our wasted water on the farms and in the homes which cannot continue without it.

And that concludes my statement, and I appreciate the opportunity to appear before you, Mr. Chairman.

Senator ANDERSON. Thank you very much, Congressman. We appreciate your coming over and visiting us about this project.

Representative SISK. Thank you.

Senator KUCHEL. Mr. Chairman, State Senator Regan is going to be compelled to leave on the 1 o'clock plane. Could he make a brief statement at this time?

Senator ANDERSON. Surely.

**STATEMENT OF EDWIN J. REGAN, STATE SENATOR OF CALIFORNIA,  
TRINITY COUNTY, CALIF.**

Mr. REGAN. Mr. Chairman and members of the committee; my name is Regan, Edwin J. I am State senator from the State of California. I represent in the California State Senate the Shasta and Trinity area.

As a member of the joint committee of the senate in California, we had made an investigation into the efficacy of this project, and I think California is unanimous that this is one of the good projects, and it is recommended.

Today I have been asked to appear by the county of Trinity, the county in which the dam will be located. And my particular remarks will be directed to the certain protective features which have been included in this bill; one being the release of water of 150 cubic second-feet for the preservation of fish life, which is essential in that area, because of the tremendous salmon and steelhead runs in the Trinity River, which is one of the great recreational fishing streams in California, and the second feature of the bill about which the county is particularly interested is that feature which gives, on page 6 of H. R. 4663, section 5, authorization to the Secretary to make payments from construction appropriations to Trinity County of such additional costs of preparing, maintaining, and constructing roads as are incurred by it during the period of construction; and then that the Secretary is further authorized and directed to pay to Trinity County annually an in-lieu tax payment out of the provisions during construction, and from the gross revenues of the project during the operation.

And I think in the brief statement I have made on behalf of the county, you will understand the problem as it affects that area.

The Federal land ownership is not an idle or academic question in the West, as you gentlemen know. I think it is important to realize that California is now 47 percent federally owned. California has approximately 100 million acres of land. 47 million acres of those lands are now owned by the Federal Government. But those are not lands which have always been off the tax rolls. Because approximately 15 years ago, 37 percent of California was then federally owned. And today there has been an increase of in excess of 7 million acres of land in Federal ownership in the State of California. Those lands are not on the tax rolls, and the impact on local government is very tough.

It represents a very real impact on State and local economy. When a comparison is made of the percentage of Federal ownership

in the West to the other States of the Nation, it is not difficult to appreciate the position of the 11 Western States that payments in lieu of taxes by the Federal Government for lands it holds from the local tax rolls is one of justification and equity.

The average percentage of Federal ownership in the remaining 37 States is 4.76 percent, with a low in Iowa of 0.29 of 1 percent.

Senator ANDERSON. Would you go back over that again?

Mr. REGAN. The average percentage of Federal ownership in the remaining 37 States, that is, other than the 11 Western States, is 4.76 percent, with a low in Iowa of 0.29 of 1 percent, and a high in South Dakota of 17.23 percent. Notably the seat of the Federal Government, here, the District of Columbia, is only 33.41 percent federally owned.

Now a comparison with the 11 Western States: Arizona is now 69.43 percent federally owned. California is 46.14 percent federally owned. Colorado is 37.35 percent; Idaho, 64.69 percent; Montana, 36.54 percent; Nevada, 84.71 percent; New Mexico, 45.62 percent; Oregon, 52.75 percent; Utah, 71.33 percent; Washington, 34.99 percent; and Wyoming, 51.61 percent. Those are the Federal ownerships of lands which are not on the tax rolls.

Now, the State of California has attempted to absorb some of the burden imposed by this, by making payments in lieu of taxes on State lands held for natural resource purposes, because the State recognizes the principle that a higher level of government has a moral duty to protect the integrity of the lower political subdivisions. In addition to these direct payments in lieu of taxes, California pays a larger amount to local government than any of the States and also apportions a greater amount per capita.

For the fiscal year ending 1952, California made subventions in the amount of \$73.67 per capita, while the all-State average was \$33.06. Payments to local governments amounted to 57.4 percent of the total general expenditures in California, and surely no one could seriously argue that the 46.14 percent Federal ownership is not reflected in the fact that California must pay more for local government than any other State.

The county of Trinity where the dam will be located, is composed of 2,042,240 acres. Of this area, 1,456,984 acres are owned by the Federal Government, which is 71 percent of that entire county. The remaining 29 percent of the land must now supply 100 percent of the cost of county governmental services.

So it is not difficult to understand why Trinity County does not have the finest roads or the finest schools or the finest fire departments, or other features, which government contributes to the welfare of its citizens.

The local taxpayer is now absorbing all that he could possibly bear in that area. The Trinity County taxpayer is paying \$3.03 per hundred, which is the 4th highest rate in the State of California.

But I think it would be interesting to note here that in the little districts, however, where the dam would be located, there is a more difficult situation. A comparable one would be the so-called Weaver-ville area. The tax rate there is \$6.57. The Hayfork area, which is just beyond that, is almost \$10—\$9.41 is the tax rate now. And in the area where the dam would be located, in order that the services be supplied for the influx of population, where you would have to have additional schools and additional police protection, and so on, the

county feels it is imperative that the principle of payments in lieu of taxes be continued.

I think you do have a comparable situation with reference to the Tennessee Valley Authority, where such payments are made.

In the fiscal year 1952, the Federal Government paid to California's school districts \$1,475,000 as payments in lieu of taxes, by reason of military establishments, most notably the county of Los Angeles, which received some \$70,000.

Senator ANDERSON. More than that, is it not?

Mr. REGAN. That is Los Angeles itself. That is not where one of the principal installations is found.

Senator ANDERSON. I thought they got more than that because of its being an impacted area.

Mr. REGAN. I believe not, Senator; 27 percent of that county is owned by the Federal Government and they have a tax rate of \$1.93, which is a lot different from the tax rates which I have just quoted here for the little county up north.

So the local government there feels that it takes this position. It is certainly willing and desirous that projects of this kind be constructed, and it wants to do everything possible to see that these projects are constructed. But when there is such an impact on the tax base by reason of the lands which are not on the tax rolls, and when additional lands beyond the 72 percent of Federal ownership which will be taken from the tax rolls by reason of the location of the project are considered, then it feels that there has been a principle adopted previous to this time that the impact is recognized by the Congress and that studies have already been made by the Congress on these matters.

In fact, some years ago I participated with Senator Guy Cordon, of Oregon, in preparing a report for the Congress, for one of your subcommittees, on the impact of Federal ownership on local government.

The Legislature of the State of California has issued a senate-interim-committee-on-public-lands report, in which it feels that there must be a reexamination and reconsideration of the problem of the impact of Federal ownership on local government.

It has been recognized by committees of the Congress. It has been recognized by the committees of the Western States. And we feel that under the circumstances, here, the protective features which are included in this legislation should be continued as the bill makes its progress, which we hope it will make, through the Congress.

Senator ANDERSON. Thank you very much, Senator Regan. That is a good statement. And we are interested, those of us around this table, particularly, in these publicland areas, and we do know your problem and are very happy to have your statement about it.

Are there additional questions about it?

Secretary Aandahl?

Governor, we are glad to welcome you back again, and we are happy to have your testimony on this matter.

#### STATEMENT OF FRED G. AANDAHL, ASSISTANT SECRETARY OF THE INTERIOR

Mr. AANDAHL. Mr. Chairman, I have a very brief statement that I would like to read.

I appreciate the privilege of appearing before your committee to express the views of the Department of the Interior regarding the proposed Trinity River facilities to expand reclamation development in the Central Valley of California.

The Central Valley project is an outstanding project of the reclamation program. Construction of the originally authorized features of the project is virtually completed and completion of the Folsom Reservoir and related works is being approached rapidly. Progress on construction of the Sacramento canals unit is in the initial stages. These works have and will continue to fulfill a great need in expanding the irrigation base of the Central Valley, but the demands for irrigation service, spurred by the phenomenal growth of California in the past two decades, have grown faster than can be met by these new facilities. We recognize, therefore, the need for further expansion of reclamation facilities for the Central Valley and are prepared to support appropriate measures for their accomplishment.

To this end we have prepared a supplementary report on the Trinity River division which proposes certain enlargements to the existing authorized project. This supplementary report was submitted to the Bureau of the Budget on July 12 and has not yet been cleared. Neither has a report on the bill been cleared by budget, so I cannot give to your committee information on the relation of the Trinity River division to the program of the President.

SENATOR ANDERSON. Has the Department not reported on the Trinity River section at any time?

MR. AANDAHL. We have sent a report on the bill in advance of clearance through the Bureau of the Budget, at the specific request of the committees; but we have not been able to state the relationship of our report to the program of the President.

This proposed addition to the Central Valley project would increase its irrigation-water yield by 1,190,000 acre-feet annually, or enough to fully irrigate almost 350,000 acres of land. It would, in addition, increase the electric-power supply to the area by more than 1 billion kilowatt-hours annually, a major part of which would be used in pumping irrigation water, including the potential San Luis unit. An addendum was prepared and attached to the supplementary report analyzing the possible development of the Trinity River division through the sale of falling water and non-Federal construction of the power facilities.

The extensive investigations and studies underlying the proposed Trinity River division establish its engineering and economic feasibility and its desirability as an addition or complement to the existing Central Valley project.

With respect to the possibilities of non-Federal construction of the power features and the sale of falling water, I would like to point out that the Department now recommends that this be done if a satisfactory contract can be worked out. Reauthorization of the Trinity River division subject to the reclamation laws would permit the Department of the Interior to build the entire project, including the power features. In case non-Federal construction of the power features is to be recognized as a probable method, it would be well to have a specific provision in the act authorizing the Department at its discretion to enter into suitable contracts for the sale of falling water and non-Federal construction of the power features. A preliminary

informal offer by the Pacific Gas & Electric Co., to enter into such an arrangement has been made to Mr. Spencer, Regional Director of the Bureau of Reclamation. Present indications are that through the sale of falling water (1) the Government capital expenditures can be reduced by more than \$50 million, (2) the Federal investment in Central Valley project power facilities would be repaid earlier since higher cost Trinity power would not be pooled with the present supplies, and (3) the needed integration and exchange of Trinity power with local steam generation to supply necessary irrigation pumping power can be accomplished effectively at suitable rates.

I would like to submit for the record a copy of the letter the Department of the Interior received from the Bureau of the Budget dated April 28 relative to our May 4, 1955, report on S. 178.

(See budget report on H. R. 105, p. 7.)

Senator ANDERSON. I do not quite understand this statement, Mr. Secretary. What do you mean, here, when you say that—

present indications are that through the sale of falling water (1) the Government capital expenditures can be reduced by more than \$50 million, (2) the Federal investment in Central Valley project power facilities would be repaid earlier, since higher cost Trinity power would not be pooled with the present supplies.

Is it your belief that you can cut this project loose from the power rates that are being charged at Shasta and Friant and various other dams and that Pacific Gas & Electric can peddle that power at 7 or 8 mills, when other power is available at 2 or 3 mills?

Mr. AANDAHIL. Would you like me to take each of those three items separately?

Senator ANDERSON. Well, yes. I can understand that if they sell the falling water to a private firm, they can do that. But I do not quite understand what the private firm is going to do with it, if it has to sell it at a rate that is several times higher than is available through pooling.

Mr. AANDAHIL. In explanation to item No. 2 of the statement to which you are referring, the cost of the Central Valley power, the production of Central Valley power, exclusive of Trinity power, is 1.84 mills.

Senator ANDERSON. Yes. I said 2 or 3 mills.

Mr. AANDAHIL. With Trinity power added, the cost of all power in the Central Valley would be 3.04. And I believe that includes the transmission to the Tracy substation.

Senator ANDERSON. What does Trinity power cost, alone?

Mr. AANDAHIL. I believe I had better ask Mr. Murray to see if he can answer that question.

Senator ANDERSON. Yes. Supposing we are going to offer this power to Pacific Gas & Electric. What is it going to cost?

I don't want to stop and refigure what the total Central Valley output is. But by taking what Central Valley now is and figuring the million kilowatts or whatever it is going to be in Trinity, if it jumps it a full mill and then some, a mill and a quarter, it must be very expensive power, is it not?

Mr. AANDAHIL. Mr. Murray?

Mr. MURRAY. The cost of the additional generation produced by the Trinity plants would be approximately 5 mills. I cannot give you an exact figure on that, Senator, but it is very close to 5 mills. And that amount of power, weighted into the entire Central Valley

project, results in the figure that Secretary Aandahl gave you, and would result in a rise in the overall.

Senator ANDERSON. What are they going to do with 5-mill power when it can buy power at 1.84 mills?

Mr. AANDAHL. In making an analysis of possible sale of the falling water—

Senator ANDERSON. No. I would kind of like to stay on this power question. Do I understand that the industries of California, northern California, that are dependent for their growth upon cheap power, look with favor upon a jump in their power rate from 1.84 mills to 3.04 mills?

Mr. AANDAHL. That would be the result on the cost of power that the Government would have for sale under the Central Valley project if we have Federal construction of the power facilities at the Trinity project.

Senator ANDERSON. Well, since we hear that there is no tax paid on that and therefore it is cheap, and private power is going therefore to be still higher, where do you think they are going to sell that higher power?

Mr. AANDAHL. If we would enter into a contract for the sale of falling water, we would expect the purchaser of the falling water to install the power generating and power transmission facilities. And we would expect an annual payment from the purchaser of the falling water for that falling water that would amortize the Federal investment in the joint facilities of the project. And the information that we have now, which is embodied in the offer that has been made by the Pacific Gas & Electric, would make such payments to the Federal Government, and the price of Trinity power would then not be pooled with the remainder of the Central Valley project.

Senator ANDERSON. Yes. And I so understand. But tell me what they are going to do with this 5½-mill power, or whatever it may be when they get through. Because they have to add taxes onto it as a private utility. And their costs are going to go up to maybe 6 mills. They can generate it with steam at San Francisco for part of that, much less than 6 mills. Why are they going to pay 6 mills for it?

Mr. AANDAHL. Of course, it would not be my purpose to outline just how they are going to use that power. But they are making an offer for the falling water that is attractive to the Government and attractive to the Central Valley project.

Senator ANDERSON. Are they making an offer for the falling water that is comparable to what it is worth?

Mr. AANDAHL. I would say reasonably so.

A final contract, of course, has not been negotiated, and I would not want to express a firm opinion until the contract has been negotiated. But the offer that has been made, in general terms, appears to be reasonably satisfactory.

Senator ANDERSON. Well, can you give us those general terms for the record?

Mr. AANDAHL. I have here a copy of a letter that was submitted to the regional director, Mr. Spencer, by the Pacific Gas & Electric Co., and that embodies the early offer that was made under the date of January 13. Since that time negotiations have been in progress, and a number of the items in this offer have been refined, so that



they are somewhat different than in this particular offer. But I will be glad to submit this for the record.

(The material referred to, when received, will be filed with the committee.)

Senator ANDERSON. Thank you. What I am trying to get to, Mr. Secretary, is this. That Central Valley power is important to northern California, is it not?

Mr. AANDAHL. That is correct.

Senator ANDERSON. Now, if it is now costing 1.84 mills, do the people who now buy that power recognize that if the Trinity project is completed they are going to have to start paying 3.04 mills, if developed?

Mr. AANDAHL. The cost of Central Valley power at the present time at the Tracy substation is 1.84 mills.

Senator ANDERSON. Is that not the figure I just used?

Mr. AANDAHL. Yes. But the average price that the Bureau of Reclamation is getting for the power that it sells from the Central Valley project is 4.48 mills. And, of course, a portion of the power revenues are used in the area of irrigation.

Senator ANDERSON. Yes. Well, you will still want to do that, will you not? You are not trying to chop off the irrigators out there, are you?

Mr. AANDAHL. That is correct.

Senator ANDERSON. Now, if the cost now when delivered to the Tracy substation is 1.84 mills, and by the construction of the Trinity power you get a pooled rate of 3.04, you are going to have to raise this rate at Tracy comparably, are you not? Unless you take it out of the irrigators' hides?

Mr. AANDAHL. With the present rates—and, of course, now you are talking about Federal construction of the power facilities.

Senator ANDERSON. Yes. Because if you sell it to somebody else, you are not going to tell me that since they have to pay taxes—I have been reading all this literature that the taxpayers' leagues have put out against the upper Colorado River project. And since they have to pay taxes on all these other things, surely they cannot generate it any more cheaply than the big Government stations can, can they? Does it not cost them just as much to buy generators as it does the Federal Government?

Mr. AANDAHL. Substantially the same.

Senator ANDERSON. Well, actually it costs them a little more, generally. But substantially the same. Does it not cost them the same amount for labor as it does the Federal Government?

Mr. AANDAHL. Substantially the same.

Senator ANDERSON. Where are they going to save any money on it?

Mr. AANDAHL. Well, I am not concerned about the savings or the additional expense that the utility that purchases the falling water may have.

Senator ANDERSON. Well, I have to be.

Mr. AANDAHL. The thing in which I am primarily interested is the effect that the sale of falling water will have on the Central Valley project.

Senator ANDERSON. Yes.

Mr. AANDAHL. If the Federal Government installs the power facilities because of the fact that this power generated in the Trinity project is higher cost power than in the other facilities of the Central

Valley project, the other elements of the Central Valley project, if the rate is kept the same, we will have to pick up about one million and a half dollars annually of the expense of the power in the Trinity project.

Senator ANDERSON. Now, who is going to pay that?

Mr. AANDAHL. That will be absorbed in the Central Valley pool if the power facilities are constructed by the Federal Government. If the Federal Government sells falling water and it does not construct those power facilities, that \$1,500,000 will not need to be picked up by the other features of the Central Valley.

Senator ANDERSON. We will come to that in a minute. May we stay with what the Federal Government is going to do? Because I understand it is contemplated that the Federal Government will do it.

Mr. AANDAHL. Yes. The House bill provides an 18-month study period, during which the Department can report to the Congress on the contract that is in prospect, and Congress can then take further action on it.

Senator ANDERSON. But the Trinity power, if the Government builds the plant, will run about 5 mills.

Mr. AANDAHL. That is correct. And of course, that will be pooled with other Trinity power.

Senator ANDERSON. Other Trinity power?

Mr. AANDAHL. Excuse me. Other Central Valley power.

Senator ANDERSON. Other Central Valley power. And raise the rate from 1.84 to 3.04 at Tracy. Now, if the rate so jumps at the present time, where would it jump, do you suppose, if the basic cost went to 3.04.

Mr. AANDAHL. It is my understanding that the rate can remain at 4.48, according to the studies that we have available at the present time—

Senator ANDERSON. Now we are getting into real financing. How could that be done?

Mr. AANDAHL. And the payout—

Senator ANDERSON. No, stay with that for a minute.

Mr. AANDAHL. And the payout still be made within the required number of years.

Senator ANDERSON. Tell us about that.

Mr. AANDAHL. Well, if power costs 3.04, there is a profit in selling it at 4.48.

Senator ANDERSON. Then there must be a terrific profit in selling it, when it costs 1.84, at 3.04.

Mr. AANDAHL. That accounts for the sizeable reserves that are building up in the Central Valley project for the aid of irrigation.

Senator WATKINS. In other words, you have a subsidy there for irrigation.

Mr. AANDAHL. That is correct.

Senator WATKINS. From power.

Mr. AANDAHL. Yes.

Senator WATKINS. Do the power users object to that?

Mr. AANDAHL. We have not had a great deal of contacts.

Excuse me. You are asking me if the power users object to the rate of 4.48?

Senator WATKINS. Yes.

Mr. AANDAH. There has been none that has come to my attention. Perhaps those in the regional office could answer that more specifically.

Senator WATKINS. I think you would have heard about that if there had been any. The power has been sold at that, has it not?

Mr. AANDAH. It has. And there has been no objection that has come to my office.

Senator ANDERSON. If the sale of falling water is made, does this proposal that you have submitted here, which is going into the record, indicate how it is to be sold, or what the price for it is to be?

Mr. AANDAH. No. In fact, we have only gotten into the early stages of contract negotiations. And I could not give any information further than to the effect that an offer has been made that seems to have the possibilities of being very helpful to the Central Valley project.

Senator ANDERSON. You are familiar with the activities of the Department of the Interior in this field, because this comes under your general direction.

Mr. AANDAH. That is correct.

Senator ANDERSON. How many places in the United States has the Department of the Interior sold falling water on a large multiple-purpose project?

Mr. AANDAH. I don't think there is any exact precedent for this arrangement, but it is one of the approaches to the overall partnership program that we are trying to develop.

Senator ANDERSON. Would these people like to be partners in the building of the dam and the tunnel?

Mr. AANDAH. That has not been explored.

Senator ANDERSON. Do you not think it is something that you ought to explore?

Mr. AANDAH. There would be a possibility.

Senator ANDERSON. In other words, I can understand that you could be partners in the profit end of it and not the construction, but I would think the Department of the Interior would have some responsibility, that if they are to be partners they should go all the way. Partnership involves sharing of risk as well as profits, does it not?

Mr. AANDAH. Insofar as the Department of the Interior would be a party to a partnership arrangement in connection with power, we would expect reasonable value for any of the advantages that were made available to the partner. And that will be set up in an analysis that will be made of the proposal.

Senator ANDERSON. What will the total cost of this project be? Will that be developed by the Bureau of Reclamation?

Mr. AANDAH. Yes. The total cost with Federal construction is around \$219 million; the commercial construction of the power facilities.

Senator ANDERSON. Very well. Do you have additional questions?

Senator WATKINS. This 3.04 mills: where is that sold? at the load centers, or at the bus bar, or what?

Mr. AANDAH. The 3.04 cost of power is the cost of the power to the Federal Government. That is, the cost of generation to the Federal Government for power at the Tracy substation, brought from the projects down to the Tracy substation. And that power is sold under numerous contracts that the Bureau of Reclamation has in the Central

Valley. And those contracts yield a revenue to the Government of about 4.48 mills.

Senator WATKINS. 4.48?

Mr. AANDAH. 4.48.

Senator WATKINS. And to whom is this sold? Who buys it?

Mr. AANDAH. Some of it is sold for irrigation pumping. Some of it is sold to the Ames Laboratory. The larger block of it is sold to the Sacramento Utility District.

Senator WATKINS. Do they all pay the same price?

Mr. AANDAH. The price for domestic and industrial use is the same.

Senator WATKINS. What is the rate for irrigation pumping?

Mr. MURRAY. There are two rate schedules set up in the Central Valley Basin. The 4.48 which the Secretary is speaking of is a pool, an estimated income, by application of 2 rate schedules to the different classes of service.

I could furnish that for the record.

Senator WATKINS. That is the income to the Federal Government from power sales.

Mr. MURRAY. Yes, sir.

I could furnish copies of those rate schedules for the record.

(The material referred to is as follows:)

[Schedule R2-S1]

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, REGION II

CENTRAL VALLEY PROJECT, CALIFORNIA

INTERIM SCHEDULE OF RATES FOR WHOLESAL POWER SERVICE TO CUSTOMERS HAVING THEIR OWN GENERATION FACILITIES

*Effective.*—January 1, 1952.

*Available.*—In the area served by Central Valley Project.

*Applicable.*—To wholesale power customers, for light and power service supplied through one meter at one point of delivery, who have and maintain generating equipment in operating condition capable of serving loads on not more than 24 hours' notice, and who, by appropriate contract, agree to such integration of their power system and the power system of the United States by interchange, purchase, and sale of capacity and energy, as will best achieve the efficient use of the production capacity of both parties.

*Character and conditions of service.*—Alternating current, sixty cycles, three-phase, normally delivered and metered at the low voltage side of substation. The service available hereunder will be considered in two categories: (1) firm power service, and (2) withdrawable power serve, herein termed secondary energy. The delivery and continuity of supply of secondary energy are not assured and such service may be withdrawn in whole or in part at any time on not less than 24 hours' notice.

*Monthly rate.*—

Demand charge: \$0.75 per kilowatt of billing demand.

Energy charge: First 130 kilowatt-hours per kilowatt of highest 30-minute integrated demand measured during the month at 4 mills per kilowatt-hour; next 130 kilowatt-hours per kilowatt of highest 30-minute integrated demand measured during the month at 3 mills per kilowatt-hour; all over 260 kilowatt-hours per kilowatt of highest 30-minute integrated demand measured during the month at 2 mills per kilowatt-hour.

Secondary service billing demand credit: For and in consideration of the customer's generating capacity, if maintained in good operating condition, and provided the customer contracts to purchase his system energy requirements in lieu of operating his own fuel burning generating equipment (except that which may be generated as a result of maintaining such equipment in standby condition and as by-product generation from production of steam for heating or other

purposes) during any billing period when secondary energy is available and as offered by the United States, the number of kilowatts of billing demand on which the demand charge will apply shall be the Contractor's system demand less the Contractor's capacity, but not less than the contract rate of delivery for firm power as specified in the contract: *Provided*, That in no event shall the number of kilowatts of billing demand on which the demand charge will apply, exceed the Contractor's system demand. For use in computing demand charges, the customer shall furnish to the United States, not later than five days after the end of the month during which service was furnished hereunder, a statement of the Contractor's system demand. The Contractor's system demand is defined as the maximum 30-minute integrated demand in kilowatts on the Contractor's power system during the month. The Contractor's capacity is defined as the sustained load carrying ability of the Contractor's electric generating plant less station use, as determined by test and as limited by transmission and substation facilities. If the Contractor purchases power under a bona-fide power contract from a supplier other than the United States, appropriate deduction shall be made from the Contractor's system demand for power actually taken under such contract before applying this rate schedule.

*Minimum bill.*—\$1.00 per month per kilowatt of the highest 30-minute integrated demand measured during the month but not less than the contract rate of delivery for firm power as specified in the contract.

*Billing demand.*—The billing demand will be the highest 30-minute integrated demand measured during the month or the contract rate of delivery for firm power as specified in the contract, whichever is the greater, but in no event shall the billing demand exceed the Contractor's system demand.

*Adjustments.*—

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, five-percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered at the low-voltage side of the customer's substation, the meter readings will be increased two percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of not less than 90 percent lagging.

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[Schedule R2-P1]

## UNITED STATES DEPARTMENT OF THE INTERIOR

### BUREAU OF RECLAMATION, REGION 2

#### CENTRAL VALLEY PROJECT, CALIFORNIA

#### INTERIM SCHEDULE OF RATES FOR COMMERCIAL IRRIGATION AND/OR DRAINAGE PUMPING SERVICE AND FOR WHOLESALE FIRM POWER SERVICE WHEN SUPPLIED IN CONJUNCTION THEREWITH

*Effective.*—August 1, 1950.

*Available.*—In the area served by the Central Valley project.

*Applicable.*—To commercial customers for their own use, or for resale for, irrigation and/or drainage pumping and purposes incidental thereto supplied through one meter at one point of delivery. Wholesale firm power service for purposes other than irrigation and/or drainage pumping service when supplied in conjunction with pumping service through the same meter at the same point of delivery shall be supplied hereunder. Not applicable to standby or auxiliary service or to the sale of dump energy.

*Character and conditions of service.*—Alternating current, sixty-cycles, three-phase, delivered and metered at the low-voltage side of substation. Rates of delivery for pumping service and for wholesale firm power service shall be separately stated in the contract. A seasonal period of delivery for pumping service is permitted hereunder provided the seasonal service months are stated by contract.

*Monthly rate.*—

Demand charge: \$0.75 per kilowatt of billing demand.

Energy charge: First 130 kilowatt-hours per kilowatt of billing demand at 4 mills per kilowatt-hour. Next 130 kilowatt-hours per kilowatt of billing demand

at 3 mills per kilowatt-hour. All over 260 kilowatt-hours per kilowatt of billing demand at 2 mills per kilowatt-hour.

**Minimum bill.**—The monthly minimum charge shall be \$1 per kilowatt of the contract rate or rates of delivery in effect during such month, except that during the period specified as seasonal service months, there will be no monthly minimum charge but in lieu thereof a seasonal minimum charge shall apply which shall be equal to the product of \$1 times the number of seasonal service months times the sum of the kilowatts of contract rates of delivery for seasonal pumping service and firm power service, if any.

**Billing demand.**—The billing demand will be the highest 30-minute integrated demand measured during the month.

**Adjustments.**—

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, 5 percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered at the low-voltage side of customer's substation, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of not less than 90 percent lagging.

[Schedule R2-F2 (Supersedes Schedule R2-F1)]

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, REGION 2

CENTRAL VALLEY PROJECT, CALIFORNIA

INTERIM SCHEDULE OF RATES FOR WHOLESALE FIRM POWER SERVICE

**Effective.**—August 1, 1950.

**Available.**—In the area served by the Central Valley project.

**Applicable.**—To wholesale power customers for light and power service supplied through one meter at one point of delivery. Not applicable to standby or auxiliary service or to the sale of dump energy.

**Character and conditions of service.**—Alternating current, sixty-cycles, three-phase, normally delivered and metered at the low-voltage side of substation.

**Monthly rate.**—

Demand charge: \$0.75 per kilowatt of billing demand.

Energy charge: First 130 kilowatt-hours per kilowatt of billing demand of 4 mills per kilowatt-hour. Next 130 kilowatt-hours per kilowatt of billing demand at 3 mills per kilowatt-hour. All over 260 kilowatt-hours per kilowatt of billing demand at 2 mills per kilowatt-hour.

**Minimum bill.**—\$1.00 per month per kilowatt of contract rate of delivery.

**Billing demand.**—The billing demand will be the highest 30-minute integrated demand measured during the month.

**Adjustments.**—

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, 5 percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered at the low-voltage side of customer's substation, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of not less than 90 percent lagging.

Senator WATKINS. I would like to get it cleared up just what the power brings in to the Federal Government and what the rate is that it is sold at.

Mr. MURRAY. The average rate at which sold commercially is the rate the Secretary quoted, 4.48 mills.

Senator WATKINS. That is the average rate at which the Government sells to the various agencies that buy it?

Mr. MURRAY. That is correct.

Senator WATKINS. Do you have any private utilities buying any of that power at that rate?

Mr. MURRAY. The Pacific Gas & Electric Co. buys a portion of the output, yes.

Senator WATKINS. What proportion? Do you know?

Mr. MURRAY. I don't have that offhand, Senator.

Senator WATKINS. Can you furnish it to us?

Mr. MURRAY. Yes, sir.

Senator WATKINS. I wish you would.

(The material referred to is as follow:)

*Central Valley project—Year ended Dec. 31, 1954*

		Kilowatt-hours
Energy available:		
Gross generation	-----	2, 714, 787, 801
Receipts from other systems (interchange)	-----	687, 498, 422
Total	-----	3, 402, 286, 223
Energy disposition:		
Sales to Pacific Gas & Electric Co.:		
Firm	-----	392, 950, 250
Nonfirm	-----	1, 150, 720, 538
	-----	1, 543, 670, 788
Sales to others	-----	949, 180, 385
Delivered to other systems (interchange)	-----	734, 984, 189
	-----	3, 227, 835, 362
Sales and interchange	-----	3, 227, 835, 362
Losses	-----	174, 450, 861
Total	-----	3, 402, 286, 223

Senator KUCHEL. Mr. Chairman?

Senator ANDERSON. Senator Kuchel.

Senator KUCHEL. Mr. Secretary, first of all, is it not true that the Bureau of the Budget, under this administration, both last year and this year, made recommendations for appropriations for the Trinity project?

Mr. AANDAH. Yes, that is correct.

Senator KUCHEL. Now, the bill which Senator Knowland and I have introduced provides specifically for the construction of the Trinity River project, including the production of hydroelectric power, and the appropriate transmission lines, by the Federal Government. That is a position which has been endorsed by the present government of California, under the administration of Governor Knight and previously under the administration of the then Governor Warren. The House bill, which is before this committee, as you have suggested, and as I alluded to in my own statement, provides for a study period of 18 months on the question of who will produce the power.

In justification of that amendment to the House bill, which was made while it was being considered in the committee there, the House committee report goes on to say, on page 5:

The Pacific Gas & Electric Co. has submitted to the Department and to the committee a proposal whereby the company would construct the power facilities and pay the Federal Government annually for the falling water. The Department of Interior has made no final recommendation on the Pacific Gas & Electric proposal, because the engineering and economic studies, together with the negotiations incident to that proposal, are incomplete. The committee therefore inserted language in this bill directing the Department of the Interior to continue its studies and negotiations and to report the result thereof to the Congress not later than 18 months after enactment, together with its recommendations thereon.

I think that was done; so that the Congress might subsequently have the considered judgment of the Department of Interior upon the offer which has been made in January of this year.

Now, in your statement to Senator Anderson, you used some language, if I may say so, Mr. Secretary, to indicate that the Department has already at least tentatively arrived at a decision, to wit, to accept the offer. I want to be quite sure, however, of that. Is it a fact that the Department has now reached a basis upon which it can or will find that that offer should be accepted?

Mr. AANDAHL. The Department has not reached a decision to accept the offer that has been made by the Pacific Gas & Electric Co. The Department has reached a decision that the sale of falling water offers a possibility that can be of advantage to the Central Valley project. And we would like to pursue the negotiations of such a contract, and if a satisfactory contract can be worked out, which we think it can be, we would then recommend the approval of that contract.

Senator KUCHEL. Do I take it from that, Mr. Secretary, that the Department is unable today to have an opinion or a considered judgment on the offer which has been made to you?

Mr. AANDAHL. We could not recommend approval of the specific offer at this time.

Senator KUCHEL. Because I was going to add for the record: Is it not true that the State of California, to which you sent the original offer which was made by the Pacific Gas & Electric Co., while not passing judgment on the policy question involved, did raise objections other than on policy to the offer which was made.

Mr. AANDAHL. They made some further analyses of the prices and the values that were involved in the offer.

Senator KUCHEL. In other words, with the amendment in the House bill, which I have urged this committee to approve, I want to make sure that we are proceeding in good faith, and that the Department will consider the public interest involved under the 18-month provision during such a period of time as it may require to develop that considered judgment, so that under the terms of the 18-month section, were it to be adopted by the Congress and signed into law, your Department's recommendations on the power question would only be arrived at by a study that would take into consideration the position which the State of California has taken, which would take into consideration questions raised by the State government; and that the mind of the Department is not now foreclosed in pursuing that question.

Mr. AANDAHL. Yes. That is entirely correct. As far as negotiating a contract is concerned, the question is wide open.

In our recommendation, we only express the opinion that we see the possibility of an advantageous arrangement in the sale of falling water. But the detail of a contract for that purpose has not reached the point where we could express any opinion on it.

Senator KUCHEL. I do not want to pontificate. But I represent the people of California. And I hope the committee may look with favor and the Congress may look with favor on this legislation. And if I am back here next year, and if this legislation has been adopted, I would want to have the Department's judgments on the production of the hydroelectric energy spread out upon this table and gone into very



thoroughly, as I think is the intention in the bill as it has come before us, Mr. Chairman.

Senator ANDERSON. May I just ask you this: The plan proposed by Pacific Gas & Electric in this proposal involves an increase in the capacity from 233,000 kilowatts to 362,000 kilowatts. It involves an expenditure on the part of the Federal Government, even if you are just selling the falling water, of \$168 million, or more. How much of that would bear interest? Would pay interest? Would return interest?

Mr. AANDAHL. If falling water is sold, all of the Federal investment in joint facilities that can be allocated to power would be interest bearing.

Senator ANDERSON. But if the Federal Government did not have any power installation, how much of it would be allocated to power?

Mr. AANDAHL. There would be quite a sizable portion of the cost of the joint facilities that would be allocated to power. I think in round numbers I can give you the off-the-cuff figure of about \$110 million out of the total cost being allocated to power.

Senator ANDERSON. Well, these people proposed to pay \$3½ million a year for this falling water. The Government's investment in it will be \$168 million a year. The average rate of Government investments is somewhere near 3 percent, I mean bonds, so that the Government is going to pay \$5 million a year for its installation and get back \$3½ million from Pacific Gas & Electric.

Mr. AANDAHL. No. Just a moment. The \$168 million would not be invested in power. That would be the total cost of the Government project, including the investment in storage for irrigation, and the investment in the diversion facility for irrigation purposes. The investment in power, that is, the portion of the joint costs that could be allocated to power, would be about \$110 million.

Am I substantially correct in that figure?

Mr. MURRAY. That is correct.

Senator ANDERSON. Out of 168; or out of the first figure of 186? There is a difference, is that not so?

Mr. MURRAY. I don't recognize the \$186 million figure.

Senator ANDERSON. Is that your proposed capital cost of the construction of the plant, not counting transmission facilities? What do your figures show for the cost of building the dams and the tunnels, and so forth?

Mr. MURRAY. \$154 million.

Mr. AANDAHL. But because of the increased generating capacity proposed in the offer, the tunnels would have to be somewhat enlarged, and that cost would be increased for that reason.

Senator ANDERSON. I am able to follow that. But I am going to start again on this.

What do you have for the Trinity Dam and Reservoir—\$90 million?

Mr. MURRAY. Yes.

Senator ANDERSON. Trinity powerplant, \$12 million?

Mr. MURRAY. Trinity powerplant, \$12 million?

Senator ANDERSON. That is right. But that will come out to \$168 million. You better be careful if you start using those figures, because that is what they have got here. They have \$12 million plus two-million-odd dollars. And that comes to \$15 million.

Mr. MURRAY. Is that from Pacific Gas & Electric?

Senator ANDERSON. Yes, it is. And I am going to try to find where the \$32 million is.

Now, you have got \$12 million, there. You have \$5 million for the Lewiston Dam and Reservoir.

Mr. MURRAY. That is correct.

Senator ANDERSON. You have \$666,000 for the Lewiston powerplant.

Mr. MURRAY. That is right.

Senator ANDERSON. \$30 million for the towerhouse tunnel.

Mr. MURRAY. That is correct.

Senator ANDERSON. \$7,592,000 for the towerhouse powerplant.

Mr. MURRAY. \$10,070,000.

Senator ANDERSON. That is the switchyard added.

Mr. MURRAY. That is adding the switchyard.

Senator ANDERSON. Well, leave the switchyard out. It will be worse if you add the switchyard. How about the towerhouse diversion dam? \$1,082,000.

Mr. MURRAY. That is correct.

Senator ANDERSON. \$31 million for Matheson Tunnel. \$6,900,000 for Matheson powerplant. Put them down and see if they come to \$154 million or \$186 million.

Mr. MURRAY. Well, I have the company's letter here before me. Their totals are \$186 million.

Senator ANDERSON. And yours are \$154 million for the same items?

Mr. AANDAH. Mr. Chairman, that \$186 million, however, is investment in addition to the investment in power facilities. That includes the Federal investment for storage, and diversion for irrigation purposes, the amounts allocated to those purposes, as well as the amounts that would be allocated to power. That is the total cost of the project to the Federal Government.

Senator ANDERSON. I hope I am not confused. I think I understand that. He gave a figure of \$154 million. And I want to know where it comes from.

Mr. MURRAY. The \$154 million figure, Senator, is the cost of the joint facilities. That includes the Trinity Dam, the Lewiston Dam, the Trinity and towerhouse tunnels, the towerhouse diversion dam—all of which are joint facilities used both for power and for irrigation purposes. And that is the cost of those facilities, as estimated in our report.

Now, I might say that there is one reason for differences in costs here in the company's offer, and that is the thought that they have advanced that the sizes of the tunnels should be somewhat larger.

Senator ANDERSON. That is taken care of in another column of this, if you have ever read it.

Mr. MURRAY. Yes, sir; I have.

Senator ANDERSON. Well, then, let us stay to the one column, please. Their figures show a saving of \$51 million, and that is mentioned here in the Secretary's statement.

Mr. MURRAY. That is correct.

Senator ANDERSON. That \$50 million is based upon \$186 million for the construction of these facilities. You say the figure is \$154 million. Now, if you figure is right, there isn't any saving of \$50 million. It is a saving of \$20 million.

Well, we can get the figures later on.

Mr. AANDAHL. I don't follow that step there, Mr. Chairman. If our figure is correct, the saving would be still more. And on the basis of the analysis that Mr. Murray just read, the saving I believe would be \$64 million or \$68 million.

Senator ANDERSON. Well, I hope arithmetic was one of your specialties in school. It sure was mine. Let's go to it.

Mr. AANDAHL. The total cost of the project under our analysis is \$219 million.

Senator ANDERSON. That is right.

Mr. AANDAHL. The cost of the joint facilities, if there is non-Federal construction of the power, would be \$154 million. Under our figures, the difference would be the saving in Federal investment if there is not Federal construction of the power facilities.

Now, the proposal made by the Pacific Gas & Electric would increase the size of the tunnels, which are joint facilities. They are diverting water for irrigation, and as it is diverted, it would run through generating plants and would generate power. So the tunnels are a joint facility, and they belong to that \$154 million investment. But under the Pacific Gas & Electric Co. proposal, where they want 362,000 kilowatts of capacity, those tunnels would be increased. And according to their figures, this joint cost figure would increase from \$154 million to \$186 million, and if that increase took place in the joint facilities then there would be an increase in the total cost.

Senator ANDERSON. Now, Mr. Secretary, if you will just take a look at these figures, you will find out that what you have just said is absolutely incorrect, I believe. Let me remind you that in this figure the Matheson Tunnel is in at \$31,246,000 in the \$186 million figure. But in the increased capacity, it is in at \$36,540,000. And the \$186 million does not represent the increased cost of the tunnels.

Do you want to take them individually and try to find out whether it does or not? Would you like to look at it? If you look at it, you will see the \$186 million involves \$31 million for Matheson Tunnel, and not \$36 million.

Senator WATKINS. What document are you reading from, Senator?

Senator ANDERSON. I am reading from Pacific Gas & Electric's proposal.

Senator WATKINS. Are there additional copies, so that we can follow you there?

Senator ANDERSON. I think while they are preparing the figures, I can explain, Senator Kuchel, that I subscribe to what you said in your original statement, that you felt that the power revenues ought to be pooled, since you have such a substantial investment in power revenues. I am only concerned about what Governor Aandahl calls the partnership features of this. If I could buy the installation at Grand Coulee on the same basis that the Pacific Gas & Electric would take this, I could well afford to retire from the Senate and not work again the rest of my life. And I am just trying to make sure that we understand the partnership proposal. That is all.

Senator KUCHEL. Mr. Chairman, may I ask one or two more questions?

Senator ANDERSON. Certainly.

Let me have my figures while he does it. I am not trying to be harsh, because I know your fine reputation, and I know what a good

Governor you were, and I am not trying to be critical about this at all. I am just trying to make sure. This may be the only chance we have at a hearing of this kind to know what the partnership proposal is so that we may be continuing it. As Senator Kuchel said, if we approve this project and I hope we may, if it passes the Congress, and I hope it will, then I hope that before we get into these partnership transactions we do lay all the papers out across the table and all of us understand what we are doing.

Mr. AANDAH. I am very glad to have the committee pursue this question for our mutual advantage.

Mr. MURRAY. My apologies, Senator. I should have picked this up a little bit quicker. The \$154 million to which I referred is an allocated part of the cost of the Trinity facilities chargeable against—

Senator ANDERSON. You understand that when I used the term it was not an allocated figure.

Mr. MURRAY. That is right. This is charged against the joint features of the project. There is \$65 million in single-purpose power facilities, some of which are included in the \$186 million figure that the company has, but separated in the 2 figures that we have been talking about, \$154 million and \$65 million, to make a total of \$219 million.

Senator ANDERSON. Well, I think the subject of arithmetic is one we can get into. As long as you say it is an allocated figure, that is something else. You could allocate it all to something else, and I would not know what it was. But this is the figure submitted by you.

Mr. MURRAY. We did not submit it. That is the company's submittal.

Senator ANDERSON. Then will you read me what your figure is on the Trinity Dam and Reservoir, if it is not \$90,399,000?

Mr. MURRAY. No. You are correct, Senator.

Senator MILLIKIN. I did not understand. What does this boil down to? I thought this was clear to me at the outset. Now I am confused.

Senator ANDERSON. I was only trying to find out for my own satisfaction, Senator Millikin, how much of this money was allocated to irrigation, which is just additional water pouring into that river, and which may be properly chargeable there, so that I might know whether the Government was getting a fair price for falling water. Frankly, I know of no yardstick for selling falling water.

Senator WATKINS. How about Hoover?

Senator ANDERSON. We do not sell falling water in the Hoover Dam.

Senator WATKINS. That is the effect of it; is it not?

Senator ANDERSON. No.

Senator WATKINS. At least, I have been so advised, that that was the effect of it. They put in their own generating plants.

Senator MILLIKIN. Could we have the whole thing summarized up to this point?

Senator ANDERSON. Well, I think, Senator Millikin, all I would say is that there is a partnership proposal that was involved in this that I think we would want to study in connection with the amendment which has been put on in the House, that would give 18 months for a determination of that. I would want to know who was going to make the determination and where it was going to be submitted. I

strongly incline to the suggestion made by Senator Kuchel, that since Shasta and Friant and these other dams are federally operated into one pool, they would have a great deal more satisfaction if they tried to integrate this power into the pool. And since Secretary Aandahl has testified that even though this power is a little expensive, it can be put into the pool without raising the 4.48 rate, I think that is probably where I would think it ought to go.

The committee would study it and come to its own conclusion. I think that would end up all the questions I had on it with Governor Aandahl.

Senator KUCHEL. Mr. Chairman, I do just want to take the time of the committee to suggest that in the House hearings during April, the chairman of the Interior Committee, Mr. Engle, directed this question to the Secretary. I read from page 69.

Now, what would you say if we struck out the authorization for the Federal Government to build the power features and put in the bill an amended direction to the Interior Department to enter into a contract with the Pacific Gas & Electric Co. to build and operate the powerhouses according to their proposal?

Mr. AANDAHL. I would feel that that would be undesirable at this time. The negotiations have hardly begun, and there are so many uncertainties that I would feel such a procedure would be unwise. If the committee is inclined to give some recognition to the falling water proposal, it would be my suggestion that the authorizing language in section 1 of this bill remain substantially as it is, but that a proviso clause be added directing the Secretary of the Interior to further study the possibilities of selling falling water, and at his discretion to contract for the sale instead of constructing the power facilities.

The last sentence of that statement, Mr. Secretary, was included in your prepared statement here today. But I am sure that you would agree that your answer, your complete answer, to wit, that it would be undesirable for a decision to be made today, and that the negotiations have just begun, and there are uncertainties, remains the same now as it was then.

Mr. AANDAHL. That is entirely correct. And the opinion expressed before the House committee is just as true now as it was then.

Senator KUCHEL. In other words, this is a multiple-purpose project, and so far as the construction of the dam is concerned, it could proceed as it is urgently needed, and this question of power, as is provided for in the House bill, could be deferred, without injury to the undertaking now.

Mr. AANDAHL. That is correct. The only difference from the position taken in the House bill and the recommendation on the part of the Department of Interior is that we suggested that it be made an executive matter for executive determination after the contract for the sale of falling water had been negotiated and all the information was before us. The House committee has taken the position that they would like to have Congress take another look at it. And we are not going to seriously object to that.

Senator ANDERSON. Well, I think it would make a great deal of difference as to the speed with which this bill might leave the committee, if it is left to an executive decision as to whether it will or will not contract for the sale of falling water. I think I might just as well say frankly that I am going to be one of those who will try to keep the bill off the Senate floor as long as I could and kill it if I possibly could. Because I think the first time the Secretary of

Interior sold falling water, he should not do it by mere executive decision. He ought to let the Congress in on that. That is a very important public question. And I really believe that the language of the House bill is preferable to the testimony of the Department that the Secretary be authorized to enter into a contract when he is ready.

That is a matter that the committee can get into at a later time. It is a discretionary matter.

Mr. AANDAHL. And we are not offering any particular objection to the opinion that is expressed by the committee.

Senator ANDERSON. I appreciate that. I do think that the consideration of selling falling water from a large dam is a pretty serious consideration. I think the Congress might have a look at it, as it has a look at a great many other things.

Is this regarded as a dam to be built on navigable waters? Is that river navigable in the ordinary sense?

Senator WATKINS. With a canoe, perhaps.

Mr. AANDAHL. I would not want to venture an answer at this moment.

Senator ANDERSON. Will the dam be built on lands owned by the United States, or lands to be acquired by the United States? Is that public land up there on which the dam is going to be built?

Mr. MURRAY. A great deal of it. Most of it is in the national forest.

Senator ANDERSON. We had some questions raised here in the committee on the Hells Canyon Dam, because it was built on a navigable stream and was going to be built on public lands. I just wonder what the answers to those two questions are.

Mr. MURRAY. Practically all of the area that would be covered by the main reservoir site and also the Lewiston Reservoir is now within the borders of a national forest and is federally owned. There are, however, scatterings of private holdings running all through that area, that would enter into it, so it is not entirely federally owned.

Senator KUCHEL. What about the other question the chairman asked? I did not hear that.

Mr. MURRAY. As to the navigable stream? We would like to supply that for the record, Senator Kuchel.

(The material referred to, when received, will be filed with the committee.)

Senator ANDERSON. Are there questions of Secretary Aandahl?

If not, we will call on Mr. Dexheimer.

#### STATEMENT OF W. A. DEXHEIMER, COMMISSIONER OF RECLAMATION

Mr. DEXHEIMER. Mr. Chairman, I have no prepared statement for the committee. Mr. Spencer, the regional director, and Mr. Murray, the planning engineer, are here to testify on any details.

Senator ANDERSON. Why don't you bring them both up here?

Mr. Murray, come up here next to Senator Watkins, if you will, please. It will be easier for the reporter.

Mr. DEXHEIMER. I will be glad to answer any questions. And I would like, if the committee would permit it, to be excused so that I could catch a plane this afternoon for a commitment I have in Denver tonight. But I would be glad to stay over if the committee wishes.

Senator ANDERSON. We will start, then, with Mr. Spencer, the regional director.

**STATEMENT OF CLYDE H. SPENCER, REGIONAL DIRECTOR OF THE  
BUREAU OF RECLAMATION, SACRAMENTO, CALIF.**

Mr. SENCER. Mr. Chairman, my name is Clyde H. Spencer, regional director of the Bureau of Reclamation, region II, Sacramento. And I have a prepared statement, but in view of the fact that Mr. Murray has explained the map on the wall, I will skip through that in order to save time, if it will help the committee any.

Senator ANDERSON. Yes; go right ahead.

Mr. SPENCER. With the committee's permission I would like to make a brief introductory statement outlining the way in which the Trinity River project fits in as a logical "next step" in the development of the water resources of the Central Valley Basin. After the statement I would be pleased to answer any questions that the committee may have.

The Central Valley project was first authorized as a Federal Reclamation project by the Congress in 1937 (act of Aug. 26, 1937; 50 Stat. 850). The principal initial features of the Central Valley project are shown on this map [indicating] and consist of Shasta and Keswick Dams and powerplants, the Delta Cross-Channel, Contra Costa Canal, Delta-Mendota Canal, and Friant Dam, Friant-Kern Canal and Madera Canal. Backbone transmission lines adequate to convey the output of Shasta and Keswick plants to the vicinity of Tracey where our largest pumping load is located also were authorized. All these works are now completed and in operation.

Friant Dam, Friant-Kern Canal, and Madera Canal, located in the San Joaquin Valley, were designed to regulate and convey San Joaquin River water to areas of serious water shortage on the east side of that valley. Friant Dam also provides space for flood control. Long before the Central Valley project was authorized, owners of a large area on the lower west side of the San Joaquin Valley had established rights to use of San Joaquin River water. Therefore, before water could be impounded at Friant it was necessary to bring Sacramento River water to a point on the San Joaquin River known as Mendota Pool in order to provide a substitute supply. The Delta-Mendota Canal serves this purpose. In the late fall, winter and spring months, water for that canal is obtained from natural flow entering the Sacramento-San Joaquin Delta. During the summer months this is supplemented by releases of water stored in Shasta Reservoir.

Shasta Dam, Reservoir, and powerplant, and the companion Keswick Dam and powerplant are the principal features of the initial project in the Sacramento Valley. In addition to the important San Joaquin Valley irrigation service, the initially authorized features of the project make it possible to provide a large amount of new irrigation in the Sacramento Valley, to improve navigation along the Sacramento River, to control floods, and to hold back the intrusion of saline waters into the Delta area.

By the time World War II ended, it was obvious that the initial features of the project were hopelessly inadequate to meet the very large demands for water brought about by California's and the

Nation's increasing population. The Congress therefore authorized the American River development in October of 1949 (63 Stat. 852), which incorporated into the Central Valley project, Folsom Dam and Reservoir, Folsom powerplant, the Sly Park unit, and Nimbus Dam, Reservoir and powerplant, together with a high voltage transmission line to connect the American River plants to the backbone Central Valley project lines at Elverta. These works are under construction now and are scheduled to be completed in 1955.

In September of 1950 the Congress again added new features to the Central Valley project by authorizing the Sacramento Canals unit (64 Stat. 1036). These canals will convey water to approximately 205,000 acres of land in the Sacramento Valley. Construction is underway on the Currey Canal and design work on the Tehama-Colusa Canal is now in progress. We anticipate initiating construction on the Tehama-Colusa Canal as soon as the formation of irrigation districts, now underway, moves ahead so that adequate repayment contracts can be secured.

Intermittently from 1942 to February of this year the Bureau of Reclamation carried out a substantial planning program in the Trinity River area looking forward to a possible expansion of the Central Valley project to include a Trinity unit. Detailed reports recommending a development substantially the same as contemplated in pending legislation have been approved by the Secretary. In transmitting the views of the State of California on the Interior Department reports the director of public works of the State endorsed the project as engineeringly and economically feasible and recommended that it be constructed at the earliest practicable date.

Based on our thorough investigations, it seems to me that the Trinity River unit is a logical addition to the Central Valley project. The basic elements of the plan are simple. They are the same as those proposed by previous investigators, including the division of water resources of the State of California, the Federal Power Commission, and the Corps of Engineers. The area involved is shown on this map of the north coastal area of California.

The Klamath River Basin, of which the Trinity is a part, is one of the largest basins in California from the standpoint of water availability. Studies of the Division of Water Resources of California shown that nearly 40 percent of all the runoff of the entire State occurs in the Klamath River Basin. Annual precipitation in the area often reaches 80 to 100 inches.

A nearly infinite number of routes exist through which water can be conveyed from a large reservoir on the Trinity River to the Sacramento River watershed. The plan presented in my report of July 1954 to the Commissioner is a sound one, is workable, and demonstrates feasibility. Obviously it may change in detail as further field investigations show ways of improving the project or saving on costs. The specific features presented in the Bureau's engineering reports consist of a dam and reservoir on the Trinity above the village of Lewiston with a capacity of 2,500,000 acre-feet to conserve and regulate Trinity River flows; a small dam at Lewiston through which all water needed downstream can be released, while at the same time serving as a diversion dam to turn surplus water toward the Sacramento Valley on the east; 2 tunnels to convey the surplus water from the Trinity to the Sacramento; 4 powerplants at appropriate



points; and backbone transmission lines to carry the power to the south. Water entering the Sacramento River would be brought in above the existing Keswick Reservoir, thus increasing the output of Keswick powerplant without any additional expense.

So far we have merely touched on the irrigation benefits of the Trinity project. I would like to call the committee's attention to the fact that the operation of the Trinity River division would permit, on an average annual basis, the diversion of over 700,000 acre-feet of Trinity water to the Sacramento River Basin which, when coordinated with the Central Valley project system, would provide an additional 1,190,000 acre-feet of irrigation water for the Central Valley. Of this quantity, 665,000 acre-feet would be used annually to meet the ultimate needs of the Sacramento Canals unit of the Central Valley project; 525,000 acre-feet annually would be available for use on other lands in the Central Valley. While thus improving irrigation supplies in the water-short Central Valley, the project will increase the electric energy produced by the Central Valley project by 1,067 million kilowatt-hours annually.

In proposing a project which would take water from one of the coastal basins and bring it into the Central Valley Basin, we have been acutely aware of the importance of not depriving the basin of origin of the water which it needs now or may need in the future. Our plans contemplate making available ample water to meet the needs of the Trinity River Basin. One important local water need is for an adequate supply of water of favorable temperature for fish life. In arriving at quantities of water which should be released to flow on down the channel of the Trinity River for preservation of fish, we have relied upon detailed studies by the Fish and Wildlife Service. These have been reviewed carefully by the California State Fish and Game Commission and endorsed except for details which we believe can be adjusted readily in final planning. We believe these releases also will meet foreseeable consumptive requirements in the downstream portion of the Trinity River Basin. In planning the project one of our basic criteria has been that of meeting these minimum downstream requirements as a first order of priority.

The estimated cost of the Trinity River division works presented in the Bureau's report is \$219,282,000. The entire sum would be reimbursable except \$215,000 for minimum recreational facilities recommended at Trinity and Lewiston Reservoirs and \$47,000 for fish-protection facilities.

The Trinity division would be a sound investment for the country in view of the favorable ratio of primary benefits alone to total cost of 1.86:1. Total benefits resulting from the development would outweigh the cost in a ratio of 3.31:1.

Our reports contain detailed repayment studies of the Central Valley Project including the Trinity River division. Our analyses show that the projected power rates will assure repayment of costs allocated to commercial power in 1989 with interest at 3 percent. This is without using that interest for repayment purposes. Costs allocated to irrigation will be repaid by 2013 with the aid of about \$67 million in power revenues. Costs allocated to municipal water service will be repaid by 2005 with interest at 2½ percent. By the year 2013, repayment would be secured on all features constructed and a surplus of about \$171 million will have been accumulated.

Senator ANDERSON. How much in costs will be allocated to irrigation? You say they will be repaid with the aid of \$67 million from power revenues. I thought you said only about \$80 million was being charged in all. So only \$13 million will be charged for this 700,000 acre-feet of water.

Mr. MURRAY. No, sir. This is based on integrating with the entire Central Valley project. This is only one unit.

Senator ANDERSON. I know it is only one unit. My question is: How much is allocated against irrigation?

Mr. MURRAY. The total allocation for the entire project, including the Trinity River division, to irrigation, is \$399 million.

Senator ANDERSON. No. What is allotted to irrigation because of Trinity River.

Mr. MURRAY. We have not allocated the costs of the Trinity River features by themselves, as among irrigation, power, and so forth.

Senator ANDERSON. Then how can you get the amount that was allocated to power? You gave a figure on that. If you have not done it, how can you do it?

Mr. MURRAY. In the case, Senator, of the study that we made on falling water, we made such an allocation to get an approximation of the power costs of the joint features.

Senator ANDERSON. If you did that, you can subtract from the \$219 million and get it; can you not?

Mr. MURRAY. The total cost of the joint features was the \$154 million, allocated, as I told you. Of that total, \$44 million is allocated to irrigation and \$110 million is allocated to power.

Senator ANDERSON. Now, \$44 million is allocated to irrigation. And the irrigation is without interest, under the reclamation bill. So you are going to take \$67 million of power revenues to pay the \$44 million?

Mr. MURRAY. No, sir. The two figures are not related.

Senator ANDERSON. Do I read this correctly, or don't I?

Costs allocated to irrigation will be repaid by 2013 with the aid of about \$67 million in power revenues.

Does that say that you are going to take \$67 million in power revenue to pay the irrigation, or doesn't it?

Mr. MURRAY. Of the total project, including the Trinity River division. The figures are not related to the \$44 million allocation.

Senator ANDERSON. Why are we not on the Trinity River division of it?

Mr. MURRAY. Because the entire project, Senator, is estimated financially on the basis of a total, enlarged Central Valley project as is provided in the Trinity River bill, H. R. 4663.

Senator ANDERSON. Do I understand that if we came in here for a consideration of a dam on the upper Colorado River project, you would give us a consolidated balance sheet taking in Hoover Dam, Davis Dam, Parker Dam, and the whole upper Colorado River project, for goodness sake?

Mr. MURRAY. No, sir.

Senator ANDERSON. Then why can we not have one on this division?

Mr. DEXHEIMER. Senator, it has been our practice in allocation and in payout studies to consider a project as an authorized project

similar to the Missouri River Basin, the Columbia Basin, the Central Valley project, the upper Colorado River project, where all of the various costs are put in for the project, for the authorized features of the project, and then the cost allocations and the payout studies are made for the overall project, with a schedule showing when we would start certain features. This is just one division of the overall Central Valley project. So that our studies are not broken down as you would like to have them here. We have not made that cost allocation on any of those existing projects in that manner. We just make the overall allocation and payout studies on the overall project.

I think that is typical of private utility projects, where the later higher cost power projects, for example, are pooled. Their revenues and their costs are pooled, and an average rate is made on the basis of those costs.

Senator ANDERSON. Now, then, taking the whole Columbia River Basin, do you calculate that same way with reference to Hells Canyon? Do you consider the Grand Coulee Dam and all the rest of them? Was that the basis on which you reported on Hells Canyon Dam?

Mr. DEXHEIMER. No, sir. The Hells Canyon Dam was not an authorized project in the Columbia Basin.

Senator ANDERSON. This cannot be too well authorized, or you would not be back here looking for authorization.

Mr. DEXHEIMER. This is a portion, however, of the Central Valley project. We are assuming it will be authorized by the Congress as a portion of the Central Valley project. And there are so many other things, power and water, that tie together, that it would be most difficult to try to separate it and make it a single project standing alone.

Senator ANDERSON. I checked a moment ago the figure of \$70,000 for Los Angeles County. The Office of Education reports that for the school year 1953-54 the school districts of Los Angeles County received total Federal payments of \$1,163,000 for operation and maintenance, and for construction received \$4,244,717, from 1950 to 1952. So that I don't understand the \$70,000 figure. I don't worry about it, except that it struck me as a strange figure.

Go ahead, I think it would be a little easier, though, if we knew what this project involved, what this matter we have under consideration involved, in costs, how you are allocating it, and what you are doing with it.

Mr. DEXHEIMER. It would be an impractical thing to separate it, because of the multiple uses in Central Valley of the water and the power for the pumping and the overall payout studies that would be required.

Senator ANDERSON. But you find it would be possible to separate the power out? That is the interesting thing. You can separate that out, but you cannot separate the irrigation out.

Mr. DEXHEIMER. It is a little easier, because the things that are specifically ascribed to power, of course, the penstock, the enlarged

tunnels, and things of that kind, are easier to separate out not only physically but from cost standpoint. Then in the reservoirs you have a joint use, and you have a joint use in the tunnels for irrigation and power. So that there you allocate how much of that is needed on a basis of the uses by prescribed formulas that are set up.

Senator ANDERSON. Proceed.

Mr. SPENCER. Since our 1954 report was completed, the Pacific Gas & Electric Co. has offered to construct the power facilities proposed in the departmental reports with the Federal Government constructing the storage and water conveyance features. Also, we have studied, in a general way, the possibility of selling falling water to a non-Federal agency. The results of this study are presented in my report of January 6 to the Commissioner of Reclamation, which is incorporated in his report of January 19 to the Secretary.

Senator ANDERSON. Do you have a copy of that?

Mr. MURRAY. Yes, sir.

Senator ANDERSON. Has that report been submitted to us here?

Mr. MURRAY. I believe copies of it have been made available to the committee, Senator.

Mr. DEXHEIMER. Senator, that report was sent up informally to the committees of the Congress at the same time it went out to the States and Federal agencies for comments, 3 or 4 months ago.

Mr. SPENCER. In recent months the Pacific Gas & Electric Co. has furnished additional data from time to time which have made possible more detailed appraisal of the possibility of selling falling water. However, the whole subject is highly complex, and extended negotiations would be required before it could be certain that a workable plan could be outlined which would be favorable to the Central Valley project.

If any legislation enacted provides for full exploration of the falling-water proposal, construction could be started on the storage facilities immediately and completion of the overall project would not be delayed. It seems to me that the major items to be considered in exploring the falling-water proposal are:

- (1) The price to be charged for falling water;
- (2) Details of joint operation;
- (3) Any necessary changes in the plan of development, including sizes of tunnels, penstocks, and powerplants;
- (4) Arrangements for exchange of power for irrigation pumping and support of long-term power commitments; and
- (5) Effect on plans for future additions to the Central Valley project such as the San Luis unit.

In conclusion, I believe that whether the Trinity River unit is built as an all-Federal project as a part of the Central Valley project or the power facilities are built by a non-Federal agency, this development will be an important and much-needed addition to the Central Valley project.

I appreciate the opportunity of appearing before this committee.

(The exhibits submitted by Mr. Spencer are as follows:)

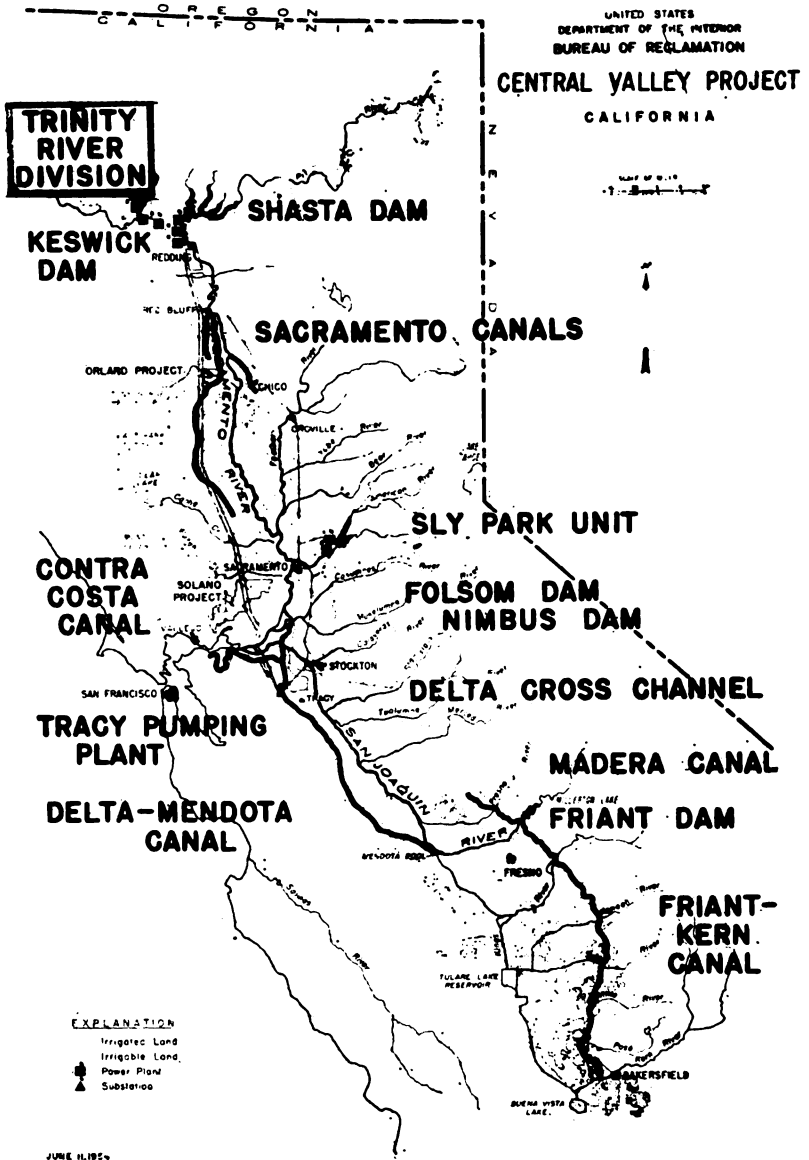
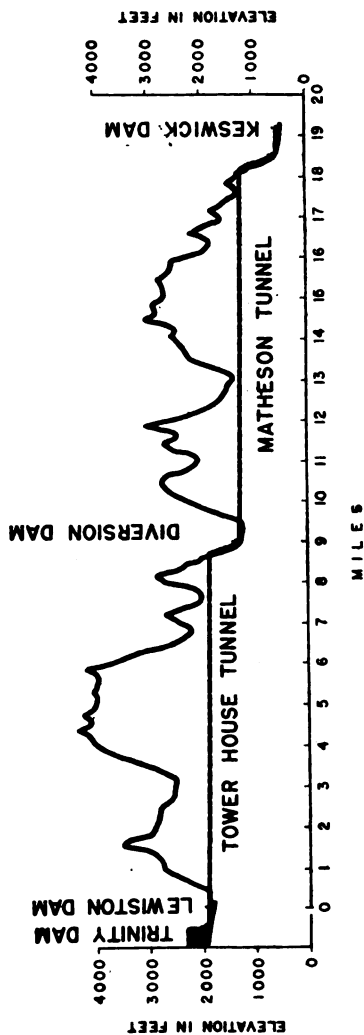
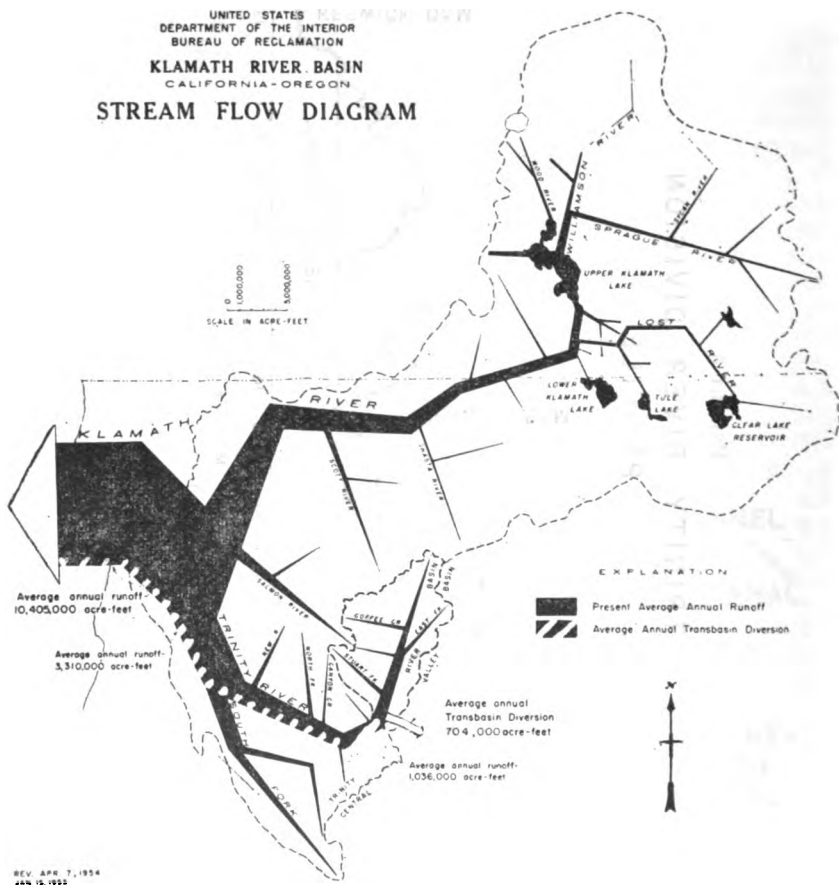
**EXHIBIT 2**

EXHIBIT 3  
TRINITY RIVER DIVISION  
PROFILE



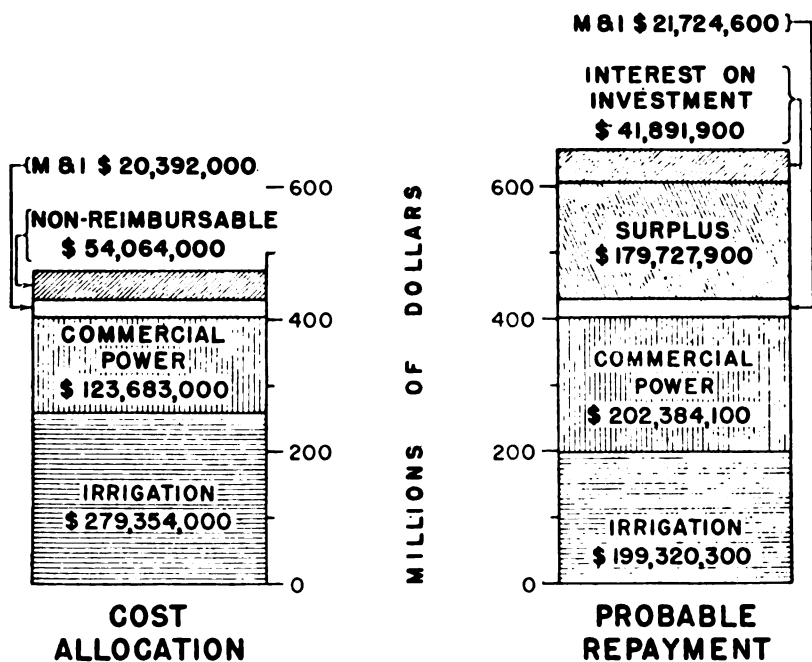
JUNE 11, 1954

**EXHIBIT 4**



# EXHIBIT 5

## COST ALLOCATION AND PROBABLE REPAYMENT CENTRAL VALLEY PROJECT EXCLUDING TRINITY RIVER DIVISION AND ASSOCIATED FEATURES



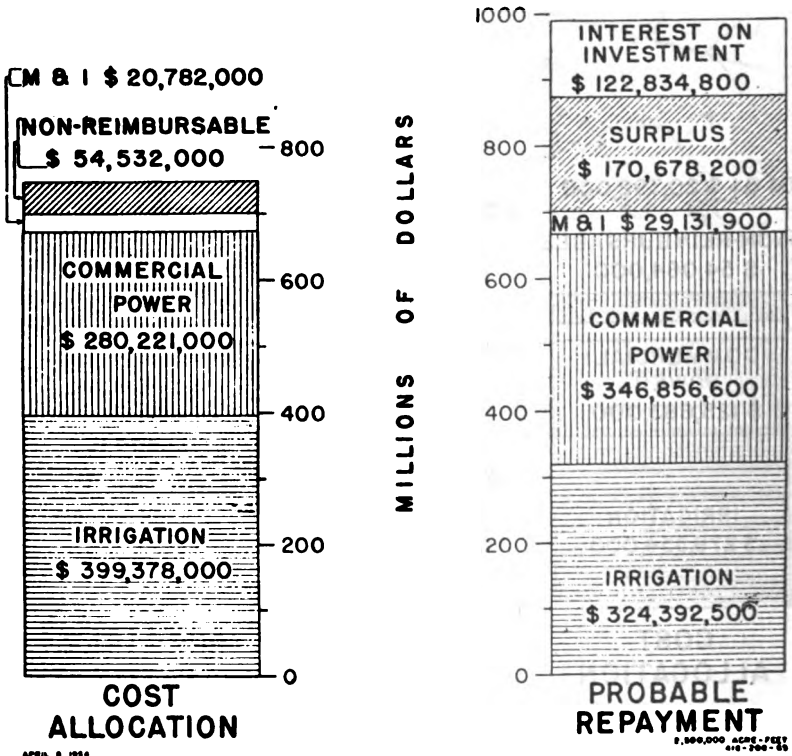
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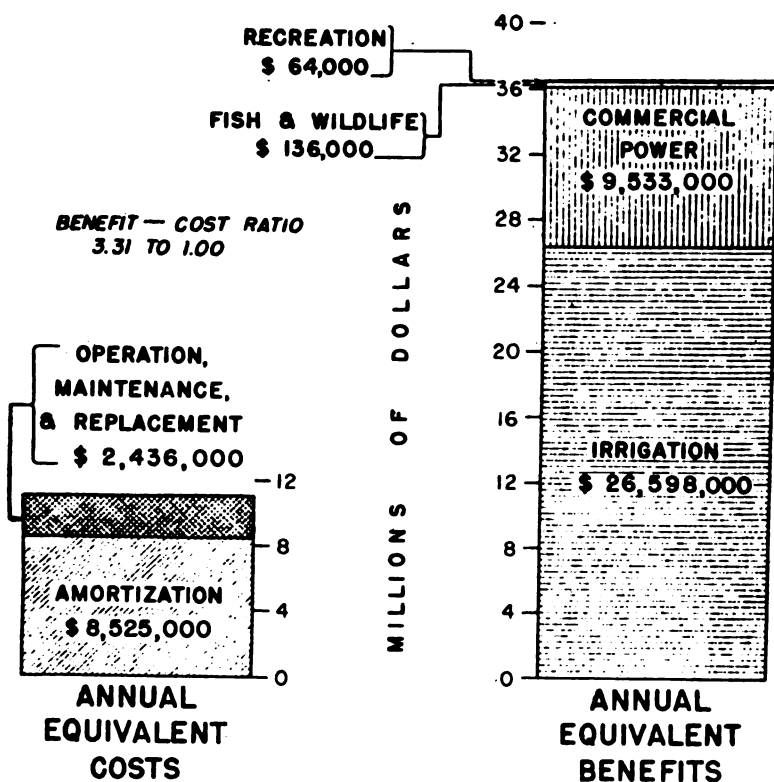


EXHIBIT - 6

**COST ALLOCATION AND PROBABLE REPAYMENT  
CENTRAL VALLEY PROJECT INCLUDING TRINITY  
RIVER DIVISION AND ASSOCIATED FEATURES**



## EXHIBIT - 7

COMPARISON OF ANNUAL EQUIVALENT BENEFITS  
AND COSTS OF TRINITY RIVER DIVISION AND  
ASSOCIATED FEATURES

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Senator ANDERSON. Mr. Dexheimer, do you have any place in the United States where you have a joint operation, as I mentioned, in item 2?

Mr. DEXHEIMER. You mean with a non-Federal agency operating?

Senator ANDERSON. Operating the water, and you trying to operate the irrigation systems, so that the water is available for irrigation when needed. Would you have a conflict there, or could you have a conflict?

Mr. DEXHEIMER. I don't believe we could, Senator Anderson. The Boulder Canyon Project Act provided an opportunity for a similar arrangement. However, it didn't work out that way. And we sell the power at the bus bar. But there the Bureau of Reclamation retains control of the water and the discharges that are necessary for irrigation.

Senator ANDERSON. Is there any place in the United States where you have a program where the Bureau of Reclamation has control of the water and a private hydroelectric company has control of the water also for their purposes?

Mr. DEXHEIMER. No, sir, none that I know of.

Senator ANDERSON. This would be the first one, then, of that nature?

Mr. DEXHEIMER. Unless it would be a very small one, sometime in the past that I am not aware of, I believe that is correct, yes, sir.

Senator ANDERSON. You do not believe there might be any difficulty in conflict of administrations there? Who would be the final judge as to whether the water would be allowed to flow through the tunnel?

Mr. DEXHEIMER. The Bureau of Reclamation would have to have absolute control over discharge of water from any reservoir and scheduling of that, and the power generation would have to be subordinated to other uses by contract.

Senator ANDERSON. Would you probably have any difficulty selling the securities under those circumstances?

Mr. DEXHEIMER. I don't believe so, under those circumstances, those particular circumstances, because that would be based on engineering judgment as to the amount of water that would be available for generation of power.

Senator ANDERSON. We will come now, then, to Mr. Murray.

Mr. MURRAY. I do not have a statement, Senator.

Senator ANDERSON. Has anyone submitted anything to us on the cost of this, other than an overall figure?

Mr. DEXHEIMER. Yes, sir. The costs indicated by Mr. Spencer a few moments ago—the overall cost of \$219,282,000. That is including the Federal construction of power facilities.

Senator ANDERSON. We have never had a copy of this. Would it be proper for the Senate Committee on Interior to have a copy of it? This is dated January 19, 1955. The report on the Trinity River division of the Central Valley project, which we now have before us.

Mr. DEXHEIMER. I felt quite sure that you sent copies of that informally at the time it was sent out to the various States.

Senator ANDERSON. We have never had copies of it at all, and the bill is here before us. It does seem to me that we ought to be allowed to have a copy of it.

Mr. DEXHEIMER. Of course, you realize that until the report from the Bureau of the Budget comes, we cannot send it to you formally.

Senator ANDERSON. That may be the difficulty, whether it is formal or informal.

Senator WATKINS. Do we have copies, whether we got them formally or informally? That is what I am interested in.

Senator ANDERSON. No; we don't.

Senator MILLIKIN. Can they not supply us with a copy to put an end to this talk about it? Can we not get a copy and have it available?

Mr. MURRAY. Yes.

Senator ANDERSON. Are there any questions?

Mr. Durkee?

Mr. Durkee, will you state your name and identify yourself for the record, please?

### **STATEMENT OF FRANK B. DURKEE, DIRECTOR OF PUBLIC WORKS OF THE STATE OF CALIFORNIA**

Mr. DURKEE. My name is Frank B. Durkee, and I am director of public works of the State of California, Mr. Chairman.

I wish to thank the committee for this opportunity to appear. I feel that Senator Kuchel's statement and that of Congressman Engle have covered this matter quite fully from the standpoint of the State, but I have a brief statement which I would like to present.

I am appearing before you today at the direction of Gov. Goodwin J. Knight in support of H. R. 4663, which would authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws. I would like to say also, Mr. Chairman, that it is at the invitation of Senator Kuchel that I am here.

The proposal for the diversion of the waters of the Trinity River to the Central Valley of California is not new. It has been given consideration for more than a generation. As early as 1924, a board of consulting engineers appointed by the Federal Power Commission reported that the advantages of such a diversion outweighed its disadvantages. In the years between 1925 and 1930, plans for the diversion of the Trinity River to the Sacramento River Basin were studied by the State engineer of California, and a plan for such a diversion was included in the State water plan submitted to the legislature in 1931. Other reports have been made by the United States Forest Service, the Corps of Engineers, and more recently, by the Bureau of Reclamation.

Senator MILLIKIN. Where does the Trinity River rise? In what State?

Mr. DURKEE. It rises in Trinity County, Calif., Mr. Chairman.

Senator MILLIKIN. I thought it rose in Oregon.

Mr. DURKEE. It flows into the Klamath River, and the Klamath River arises in the State of Oregon.

Senator MILLIKIN. Is the State of Oregon agreeable to the project?

Mr. DURKEE. I know of no opposition from the State of Oregon.

Senator MILLIKIN. Have they been consulted?

Mr. DURKEE. Perhaps the representative of the Bureau could answer that more fully. I have never heard of any opposition to the project by the State of Oregon, as a State.

Senator MILLIKIN. I would like to know whether the State of Oregon has been consulted, and whether it agrees to this project.

Mr. DEXHEIMER. May I say they have been consulted. We have their comments and we have summarized those. They are before the Bureau of the Budget. We hope that will be up before this committee in the next few days. Oregon did not object to the project.

Senator MILLIKIN. Thank you very much.

Mr. DURKEE. On July 30, 1927, following further study of the diversion of Trinity River water to the Sacramento River Basin, the State of California, through its department of finance, filed applications with the State division of water resources for the appropriation of water from the Trinity River for the development of power and for use for irrigation, domestic purposes, salinity control, and navigation, in the Sacramento and San Joaquin Valleys. These applications are still in good standing and are subject to assignment to the Federal Government.

As the representative of the Governor of California, I have, on two previous occasions, submitted to the Secretary of the Interior, under the terms of the Flood Control Act of 1944, reports stating the views and recommendations of the State of California on the Trinity River division project. One submission was made in connection with the proposed report of the Secretary, dated May 2, 1952, and the other was made in connection with his proposed report dated February 17, 1955, the one on which H. R. 4663 is based.

The views and recommendations on both of these reports are supported by detailed studies made of the Trinity River division project by the division of water resources of the State department of public works, supplemented by studies made by all other interested State agencies. It was requested in both reports that the State's views and recommendations be sent by the Secretary of the Interior to the President of the United States and to the Congress. It is understood that has been done. I may be in error, in view of the statements made this morning, Mr. Chairman.

In my letter of transmittal of the State's views on the 1952 report of the Secretary of the Interior on the Trinity River division project, dated April 13, 1953, it was stated that the increase in the population of California during the past decade and further continued rapid growth predicted for the future, require development of the State's water and power resources in consonance with such increasing population and the accompanying industrialization and agricultural expansion. The Trinity River project would serve to meet in part this need and would be highly beneficial to the economy of California. It is further stated in that report that the position of the State of California, based on the studies made, is that the Trinity River project is engineeringly and economically feasible and that it should be constructed at the earliest practicable date.

In my letter of transmittal of the State's views on the 1955 report of the Secretary of the Interior on the Trinity River division project, dated May 28, 1955, I again stated that the project should be developed to make the greatest possible contribution to the water and power resources of California and that it continues to be the position of the State of California that the project should be constructed at the earliest practicable date.

At the recent session of the California State Legislature both the senate and the assembly, by separate actions, as has been previously stated to you this morning, memorialized the Congress and the Presi-

dent of the United States to enact such legislation as may be required to bring about the immediate authorization and construction of the Trinity River division and San Luis projects.

In conclusion, gentlemen, I respectfully request, on behalf of the State of California, that your committee take favorable action on the pending legislation to authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division project.

Thank you, Mr. Chairman.

ADDITIONAL STATEMENT OF FRANK B. DURKEE, DIRECTOR OF PUBLIC WORKS OF THE STATE OF CALIFORNIA, WITH ENGINEERING AND FINANCIAL FEASIBILITY OF THE TRINITY RIVER DIVISION PROJECT

1. *Engineering feasibility.*—The engineering feasibility of the project is not questioned. A summary of previous reports and investigations is set out in the State's comments on the 1952 report of the Secretary of the Interior. (H. Doc. 147, 83d Cong., 1st sess., p. 3.)

2. *Financial feasibility.*—The Central Valley project, as presently completed and operated, has been demonstrated to be financially feasible to a high degree. If the Trinity project is integrated with Central Valley project, financially and operationally, as provided by H. R. 4063, the combined and enlarged Central Valley project will still be financially feasible, as demonstrated by analyses included in the report of the Secretary of the Interior.

The State's comments included an analysis of the project operated as a separate entity. This also demonstrated the Trinity project to be financially feasible, if power available for commercial sale were sold at approximately 7.2 mills per kilowatt-hour. There is a market for this power in northern California at this rate or higher (State's report of May 1955, pp. 35 and 36).

In other words, the project can be made financially feasible, either standing alone or as a part of Central Valley.

Therefore, we say that the Trinity River project is engineeringly and financially feasible. Its need, likewise, is unquestioned.

Senator ANDERSON. Thank you very much, Mr. Durkee.

Are there questions?

Senator WATKINS. I have none.

Senator ANDERSON. Senator Millikin?

Senator MILLIKIN. Is there any irrigation from the river in Oregon? I have not got that clear in my mind.

Senator ANDERSON. From the Trinity there is none, but there is from the Klamath.

Mr. DEXHEIMER. Senator, the Trinity River itself is entirely in California; but it enters the Klamath River near the ocean, and there is a very large amount of irrigation on the Klamath in Oregon. That river arises in Oregon. And the only interest, really, of Oregon, in the Trinity development would be the amount of depletions that the Trinity might make, which in effect, might possibly affect the amount of water they would have to let go from the Trinity, that they would not be able to develop in Oregon. So there is no irrigation directly involved on the Trinity River, except a provision for future possible developments in California or the lower Klamath Basin, where there is some possibility of future development.

Senator MILLIKIN. Has anybody raised any questions about moving the water from one watershed to another?

Mr. DEXHEIMER. No, sir.

Senator MILLIKIN. All right. Thank you.

Senator ANDERSON. Are there any further questions?

Mr. Jackman, you are going to have to leave early. I am going to take you now.

Will you state your name and your position?

**STATEMENT OF WILLIAM JACKMAN, PRESIDENT, INVESTORS LEAGUE, INC., NEW YORK CITY, N. Y.**

Mr. JACKMAN. Thank you very much, Mr. Chairman.

I am William Jackman, president of the Investors League, Inc., with headquarters at 175 Fifth Avenue, New York City, N. Y. The league I represent is the largest and most successful organization of investors, with thousands of members who reside in every State of the Union.

I am grateful for the opportunity to appear before this distinguished committee, and to register the support of the Investors League, Inc., for private development of the power generation and transmission facilities of the Trinity River project in California.

I am not here as a representative of the utility industry but rather as a spokesman for the investing public: Those persons who have contributed in no small measure to building our industrial might to a point of world leadership and as such have created for our citizens the highest standard of living known to man.

We are keenly aware of the importance of this issue, not only as between public or private development of our power resources but also as it applies to our basic concepts of free enterprise. For here is a clear case of a private concern ready, willing, and able to do a job and do it well. We feel quite strongly that they should be allowed the right to do so.

Senator ANDERSON. You mean by that that they should stand willing to build the dams?

Mr. JACKMAN. Just the power end of the project.

Senator ANDERSON. Well, has that not been true of Grand Coulee and many others, that after the dams have been built and millions expended on the project, nearly anybody can put in a generator?

Mr. JACKMAN. Well, that is true, too. But we believe in this case where the utility companies have come along and made an offer, they should be given an opportunity to do it. I don't think in other cases you have had a similar offer.

It has been brought out at the hearings today about this sale of water. I don't know much about the sale of water. But nevertheless I think in this case, where free enterprise has entered into the picture, where it is a joint matter, we believe that they should be given every consideration as to whether they can or cannot. Far be it from us to say whether they can or not, but we think the committee should give that serious consideration.

As I said, we are keenly aware of the importance of this issue, not only as between public or private development of our power resources, but also as it applies to our basic concepts of free enterprise. For here is a clear case of a private concern ready, willing, and able to do a job and to do it well. We feel quite strongly that they should be allowed the right to do so.

As a matter of fact, President Eisenhower expressed this viewpoint quite adequately in a speech which he made in 1952, when he stated:

No Federal project, large or small, will be undertaken which the people can actively do or help to do for themselves; no Federal project will be undertaken which can be handled by private enterprise.

I know of no better situation to which this statement can apply than the one before you today.

In line with the administration's partnership policy, the report submitted to the Secretary of the Interior by the Reclamation Commissioner, Mr. Dexheimer, indicated that private developments of the power features not only would be acceptable, but would prove beneficial to the Government.

We thoroughly support this position of private enterprise-Federal Government partnership development of the Trinity River area.

Sound business administration dictates that Government should encourage taxpaying enterprises, rather than expand tax-consuming Government projects. The proposal of the Pacific Gas & Electric Co., for partnership construction of this project, would save the taxpayers at least \$50 million.

A Federal Government outlay of this amount, in addition to the \$155 million estimated for the construction of the dams and reservoirs would further aggravate the budgetary deficit under which we are now living, and would make the realization of our goal of a balanced budget that much more difficult.

We must bear in mind that all of the business of the United States, which is developed by private resources, are taxpaying enterprises. It is such enterprises which supply the billions of dollars the Nation needs annually to meet its expenses. Public power projects are non-taxpayers. Their initial cost must be met through taxation and if they prove unsuccessful and are unable to meet their operating costs, taxpayers must make up the deficit.

The Pacific Gas & Electric Co. would provide at least \$171 million more in net revenue to Federal, State, and local governments, over the project repayment period. This is money that would otherwise be lost to these governments. Of the total the Federal Government would realize \$70 million in taxes and \$36 million in the form of net savings to the Government.

We must not forget it takes an average investment of over \$12,000 to build the tools and facilities necessary to create one job in industry. In the public-utility field the investment needed is probably many times greater than this average amount. The investors for whom I am speaking have shouldered the responsibility in the past and will do so in the future provided it can be done in an environment of freedom.

The only alternative is for the Government to assume the role of investor—a costly and politically dangerous procedure.

I am not an engineer so I am therefore not qualified to pass on the technical merits of the Pacific Gas & Electric Co.'s plans. I can only speak out in defense of our system of private capital and to urge that you lend the weight of this committee toward the encouragement of such endeavors.

The league believes that the basic criteria for considering a case of this nature is that whenever free enterprise can do the job they should be allowed to do so. Only in the case where private enterprise is unwilling or unable to do it, the Federal or State Governments should, providing that such undertakings are in the public interest. Public activity should never be at the expense of taxpaying enterprise.

I think that provides the answer to the question.

Since the House hearings on this subject were concluded in April the Investors League, through its California chapter, has been seeking to gauge local public opinion on this matter. The tremendous amount of mail we have received, both from our members in Cali-



fornia and bordering States, indicates wholehearted support for our position. During the latter part of last May, at investor conventions in San Francisco and Los Angeles, a resolution in support of partnership development of the Trinity River project was unanimously adopted.

The resolution states as follows :

Whereas legislation has been introduced in Congress to authorize construction of the Trinity River development in California by the Department of the Interior ; and

Whereas the Investors League, Inc., believes that development of the Trinity River should be carried out at the least cost to Federal taxpayers ; and

Whereas the Department of the Interior has announced that construction of power facilities by local enterprise at the Federal Trinity River Development would save the Federal Government millions of dollars ; and

Whereas it appears that development under this partnership plan would result in beneficial broadening of the local tax base ; and

Whereas this organization supports the announced policy of the present administration of removing the Government from commercial activities in competition with its citizens and of encouraging development of hydroelectric power by local, public, or private enterprise in partnership with the Government at Federal dams. Now, therefore, be it

*Resolved.* That the Investors League, Inc., approves development of hydroelectric power on the Trinity River by local enterprise ; and be it further

*Resolved.* That this organization hereby respectfully urges the Governor of the State of California, Senators Knowland and Kuchel and members of the California congressional delegation and the Interior and Insular Affairs Committees of the Senate and House of Representatives of the United States to obtain suitable legislation by Congress authorizing construction of Trinity River power facilities by any local, public or private agency which is willing and able to build said facilities in the public interest ; and be it further

*Resolved.* That the Secretary of the Investors League, Inc., is hereby directed to send copies of this resolution to the President of the United States, the Secretary of the Interior, the Governor of the State of California, Senators William F. Knowland and Thomas H. Kuchel, each member of the congressional delegation from California, and to the Interior and Insular Affairs Committees of the Senate and House of Representatives of the United States."

Thank you.

Senator ANDERSON. On page 2, you suggested that Mr. Dexheimer had indicated that private development of the power features would not only be acceptable but would prove beneficial to the Government.

Mr. JACKMAN. That was in the case of falling water.

Senator ANDERSON. Did Mr. Dexheimer indicate that private development of the power features would not only be acceptable but would prove beneficial to the Government ?

Mr. JACKMAN. He referred, Mr. Chairman, to this contract that they were negotiating or talking about with the Pacific Gas & Electric.

Senator ANDERSON. Did he, I say, state, when he discussed that, that it would not only be acceptable, but would prove beneficial to the Government ?

Mr. JACKMAN. It would prove beneficial if they could sell the water. But I don't think that had been done before. And that was tied to the generating of power. Therefore, it would be beneficial.

Senator MILLIKIN. The question is whether he said that, is it not ?

Senator ANDERSON. That is what I am trying to find out.

Mr. Dexheimer, did you testify before the House committee that the private development of the power features would not only be acceptable but would prove beneficial to the Government ?

Mr. DEXHEIMER. I said that it might prove beneficial, provided that the contract which would be entered into would provide the

same—or at least as good or better—arrangements so far as irrigation pumping power was concerned. The releases of water for irrigation and all of the other things that would need to be considered, and the rates for the pumping power would also have to be at least as good as those that were developed by the Federal Government. And I also indicated that the negotiation of that contract would be most difficult, because of the complicated nature of it, and the P. G. & E. proposal, which would require us to change our plans for pumping facilities, capacities, and so on.

Senator MILLIKIN. I take it, Mr. Chairman, that the statement referred to was made in the hearing in the House.

Senator ANDERSON. Yes.

Senator MILLIKIN. Then it is on record, and we can compare the two and draw our own conclusions as to whether the witness has made a correct summary of what Mr. Dexheimer said.

Senator ANDERSON. That is correct.

It is now 25 minutes till 1. Do you want to go on, or do you want to stop now?

Is Mr. Heffington here?

Senator KUCHEL. Mr. Heffington sent a wire to you, Senator, so there will be no personal appearance.

Senator ANDERSON. We will be glad to have his statement. I congratulate the junior Senator from California on moving the list along.

Mr. Fleharty? And Mr. Carr, don't you want to come along with him?

Mayor Fleharty, will you state your name? It is obvious of course what you are here for, but I will be glad to have you identify yourself for the record.

#### **STATEMENT OF GEORGE FLEHARTY, MAYOR OF THE CITY OF REDDING, CALIF.**

MR. FLEHARTY. Mr. Chairman and members of the committee, my name is George Fleharty. I am the mayor of Redding, Calif., and with your permission, I will condense my statement as briefly as possible in the interest of the valuable time of the members of the committee.

Our city is located approximately 5 miles from the lowest feature of the proposed Trinity River project. I appear before you today on behalf of the city of Redding, Calif., to urge passage of H. R. 4463. As briefly as possible, I shall state the reasons why we believe it would be sound Federal policy to enact into law H. R. 4663.

The Trinity River project has been studied by both State and Federal agencies periodically for more than 30 years. Former witnesses have informed you the project is definitely one of the best yet to be constructed in the United States and has a high ratio of benefits to cost. There is no question about its financial feasibility. Because we in the city of Redding, and the county of Shasta, have seen first hand the benefits that come from Shasta Dam and other features of the Central Valley project we urge that you take action to make this part of the Central Valley project a reality. It is a logical addition which would furnish more water to the area that is desperately in need of it and more power can be generated to help pay the cost of irrigation.

The Sacramento River portion of the great Central Valley has approximately 1 million acres of fertile land not now in production, which needs only water to become productive. Irrigated acreage in the Sacramento Valley has increased at an average rate of 20,000 acres per year, over the past 20 years. The experience in this development has been that this acreage has developed on lands that were formerly planted in dry farm grains of the variety now in surplus production. In short, it is our considered judgment that placing these lands in specialty crop production will make a direct contribution toward a more stabilized, and better balanced, agricultural economy.

Senator MILLIKIN. Mr. Chairman, may I ask: What are the principal crops to be produced by this water?

Senator ANDERSON. Senator Millikin suggests he would like to know what the principal crops are which would be influenced by this water, or helped by it.

Mr. FLEHARTY. The crops in the total area were introduced in the presentation in the House record. They would primarily be vines, row crops, orchards, permanent pastures, such as clover, beans, tomatoes, strawberries, specialty crops which have a very high commercial value per acre.

Senator MILLIKIN. Thank you.

Senator WATKINS. What about cotton and rice?

Mr. FLEHARTY. The cotton is primarily in the San Joaquin Valley. There is very little cotton in the Sacramento Valley. In fact, I think there is none.

Senator KUCHEL. There isn't any.

Senator WATKINS. Has this supply anything to do with the releasing of other water which could be used for cotton?

Mr. FLEHARTY. In the present project, as such, the Trinity project, it would not, Senator.

Senator WATKINS. You do not produce any rice?

Mr. FLEHARTY. There is a limited amount of rice in the Sacramento Valley, yes. The project would not bring additional acreage under rice cultivation, however, through these additional waters.

One local example of such land utilization is the production of strawberry plants. The frozen strawberry industry has greatly expanded demands for this crop and newly irrigated lands in Shasta County are currently producing a crop with a gross dollar yield of \$5,000 to \$7,000 per acre. The county of Shasta has approximately 175,000 acres of fertile land not now under irrigation, a part of which could be developed in conjunction with the Trinity River project.

The people in the city of Redding are particularly concerned and respectfully request your approval of that part of the bill which appears on page 2, line 22, to page 3, line 5, wherein it says:

The works authorized to be constructed shall also include a conduit or canal extending from the most practical point on the Sacramento River near Redding in an easterly direction to intersect with Cow Creek, with such pumping plants, regulatory reservoirs, and other appurtenant works as may be necessary to bring about maximum beneficial use of project water supplies in the area.

The authorization of these works would make it possible to irrigate about 20,000 acres of land adjacent to the Sacramento River and east of the city of Redding, in Shasta County. A small supply of water has been made available from Shasta Dam for similar land a few miles north. Experience has proven that a number of people who work in

the area can improve their living standards by small tracts and part-time farming.

We in the city of Redding are anxious to develop more of this irrigable land, especially in small family-size tracts, even on a part-time basis, because it definitely stabilizes the economy of the area. At present our economy is based largely on lumber and lumber manufacturing, a strictly seasonal industry. Layoffs in the lumber plants would not affect workers so seriously if they could settle on small pieces of land and produce some of the family needs. This seems to be in the keeping with basic objectives and principles of the Federal reclamation program. It is especially important where we have such large and continuing increases in population, as we are experiencing in all of California and the other Western States.

The members of this committee will be interested to know that the Orland reclamation project, one of the first authorized by the Congress and located about 75 miles south of Redding, has developed an economy based on small farms which has been a great asset to the northern part of Glenn County. It is estimated that the income taxes from the area every 2 years are now equal to the total Federal investment, which has made it possible to sell many manufactured items that come from the States east of the Mississippi River.

Senator ANDERSON. Do I understand that the total amount of money that comes from the Federal Treasury flows back to it every 2 years from income taxes?

Mr. FLEHARTY. Yes, sir.

Senator ANDERSON. We have made statements about the Salt River Valley of Arizona, and that has been my pet example up to now, but I am happy to have this one. Because in the Salt River Valley they have paid back that enormous project several times over in income taxes. They are still paying back the cost of it in assessments from the land and power features. And after all that is done, then the income taxes will continue to pour money into the Federal Treasury for many, many long years to come. And I am glad to know we have found one that can do it every few years.

Senator WATKINS. We have a small project in Utah that does not quite approach that, but I think it is coming along in that direction.

Senator ANDERSON. You would not expect anything in Utah to be quite as good as it grows in California.

Senator WATKINS. I should be quite careful to say that.

Senator ANDERSON. Nevertheless, I am quite glad to have your confirmation of their experience.

Proceed, Mr. Fleharty.

Mr. FLEHARTY. The benefits to our national economy certainly justify national assistance in meeting the water problems in northern California where the local people cannot finance and develop these resources fast enough to meet the growing need.

In closing, may I point out to you that this project is of such vital importance to the State and to the Nation that Senator Knowland, Senator Kuchel, and Congressman Engle as well as Congressmen Sisk, Moss, and Hagen have joined in a bipartisan effort to get the project underway as soon as possible. On the State level, Governor Knight has on several occasions urged immediate construction of the Trinity project by the Federal Government. Every major office-

holder in California representing both political parties have taken a similar stand. On the local scene, both the Redding Chamber of Commerce and the central labor council have adopted identical resolutions endorsing immediate construction in line with H. R. 4663. We are solidly behind that bipartisan effort because reclamation, over a long period of years, has been a fruitful, extremely successful, bipartisan program for the good of the entire Nation.

If I might add one more paragraph: As representing an area directly concerned with the eventual outcome of the power partnership proposal, I was gratified to hear Secretary Aandahl reaffirm his position taken in April at the hearings of the House of Representatives. The Department of the Interior's statement this morning that it now represents such a partnership is disturbing to us in that Mr. Spencer's opinion was that it would take 5 or 6 months at least to reach a conclusion on the justification of such a partnership. We hope that the Department will not prejudge this important issue. We strongly support the 18-month provision of H. R. 4663 and express the utmost confidence in the wisdom in Congress to render the proper decision following the completion of these negotiations.

Senator ANDERSON. I am sorry to say, Mr. Mayor and Mr. Examiner, that the Senate is now voting on the Knowland resolution. We will have to go and vote. We will resume at 2 o'clock.

Senator WATKINS. I would like to congratulate the mayor on his statement. I think it was good.

I have used the same kind of argument before for the Colorado project.

Mr. FLEHARTY. Thank you.

Senator ANDERSON. That last sentence in there is one to which we all subscribe, that over a long period of years this reclamation work has been fruitful and extremely successful.

(Whereupon, at 12:47 p. m., the hearing was recessed until 2 p. m.)

#### AFTERNOON SESSION

The committee reconvened at 2 p. m., upon the expiration of the recess.

Senator ANDERSON. The committee will come to order.

Mr. Carr, will you proceed please?

#### **STATEMENT OF LAURENCE W. CARR, REDDING, CALIF., APPEARING ON BEHALF OF THE COUNTY OF SHASTA, CALIF., AND REDDING, CALIF., CHAMBERS OF COMMERCE**

Mr. CARR. Mr. Chairman, a number of matters that are contained in my statement have been covered, and I will attempt to paraphrase and at the same time keep the committee advised where I am.

Senator ANDERSON. Suit yourself. You are up close to this project and if you want to proceed, you may.

Mr. CARR. My name is Laurence W. Carr, of Redding, Calif. I am a member of the Water Resources Board of Shasta County, Calif. I am appearing here on behalf of the county of Shasta, Calif., and its board of supervisors. I also represent the Redding (Calif.) Chamber of Commerce. Needless to say the organizations which I represent have dedicated themselves for some time to unqualified support

of the Trinity River division of the Central Valley project, and to seeing this project become a reality. The area which I represent will be the primary beneficiary from the construction of this project, and is probably more acutely aware of its necessity than any other area in the State of California.

The project itself, however, is not a sectional affair, and in advocating the project we are not promoting a sectional interest within the State of California. Considering that the project is actually to be constructed in a rather remote area of the State, the almost unbelievable unanimity of support throughout the State of California, from every geographical area of the State, as well as at the top level of the State government, is the most eloquent proof of the worthiness of the project. I will deal with the unanimity of statewide support in a moment in my brief statement. However, I should like to point out certain background facts that I hope will assist the committee in a better appreciation of the urgent necessity of this project.

The Trinity River is a tributary of the Klamath River, which flows through southern Oregon and northern California. The Klamath Basin carries 18½ percent of all of the surface water which flows through the State of California. The Division of Water Resources of the State of California estimates that approximately 70 million acre-feet of water flow to the ocean through the various watersheds within the State. Of this 70 million, 13 million flow through the Klamath Basin alone, which is located in a very remote corner of the State. The Trinity River supplies 27 percent of this 13 million acre-feet, or a total of 31½ million acre-feet.

When we speak of this water running into the Pacific Ocean, we speak for the most part of its running to waste in the ocean, for most of this water represents precipitation. As most of the members of the committee appreciate, we have the so-called dry season, that falls during the months of December through May, whereas during the months of June through November no rainfall or precipitation of any appreciable amount can be expected in any of the great Central Valley or lowlands of the State of California. This season in all the arid States of the West is known as the irrigating season. This is a season during which a major part of the irrigation is done with impounded water, stored up during the rainy season. In the mountains within a few miles of Redding, in Shasta and Trinity Counties, upward of a hundred inches of rain fall during the months of December through May, into the Trinity watershed and other watersheds which flow into the Klamath River and waste into the Pacific Ocean. On the other hand, in the Sacramento and San Joaquin Valleys, the water shortage has become so acute that in one place in the San Joaquin Valley approximately 500,000 acres are in danger of reverting to desert. I might add that this year being a very bad year in California, and the impounded water being at the lowest level in years, that the situation is more critical than ever, and has a great deal to do with our interest in the urgent commencement of the project.

At the present time they are drilling in that valley for water up to depths of 2,000 feet with wells costing between seventy and seventy-five thousand dollars. The result of this deep-well pumping has been that the water table in the San Joaquin Valley is receding continuously. As a result, the House committee, as Congressman Engle men-

tioned this morning, made the study and the findings which are set forth on page 2 of my statement.

A special subcommittee of the House, meeting with a joint water-problems committee of the State legislature, in 1951, made the following findings and reached the following conclusions:

For all practical purposes the developed water supplies of the Sacramento River are overcommitted and oversubscribed. Increased uses of water from the Sacramento River from the beginning of project construction in 1935 to the present are about 3 times the expected increase of 300,000 acre-feet which was estimated by the State of California and the Bureau of Reclamation officials in the original plans for the operation of the Central Valley project.

That special committee filed a report which states as follows:

Construction of additional storage facilities to conserve water for use in the Central Valley should be commenced as soon as possible. The committee recommended that additional storage facilities be constructed as soon as possible to augment the deficient supply of water in northern California and to firm up the water supply for the Central Valley project if such facilities are required within the limits of economic feasibility.

So acute is the water situation in the State of California that a special legislative session was proposed in 1955, to deal solely with the subject of water. In my own county of Shasta there are 50,000 acres from a total of 200,000, of fertile land capable of producing specialty crops and livestock, which are almost completely unproductive now due to the lack of water. If this project is built, 20,000 acres of land will be served directly by the project. The additional 30,000 can be served by the construction of additional supplementary facilities by local agencies.

The urgent problem, therefore, is to find a source of this additional water. Engineers in their detailed statement to this committee have shown how logical the Trinity River division is, as an immediate source of the water that is so critically required. Transferring a small portion of the waters of the Trinity and Klamath watershed into the Sacramento Valley will produce more than average results.

Because of the fall involved the power production resulting as a by-product of the project is maximum. Testimony before this committee indicates that there is a ready market for all of this power. The testimony before the committee as to the financial returns from the sale of power and the tremendous cost-to-benefit ratio of this project show why it is high on the list among all of the reclamation projects in the United States, as a sound Federal project.

It is for this reason, therefore, that no organized opposition exists anywhere in the State of California to this project. On the other hand the Governor of California, in January 1955, stated as follows in his annual message to the State legislature:

The Trinity River project is now being planned by the Federal Government. California has informed the Secretary of the Interior that the project is feasible from an economic and an engineering standpoint and should be constructed at the earliest possible date. I recommend that this session of the legislature approve a joint resolution urging the Congress to begin consideration of this construction project, including all of its power facilities, at the earliest possible date.

Again in April the Governor stated as follows, in a further message to the legislature:

The plan of the Department of the Interior for the development of the Trinity project has heretofore been submitted to, and favorably recommended by, the executive branch of the State government on April 15, 1953.

There is now pending in the Congress legislation to provide for Federal construction of this project as a unit of the Central Valley project, I reiterate my recommendation of last January that the legislature adopt a joint resolution urging the Congress to take favorable action on appropriate legislation to authorize construction of the project.

The Water Resources Board of the State of California on June 4, 1954, adopted a resolution memorializing Congress, stating among other things, as follows:

That the Trinity River division project be constructed at the earliest practicable date; \* \* \*

The State Legislature of California in May 1955 passed a resolution memorializing Congress to construct the Trinity project at the earliest practicable date. This resolution received unanimous approval by the State senate and was approved by a majority of the assembly.

In the 1954 State elections, every major candidate for public office in California, both at the State and Federal level, regardless of party affiliation, declared his support of this project. All informed public officials in our State recognize that it is the soundest immediate solution to the critical water problem which has arisen from California's tremendous growth of the past decade. Much of the water that is needed will be required to salvage land already in production. The new land to be placed into production will in large measure be converted to specialty crops and production of meat and dairy products. The acreage now in dry farming grain production will be reduced and will therefore help to reduce present agricultural surpluses in those crops.

For the foregoing reasons the agencies which I represent respectfully urge your favorable action on H. R. 4663. Thank you.

Senator ANDERSON. Thank you very much.

Mr. CARR. I have a statement, Mr. Chairman, of Mr. Clair A. Hill, who is a consultant engineer for the county of Shasta on water problems, appeared before the House committee, and Mr. Hill also is the chairman of the California Water Resources Board which has adopted the resolution urging favorable action. I would like at this time to file the statement of Mr. Hill on behalf of the county also.

Senator ANDERSON. The statement will be reproduced in the record at this point.

(The statement referred to, when received, will be filed with the committee.)

Senator ANDERSON. Mr. Lyons?

**STATEMENT OF BARROW LYONS, APPEARING ON BEHALF OF CALIFORNIA FARM RESEARCH AND LEGISLATIVE COMMITTEE, SANTA CLARA, CALIF.**

Senator ANDERSON. Will you state your name and your position for the record, please?

Mr. LYONS. My name is Barrow Lyons. I have been asked to read a statement from the California Farm Research and Legislative Committee, Santa Clara, Calif.

Senator ANDERSON. You may proceed.

Mr. LYONS. My home is in Washington, D. C. This is addressed to Hon. James E. Murray, the chairman. I presume it should be addressed to Senator Anderson at the moment.



Senator ANDERSON. No, indeed. Senator Murray is the chairman. Mr. LYONS (reading) :

Gentlemen, you have before you for consideration, and our committee urges that this consideration be favorable, H. R. 4663 (Representative Clair Engle, California) already enacted by the House of Representatives, and providing for construction, operation, and maintenance by the United States Department of Interior of a major storage reservoir on the Trinity River, Calif., with a capacity of 2,500,000 acre-feet, a conveyance system and appurtenant works and power facilities to transport Trinity River water to the Sacramento River.

The necessary approval has been given to this project by all Federal and State agencies as required by law and both Houses of Congress have included in appropriation bills passed for fiscal 1955-56 the sum of \$1 million to start construction pending Senate approval.

Construction of the Trinity River project is the next logical step in fulfilling the requirements of a basinwide Central Valley project of which Shasta, Keswick, Friant, and Folsom, all authorized by the Congress as Federal reclamation projects, are now in operation although Folsom will not be fully operating until later this year.

The bill before you will provide an additional average of 704,000 acre-feet of irrigation water to be coordinated with and distributed through the facilities of the presently operating Central Valley project system in some measure replenishing the constantly receding underground water supply which is the life-blood of agriculture in this semiarid State.

Most of the water diverted from the Trinity will be used in the Sacramento canals now under construction as a Federal project. Due to a series of dry years, sharply increased population following World War II and more intensive agricultural production to satisfy demand, Central Valley project supplies, even with the volume which will be available from Folsom Dam this summer, are insufficient to service the Sacramento canals.

Irrigable acres to receive water from the canals amount to some 205,000, almost entirely within the counties of Tehama, Glenn, Colusa, and Butte.

Senator MILLIKIN. May I ask if that is publicly owned land or privately owned land? This 205,000 acres, are they publicly or privately owned lands?

Mr. MURRAY. They are privately owned lands.

Senator ANDERSON. Are they over the mountain and down the other side? Are they all on the other side of the mountain? Are they all supplied by transmountain diversion?

Mr. MURRAY. Yes, sir.

Senator ANDERSON. There are none in the valley of the Klamath?

Mr. MURRAY. No, sir.

Senator ANDERSON. Proceed, please.

Mr. LYONS (reading) :

It is anticipated that half these irrigated lands will be devoted to forage crops for feeding dairy and beef cattle to meet present and future California deficiencies in milk and meat production.

Much of the remaining land to be irrigated will be devoted to fruit and nuts. The additional water supply will be extremely beneficial in raising the whole water table of the area and preventing further deterioration through drought of the heavy investment in producing orchards in the entire area.

It has always been the conviction of our committee that the Nation and the world need more, not less food, and that so-called surpluses are really the result of an ineffective system of distribution.

This premise has long been recognized as valid by many members of your committee who have consistently introduced and supported legislation to make more food and fiber available to underprivileged families at home and abroad. And these Senators know that our committee has given its vigorous support to these measures.

With our own rapidly mounting population and standard of living we cannot afford to lose the productivity of vast acres throughout the Nation because of an inadequate water supply. Members of your committee also know that our

group of farmers and organizations who work with us have given all possible support to reclamation projects in States other than in California. We feel that all these projects contribute to the national interests.

Senator ANDERSON. I am sure Senator Millikin, having had California testify against his pet bill, and how he and I joined in the effort of the Colorado bill, and have California testify against that, take that last statement with some slight degree of reluctance.

Senator MILLIKIN. It is some very slight approbation, Mr. Chairman. I think it is a favorable offense.

Senator ANDERSON. I think so, too.

Senator MILLIKIN. It is very difficult, I have observed, for one section of the country to note the welfare of other projects equally with their own.

Senator ANDERSON. Senator Millikin's project in Colorado, the Arkansas project, which he has so consistently supported, depends on a transmountain diversion out of the Colorado River watershed, which is looked upon in a very dubious light by the people in California, this being a transmountain diversion.

Mr. ENGLE. Mr. Chairman, may I interrupt to say that, in order that the record may speak correctly, that I am a Californian who last year voted for the Colorado-Frying Pan-Arkansas. It is now in my committee. It will be marked up on Saturday by the subcommittee. I support it now as in the past.

Senator ANDERSON. We only wish that more Daniels could come to judgment.

Senator MILLIKIN. I wish to say that I appreciate the gentleman's attitude. It just goes to show that if we are patient in these things it will all work out.

Senator ANDERSON. You understand, we are just having a little fun at this end of the table. You may go ahead.

Mr. LYONS (reading) :

Agricultural production is a continuing wealth-producing process. It creates new farm commodities each year. It provides jobs for farm labor, skilled and unskilled. It is a vital factor in transportation, processing, farm machinery, containers, sprays and insecticides, gas, oil, and electricity.

Federal investment in reclamation projects is returned to the Treasury many times over in taxes from the new wealth created.

From a dollars-and-cents standpoint the Trinity project is far and away the soundest reclamation investment the Federal Government could make. Annual benefits would exceed annual costs by a ratio of more than 3 to 1.

The framework into which the project will be geared is already in operation. Completion of the initial water storage phase of Trinity is a matter of but a few years. The great hydroelectric potential of the project, approximately 233,000 kilowatts, will ensure quick payoff of Government investment, and water costs low enough to come within the budgets of the project's farm water users.

Officers and members of our committee have been closely identified with their own farming operations and with water conservation and reclamation projects during their working lives and during the 14½ years in which we have functioned. We belong to granges, farm bureaus, and farmer cooperatives. Among our number are former and present members of the State legislature, the State board of agriculture, mayors, and city councilmen, irrigation and water conservation district officials.

Our members have given unqualified support to the Central Valley project since it was accepted by the Federal Government. We were active in the campaign which resulted in the authorization and construction of Folsom Dam on the American River. Many of us helped form irrigation districts to contract for Central Valley project water.

We want to see this vital project keep pace with the growth of California and the growth of our Nation. We offer you our cooperation in this great obligation of which authorization of the Trinity River project is the immediate step.

Respectfully, for the committee :

JOE C. LEWIS,  
*Buttonwillow, Chairman.*

Mrs. GRACE McDONALD,  
*Santa Clara, Executive Secretary.*

Senator ANDERSON. Thank you. Are there any questions?

Senator MILIKIN. Mr. Chairman, I would like to ask: Do they have irrigation districts in this area similar to those we have in our part of the country, which assumes the obligation that we pay the charges against the project?

Mr. LYONS. They do, indeed.

Senator ANDERSON. Thank you.

The next witness will be Mr. Henley, who is accompanied by Mr. Binkley.

**STATEMENTS OF ALBERT T. HENLEY, SANTA CLARA VALLEY  
WATER CONSERVATION DISTRICT; AND THAD C. BINKLEY,  
ENGINEER, ALAMEDA COUNTY WATER DISTRICT**

Mr. HENLEY. Mr. Chairman, my name is Albert T. Henley. Mr. Binkley and I constitute a delegation to this committee from a citizen's committee in our area of California, which I would like to describe for a moment, and, parenthetically, I can tell the Chair, which may gratify the committee, that during the lunch hour we reduced our statement very largely and it will not take as long as we had supposed it would.

Last year, pursuant to a number of requests from a number of organizations who were disturbed at the ever-growing water shortage in an area which lies just to the east and south of the eastern tip of San Francisco Bay, an area comprising southern Alameda County, all of the valley floor of Santa Clara County, and northern San Benito Valley. This is all one long valley and it has common needs.

At the request, as I say, of these organizations, the Santa Clara County Planning Commission called a public meeting which was very well attended by representatives of this area, and from that meeting was born the committee which we represent.

The committee is called the Citizens' Committee for the Importation of Water. It consists of more than 50 active members who, again, are truly representative of a cross section of our economic life.

They are from all portions of this rich and populous area I am speaking of, which, for convenience, I will call the Santa Clara County, which, as I have stated, extends north into Alameda and southern San Benito County, which has common interests and common needs.

Our chairman is Jack Z. Anderson, formerly a representative in Congress from the 10th Congressional District. Mr. Anderson asks me to extend greetings to you who are here who remember him during his tenure.

Among the members are persons representing a number of interests and organizations in this committee. These include the three county governments, also the chambers of commerce, both through their local water committee, and the State Agricultural Committee; the Central Labor Council and the Building and Construction Trades Council; banks and title companies, farm organizations, most specifically the

water committee of the local Farm Bureau. The local newspapers supported this actively, including the Mercury and the News, and the public districts in the area concerned with the acquisition and distribution of water took an active part in our work.

The first job of the committee was the drafting of legislation which is now completed. That legislation was presented to the California State Legislature in its recent session, this spring, and was passed.

It was signed into law on June 24 by the Governor.

The objective is to provide for the creation of the three-county authority, the title which will be Santa Clara-Alameda-San Benito Water Authority, which will comprise the existing public agencies within the area having the appropriate powers, following an election within those public agencies.

The work necessary to bring these elections about is now going forward.

The reason this is pertinent to my presentation is that the central job which is envisioned for this tricity authority is the importation of water into our area.

One of the guiding reasons for the committee's work and for its existence, as a matter of fact, is the Miller-Engle-Anderson Act, which is now Public Law 356 of the 81st Congress.

During its consideration here, it was known as H. R. 165.

The act reads in part, if I may state :

The Secretary of the Interior, through the Bureau of Reclamation, is hereby further authorized and directed to conduct the necessary investigations, surveys and studies, for the purpose of developing plans for disposing of the water \* \* \* and a conduit or conduits with necessary pumping plants and supplemental works extending from the most feasible diversion point on the central valley project of California to serve lands and municipalities in Contra Costa, Alameda, Santa Clara, and San Joaquin Counties.

During the consideration of the bill by the House Committee on Public Lands, a report was made by that committee, being Report No. 241 of the 81st Congress, which reads in part :

Among the investigations which are to be made and reported on are studies of the feasibility of diversion canals leading north and south from Folsom Reservoir to serve the lands in El Dorado, Sacramento, and Placer Counties, and Santa Clara and Alameda Counties.

Perhaps more interesting to the committee is the finding of this committee when it was considering the bill, this being a quotation from the report of the Senate Committee on Interior and Insular Affairs, number 606, reading in part :

The committee also finds that there is an immediate and critical need for water in Santa Clara, San Benito, and southern Alameda Counties, Calif. The committee believes that the relation of the Central Valley project to the water supply situation in Contra Costa, Alameda, Santa Clara, and San Benito Counties should be clarified as rapidly as possible, and that the water needs and potentialities of those counties be determined in the immediate future.

The committee was also gratified by a senate joint resolution recently passed by our senate in assembly in California in final form on June 8, 1955.

I will skip the "whereas" items and proceed immediately to the central paragraph which reads :

*Resolved by the Senate and Assembly of the State of California jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States and the Secretary of the Interior through the Bureau of*

Reclamation to take such action as may be necessary to conduct and complete with the least possible delay the necessary investigations, surveys and studies for the purpose of providing plans and feasibility reports to furnish a supply of water from the Central Valley project to Santa Clara, San Benito, Santa Cruz, Alameda, and Contra Costa Counties, all generally in keeping with section 2 of the Act of October 1948, authorizing the American River Division, Central Valley project.

Senator MILLIKIN. Mr. Chairman, may I ask what is the population of the area to be served by the proposed project?

Senator ANDERSON. Well, of course, if you are going to take in Santa Clara Valley with some of those areas, it is quite a little.

Senator MILLIKIN. I am talking about the area that will be served by this project.

Mr. HENLEY. That, Mr. Chairman, I am not prepared to answer. The project, as a whole, would naturally serve, as you have been told, the entire Central Valley of California.

Senator MILLIKIN. I understand that.

Senator ANDERSON. There are only about 5,000 people in the area where the dam will be constructed, but the water flows into the whole Central Valley project of California, and it serves the four counties which we mentioned. It serves a good many hundreds of thousands of people there.

Mr. BINKLEY. If I might comment, the current population of the areas that Mr. Henley refers to would probably be in the neighborhood of 400,000. But that is just the beginning. We are just on the threshold of a terrific growth. Chances are that by the end of the century, it will approximate 3 or 4 million.

Senator KUCHEL. Was your question to the Trinity project?

Senator MILLIKIN. It goes to the project before this committee. How large is the population?

Mr. HENLEY. I am unable to answer.

Senator ANDERSON. Could we use the 400,000 figure as being about right?

Senator KUCHEL. It is far more than that, Mr. Chairman. You divide 13 million and put 7 down south and 6 up north, and in this area Congressman Engle and I believe you might find it in the neighborhood of a million and a half or 2 million.

Mr. ENGLE. I would think so. That would be conservative.

Senator ANDERSON. The Senator from Colorado recognizes that nothing is more dangerous than to try to estimate the population of California on any particular day.

Mr. HENLEY. I am sure it is clear in the Chair's mind that the area mentioned by Senator Kuchel is the large area which is going to be served by this project, whereas the area that I represent or that our committee represents is merely the three counties that I have been speaking of in the south end of San Francisco Bay.

Senator KUCHEL. Immediately adjacent to this area that we call the Central Valley.

Mr. HENLEY. Yes. It is just over the hill, as it were, 25 miles from the water conduit.

On the basis of the legislation that I have mentioned, and other favorable consideration, we feel that our people have a legitimate, a direct, and, I might say, even an anxious interest in Central Valley project water.

The legislation also reflects the facts which are to be found in that valley, and which Mr. Binkley will elaborate on, the facts of a disastrous water shortage.

I would like to emphasize that we have not been idle; we have not sat by and allowed this situation to develop without doing anything about it.

We have expended large sums of money and have taxed ourselves heavily to create the necessary conversion works, to capture winter floods and to release them later during the dry season for percolation into the underground to recharge our underground supply, because our supply there, without any substantial exception, is from ground water.

The attorneys on the committee will be familiar with the rule of law which requires that a litigant before he may proceed to an upper court must have exhausted his remedies. We feel we are in a position of having exhausted our remedies and we are properly before this body asking for relief.

The shortage, no matter what we have done for ourselves, is present and growing. In other words, we see no alternative to the introduction of an outside supply to our area. The Trinity diversion will add to the supply of surplus waters in the Central Valley project. And, that being so, our interest, as I said before, is direct and legitimate, and we are urging this committee to receive favorably or to act favorably upon H. R. 4663.

As I have said, I will ask Mr. Binkley to carry on with as much detail as time will permit.

Senator ANDERSON. State your name in full, Mr. Binkley.

Mr. BINKLEY. I am Thad C. Binkley, a resident of Saratoga, Calif. I am the engineer for the Alameda County Water District, which is a public agency that has for its function the conservation of water and distribution of water for municipal purposes in southern Alameda County in the area immediately east of the southern arm of the bay.

I am appearing, as Mr. Henley has mentioned, on behalf of the citizens' committee for importation of water, and, also as he has mentioned, the committee represents an area although located in three separate counties where the water problem of the entire area is common.

We have banded together under this committee with the idea that jointly we can expedite the importation of water to relieve our present serious water shortages.

The committee, of course, favors and urges the early completion of the Trinity project to bring additional water into the Sacramento Valley, some of which will be surplus and will enter the delta. From the southwest side of the delta some of this should be available for transmission into our area, which is just on the other side of the hill, as we call it. There is a range about 750 feet in height separating us from the delta. A project for transmission of delta water into our area is not at all infeasible as our demand grows.

The San Francisco Bay area, of course, as a whole, is experiencing enormous growth.

Senator ANDERSON. Do I understand that this water would normally not touch you at all but would flow into the delta area, and you propose to lift it 750 feet over a mountain range and bring it into the San Jose area?

Mr. BINKLEY. That is correct. The Central Valley water will not reach our area by gravity. It has to be lifted. The exact lift and other features of the project are not yet determined. It has been under study by State agencies and by various other groups.

At this moment, there is no agreed project for bringing it in to us. Nonetheless, it appears entirely feasible as soon as our requirements reach the proportions that would justify the capital investment required.

One project would anticipate diversion very close to the Central Valley pumping plant near Tracy, lifting the water to a tunnel at or near elevation 600, and thence by gravity into southern Alameda County, Santa Clara County, and on down into San Benito County.

Senator ANDERSON. A 600-foot lift is not trivial.

Mr. BINKLEY. That is quite true. Of course, an important point in this whole water problem in our area is the necessity of delivering water at low cost. So one of the purposes of this group of agencies joining together was that the combined need would be great enough that the project will become feasible and the pumping lift and capital investment and other features would be economically justified.

The areas that we are discussing have been in the past largely agricultural, and agriculture still is the mainstay of the area.

However, in southern Alameda County and in the Santa Clara Valley, the trend toward industrialization and urbanization is very evident and going on at an accelerated rate.

Senator ANDERSON. Let me ask the Bureau of Reclamation a question.

Is this part of the project? I cannot follow it. It seems to me this is a wholly different subject. Am I wrong in that? Is this part of the project?

Mr. MURRAY. It has not been so proposed; no, sir.

Senator ANDERSON. How do you people come into this hearing, if I may ask it that way?

Mr. HENLEY. Because we are looking ahead to the necessity which we see of importing water, and any project, and this is one of those, which adds to the supply of Central Valley is of interest to us, and of vital interest to us.

That is why we are here, and why we have made this 3,000-mile trip.

Senator ANDERSON. But if we consider the project, we will not be considering a 600-foot lift up to drop it over from the delta into the Santa Clara Valley.

Mr. HENLEY. No, Mr. Chairman.

Senator ANDERSON. You may go on, but I fail to see this.

Senator KUCHEL. I think this, Mr. Chairman: I think, as one of the gentlemen indicated earlier, we have had an astounding increase in population.

Senator ANDERSON. As modestly as you can, you still have to admit there has been increased population in California. I will agree to that.

Senator KUCHEL. It is roughly 400,000 people a year. These people here come from an area which now boasts one of the largest cities in the State, San Jose. Of course, the chairman is acquainted with the growth in Alameda County. I take it that their understand-

able apprehension prompts them to urge the committee to consider bringing the waters down into the San Joaquin with the hopes that ultimately the Bureau of Reclamation and the State government might be able to recommend to the Congress that waters were there which might, in some subsequent piece of legislation, be made available to that area.

Senator ANDERSON. I do not want to rule anybody out, but I do think we ought to have testimony, Senator Kuchel, which relates to this project. As I said a moment ago, we are off the Senate floor primarily to hear about this project, and if this is a future hope, there are probably a dozen of these in California.

I do not want to be discourteous about it, but I do not follow the connection or see the connection.

You may proceed.

Mr. BINKLEY. Mr. Chairman, the feeling of our committee was this, that our hope is to import water from the San Joaquin Valley to our area. In order to do so, naturally, water must get there.

Out of the proposed Trinity project, there will be a certain amount of surplus water that will enter the delta. Our district, the Alameda County Water District, has made application to the division of water resources of the State for the appropriation and diversion of 40,000 acre-feet of that water per year. Another agency of Alameda County has made application for 360,000 acre-feet of those waters.

Senator ANDERSON. Does not the constitution of the State of California give to the State of California the right to divide up its own waters? Can we decide whether this water goes to Alameda County or some other part of the State?

Mr. BINKLEY. I do not believe so.

Senator ANDERSON. I think if we pass on a project that lifts it over the mountain and drops it into the river, we are through.

Mr. BINKLEY. That is undoubtedly true, but, nonetheless our hope is to get more water into the delta that will be available to us in our area, and to be able then to go to the State of California to allot us a portion of it. That is why we are here.

Senator MILLIKIN. Mr. Chairman, I would like to ask if this project which has just been described, not the one in the bill, is essential to the well-being of the project that we are considering.

Senator ANDERSON. Can we have an answer to that from the Bureau of Reclamation?

Do you regard this project that is now being described, the three-county project, as essential to the welfare of the Trinity River project?

Mr. MURRAY. We have not studied it in that light at all, sir.

Senator ANDERSON. Is it tied into your calculations?

Mr. MURRAY. No, sir.

Senator ANDERSON. I am not trying to stop you, but I still say that your forum is the State of California, where you will try to get some of this water once it gets over the mountain, if it gets over the mountain.

But go ahead.

Mr. BINKLEY. I probably can sum up my comments. I was going to go into more detail. If you tell me they are not relevant, however, they can be waived. I was going to go into some detail on the steps that the various agencies have taken in developing their own resources, and try to show how urgent our need is, also how the Trinity project can benefit us.



Mr. BINKLEY. That is correct. The Central Valley water will not reach our area by gravity. It has to be lifted. The exact lift and other features of the project are not yet determined. It has been under study by State agencies and by various other groups.

At this moment, there is no agreed project for bringing it in to us. Nonetheless, it appears entirely feasible as soon as our requirements reach the proportions that would justify the capital investment required.

One project would anticipate diversion very close to the Central Valley pumping plant near Tracy, lifting the water to a tunnel at or near elevation 600, and thence by gravity into southern Alameda County, Santa Clara County, and on down into San Benito County.

Senator ANDERSON. A 600-foot lift is not trivial.

Mr. BINKLEY. That is quite true. Of course, an important point in this whole water problem in our area is the necessity of delivering water at low cost. So one of the purposes of this group of agencies joining together was that the combined need would be great enough that the project will become feasible and the pumping lift and capital investment and other features would be economically justified.

The areas that we are discussing have been in the past largely agricultural, and agriculture still is the mainstay of the area.

However, in southern Alameda County and in the Santa Clara Valley, the trend toward industrialization and urbanization is very evident and going on at an accelerated rate.

Senator ANDERSON. Let me ask the Bureau of Reclamation a question.

Is this part of the project? I cannot follow it. It seems to me this is a wholly different subject. Am I wrong in that? Is this part of the project?

Mr. MURRAY. It has not been so proposed; no, sir.

Senator ANDERSON. How do you people come into this hearing, if I may ask it that way?

Mr. HENLEY. Because we are looking ahead to the necessity which we see of importing water, and any project, and this is one of those, which adds to the supply of Central Valley is of interest to us, and of vital interest to us.

That is why we are here, and why we have made this 3,000-mile trip.

Senator ANDERSON. But if we consider the project, we will not be considering a 600-foot lift up to drop it over from the delta into the Santa Clara Valley.

Mr. HENLEY. No, Mr. Chairman.

Senator ANDERSON. You may go on, but I fail to see this.

Senator KUCHEL. I think this, Mr. Chairman: I think, as one of the gentlemen indicated earlier, we have had an astounding increase in population.

Senator ANDERSON. As modestly as you can, you still have to admit there has been increased population in California. I will agree to that.

Senator KUCHEL. It is roughly 400,000 people a year. These people here come from an area which now boasts one of the largest cities in the State, San Jose. Of course, the chairman is acquainted with the growth in Alameda County. I take it that their understand-

able apprehension prompts them to urge the committee to consider bringing the waters down into the San Joaquin with the hopes that ultimately the Bureau of Reclamation and the State government might be able to recommend to the Congress that waters were there which might, in some subsequent piece of legislation, be made available to that area.

Senator ANDERSON. I do not want to rule anybody out, but I do think we ought to have testimony, Senator Kuchel, which relates to this project. As I said a moment ago, we are off the Senate floor primarily to hear about this project, and if this is a future hope, there are probably a dozen of these in California.

I do not want to be discourteous about it, but I do not follow the connection or see the connection.

You may proceed.

Mr. BINKLEY. Mr. Chairman, the feeling of our committee was this, that our hope is to import water from the San Joaquin Valley to our area. In order to do so, naturally, water must get there.

Out of the proposed Trinity project, there will be a certain amount of surplus water that will enter the delta. Our district, the Alameda County Water District, has made application to the division of water resources of the State for the appropriation and diversion of 40,000 acre-feet of that water per year. Another agency of Alameda County has made application for 360,000 acre-feet of those waters.

Senator ANDERSON. Does not the constitution of the State of California give to the State of California the right to divide up its own waters? Can we decide whether this water goes to Alameda County or some other part of the State?

Mr. BINKLEY. I do not believe so.

Senator ANDERSON. I think if we pass on a project that lifts it over the mountain and drops it into the river, we are through.

Mr. BINKLEY. That is undoubtedly true, but, nonetheless our hope is to get more water into the delta that will be available to us in our area, and to be able then to go to the State of California to allot us a portion of it. That is why we are here.

Senator MILLIKIN. Mr. Chairman, I would like to ask if this project which has just been described, not the one in the bill, is essential to the well-being of the project that we are considering.

Senator ANDERSON. Can we have an answer to that from the Bureau of Reclamation?

Do you regard this project that is now being described, the three-county project, as essential to the welfare of the Trinity River project?

Mr. MURRAY. We have not studied it in that light at all, sir.

Senator ANDERSON. Is it tied into your calculations?

Mr. MURRAY. No, sir.

Senator ANDERSON. I am not trying to stop you, but I still say that your forum is the State of California, where you will try to get some of this water once it gets over the mountain, if it gets over the mountain.

But go ahead.

Mr. BINKLEY. I probably can sum up my comments. I was going to go into more detail. If you tell me they are not relevant, however, they can be waived. I was going to go into some detail on the steps that the various agencies have taken in developing their own resources, and try to show how urgent our need is, also how the Trinity project can benefit us.

Senator KUCHEL. Let me say this to you, in all courtesy. I think for the purposes of that area of our State your comments are very important. They are not, very frankly, in my judgment, completely relevant to the question of the Trinity.

I see the connection. I want to help. But I think it is a problem that you should take up with your representatives in Congress and with the State government rather than here.

Senator ANDERSON. We are here under very strange circumstances today. Would you mind filing a statement for the record with us that covers the entire matter? I say to you I am glad to have your statement.

There will be other markets for this water besides those which the Bureau of Reclamation has considered. I think it is extremely pertinent to say that there will be other sections of California that will be wanting water steadily as population increases, and that that adds generally to the desirability of the Trinity River project. But when you get to particularizing, that is not a matter with which we should concern ourselves.

I have tried to be courteous to the witnesses today, and I am not trying to chop you off. We are here with the permission of the Senate to sit only because it is an emergency. We are supposed to be on the Senate floor. We have obtained permission to sit, but we would like to be back on the floor taking part in the debate pertaining to the Reserve policy.

I would suggest, if you do not mind, Mr. Binkley, that you summarize your remarks and file your statement, and also any further statement which Mr. Henley may wish to file.

Mr. HENLEY. I think we can sum it up by saying that we have an interest which is vital to act, and we are here to urge the passage of this act simply because it will benefit us not tomorrow but in the future. Thank you very much.

#### STATEMENT OF T. C. BINKLEY RE HEARING ON TRINITY DIVISION OF THE CENTRAL VALLEY PROJECT

Pursuant to permission granted by the chairman of this committee, this statement is filed to round out my testimony given this date.

The Citizens Committee for Importation of Water represents an area of nearly 250,000 acres, lying adjacent to and south of the southern arm of San Francisco Bay, Calif. 50,000 acres is located in southern Alameda County, east of the bay, the balance being in the rich agricultural areas of the Santa Clara Valley and San Benito County.

In this area lies some of the most valuable agricultural land in the State. The population of the area is now around 400,000, however, the rapid trend toward urbanization and industrialization is evidenced by studies of growth in southern Alameda County. Here the population now is estimated at 30,000; nearly double what it was 5 years ago. By 1960 this population is expected to reach 60,000 and, dependent upon economic conditions, may total 500,000 by the end of the century. These figures apply to southern Alameda County alone, they are an example of the rate of growth that may be experienced in much of the area.

At the present time the tricity area is basically agricultural and wholly dependent on ground water for irrigation, which is the lifeblood of the area. Ground water also provides most of the municipal needs.

With the rapid transition from agricultural to other uses requiring greater quantities of water, the ground water supply is being depleted at an alarming rate. In southern Alameda County alone the overdraft of the ground water is estimated at 12,000 to 15,000 acre-feet per year. In the Santa Clara Valley this figure is around 50,000 acre-feet for the current year. In the southern

Alameda County area, water levels have been drawn down to the point where salt water is encroaching into the excellent ground-water basin. This may render it useless for all time and is a serious loss. In the Santa Clara Valley area water levels are at an alltime low and are still falling. In San Benito County, ground water is exhausted in some areas.

Hence it is apparent that local water supplies in the three-county area are grossly deficient. It is estimated that Santa Clara Valley alone will ultimately require importation of 234,000 acre-feet per year from a supplemental source. For southern Alameda County this figure is estimated at 88,000 acre-feet and adding the needs of San Benito County, the ultimate supplemental supply required will exceed 360,000 acre-feet per year.

To meet this need we are looking to all sources of outside water and the most likely appears to be surplus secondary water available in the delta region. Studies made by the State division of water resources indicate that diversion of water from this source to the three-county area is feasible.

We are, therefore, greatly interested in any project that augments the supply of water in the delta area in order that there will be ample to take care of our ultimate requirements. The Trinity division of the Central Valley project will be a big help in this direction. Water routing studies indicate an average of over 340,000 acre-feet per year of surplus water to be released to the delta region by the Central Valley project after completion of the Trinity project.

It is our firm conviction that the Trinity project is a good project and serves vital purposes. We feel that it can definitely assist us in solving our future water problems and we heartily endorse it for the following reasons:

It is the first step in developing a vast reservoir of water now existing and wasting into the Pacific Ocean from the north coastal area of California.

It provides new supplies of irrigation for use in the Sacramento Valley, thereby relieving tension between the northern areas of origin and the southern areas of need.

It provides very substantial supply of secondary water that will be available to us in our areas of need.

The water from the Trinity will be new water to the thirsty Central Valley and its advent will be like a blood transfusion to the whole State of California.

I also request permission of the chairman to file at this time a statement of E. R. Hanna, chairman of the board of directors of the San Benito County Water Conservation and Flood Control District, dealing with this matter.

I want to express my appreciation to the committee for the opportunity of appearing and testifying in this vital matter.

Senator ANDERSON. Thank you, gentlemen.

(The following statement was submitted for the record on behalf of the San Benito County Water Conservation and Flood Control District:)

**STATEMENT FROM THE SAN BENITO COUNTY WATER CONSERVATION AND FLOOD CONTROL DISTRICT URGING COMPLETION OF THE TRINITY RIVER DIVERSION PROJECT**

Water is vital to the economy of San Benito County. All of our valley area is irrigated from wells. Land values are quite high, with bare land selling for around \$2,000 per acre. This same land, with full bearing orchard, is selling for around \$3,500 per acre. These values are predicated on good wells. Without good wells, the land value drops to less than \$200 per acre.

The entire economy of this area is fixed on the value of the farmland. Local government and schools are geared to the assessed valuation of this land, which produces from \$15 to \$25 per acre in taxes from bare land.

Wells in this area are failing daily. Some areas have gone deeper and pumped chemically contaminated water that has killed all vegetation. The situation is very serious and cannot be solved by bigger and deeper wells. We must have a supplemental supply of water, and we must have it soon to prevent the entire local economy from degenerating into chaos.

Local rainfall is neither sufficient nor reliable for full replenishment of our underground supply. Much of the area is so contaminated with underground boron water that surface irrigation is the only solution. The needs of this area can only be met by water imported from other watersheds.

Ours is not a case of reclamation of wasteland, but the necessity of preventing the economic collapse of one of the richest farmland areas in the country.

The need is present and growing daily. Some of the valley area has already commenced a rapid decline in assessed valuation, as land is steadily being diverted from truck farming to dry farming. Dry farming cannot sustain either our population or the economy we have created over the past 100 years.

Trinity River diversion represents a supplemental source of water for all of the water-deficient lands of California, plus the power necessary to transport the water to the areas of need. As an area of need, we have a vital interest in the full and rapid development of the Trinity project.

Delay in securing our water supply can be disastrous to us. We need the water now, not in the future. We respectfully urge that the Trinity diversion be fully completed as rapidly as possible.

E. R. HANNA,  
*Chairman, Board of Directors.*

Senator ANDERSON. The next witness will be Mr. Gerdes.

**STATEMENT OF ROBERT H. GERDES, EXECUTIVE VICE PRESIDENT  
AND GENERAL COUNSEL, PACIFIC GAS & ELECTRIC CO.**

Mr. GERDES. Mr. Chairman, my name is Robert H. Gerdes. I am executive vice president and general counsel of the Pacific Gas & Electric Co. I have with me Mr. Walter Dreyer, the company's vice president and chief engineer; Mr. John Bonner, civil engineer; and Mr. William Kuder, attorney.

We want to thank the committee for this opportunity to appear before it. We have a prepared statement which, I understand, has been passed to the members of the committee. I would like to have that prepared statement made a part of the record.

Senator ANDERSON. Without objection that will be done at this point. (Statement referred to follows:)

**STATEMENT ON TRINITY RIVER PROJECT IN CALIFORNIA BY ROBERT H. GERDES,  
EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, PACIFIC GAS & ELECTRIC CO.**

There is now before this committee H. R. 4663, a bill to authorize the Secretary of the Interior to spend \$225 million on construction of 2 reservoirs on the Trinity River, tunnels from the Trinity to the Sacramento River and 4 powerplants and related electric facilities as part of the Central Valley project in California.

Last April, we appeared before the House Committee on Interior and Insular Affairs at the hearing on this bill. We described the Pacific Gas & Electric Co.'s offer to build and pay for the power features of the Trinity River project and also to pay the Federal Government \$3,500,000 a year for falling water under a partnership arrangement with the United States Bureau of Reclamation. We pointed out that this partnership would save the Government \$50 million in capital outlay and over the project repayment period would provide \$171 million more net revenue to Federal, State, and local governments than if the project were constructed by the Bureau alone.

H. R. 4663 directs the Secretary of the Interior to continue to a conclusion engineering studies and negotiations for the purchase of falling water by a non-Federal agency. Within 18 months from the date of the act, the Secretary must submit to Congress any agreement that may be reached, together with his recommendations thereon. Such agreement shall not become effective until it is approved by Congress.

Before the House Committee we urged that the bill should permit partnership construction of the Trinity power facilities by a non-Federal agency under the safeguards established by Congress in the Federal Power Act. It is still our belief that this offers the most practical method of providing for partnership construction of the Trinity project.

## TRINITY PARTNERSHIP FIRST PROPOSED IN 1954

Our partnership proposal was first advanced at a hearing before a House subcommittee at Redding, Calif., in April 1954. We subsequently made further studies of the Trinity project, based upon operation studies completed in late 1954 by region 2 of the Bureau. These studies enabled us to make the formal offer which we submitted to the Bureau last January.

Conservation and use of the Trinity water resources are of vital concern to the State of California. They concern us, too, as a California enterprise which provides essential services to most of the homes, communities, farms, and industries in 48 of the State's 58 counties. Our power, payrolls, and taxes make a basic contribution to the prosperity of the State.

Our company owns and operates 57 hydroelectric plants interconnected with 13 steam-electric plants and the plants of several other agencies; 22 of our hydroelectric plants are located within an 85-mile radius of the proposed Trinity project. Within this area we have installed nearly three-quarters of a million kilowatts. In addition, in the same area we are building or have under application to the Federal Power Commission 9 more plants with a total capacity of 840,000 kilowatts.

Since 1946, the company has constructed power facilities aggregating 2,700,000 kilowatts, more than 4 times the combined capacities of the Shasta, Keswick, Folsom, and Nimbus plants of the Central Valley project. By 1956, postwar additions in new hydro- and steam-power capacity will amount to 3 million kilowatts, increasing the system total to 4,400,000. The 11-year postwar construction program will represent an investment of \$1,600 million, of which \$1,200 million is for electric facilities.

This program is meeting the power needs of the area with ample reserves. We are continuing to expand, ahead of growing power demands.

Water, not power, is the problem in California.

## COMPANY'S OFFER TO BUILD TRINITY POWER FACILITIES

Our studies show that the most advantageous use of the water power resources of the Trinity project would be obtained by integrating its operation with the company's regional power system. To obtain the maximum benefit of such integrated operation, the installed capacities of the Trinity powerplants should be 362,000 kilowatts. Of this, 321,000 kilowatts would be dependable under a suitable water release schedule.

The company has offered to construct these powerplants and related transmission facilities at its own expense.

The figures on the map and profile before you show the installed power capacities proposed by the company and the Bureau. You can see that our plants would be at the same locations. At Trinity Dam, the company would install the same power capacity as the Bureau—90,000 kilowatts; at Lewiston, we would produce 2,300 kilowatts; at Tower House, 126,000; and at Matheson, 144,000. The combined installed capacities of the company plants would be 362,300 kilowatts, or 129,300 more than the Bureau would build.

The company could develop more than half again as much power capacity from the Trinity project as the Bureau proposes because the company's powerplants would be integrated with its widespread regional power system. On the other hand, the plant capacities proposed by the Bureau were designed for a smaller independent system.

I want to emphasize that although we propose larger plant capacities, this is no reflection on the planning of the Bureau of Reclamation. The simple fact is, that if the plants are integrated with our widespread regional system, it is more economical to install the larger capacities.

The larger power capacity of our plants would require tunnels 20 percent larger in diameter. This would increase the tunnel peak flow capacity, and thus the peaking capacity of the plants, by more than 80 percent. Under our plan, the peak flow through Tower House and Matheson tunnels would be increased from 1,700 cubic feet per second to 3,130. The added cost to the Government of constructing larger tunnels and penstocks was taken into account in arriving at the net savings our plan would make possible.

The coordination proposed by the company would enable the best use of project water for power purposes and would give the power its greatest value.

For the use of falling water through these plants, the company would pay the Government \$3½ million a year. We calculate this to be its full value based

on the present cost of alternative steam power. This payment is equivalent to more than \$4.50 for each acre-foot of water diverted through the plants. Farmers pay \$3.50 an acre-foot for firm irrigation water from the Central Valley project. As you know, none of the Trinity falling water would be consumed in the power operation.

Clyde H. Spencer, director of region 2 of the Bureau, stated at the House committee hearing that he thought the amount of the payment for falling water could be determined by negotiation. If by any chance we should not reach agreement, the company is willing to have the falling water payment fixed by the Federal Power Commission. We would agree that the Commission's determination would be final and conclusive.

#### ADVANTAGES OF COMPANY PARTNERSHIP

Construction and operation of the Trinity power facilities by the company, rather than by the Federal Government, would provide the following advantages:

(1) A net saving to the Federal Treasury of nearly \$50 million in capital outlay for power facilities.

(2) An estimated \$36 million more net revenue over the project repayment period. This would result from the assured annual payment of \$3,500,000 together with the net savings in annual costs to the Government made possible under the company's proposal.

(3) The company would pay \$2,700,000 a year in taxes on the Trinity power facilities.<sup>1</sup> This would increase annual revenues of the Federal Treasury by \$1,400,000 and would provide an additional \$1,300,000 a year for State and local governments. Over the repayment period these tax revenues would aggregate \$70 million to the Federal Government and \$65 million to State and local governments.

In Trinity County our taxpayments would be nearly tripled. Our total payment would rise to about \$325,000 a year. This would represent 44 percent of the total taxes levied by the county. Our annual payments in Shasta County would increase to nearly \$2,900,000, or more than one-half of the total taxes levied in the county.

H. R. 4663 and S. 178 would require the Federal project to make in-lieu payments to Trinity County for loss of taxes only on "the value of the real property and improvements taken" for project purposes. Under the partnership plan, the Government could make such payments on property taken for Federal construction of the dams, reservoirs, and tunnels. In addition, the company would pay taxes in both Trinity and Shasta Counties on the powerplants and related facilities.

(4) The company Trinity plants would provide 125,000 kilowatts more dependable capacity at load center than would be made available by the Bureau's Trinity plants. However, after giving credit for additional capacity estimated to be made dependable in existing plants under the Bureau's Trinity plan, the net gain under our plan would be 65,000 kilowatts.

The Bureau's ability to meet its present commercial power commitments from existing plants would not be impaired.

(5) Under the company proposal, 5 percent more Trinity water would be available to users in the Central Valley.

#### LOWEST COST WATER AND POWER FOR SAN LUIS

Several bills now before Congress and several proposals under study by the State of California provide for the construction of the San Luis reservoir and related facilities to furnish water to the west side of the San Joaquin Valley.

Whether San Luis should become a part of the Central Valley project or of the State's Feather River project, or of both, the company's cooperation would result in benefits to water users and taxpayers.

The additional net revenue to the Government under the company's proposal for Trinity could be used to reduce the cost of project water or to assist the financing of the San Luis unit or other needed water projects in California.

<sup>1</sup> Total taxes accrued for 1954 amounted to \$104 million of which \$54 million was for the Federal Government and \$50 million for State and local governments. Taxes charged to operation represented 25.3 percent of the company's gross operating revenue. They exceeded wages and salaries paid to all operating employees by \$47 million and exceeded by \$16 million the dividends paid for the year 1954 to the 217,000 stockholders who own the business.

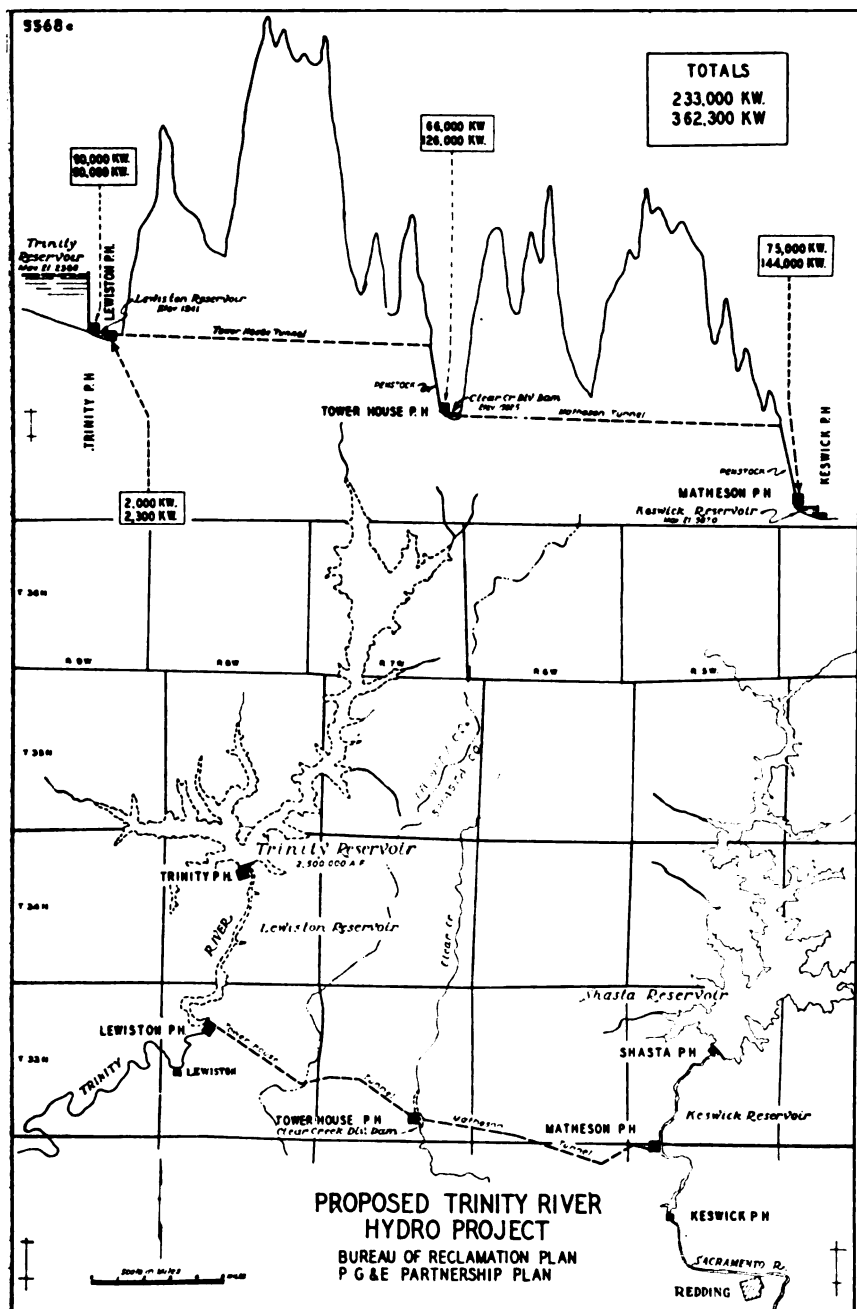
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on the present cost of alternative steam power. This payment is equivalent to







As a part of its partnership proposal, the company is willing to supply power from its system for San Luis pumping on an exchange basis. Any deficiencies in available project power could be supplied by delivery of off-peak energy generated by company plants. Such an exchange contemplates the construction of off-canal water storage to permit the maximum use of this low-cost energy whenever practicable.

This exchange would be made at Tracy. The only charge to the Bureau for exchange power would be for transmitting it from Tracy to the San Luis pumps. We guarantee that such charge would be less than the cost to the Government if the Bureau undertook to build transmission lines to the pumps.

#### COMPANY AIDS WATER CONSERVATION IN CALIFORNIA

The company long has recognized the desirability and necessity of conserving and putting to maximum beneficial use the waters of California. For more than 30 years we have contributed to the development of water for irrigation and we fully support the policy of constructing sound reclamation and flood-control projects.

Nearly a million and a half acre-feet of storage capacity in 57 reservoirs owned by the company supplies water not only for power generation but also for irrigation and other beneficial uses in the Central Valley.

The company has followed a policy of cooperation with the Federal Government, local irrigation districts, cities and other Government agencies in the development and storage of water. In many cases the company, by contracting to purchase the power output, has provided an assured market for electric power generated by public irrigation and water-supply projects and thereby has aided in financing their construction.

The company also has constructed powerplants in connection with the Narrows Dam built by the United States Army engineers on the Yuba River, the Melones Dam of the Oakdale and South San Joaquin Irrigation Districts on the Stanislaus River, and dams of the Nevada Irrigation District on the Yuba and Bear Rivers. Under partnership arrangements with these agencies, our payments for the use of falling water released from these dams through our powerplants have made a substantial contribution toward repayment of the cost of the water-conservation works.

We have demonstrated that cooperation between public and private agencies best serves the public interest. We offer our cooperation in connection with the Trinity and San Luis projects, and any other water-conservation projects which the State or Federal Government may authorize.

#### CALIFORNIA REGULATES COMPANY POWER RATES

The company would distribute Trinity power to its 1,600,000 electric customers throughout northern and central California without discrimination. The power would be sold at rates established by the California Public Utilities Commission. The commission has continuously and effectively regulated the electric rates, financing, and operation of public utilities since 1914. Under such regulation, payments made by the company for the use of Trinity falling water would be entered as an operating expense on our books. The company can make no profit on the falling water it purchases. All that it is allowed is a fair return on its own investment in facilities used and useful in service to the public. Any benefits from purchase of water power must be passed on to consumers in the form of lower electric rates.

Today our customers pay 15 percent less for each kilowatt-hour of electricity used in their homes than they did in 1939, although the prices of most other goods and services they buy have at least doubled since that time. Despite the fact that more than 25 cents of every dollar collected by us is paid out in taxes, we have preserved this low-rate level by advanced engineering and efficient management.

Trinity power would be sold by the company at the lowest possible rates consistent with sound business principles.

#### PARTNERSHIP INVOLVES NO TRINITY DELAY

No delay in construction of the Trinity project would result from our partnership proposal. At the House committee hearing, Commissioner of Reclamation Wilbur A. Drexelheimer stated that up to 18 months is available for partnership negotiations after construction of the Trinity Dam is started. Clyde H. Spencer,

director of region 2 of the Bureau of Reclamation, testified that in his opinion negotiations could be completed within a year. We share this opinion. There is no reason why Trinity construction cannot be started immediately after Congress authorizes it.

#### POWER PARTNERSHIPS AUTHORIZED BY CONGRESS

The legislative pattern for partnership development may be found in three acts passed by Congress in 1954. These are: (1) Public Law 544, authorizing the Priest Rapids project on the Columbia River where a local public-utility district proposes to build a power facility at a dam to be constructed by the Federal Government; (2) Public Law 436, deauthorizing a Federal project on the Coosa River in Alabama, to allow the Alabama Power Co. to construct 5 dams on the river at a cost of \$100 million; and (3) Public Law 476, authorizing partnership between the State of Oklahoma and the Federal Government to build the Markham Ferry Dam.

These acts provide for construction of power facilities at Government water projects by local agencies under Federal Power Commission license.

Licenses are limited to a maximum term of 50 years. The Government has the right to recapture the power facilities at their depreciated cost upon the termination of the license. The power operation must be approved by the Commission as the one best adapted to a comprehensive development of the water resources for all beneficial public purposes, including recreation. Licensees must pay for benefits provided by Federal dams. Operation of plants constructed under license is subject to the continuous supervision of the Commission.

#### BENEFITS TO GOVERNMENT FROM PARTNERSHIP PLAN

Our formal offer on Trinity was first published in the press on February 21 of this year. The favorable public response to our plan has been impressive. To date, more than 200 organizations throughout northern and central California have adopted resolutions endorsing construction of Trinity power facilities by local enterprise. A partial list of these organizations is attached to this statement.

H. R. 4663 would authorize appropriation of \$225 million for construction of the Trinity River division of the Central Valley project.

The Bureau estimates that Federal operation of power facilities proposed in the bill would return \$237 million in revenues over the project repayment period.

If Trinity power facilities are built and operated by the company under its partnership proposal, payments for falling water, taxes, and savings to the Federal Government over the same period would amount to \$343 million, or \$106 million more to water users and Federal taxpayers. In addition, the company would pay \$65 million in taxes on these power facilities to State and county governments. This amounts to a net gain to the public of \$171 million from the partnership development.

The Federal Government already has spent approximately \$800 million on water resources development in California. Another \$800 million will be required to complete presently authorized Federal water projects. The most comprehensive Federal development of water in California can be achieved if our public and private agencies willing and able to share this financial burden become working partners in the Federal reclamation program.

The company's cooperation in the Trinity River power development will make possible the earliest construction by the Federal Government of needed water conservation works in California with the least cost to taxpayers and with maximum benefits to water users in the Central Valley.

The following California organizations have formally endorsed construction of Trinity power facilities by local enterprise in partnership with the Federal Government. This list includes statewide farm and business organizations, farm organizations, labor unions, taxpayers associations, boards of supervisors, city councils, local civic organizations, business groups, and others:

California Farm Bureau Federation  
California State Chamber of Commerce  
California Taxpayers' Association

Intercounty chambers of commerce of northern California, representing 17 chambers of commerce including Shasta, Trinity, and 4 other northern California counties.

Amador County Farm Bureau  
 Arboga Farm Bureau Center  
 Banta-Carbona Irrigation District  
 Byron Bethany Irrigation District  
 Calaveras County Farm Bureau  
 Colusa County Farm Bureau  
 East Contra Costa Irrigation District  
 Lake County Farm Bureau  
 Lake Mountain Grange  
 Linda Farm Center  
 Live Oak Farm Bureau Center  
 Mendocino County Farm Bureau  
 Mount Pleasant Farm Bureau  
 North Fork Grange  
 Nuestro Farm Bureau Center  
 Oakdale Farm Bureau Center  
 Oakdale Irrigation District  
 Plainview Irrigation District  
 San Benito County Farm Bureau Directors  
 San Joaquin Farm Bureau  
 Sonoma Valley Soil Conservation District  
 South San Joaquin Irrigation District  
 Trinity County Farm Bureau  
 Winship Farm Center  
 International Brotherhood of Electrical Workers, Local 1245  
 San Francisco area group of professional employees  
 Santa Maria Carpenters Union, Local 2477, AFL  
 Santa Maria Union, Local 1222, AFL  
 Contra Costa County Taxpayers Association  
 Sacramento County Taxpayers Association, Inc.  
 San Benito County Taxpayers Association  
 San Mateo County Taxpayers Association  
 Santa Clara County Taxpayers Association  
 Alisal Chamber of Commerce  
 Alleghany Development League  
 Anderson Chamber of Commerce  
 Appliance Dealers Association of San Joaquin County  
 Arcata Chamber of Commerce  
 Auburn Area Chamber of Commerce  
 Benecia Chamber of Commerce  
 Berkeley Chamber of Commerce  
 Brentwood Chamber of Commerce  
 Brisbane Chamber of Commerce  
 Building Owners and Managers Association of San Francisco  
 Burlingame Chamber of Commerce  
 Burney Chamber of Commerce  
 Calaveras County Chamber of Commerce  
 Calistoga Chamber of Commerce  
 Central San Francisco Association  
 Chico Chamber of Commerce  
 Civic League of Improvement Clubs and Association, San Francisco  
 Cloverdale Chamber of Commerce  
 Colfax Area Chamber of Commerce  
 Colusa Chamber of Commerce  
 Colusa County Boat Club  
 Colusa Lions Club  
 Concord Area Chamber of Commerce  
 Cotati Chamber of Commerce  
 Cottonwood Chamber of Commerce  
 Davis Chamber of Commerce  
 Del Norte Board of Supervisors  
 Dixon District Chamber of Commerce  
 Downleville Civic Club  
 Downleville Lions Club

El Dorado County Appliance Dealers Association  
El Dorado County Chamber of Commerce  
El Dorado County Council of Republican Women  
El Sobrante Lions Club  
Emeryville Industries Association  
Eureka City Council  
Eureka Chamber of Commerce  
Escalon Chamber of Commerce  
Fairfield-Suisun Chamber of Commerce  
Fall River Valley Chamber of Commerce  
Ferndale Chamber of Commerce  
Fort Bragg Chamber of Commerce  
French Camp District Chamber of Commerce  
Grass Valley Chamber of Commerce  
Greater Sacramento Chamber of Commerce  
Gridley Chamber of Commerce  
Guerneville Chamber of Commerce  
Hayfork Chamber of Commerce  
Hayward Lions Club  
Healdsburg Chamber of Commerce  
Humboldt County Board of Supervisors  
Humboldt County Chamber of Commerce  
Kings City Optimist Club  
LaFayette Chamber of Commerce  
Lake County Chamber of Commerce  
Lakeport Chamber of Commerce  
Lassen County Chamber of Commerce  
Lathrop Chamber of Commerce  
Lincoln Area Chamber of Commerce  
Linden-Peters Chamber of Commerce  
Linden Chamber of Commerce  
Live Oak Kiwanis Club  
Livermore Chamber of Commerce  
Lodi Board of Realtors  
Lodi District Chamber of Commerce  
Lodi Junior Chamber of Commerce  
Loleta Chamber of Commerce  
Los Altos Chamber of Commerce  
Los Gatos Chamber of Commerce  
Manteca District Chamber of Commerce  
Manteca Junior Chamber of Commerce  
Mariposa County Chamber of Commerce  
Martinez Chamber of Commerce  
Martinez City Council  
Marysville Kiwanis Club  
Marysville Masonic Organization  
Marysville Realty Board  
Marysville-Yuba County Chamber of Commerce  
Maxwell Service Club  
Mendocino County Chamber of Commerce  
Mendocino County Chamber of Commerce at Point Arena  
Mokelumne Hill Lions Club  
Monte Rio Chamber of Commerce  
Mountain View Chamber of Commerce  
National Electrical Contractors Association  
Napa Chamber of Commerce  
Newman Chamber of Commerce  
Niles Chamber of Commerce  
North Central Association (San Francisco)  
Oakdale District Chamber of Commerce  
Oakland Junior Chamber of Commerce  
Oakland Kiwanis Club  
Oakland Lions Club  
Oakland Service Club  
Orinda Chamber of Commerce  
Paso Robles Chamber of Commerce  
Peninsula Electrical Contractors Association  
Petaluma Chamber of Commerce

Pinedale Chamber of Commerce  
Redwood City Chamber of Commerce  
Richmond Chamber of Commerce  
Richmond Kiwanis Club  
Rio Vista Chamber of Commerce  
Ripon Chamber of Commerce  
Ripon Junior Chamber of Commerce  
Rodeo Chamber of Commerce  
Sacramento Chamber of Commerce  
Sacramento Junior Chamber of Commerce  
Sacramento Luncheon Club  
Sacramento Power-Anne's Club  
San Benito County Chamber of Commerce  
San Bruno Chamber of Commerce  
San Francisco Chamber of Commerce  
San Francisco Drygoods Association  
San Francisco Executives Association  
San Francisco Electrical Contractors Association, Inc.  
San Francisco North Beach Merchants and Boosters  
San Francisco Retail Merchants Association  
San Joaquin Chamber of Commerce  
San Joaquin County Chamber of Commerce  
San Jose Chamber of Commerce  
San Juan Chamber of Commerce  
San Leandro Chamber of Commerce  
San Leandro Downtown Merchants Association  
San Leandro Kiwanis Club  
San Leandro Manufacturers Association  
San Lorenzo Valley Chamber of Commerce  
San Luis Obispo Chamber of Commerce  
San Mateo Chamber of Commerce  
San Mateo County Manufacturers Association  
San Rafael Chamber of Commerce  
Santa Clara County Builders Exchange  
Santa Cruz Chamber of Commerce  
Santa Maria Chamber of Commerce  
Santa Maria Valley Chamber of Commerce  
Santa Rosa Chamber of Commerce  
Santa Rosa Junior Chamber of Commerce  
Sebastopol Chamber of Commerce  
Sheet Metal Contractors of San Francisco  
Solano County Board of Supervisors  
Sonoma Merchants Association  
Sonoma Valley Chamber of Commerce  
Sorooptimist Club of Marysville  
South Oakland Market Central Improvement Association  
South San Francisco Chamber of Commerce  
Stanislaus County Chamber of Commerce  
Stockton Chamber of Commerce  
Stockton Junior Chamber of Commerce  
Stockton Optimist Club  
Sunnyvale Chamber of Commerce  
Sutter County, Yuba City Chamber of Commerce  
Taft Chamber of Commerce  
The Downtown Association of San Francisco  
The San Francisco Real Estate Board  
Thornton District Chamber of Commerce  
Tracy Chamber of Commerce  
Tracy Junior Chamber of Commerce  
Trinity County Board of Supervisors  
Turlock Chamber of Commerce  
Ukiah Chamber of Commerce  
Upper Trinity Citizens Council  
Vacaville Chamber of Commerce  
Walnut Creek Area Chamber of Commerce  
Walnut Creek City Council  
Weaverville Chamber of Commerce



West Sacramento Chamber of Commerce  
West Sacramento District Chamber of Commerce  
Willits Chamber of Commerce  
Winters Lions Club  
Woodland District Chamber of Commerce  
Yuba Sutter Boat Club  
Yuba-Sutter High Twelve Club  
Yolo County Appliance Dealers Association  
Yolo County Chamber of Commerce

**Mr. GERDES.** In the interest of time, Mr. Chairman, I will endeavor to condense the statement as best I can.

Last April, we appeared before the House Committee on Interior and Insular Affairs at the hearing on H. R. 4663, and described the Pacific Gas & Electric Co.'s offer to build and pay for the power features of the Trinity River project and also to pay the Federal Government \$3½ million a year for falling water under a partnership arrangement with the United States Bureau of Reclamation.

We pointed out that this partnership would save the Government \$50 million in capital outlay, and over the project repayment period would provide \$171 million more net revenue to Federal, State, and local governments than if the project were constructed by the Bureau alone.

Before the House committee, we urged that the bill should permit partnership construction of the Trinity power facilities by a non-Federal agency under the safeguards established by Congress in the Federal Power Act.

It is still our belief that this offers the most practical method of providing for partnership construction of the Trinity project.

I wish to emphasize, however, Mr. Chairman, that we do not suggest any change in the bill as it has passed the House.

#### P. G. & E. REGIONAL POWER SYSTEM; POSTWAR CONSTRUCTION

The company distributes gas and electricity through a very large area of California. We serve 48 of the State's 58 counties. The company owns and operates 57 hydroelectric plants which are interconnected with 13 steam-electric plants and the plants of several other agencies.

Since 1946, the company has constructed power facilities aggregating 2,700,000 kilowatts, more than 4 times the combined capacities of the Shasta, Keswick, Folsom, and Nimbus plants of the Central Valley project.

By 1956, postwar additions in new hydro and steam power capacity will amount to 3 million kilowatts, increasing the system total to 4,400,000 kilowatts.

The 11-year-postwar-construction program will represent an investment of \$1,600 million of which \$1,200 million is for electric facilities.

This program is meeting the power needs of the area with ample reserves. We are continuing to expand ahead of growing power demands.

Water, not power, is the problem in California.

## COMPANY'S OFFER TO BUILD TRINITY POWER FACILITIES

Our studies show that the most advantageous use of the waterpower resources of the Trinity project would be obtained by integrating its operation with the company's regional power system. To obtain the maximum benefit of such integrated operation, the installed capacities of the Trinity powerplants should be 362,000 kilowatts. Of this, 321,000 kilowatts would be dependable under a suitable water-release schedule. The company has offered to construct these powerplants and related transmission facilities at its own expense.

Senator ANDERSON. Would the 362,000 kilowatt capacity represent a larger transmountain diversion?

Mr. GERDES. Under the proposal that we have made, there would be about 5 percent more water that could be diverted from the Trinity watershed into the Central Valley watershed. I will go into that a little more later, Mr. Chairman.

Mr. Chairman, we have on the board a map and profile which shows the installed power capacities proposed by the company and the Bureau. You can see that our plants would be at the same locations as those proposed by the Bureau. At Trinity Dam, the company would install the same power capacity as the Bureau, 90,000 kilowatts; at Lewiston, we would produce 2,300 kilowatts; at Tower House, 126,000; and at Matheson, 144,000.

The combined installed capacities of the company plants would be 362,300 kilowatts, or 129,300 more than the Bureau would build.

The company could develop more than half again as much power capacity from the Trinity project as the Bureau proposes because the company's powerplants would be integrated with its widespread regional power system. On the other hand, the plant capacities proposed by the Bureau were designed for a smaller independent system.

I want to emphasize that although we propose larger plant capacities, this is no reflection on the planning of the Bureau of Reclamation. The simple fact is, that if the plants are integrated with our widespread regional system, it is more economical to install the larger capacities.

Senator ANDERSON. Do they not integrate with some other projects of theirs?

Does not the Bureau of Reclamation integrate into the power developed at Shasta, Folsom, and various other places?

Mr. MURRAY. Yes, sir, Mr. Chairman.

Mr. SPENCER. That is correct, Mr. Chairman.

Senator ANDERSON. How do you explain the difference at Matheson between their 145,000 kilowatts and your 75,000 kilowatts?

Mr. MURRAY. The power installations which are presented in our reports were worked up several years ago and were designed to fit in with an independent system to the maximum that that could be justified.

Senator ANDERSON. You do not plan to tie it into Shasta or other areas?

Mr. MURRAY. They were tied to Shasta, but tied to much smaller total power system than is proposed here by the company.

Senator ANDERSON. But if the population growth that we have been hearing about takes place, someone will need that power; will they not?

Mr. MURRAY. That is true. If we were reviewing it on the basis of the present time, and on the basis of integration with the company plants in their entire system, we would be proposing plants of probably the same size.

Mr. GERDES. The reason that we can install these larger plants and utilize the power is that we can use these plants for what is commonly called peaking purposes and fit that power into our system.

Senator ANDERSON. Do you not buy power now from Shasta?

Mr. GERDES. We do.

Senator ANDERSON. Why could you not buy your peaking power from this outfit just as well as generate yourself? They can build one 144,000 kilowatts just as well as you can; can they not?

Mr. GERDES. Physically it could be built, but in order to utilize a plant of that size it would have to be fitted into a large regional system, such as ours.

Senator ANDERSON. Where does the power from Friant go?

Mr. GERDES. No power is produced at Friant Dam, Mr. Chairman. Power is generated not only at Shasta and Keswick Dams, but also at the Folsom and Nimbus Dams. Folsom and Nimbus are located on the American River. All of those plants are a part of the Central Valley project.

Senator ANDERSON. Do they sell their power only to small, independent companies?

Mr. GERDES. They have an agreement with the Pacific Gas & Electric Co. which you might characterize as a power exchange and wheeling contract. It has been frequently so designated.

In substance, the Bureau delivers substantially of its power into the company's system, and now most of that power is transmitted by the company to other customers.

Senator ANDERSON. All right.

Mr. GERDES. The larger power capacity of our plants would require tunnels 20 percent larger in diameter. This would increase the tunnel peak-flow capacity, and thus the peaking capacity of the plants, by more than 80 percent. Under our plan, the peak flow through Tower House and Matheson tunnels would be increased from 1,700 cubic feet per second to 3,130. The added cost to the Government of constructing larger tunnels and penstocks was taken into account in arriving at the net savings our plan would make possible.

The coordination proposed by the company would enable the best use of project water for power purposes and would give the power its greatest value.

For the use of falling water through these plants, the company would pay the Government \$3.5 million a year. We calculate this to be its full value based on the present cost of alternative steam power. This payment is equivalent to more than \$4.50 for each acre-foot of water diverted through the plants. Farmers pay \$3.50 an acre-foot for firm irrigation water from the Central Valley project. As you know, none of the Trinity falling water would be consumed in the power operation.

Clyde H. Spencer, director of region 2 of the Bureau, who testified today, stated at the House committee hearing that he thought the

amount of the payment for falling water could be determined by negotiation. If by any chance we should not reach agreement, the company is willing to have the falling-water payment fixed by the Federal Power Commission. We would agree that the Commission's determination would be final and conclusive.

#### ADVANTAGES OF COMPANY PARTNERSHIP

Construction and operation of the Trinity power facilities by the company, rather than by the Federal Government, would provide the following advantages:

1. A net saving to the Federal Treasury of nearly \$50 million in capital outlay for power facilities.

2. An estimated \$36 million more net revenue over the project repayment period. This would result from the assured annual payment of \$3,500,000 together with the net savings in annual costs to the Government made possible under the company's proposal.

3. The company would pay \$2,700,000 a year in taxes on the Trinity power facilities. This would increase annual revenues of the Federal Treasury by \$1,400,000 and would provide an additional \$1,300,000 a year for State and local governments. Over the repayment period these tax revenues would aggregate \$70 million to the Federal Government and \$65 million to State and local governments.

In Trinity County our taxpayments would be nearly tripled. Our total payment would rise to about \$325,000 a year. This would represent 44 percent of the total taxes levied by the county. Our annual payments in Shasta County would increase to nearly \$2,900,000 or more than one-half of the total taxes levied in the county.

H. R. 4463 and S. 178 would require the Federal project to make in-lieu payments to Trinity County for loss of taxes only on "the value of the real property and improvements taken" for project purposes. Under the partnership plan, the Government could make such payments on property taken for Federal construction of the dams, reservoirs, and tunnels. In addition, the company would pay taxes in both Trinity and Shasta Counties on the powerplants and related facilities.

4. The company Trinity plants would provide 125,000 kilowatts more dependable capacity at load center than would be made available by the Bureau's Trinity plants. However, after giving credit for additional capacity estimated to be made dependable in existing plants under the Bureau's Trinity plan, the net gain under our plan would be 65,000 kilowatts.

The Bureau's ability to meet its present commercial power commitments from existing plants would not be impaired.

5. Under the company proposal, 5 percent more Trinity water would be available to users in the Central Valley.

Mr. Chairman, under the next heading in our statement we have discussed our proposal to exchange power for the San Luis project.

Senator WATKINS. Before you leave that, may I be permitted a question?

Mr. GERDES. Surely.

Senator WATKINS. I note that you figure what you can pay based on what it would cost a steam plant to replace that power with.

Mr. GERDES. That is the basis on which we arrived at the \$31½ million payment for falling water.

Senator WATKINS. What would be the answer to the chairman's question, if you are going to be a partner to this enterprise, why not be a partner in constructing the reservoirs and tunnels?

Mr. GERDES. One of the problems would be that if we constructed the reservoirs and the tunnels, the property would be subject to taxation. As shown by Bureau of Reclamation studies, the project by itself, neither the power phases of it nor the water phases of it, pays its expenses. If the whole project were constructed by private enterprise, the situation would be much worse because there would be no interest-free irrigation capital and because of the taxes that would be paid. As you know, private enterprise cannot take on a project that would have large annual losses.

Senator ANDERSON. Then the project standing by itself is not feasible?

Mr. GERDES. I did not say it was not feasible. I stated that the Bureau study that was introduced here—and to which Secretary Aandahl referred—stated, and Mr. Aandahl stated, that the power phases of the Trinity project itself would result in a loss of a million and a half dollars a year.

Senator ANDERSON. And the power phases were to pay for the irrigation. So what will pay for the irrigation?

Mr. GERDES. As the witnesses for the Bureau testified this morning, they pooled it with the Central Valley project and, so pooled, it was shown by them to be feasible.

Senator WATKINS. What is the cost per kilowatt-hour on the production under the Government program on this project?

Mr. GERDES. I do not know.

Senator WATKINS. You say it would be a loss. What does it cost to produce electricity?

Mr. GERDES. Well, the State of California filed a report on this subject. Mr. Durkee described that report.

Senator WATKINS. I want your view.

Mr. GERDES. I was going to quote Mr. Durkee, because the State has made the study.

Senator WATKINS. Can you not answer that question?

Mr. GERDES. We did not make an independent study of that specific item.

Senator WATKINS. How do you know you are going to save money?

Mr. GERDES. We have no reason to doubt the State engineer's figure. He estimated that the power from Trinity would cost 7.2 mills per kilowatt-hour.

Senator WATKINS. The hydro plant would cost that much?

Mr. GERDES. That is what—

Senator WATKINS. What is included in that, just the cost of the generation, or the transmission lines, or subsidies for carrying the irrigation?

Mr. GERDES. That is the cost of generation and transmission to load center, as I recall it.

Senator WATKINS. Where would the load center be?

Mr. GERDES. Tracy is regarded as the load center for the Central Valley project.

Senator WATKINS. What would it cost them to put a transmission line from the production point to the load center?

Mr. GERDES. Their estimates are contained in the record here. Mr. Bonner, perhaps, can supply that figure.

Mr. BONNER. I believe it is \$19 million for transmission and \$11 million for substation facilities.

Mr. GERDES. That is as I recall it, for transmission and substation facilities.

Senator WATKINS. Am I correct in this statement that you in effect said that the power operation here would be at a loss if the Government ran it?

Mr. GERDES. That is not my statement. That is the statement of the Bureau of Reclamation which was made here today. Secretary Aandahl made the statement, as I heard him this morning, that the Trinity, with the power sold at the rates at which they propose to sell it, will result in a loss of a million and a half dollars a year. The State of California estimate is that the loss will be something over 3 million.

Senator ANDERSON. That is not in Mr. Aandahl's prepared statement.

Mr. GERDES. I thought I heard him say that, Mr. Chairman.

Senator WATKINS. I did not remember it. I am quite surprised.

Senator ANDERSON. Then we understand that this project fails by a million and a half dollars, according to the Bureau of Reclamation, of being able to pay out, including both irrigation and power?

Mr. GERDES. They make that statement with respect to the power features.

Senator ANDERSON. And \$3 million according to the State of California?

Mr. GERDES. What was that?

Senator ANDERSON. \$3 million was the figure that someone else had.

Mr. GERDES. That was the State engineer.

Senator ANDERSON. I think we better go back to the Bureau of Reclamation for just a minute, because it says: Trinity division will be a sound investment for the country in view of the favorable ratio of primary benefits alone to the total cost of 1.86 to 1. Can you supply me with the figures on which 1.86 to 1 is calculated?

Mr. MURRAY. Yes, sir.

Senator Anderson, in the report, a copy of which has been given to you today, and which we understand had been supplied to the committee staff previously, entitled "Supplementary Report on the Trinity River Division, July 1954," on pages 7 and 8 of that report, of the supplementary report—

Senator ANDERSON. I have one for January 1955. This is an addendum.

All right, here it is.

Mr. MURRAY. On pages 7 and 8 are presented the estimates of cost, and the estimates of benefits which would flow both cost and benefit-wise from the Federal investment of \$219 million in the Trinity facilities if those facilities are added to and operated as an integral part of an enlarged Central Valley project.

Senator ANDERSON. Let us look at it by itself.

Mr. MURRAY. We have never analyzed the Trinity River project or considered that it would operate separately and by itself.

Senator ANDERSON. I recognize that it does not. But there are some 30 projects listed in the upper Colorado storage bill. They do not take and lump all of them together and say, "We did not analyze Flaming Gorge, we did not analyze the silt, we did not analyze the Seedskadee." Why do you handle this one this way?

Mr. MURRAY. I am not qualified to talk about the upper Colorado storage project.

Senator ANDERSON. We will talk to you about this one. Can you give us an analysis of this one by itself? They seem to have some information on it, why do you not?

Mr. MURRAY. The only analysis that we have of the Trinity River division standing by itself is the analysis presented on pages 7 and 8 in which the costs and the returns in the form of direct and indirect returns on the Federal investment are compared.

Senator WATKINS. Can you tell us what it would cost per kilowatt-hour to produce electricity at your Trinity plant?

Mr. MURRAY. We testified this morning on the basis of some rough calculations, that the incremental power output produced at the Trinity plants would average approximately 5 mills.

Senator ANDERSON. This incremental output is a bad term. We have been dealing with the incremental power of Dixon-Yates and we found out we did not know what it was for a long time. Can you tell us how much the electrical energy costs, skipping the words "incremental power"? Just put it in mills per kilowatt.

Senator KUCHEL. Can you define that term for the record?

Senator ANDERSON. When we got through with it, the incremental power was the power they were going to generate that was going to be firm at all times not counting the power they were going to sell back to themselves in the Arkansas Power & Light, and not counting the peak power and not counting the rest of it. When we got through, we were a little bit at sea, not being great experts.

You tell us how many kilowatts you are going to generate, how much it will cost you to do it, and how much per kilowatt-hour. They have a figure of 7.2. Do you have a figure like that?

Mr. MURRAY. I have a figure like that, but I do not agree with the 7.2 mills. May I refer, if you have a copy of the House hearing, to pages 42 and 43?

Senator ANDERSON. We do not have that.

Mr. MURRAY. We have derived that from the repayment studies summarized in as brief a form as we can in the long complex tables that appear in that July 1954 supplemental report. You will notice that these two sets of figures derive the cost of firm power from the Central Valley project both with the Trinity River and without it.

This morning I made a rather rapid computation comparing the 1.84 mills and the 3.04 mills that are shown in those two tabulations, and calculated an average figure of approximately 5 mills for the cost of the power generated by the Trinity River division. The figure is approximate because the two pay-out periods on which these two charts are made are a little different.

Senator WATKINS. Where is that price figured?

Is that the load centers or at the bus bar?

Mr. MURRAY. At load center.

Senator WATKINS. That is about \$19 million?

Mr. MURRAY. Yes, that is about right.

Senator WATKINS. To put the transmission line in. That takes into consideration the cost of transmission?

Mr. MURRAY. Yes, sir; in both cases.

Mr. GERDES. I would like to make myself clear.

Senator KUCHEL. Let me interrupt. Where does this 7.2-mill figure come from?

Mr. MURRAY. I don't know.

Senator ANDERSON. What is the one you have like it that is not the same?

Mr. MURRAY. Approximately 5 mills.

Senator ANDERSON. One is an attractive figure and one is an unattractive figure.

Mr. MURRAY. I don't know where the 7 mills came from.

Senator ANDERSON. Tell us how you got the 7.2.

Mr. GERDES. That 7.2 figure is contained in the State engineers' report.

Senator ANDERSON. May we have the State engineers' report filed for our records?

Mr. LINEWEAVER. We do not have it.

Mr. GERDES. I want to make myself perfectly plain. We are in no way challenging the feasibility or desirability of the Trinity River project.

Senator ANDERSON. I want to make myself plain, too. If the State engineer of California figured out this current was going to cost 7.2 mills and we are using figures of 3.4 and 5 mills, and figures of that nature, we ought to get our figures together to begin with, and it is very important.

You did say this powerplant would lose \$11½ million a year. The Bureau of Reclamation does not agree with that.

You say the State agrees it will lose 3 million a year.

Mr. MURRAY. The million and a half dollars a year is our figure.

Senator ANDERSON. If you lose a million and a half dollars on the powerplant, do you expect to make it back from the irrigation?

Mr. MURRAY. Our repayment studies are all predicated upon pooling the costs and revenues from Trinity with the Central Valley project.

Senator ANDERSON. We have spent most of the day trying to get them unpooled. We are like Mr. Lewis, we want to disaffiliate.

Mr. MURRAY. I can't testify to anything else.

Senator ANDERSON. In order to get the benefits, you have to know what is going to be beneficial and what will be detrimental. If I am any judge of this, we thought power revenues would help pay for irrigation.

Mr. MURRAY. They will.

Senator ANDERSON. If the power revenues are going to lose a million and a half dollars a year—and you say that is your figure—how can they pay for anything?

My guess is they are going to keep on costing money; isn't that right?

If I lose a million and a half dollars in a branch, which I could not do, but if I did, or any proportion of it, increasing the volume would not help me. I would be going further into the hole.

Mr. GERDES. They can avoid that loss by accepting a partnership proposal with us, which will eliminate the \$1,500,000 loss.



Senator ANDERSON. The only reason you can get in the partnership deal is you get it at an advantageous price.

Mr. GERDES. No, we do not get it at an advantageous price. We have no expectation or even hope of getting it at an advantageous price.

Senator ANDERSON. You have no part of the obligation in building the dam. If you take all the great power projects in the country and let somebody else build the dam and you put a generator in and pay all the cost of the generator, you would do well even if you paid \$31½ million on top.

Senator WATKINS. We have a different story because he said the amount they offered is what it would cost them for the steam plant to produce the same electricity. They are offering to pay that, too.

That will bring more money to the Treasury and they will not lose on that kind of a deal.

Senator ANDERSON. I agree.

Senator WATKINS. That is why I asked him that very question, what would be the answer to the question you asked? Why would they be willing to take on the construction of the dam and all that?

Actually, it looks like a better deal if the figures are correct.

Senator ANDERSON. I think this has been a very informative session because it gives us an idea of what the project is all about. I do not say it is improper for you people to pay the equivalent of the cost of generating current by the use of coal as fuel.

Mr. GERDES. In our case, oil or gas.

Senator ANDERSON. You burn very good gas, brought from a good part of the country. I would not mention where it comes from.

Mr. GERDES. A lot comes from your State.

Senator ANDERSON. That is a fair and comparable figure. That is the figure that you are using, and it has no relationship necessarily to the cost of the generation of the power.

Mr. GERDES. Correct.

Senator WATKINS. It seems to be a better price, probably save the Government, if their figures are correct, it would seem to be a much better price.

Senator ANDERSON. If I had kilowatts to sell, I would try to sell it to the best spot. If I could get 3 mills for it one place and 5 mills at another place, it would not take me long to find out where I wanted to sell it.

Senator WATKINS. What was your cost per mill at the steam plants?

Mr. GERDES. Our cost of generating power at our system load factor is in the neighborhood of 7 mills per kilowatt-hour.

Senator WATKINS. You are willing to pay 7 mills for this power?

Mr. GERDES. Approximately 7 mills for this power.

Let me correct that: We will pay more than 7 mills but that is because we will be buying it at a load factor much lower than our system load factor and supplement from our other plants the supply that we would get from our proposed Trinity plants.

Senator WATKINS. I do not understand.

Mr. GERDES. We would be buying this falling water to generate peaking power and paying more than 7 mills for it. However, we would supplement that peaking power by energy generated in our steam plants. The cost of such energy from our steam plants does not involve the capital charges, but only the cost of fuel.

Senator WATKINS. I can understand that because for peaking you would have to start up your steam plants and that cost is better than 7 mills.

Mr. GERDES. At our system load factor——

Senator WATKINS. You said load factor?

Mr. GERDES. That means percent of the time that you use the maximum power capacity. In other words, it is the ratio of the average use to the maximum demand.

Is that correctly stated?

Mr. BONNER. Yes.

Senator ANDERSON. In other words, is it not true that if you have a fuel cost of 2 mills and another cost that may come in there, that you might raise a mill or mill and a half for depreciation and use of equipment, they cannot hope to get that load running a hundred percent all the time. They have peaks and valleys. By the time they get through, they level it all out, and even though the fuel cost may be way down and other costs down, you cannot apply that and you end up with about 7 mills.

We found in the steam plants in TVA and elsewhere, even though they may generate some of it at 1.8 or 2 mills, by the time they get through with their load factor it goes up to 4 or 5.

Senator WATKINS. I can understand it.

If that is what they want it for, I can see why they can pay 7 mills. We, of course, in all these projects where we have irrigation water for supplemental purposes, that supplemental water is much more expensive than any water the farmers have under the old gravity system they had many years ago that they got early by just building a rather cheap distribution system.

They can afford to pay for the last acre-foot of water they need to make a success, they can pay more for it. I can understand that theory if that is it.

Mr. GERDES. Mr. Bonner tells me the cost of Trinity power under the company's proposal will work out to about 10 mills per kilowatt-hour, at the load factor at which we would generate the Trinity power.

Senator ANDERSON. Is there any possibility that a proposal could be made to sell you current without going into who installs the turbines and let the Government do the whole job and give you a contract for power?

Mr. GERDES. Mr. Chairman, we have been buying power from the Central Valley project since the time that the first generators turned over, as I recall it, in 1944. Since that time, every year we have been buying power from the Bureau of Reclamation; for quite a period we bought substantially all of their power.

As a matter of fact, we paid the Bureau of Reclamation, if I remember the figure correctly, better than \$65 million for power during the period since 1944.

Senator ANDERSON. If we are going to finish your testimony, we will have to go on.

Mr. GERDES. I want to emphasize that in no way are we urging that the Trinity is not feasible. On the contrary, we urge the Congress to authorize the Trinity project under the bill before you.

Senator WATKINS. Even if you do not buy the power?

Mr. GERDES. Yes, whether we buy it or not, we think it is something that is desirable for the State.

Senator ANDERSON. Your testimony apparently is, too, that the Trinity project standing by itself lacks millions of dollars of being feasible.

Mr. GERDES. That isn't my testimony. I was merely referring to figures contained in the Bureau reports and in their testimony. I mentioned it in answer to the question from the Senator regarding why we couldn't take over this dam and all the tunnels and the rest of it.

Senator WATKINS. On the partnership basis, you ought to go in and help pay for the cost of those.

Mr. GERDES. Under our proposal we would put in all the capital in the power facilities and, in addition, we would pay \$3½ million a year. That \$3½ million would be used by the Government to help pay for the capital cost of the dams and tunnels and the water features of the project.

Senator WATKINS. I think, Senator, it seems as though this project is based somewhat on the same theory we have in the upper Colorado storage.

We have one dam, for instance, at a certain rate per kilowatt-hour, and we have others that are more expensive but they are all pooled together. The theory they are proceeding on is to put all this in the Central Valley and take some of the cheaper power produced, and it sweetens up the whole load.

Senator ANDERSON. This has been helpful in bringing out what the proposal is, because I didn't understand it this morning.

Mr. GERDES. What our proposal does, we believe, is to make the power phase of the project assist to a much greater degree, the repayment of the project.

Now, I stated that were were for the Trinity project, and we are. However, there are included in this bill construction of certain transmission facilities, which we believe are unnecessary. I don't think it is necessary to discuss that now, in view of the bill before you, which provides for a study of partnership construction.

Senator ANDERSON. Mr. Murray, do you have anything to say before we get off this subject?

Mr. MURRAY. I feel an obligation, because of the question raised about the million and a half dollars, to make a statement inasmuch as Secretary Aandahl testified on that this morning.

May I refer to page 6 of the letter of January 19 from the Commissioner to the Secretary with respect to the Trinity River project. It is on the cover of that report you have, Senator Anderson.

On page 6, the million and a half dollars a year which Secretary Aandahl referred to this morning is presented.

Senator KUCHEL. Where did he refer to it?

Mr. MURRAY. I think he referred to it in oral testimony. It was not in his prepared statement. He referred to it in oral testimony.

Basically, this figure is derived as a computation of the amount of money annually that has to be contributed by the present Central Valley project to the enlarged project by reason of the addition of Trinity.

Senator Watkins' statement has exactly summarized the situation. The Trinity power is more costly, is a higher cost power than is the

power produced from the present Central Valley project. The two are, however, pooled and sold essentially at the same rate. The result is that the present Central Valley project is contributing a million and a half dollars a year over the pay-out period in support of the enlarged project, by reason of the higher cost power.

It is in that sense that the Secretary spoke of the loss incurred by reason of this higher cost power.

Another way of explaining it is to look at it in this way. The power facilities from the present Central Valley project are now estimated to pay out in the year 1967, about 22 years from now. If the Trinity River project is constructed and added to the project, we estimate the total power facilities will be paid out in the year 1989, a difference of about 22 years more by reason of the Trinity power being more costly power than that generated.

Senator KUCHEL. Give me that again. What is the pay-out period?

Mr. MURRAY. The commercial power allocation on the existing Central Valley project as it now is estimated to pay out in 1967, about 22 years from now.

Senator ANDERSON. Twenty-two years from now?

Mr. MURRAY. Twelve years from now.

If the Trinity project is constructed, the power, of course, is more costly and the total power investment would not then be repaid until the year 1989.

Senator WATKINS. Is that commercial power alone?

Mr. MURRAY. Yes, sir.

Senator WATKINS. You describe your power divisions. You have commercial power? What other kind do you have?

Mr. MURRAY. The other kind is power for irrigation pumping.

Senator WATKINS. What do they pay for that?

Mr. MURRAY. That is paid for in irrigation water rates. We carry it on our books as intraproject charge.

Senator WATKINS. How much do you allocate for the power—

Mr. MURRAY. We add a part of the cost of the power-generating facilities to irrigation. That is repaid along with the other irrigation costs, and we have an intraproject transfer of funds in the amount of  $2\frac{1}{2}$  mills for each kilowatt-hour used for irrigation pumping.

Senator WATKINS. They are charged  $2\frac{1}{2}$  mills?

Mr. MURRAY. That is the effect to reflect cost of operating and maintaining this service.

Senator WATKINS. That is noncommercial?

Mr. MURRAY. Yes; a substantial amount.

Senator WATKINS. You do not have repayment contracts with any of the users of the water or power for the overall cost of the project?

Mr. MURRAY. Yes.

Senator WATKINS. When did you get them? Are they not all under 9 (e) contracts?

Mr. MURRAY. Yes.

Senator WATKINS. That is merely a rental proposition, is it not?

Mr. MURRAY. They will repay the cost over the estimated repayment period.

Senator WATKINS. But that is just the rental. You rented to them on the theory it is a rental and the United States will forever own the project, both water and power; is that right?

Mr. MURRAY. They are sold on a water-service contract under section 9 (e).

Senator WATKINS. Did I describe it correctly that it is a rental contract?

Mr. MURRAY. I, personally, don't view it that way; no, sir.

Senator ANDERSON. How do you view it?

Mr. MURRAY. I view those contracts—granted on their face they are water-service contracts with a term of 40 years—but I know they will be renewed.

Senator WATKINS. At the end of 40 years?

Mr. MURRAY. Yes.

Senator WATKINS. And at the end of another 40 years they will still be renewed under your theory?

Mr. MURRAY. If at that time there was nothing further to be done to the project.

Senator WATKINS. We went into it thoroughly a number of years ago. That is a rental proposition, you have no repayment contracts obligating the water users to pay anything but a rental.

Mr. MURRAY. That is correct.

Senator WATKINS. That is a rental contract.

Senator ANDERSON. What would happen if we asked the Bureau of Reclamation to give us, as it does on most other projects, a breakdown of this project showing its feasibility, what it was going to cost, and what you are going to get for it, and then pool it in the whole Central Valley project?

It strikes me like if I happened to live on the coast and had a swimming pool and tried to figure how much it cost me by totaling the cost of operating the Pacific Ocean.

I want to know what my pool will cost. I want to know what this project will cost. Can you not give us a figure of how this project works out by itself?

Mr. MURRAY. The Trinity River project is designed to operate and be influenced by the operations of the entire Central Valley project. Its operations are intimately coordinated with that of the rest of the project.

Senator ANDERSON. I understand that.

Mr. MURRAY. I don't see any way to haul it out and look at it in the sense you described, other than the way we have done by comparing the benefits and the costs of the features that are constructed.

Senator WATKINS. We inquired of the engineers to break down each one as to the cost of power.

Senator ANDERSON. Your answer is if we expect to get that information, the information will have to be gotten by the committee on its own time the best way it can.

Mr. MURRAY. I am sure we in the Bureau will do the best we can to help the committee on that, and I am quite certain that I and the members of my staff are probably as able to do it as anyone else. It has been done—in a sense of subtraction type of thing—by subtracting out, but that doesn't recognize the integrated nature of the operation.

Senator ANDERSON. Suppose we do not care to recognize the integrated purpose of the operation for the purpose of starting this project by itself.

I do not say we would not care to look at the integration when we get through, but is there anything wrong with letting us know how the project works out by itself?

Mr. MURRAY. The nearest thing that I could suggest at this time is that you look at the analysis presented in this addendum report which is about as good an effort as can be made now to segregate the repayment of the Central Valley project, and to segregate Trinity out of it. Certainly we would be glad to furnish the committee a further statement on it, explaining it and outlining that repayment project as best we can.

I am sure we would have to qualify it to point out the integrated nature of the project in so doing, but I think we can furnish something more direct along that line to the committee.

Senator WATKINS. I would like to find out how much it will cost per acre-foot for water delivered to the land and the cost per acre for the water supply needed. That is what we were required to do in the other. It was difficult but we did it, and then we added it to the other to make the overall project, were ready to pool our income and resources and taxes and ability to pay all in one pool, make it one project, with a lot of separate units. You have not done that.

(Mr. Murray subsequently submitted the following information in response to Senator Watkins inquiry.)

Annual costs of distributing to the land water made available in the Sacramento River will vary from about \$5 per acre on existing systems whose capital costs have been amortized, to about \$15 per acre on new systems being constructed under reclamation laws.

Senator WATKINS. You built that on piecemeal and it started away back in the depression days or beyond that, and has been added to; first was flood control and then reclamation and I do not know what else.

The State has been in it, private enterprise has been in it, today you do not have any repayment contracts with anybody in the sense you have it with other projects.

Mr. MURRAY. We don't have Central Valley contracts in the terms of section 9 (d) on the dams, power facilities and main canals serving numerous districts.

Senator WATKINS. It is in the business of renting water as well as power. Call them service contracts, but most every place else they would be called rental on water.

Mr. MURRAY. I will be glad to furnish for the record the best analysis we can in answer to Senator Watkins' and your questions.

Senator WATKINS. As far as I am concerned, I think that it is proper to pool all resources; it should have been done a long time ago. The people in the area should pool resources, just like the man on the canal.

The man at the top of the canal does not get a better deal, since he only has probably 400 yards to carry his water, than the man down at the other end of the canal. It will be clearer to everybody if you make it plain that is what you are trying to do and show how it does integrate.

Mr. MURRAY. I am sure there has been no intent on the part of the Bureau to conceal that essential aspect of the proposed operation of the Trinity project.

Senator WATKINS. Suppose your water supply fails for any reason and the Government has not been made whole. Are the water users under obligation to pay whether they have the water or do not have it?

Mr. MURRAY. Our contracts provide for the delivery of water.

Senator WATKINS. If you do not deliver water, you do not get money?

Mr. MURRAY. That is correct.

Senator WATKINS. In the other States, we have to pay whether we have water or not. That is the legal obligation.

Senator ANDERSON. Mr. Murray, if you would give us the figure by itself, it might look bad, but at the same time it would give us a chance to demonstrate how much better the project was when it was integrated. That is what we want to find out.

This is a part of the Central Valley project but, just the same, we have a right to find out what the individual parts are going to cost. You may want to have choices as to the construction of various parts of it.

While you say there was no attempt to conceal anything, and I am willing to concede that, I did not catch the fact that the power revenues were not paying for the irrigation until we got into this discussion this afternoon. I thought the power revenues were going to pay for this thing.

Senator WATKINS. It is the power revenue that comes from the over-all pool of the Central Valley.

Senator ANDERSON. I see it now.

Mr. MURRAY. It not only does to the extent of \$67 million, but accumulates a subsidy of \$170 million for even more expensive irrigation projects.

Senator ANDERSON. Do you know of any other projects in the country where the power features operate at a loss?

Mr. MURRAY. We don't consider that the power project, or, rather, the power features here operate at a loss.

Senator WATKINS. If it operated alone, it would.

Senator ANDERSON. Maybe that is a special viewpoint that the taxpayer has on this, but anything that loses a million and a half dollars to me operates at a loss.

Mr. MURRAY. Mr. Gerdes touched on a typical example in pointing out that this power, at the load factors that would be in force under the offer the company has made, might cost them 10 mills but they might sell that wholesale at 6½ mills.

Mr. GERDES. No. You don't mean to imply there are any markups like that.

Senator ANDERSON. That was a markdown.

Mr. GERDES. I beg your pardon.

Senator ANDERSON. We are getting everybody confused.

Mr. MURRAY. That is a perfectly common utility practice; it is common sense to operate a utility that way.

Senator MILLIKIN. Could we get the staff or somebody to review again this whole power question under any of the aspects that have been presented so we will know what is involved?

Senator ANDERSON. I think they will be happy to do that. We are not going to do it here.

Before you leave, Mr. Murray, will you get with other officials of the Bureau of Reclamation and work it out, and with Mr. Lineweaver

and other members of the staff so that we may have a report. It need not be in the hearings but so we have something on which we should base a judgment.

After all, this committee is asked to spend \$219 million of the money of the Government of the United States, and that is still quite a little money. We like to know what we are doing when we spend it.

(The information referred to is as follows:)

We agree the tabulations on pages 1, 2, and 3 are best presentation possible in response to Senator Anderson's request.

FRANK B. DURKEE,  
*Director of Public Works, California.*

C. H. TURNER,

*Reg. Dir. Reg. 2 USBR.*

Q. G. MURRAY,

*Reg. Plan. Eng. Reg. 2, USBR.*

(As to pages 1 and 2 dealing with power cost.)

JOHN F. BONNER,  
*Asst. to V. P. & Chief Engineer Pacific Gas & Electric Co.*

G. W. LINEWEAVER.

● ELMER K. NELSON.

*Allocation of costs of features comprising Trinity River division, Central Valley project,<sup>1</sup> July 15, 1955, requested by Senator Anderson at hearing on June 24, 1955*

**Power:**

Commercial.....	\$156,538,000
Irrigation pumping.....	18,155,000
Municipal and industrial pumping.....	390,000
Subtotal.....	<u>175,083,000</u>

**Irrigation:**

Joint features.....	43,937,000
Power (irrigation pumping).....	18,155,000

Subtotal.....	62,092,000
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Commercial power (total).....	156,538,000
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Municipal and industrial (total) <sup>2</sup> .....	390,000
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Fish and wildlife (total).....	47,000
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Subtotal.....	219,067,000
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Minimum basic recreational facilities <sup>3</sup> .....	215,000
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Total.....	219,282,000
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<sup>1</sup> Data from table I, Addendum to Supplementary Report dated July 1954, Jan. 6, 1955, and Supplementary Report, July 1954, both on Trinity River division, Central Valley project.

<sup>2</sup> Results from application of standard cost allocation procedures. No additional M. and I. service is provided in Trinity River division.

<sup>3</sup> Added in Commissioner's report of Jan. 19, 1955, to the Secretary, which was adopted by Secretary McKay as his proposed report on Feb. 17, 1955.

**NOTE.**—The integrated nature of the operations of the Trinity, Shasta, and American River divisions of the Central Valley project and their coordinated operation with tributary inflow entering Sacramento River below Keswick Dam make it impractical to allocate the costs of the Trinity division as it might be operated separate and apart from the existing features of the CVP. Consequently, the allocations shown above are based on incremental costs, benefits, revenues, and operations—measured as the differences between (1) the existing Central Valley project and (2) the existing project plus the Trinity River division.



*Annual cost of power, Trinity River division, Central Valley project<sup>1</sup>—  
July 15, 1955*

Amortization of commercial power allocation of \$156,538,000 in 50 years at 3 percent-----	\$6,080,000
Operation, maintenance, and replacement <sup>2</sup> -----	1,731,000
<b>Total-----</b>	<b>7,811,000</b>
\$7,811,000 divided by 1,067,000,000 kilowatt-hours <sup>3</sup> equals 7.3 mills per kilowatt-hour. <sup>4</sup>	
Amortization of commercial power allocation of \$156,538,000 in 50 years at 2½ percent-----	5,505,000
Operation, maintenance, and replacement <sup>2</sup> -----	1,731,000
<b>Total-----</b>	<b>7,236,000</b>
\$7,236,000 divided by 1,067,000,000 kilowatt-hours <sup>3</sup> equals 6.8 mills per kilowatt-hour. <sup>4</sup>	

<sup>1</sup> Based on and subject to qualifications in table dated July 15, 1955.

<sup>2</sup> Includes minor amount of O. M. and R. properly chargeable against production of project pumping (irrigation and municipal water).

<sup>3</sup> Annual increase in firm power production of Central Valley project due to integrated operation of Trinity River division with existing features of the project.

<sup>4</sup> Based on coordinated operation with existing features of the Central Valley project. The Trinity River division would not be constructed as a physically separate project; if it were so constructed, the cost of producing the same amount and type of power as the integrated project produces would be even higher than shown. Through integrated operation, advantage is taken of Federal investments already made in Shasta, Keswick, Folsom, and Nimbus Dams, Reservoirs, and powerplants. Further, the ratio of direct benefits to costs (1.86 to 1) shown in the report approved by the Secretary on Feb. 17, 1955, is conservative since the cost side of that ratio includes an allocated share of the cost of the Delta-Mendota Canal, an already constructed part of the Central Valley project.

As noted in testimony at the July 14 hearing, the average cost of Trinity power of approximately 5 mills was derived from the tables on pp. 42-43 of the hearing before the Irrigation and Reclamation Subcommittee of the House of Representatives on H. R. 4663, and reflects in part the pooling of Trinity costs with other Central Valley revenues. The 5-mill average cost thus is consistent with the average subsidy of \$1,500,000 from the Central Valley project shown in the table on p. 6 of the report, which the Secretary approved on Feb. 17, 1955.

*Annual cost of irrigation water (in Sacramento River), Trinity River division,  
Central Valley project<sup>1</sup>—July 15, 1955*

Irrigation allocation, Trinity River division-----	\$62,092,000
Annual cost, <sup>2</sup> repayment in 50 years without interest-----	1,242,000
<b>\$1,242,000</b>	
-----	= \$1.04 per acre-foot capital repayment.
<b>1,190,000 acre-feet</b>	
<b>\$705,000</b>	
-----	= 0.59 per acre-foot operation, maintenance, and re-
<b>1,190,000 acre-feet</b>	<b>placement.</b>
<b>Total-----</b>	<b>1.63 per acre-foot.</b>

<sup>1</sup> For 1,190,000 acre-feet of water made available for diversion from the Sacramento River under an irrigation demand schedule. Diversions subject to deficiencies in critically dry years estimated to occur not oftener than once in 25 years.

<sup>2</sup> Should be reduced slightly since annual O. M. and R. cost of \$705,000 should be charged partly to M. and I. water service and fishery preservation. Reduction would be minor.

Senator KUCHEL. May I ask one question of Mr. Murray before he sits down?

You stated that the Trinity project as contemplated by the Department of the Interior would prolong the pay-out period about 20 years from the presently contemplated date for Central Valley of 1967.

Mr. MURRAY. That is commercial power facilities only.

Senator KUCHEL. I understand. So that, subsequent to the new pay-out period, assuming Trinity were constructed, that item would amount to profit, would it not? No questions about that?

Mr. MURRAY. Profit on the commercial power investment.

Senator KUCHEL. On the commercial power?

Mr. MURRAY. That is correct.

Senator KUCHEL. Secondly, when you prepare this statement, Mr. Murray, I wish that you could furnish the members of the committee the Department of the Interior's original concept of what the Central Valley project included.

We have talked about the Central Valley project here. We have had it in California.

There is a State statute in California with respect to it. Now, if the Trinity project was to be part of the Central Valley project originally, I think the members of the committee ought to know that. If it came in subsequently, I think they ought to know why it came in subsequently and on what basis, because if I understand the theory of the Bureau, it is that all these segments together constitute one project that is not new in this country and that the undertaking during the 1930's in our State was actually an undertaking of something which would include a number of these units.

I think that concept ought to be clearly demonstrated to the committee so that when by piecemeal, which God knows is the only way you get things done back here, you come in in 1954 and ask consideration of a unit that is not brandnew but was conceived in the overall Central Valley project from the beginning. I think that ought to be done.

(In response to Senator Kuchel's request, Mr. Murray subsequently submitted the following statement on the Department of Interior's concept of the Central Valley project:)

The Central Valley project of the Federal Government is based very largely on the same project as it was authorized for construction by the State of California in 1933. The Central Valley Project Act authorized construction of a project which was to be "a single object and the units thereof collectively constitute one project." Units authorized as initial parts of the project included the facilities which subsequently became authorized as a Federal undertaking in the act of Congress of August 26, 1937 (50 Stat. 850). The California Legislature provided that additional units could be added to the project and such additions subsequently were authorized from time to time.

The Trinity River project, while never authorized as a part of the State's Central Valley project, was adopted by the State legislature as a unit in the State water plan, and thus was placed in a status which logically might have led to its incorporation in the Central Valley project.<sup>1</sup>

At the time of the original planning of the Central Valley project by the Bureau of Reclamation both Shasta and Folsom Reservoirs were considered for possible construction as the initial storage unit to provide water for export to the San Joaquin Valley. Consistent with the original State project, the Bureau finally recommended Shasta as the initial unit and it was subsequently constructed and placed in operation.

In the American River Development Act of 1949 (63 Stat. 852), Folsom Dam and Reservoir, Folsom powerplant, the Sly Park unit, and Nimbus Dam, Reservoir, and powerplant, and transmission lines to connect these powerplants to the backbone Central Valley project lines were authorized by the Congress. The act provided that the works were to be integrated in their operation and in their financing with the initial features of the Central Valley project.

In the act of September 26, 1950 (64 Stat. 1036), the Congress again reauthorized the Central Valley project, this time to include the Sacramento Canals unit. This act also specifically provided that the canals were to be integrated in their operation and in their financing with other features of the Central Valley project.

<sup>1</sup> By subsequent act of the legislature the Trinity River project was removed from the State water plan in 1945. In 1955 the legislature memorialized the Congress by resolution to construct the Trinity River project.

The State Central Valley Project Act of 1933, as amended, authorizes the Water Project Authority to issue revenue bonds as a means of financing construction of the project by the State. All bonds issued for construction of the initial features or subsequent additions were to be repaid within a period of not to exceed 70 years after the beginning of the construction of the project.<sup>2</sup> Within this time limitation, it appears costs and revenues were to be pooled in the financing of the project.

Thus it can be seen that the Central Valley project, as it has been considered by the Federal Government in various acts of Congress and in various reports of the Interior Department, is, in general, consistent with the Central Valley project as it was initially authorized by the State of California. Both levels of Government have viewed the project as a growing enterprise capable of providing expanding service to water users within the State.

A. N. MURRAY.

In the limited time available we have been unable to determine whether there has been a judicial adjudication of whether the Trinity River is itself a navigable stream. In the same limited time we have been unable to examine the Army's existing "308 report" on the Klamath River and tributary to ascertain whether the Department of the Army has expressed itself on this question. There is some indication, however, from material at hand that diversions from the Trinity would affect the navigable capacity of the Klamath River. At page 4 of the report of the State of California dated April 1953, which is set forth in House Document 147, 83d Congress, 1st session, there is a reference to a report to the Federal Power Commission on the uses of the Trinity River, Calif., by Board of Engineers, D. C. Henny, U. S. Grant III, W. F. McClure, and E. W. Kramer. One of the conclusions to that report as set forth at page 4 of the State of California's comments is as follows:

"(i) Navigation is confined to Klamath River below the mouth of Trinity. It may be interfered with to a small extent by diversion, which, on the other hand, may benefit Sacramento navigation."

Senator WATKINS. It ought to be done and that is what we have done under the Colorado project; we brought the whole thing at once and everybody screamed to high heaven.

You fellows have tried to get under the wire one at a time. You are back where we are. We are glad to welcome you threefold.

Senator KUCHEL. During the 1930's, Congress must have been made completely aware of the project known as the Central Valley project but, at any rate, I think the committee should have a historical statement of just what was contemplated.

Senator WATKINS. I would say it was 1947 and 1948 when I sat on this same committee and held a complete investigation of the Central Valley. They found out they did not know much about it. Nothing was explained. Some were started by Presidential order, flood control, et cetera. It does not follow any previous reclamation pattern.

That is my memory of it. I sat for the most part listening to them. I think it was of benefit and has done a great deal of work.

Senator ANDERSON. We are going to have to leave shortly.

Mr. GERDES. I can get through with this in about 2 minutes, I believe.

Senator ANDERSON. I might give you more.

Mr. GERDES. The company has followed a policy of cooperation with the Federal Government, local irrigation districts, cities, and other government agencies in the development and storage of water.

In many cases the company, by contracting to purchase the power output, has provided an assured market for electric power generated by public irrigation and water supply projects and thereby has aided in financing their construction.

<sup>2</sup> Sec. 11560, California Water Code.

The company also has constructed powerplants in connection with the Narrows Dam built by the United States Army engineers on the Yuba River, the Melones Dam of the Oakdale and South San Joaquin Irrigation Districts on the Stanislaus River, and dams of the Nevada Irrigation District on the Yuba and Bear Rivers.

Under partnership arrangements with these agencies, our payments for the use of falling water released from these dams through our powerplants have made a substantial contribution toward repayment of the cost of the water-conservation works.

We have demonstrated that cooperation between public and private agencies best serves the public interest. We offer our cooperation in connection with the Trinity and San Luis projects, and any other water conservation projects which the State or Federal Government may authorize.

#### CALIFORNIA REGULATES COMPANY POWER RATES

The company would distribute Trinity power to its 1,600,000 electric customers throughout northern and central California without discrimination. The power would be sold at rates established by the California Public Utilities Commission.

The commission has continuously and effectively regulated the electric rates, financing, and operation of public utilities since 1914. Under such regulation, payments made by the company for the use of Trinity falling water would be entered as an operating expense on our books.

The company can make no profit on the falling water it purchases. All that it is allowed is a fair return on its own investment in facilities used and useful in service to the public. Any benefits from purchase of waterpower must be passed on to consumers in the form of lower electric rates.

Today our customers pay 15 percent less for each kilowatt-hour of electricity used in their homes than they did in 1939, although the prices of most other goods and services they buy have at least doubled since that time. Despite the fact that more than 25 cents of every dollar collected by us is paid out in taxes, we have preserved this low rate level by advanced engineering and efficient management.

Trinity power would be sold by the company at the lowest possible rates consistent with sound business principles.

#### PARTNERSHIP INVOLVES NO TRINITY DELAY

No delay in construction of the Trinity project would result from our partnership proposal. At the House committee hearing, Commissioner of Reclamation Wilbur A. Dexheimer stated that up to 18 months is available for partnership negotiations after construction of the Trinity Dam is started.

Clyde H. Spencer, director of region 2 of the Bureau of Reclamation, testified that in his opinion negotiations could be completed within a year. We share this opinion.

There is no reason why Trinity construction cannot be started immediately after Congress authorizes it.

## POWER PARTNERSHIPS AUTHORIZED BY CONGRESS

The legislative pattern for partnership development may be found in three acts passed by Congress in 1954. These are:

(1) Public Law 544, authorizing the Priest Rapids project on the Columbia River where a local public utility district proposes to build a power facility at a dam to be constructed by the Federal Government;

(2) Public Law 436, deauthorizing a Federal project on the Coosa River in Alabama, to allow the Alabama Power Co. to construct 5 dams on the river at a cost of \$100 million; and

(3) Public Law 476, authorizing partnership between the State of Oklahoma and the Federal Government to build the Markham Ferry Dam.

These acts provide for construction of power facilities at Government water projects by local agencies under Federal Power Commission license.

Licenses are limited to a maximum term of 50 years. The Government has the right to recapture the power facilities at their depreciated cost upon the termination of the license.

The power operation must be approved by the Commission as the one best adapted to a comprehensive development of the water resources for all beneficial public purposes, including recreation. Licensees must pay for benefits provided by Federal dams.

Operation of plants constructed under license is subject to the continuous supervision of the Commission.

H. R. 4663 would authorize appropriation of \$225 million for construction of the Trinity River division of the Central Valley project.

The Bureau estimates that Federal operation of power facilities proposed in the bill would return \$237 million in revenues over the project repayment period.

If trinity power facilities are built and operated by the company under its partnership proposal, payments for falling water, taxes, and savings to the Federal Government over the same period would amount to \$343 million, or \$106 million more to water users and Federal taxpayers.

In addition, the company would pay \$65 million in taxes on these power facilities to State and county governments. This amounts to a net gain to the public of \$171 million from the partnership development.

The Federal Government already has spent approximately \$800 million on water resources development in California.

Another \$800 million will be required to complete presently authorized Federal water projects.

The most comprehensive Federal development of water in California can be achieved if our public and private agencies willing and able to share this financial burden become working partners in the Federal reclamation program.

The company's cooperation in the Trinity River power development will make possible the earliest construction by the Federal Government of needed water-conservation works in California with the least cost to taxpayers and with maximum benefits to water users in the Central Valley.

I want to add at this time that we urge that the committee approve the bill which is before you.

Senator ANDERSON. Thank you very much.

I think that the testimony you have given us has been very helpful in permitting us to understand what the proposal was, and I certainly did not previously understand it. I think that if the bill does pass the Congress, that the Secretary of the Interior in his negotiations with and recommendations to Congress to make a comparable analysis of financial results from installations by the Bureau of the same capacity as those proposed by the Pacific Gas & Electric Co.

The comparison seems to be on 233,000 kilowatts as against 362,000 proposed by P. G. & E. and probably the Bureau ought to recompute, using the same set of figures because, as you point out, they can do the same thing.

If you should happen to have a member of your staff staying here, I think it would be useful if that person could take a look at the computations made up here for the benefit of the committee and give us your subsequent comments on them, as to whether you think the partnership proposal is still preferable in view of the studies that may be made as we go along.

In other words, I think your contribution has been useful, and we would like your comments and advice.

Mr. GERDES. We will be glad to make available any of our engineering services that you would like to have. If we can aid in cooperating with the committee, we will be very happy to do so.

Senator ANDERSON. I do not want to necessarily stop the hearing if there are further questions. I personally made a 4 o'clock appointment, in connection with another matter. But this ends the list of formal witnesses.

Senator Kuchel, do you have others you wish to put on the stand?

Senator KUCHEL. No, sir.

Senator ANDERSON. We should give you permission to file with the committee such telegrams, letters, and statements as you desire to file, and Congressman Engle, if you desire to supplement your original remarks with additional comments, statements or studies, in view of the testimony here today, we will be glad to have that.

Representative ENGLE. Of course, I would be glad to see the Department present the statement they referred to. I merely want to say, by way of emphasis, that the power features of this project pay out in 26 years with the integration proposed in this legislation, and thereafter the entire power revenues are straight profit.

It is a matter of bookkeeping, and I am sorry there has been confusion about it, but this project is precisely what it was stated to be. I was not kidding anybody when I said it was a project with a 3.31 to 1 benefit-to-cost ratio, and in 26 years it pays out and everything is velvet from then on.

I am in hopes the Department can get on to this right away, because we are in the last few days of this session and I was in hopes that we could get this thing along so we would not be delayed into another year.

Senator ANDERSON. I recognize you do want to regard this as an integrated operation, and I commend Senator Watkins for saying that the areas in the upper Colorado need to be regarded as an integrated

The State Central Valley Project Act of 1933, as amended, authorizes the Water Project Authority to issue revenue bonds as a means of financing construction of the project by the State. All bonds issued for construction of the initial features or subsequent additions were to be repaid within a period of not to exceed 70 years after the beginning of the construction of the project.<sup>2</sup> Within this time limitation, it appears costs and revenues were to be pooled in the financing of the project.

Thus it can be seen that the Central Valley project, as it has been considered by the Federal Government in various acts of Congress and in various reports of the Interior Department, is, in general, consistent with the Central Valley project as it was initially authorized by the State of California. Both levels of Government have viewed the project as a growing enterprise capable of providing expanding service to water users within the State.

A. N. MURRAY.

In the limited time available we have been unable to determine whether there has been a judicial adjudication of whether the Trinity River is itself a navigable stream. In the same limited time we have been unable to examine the Army's existing "308 report" on the Klamath River and tributary to ascertain whether the Department of the Army has expressed itself on this question. There is some indication, however, from material at hand that diversions from the Trinity would affect the navigable capacity of the Klamath River. At page 4 of the report of the State of California dated April 1953, which is set forth in House Document 147, 83d Congress, 1st session, there is a reference to a report to the Federal Power Commission on the uses of the Trinity River, Calif., by Board of Engineers, D. C. Henny, U. S. Grant III, W. F. McClure, and E. W. Kramer. One of the conclusions to that report as set forth at page 4 of the State of California's comments is as follows:

"(i) Navigation is confined to Klamath River below the mouth of Trinity. It may be interfered with to a small extent by diversion, which, on the other hand, may benefit Sacramento navigation."

Senator WATKINS. It ought to be done and that is what we have done under the Colorado project; we brought the whole thing at once and everybody screamed to high heaven.

You fellows have tried to get under the wire one at a time. You are back where we are. We are glad to welcome you threefold.

Senator KUCHEL. During the 1930's, Congress must have been made completely aware of the project known as the Central Valley project but, at any rate, I think the committee should have a historical statement of just what was contemplated.

Senator WATKINS. I would say it was 1947 and 1948 when I sat on this same committee and held a complete investigation of the Central Valley. They found out they did not know much about it. Nothing was explained. Some were started by Presidential order, flood control, et cetera. It does not follow any previous reclamation pattern.

That is my memory of it. I sat for the most part listening to them. I think it was of benefit and has done a great deal of work.

Senator ANDERSON. We are going to have to leave shortly.

Mr. GERDES. I can get through with this in about 2 minutes, I believe.

Senator ANDERSON. I might give you more.

Mr. GERDES. The company has followed a policy of cooperation with the Federal Government, local irrigation districts, cities, and other government agencies in the development and storage of water.

In many cases the company, by contracting to purchase the power output, has provided an assured market for electric power generated by public irrigation and water supply projects and thereby has aided in financing their construction.

<sup>2</sup> Sec. 11560, California Water Code.

The company also has constructed powerplants in connection with the Narrows Dam built by the United States Army engineers on the Yuba River, the Melones Dam of the Oakdale and South San Joaquin Irrigation Districts on the Stanislaus River, and dams of the Nevada Irrigation District on the Yuba and Bear Rivers.

Under partnership arrangements with these agencies, our payments for the use of falling water released from these dams through our powerplants have made a substantial contribution toward repayment of the cost of the water-conservation works.

We have demonstrated that cooperation between public and private agencies best serves the public interest. We offer our cooperation in connection with the Trinity and San Luis projects, and any other water conservation projects which the State or Federal Government may authorize.

#### CALIFORNIA REGULATES COMPANY POWER RATES

The company would distribute Trinity power to its 1,600,000 electric customers throughout northern and central California without discrimination. The power would be sold at rates established by the California Public Utilities Commission.

The commission has continuously and effectively regulated the electric rates, financing, and operation of public utilities since 1914. Under such regulation, payments made by the company for the use of Trinity falling water would be entered as an operating expense on our books.

The company can make no profit on the falling water it purchases. All that it is allowed is a fair return on its own investment in facilities used and useful in service to the public. Any benefits from purchase of waterpower must be passed on to consumers in the form of lower electric rates.

Today our customers pay 15 percent less for each kilowatt-hour of electricity used in their homes than they did in 1939, although the prices of most other goods and services they buy have at least doubled since that time. Despite the fact that more than 25 cents of every dollar collected by us is paid out in taxes, we have preserved this low rate level by advanced engineering and efficient management.

Trinity power would be sold by the company at the lowest possible rates consistent with sound business principles.

#### PARTNERSHIP INVOLVES NO TRINITY DELAY

No delay in construction of the Trinity project would result from our partnership proposal. At the House committee hearing, Commissioner of Reclamation Wilbur A. Dexheimer stated that up to 18 months is available for partnership negotiations after construction of the Trinity Dam is started.

Clyde H. Spencer, director of region 2 of the Bureau of Reclamation, testified that in his opinion negotiations could be completed within a year. We share this opinion.

There is no reason why Trinity construction cannot be started immediately after Congress authorizes it.



## POWER PARTNERSHIPS AUTHORIZED BY CONGRESS

The legislative pattern for partnership development may be found in three acts passed by Congress in 1954. These are:

(1) Public Law 544, authorizing the Priest Rapids project on the Columbia River where a local public utility district proposes to build a power facility at a dam to be constructed by the Federal Government;

(2) Public Law 436, deauthorizing a Federal project on the Coosa River in Alabama, to allow the Alabama Power Co. to construct 5 dams on the river at a cost of \$100 million; and

(3) Public Law 476, authorizing partnership between the State of Oklahoma and the Federal Government to build the Markham Ferry Dam.

These acts provide for construction of power facilities at Government water projects by local agencies under Federal Power Commission license.

Licenses are limited to a maximum term of 50 years. The Government has the right to recapture the power facilities at their depreciated cost upon the termination of the license.

The power operation must be approved by the Commission as the one best adapted to a comprehensive development of the water resources for all beneficial public purposes, including recreation. Licensees must pay for benefits provided by Federal dams.

Operation of plants constructed under license is subject to the continuous supervision of the Commission.

H. R. 4663 would authorize appropriation of \$225 million for construction of the Trinity River division of the Central Valley project.

The Bureau estimates that Federal operation of power facilities proposed in the bill would return \$237 million in revenues over the project repayment period.

If trinity power facilities are built and operated by the company under its partnership proposal, payments for falling water, taxes, and savings to the Federal Government over the same period would amount to \$343 million, or \$106 million more to water users and Federal taxpayers.

In addition, the company would pay \$65 million in taxes on these power facilities to State and county governments. This amounts to a net gain to the public of \$171 million from the partnership development.

The Federal Government already has spent approximately \$800 million on water resources development in California.

Another \$800 million will be required to complete presently authorized Federal water projects.

The most comprehensive Federal development of water in California can be achieved if our public and private agencies willing and able to share this financial burden become working partners in the Federal reclamation program.

The company's cooperation in the Trinity River power development will make possible the earliest construction by the Federal Government of needed water-conservation works in California with the least cost to taxpayers and with maximum benefits to water users in the Central Valley.

I want to add at this time that we urge that the committee approve the bill which is before you.

Senator ANDERSON. Thank you very much.

I think that the testimony you have given us has been very helpful in permitting us to understand what the proposal was, and I certainly did not previously understand it. I think that if the bill does pass the Congress, that the Secretary of the Interior in his negotiations with and recommendations to Congress to make a comparable analysis of financial results from installations by the Bureau of the same capacity as those proposed by the Pacific Gas & Electric Co.

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Senator ANDERSON. I recognize you do want to regard this as an integrated operation, and I commend Senator Watkins for saying that the areas in the upper Colorado need to be regarded as an integrated

operation, and that is why we have appreciated the kindly reception you have given our project over there, and I am sure we will give you the same kind of courteous treatment here.

Representative ENGLE. We had water coming out of the Trinity, dumping into the Sacramento River, going into the same canals, we integrate Trinity with Shasta and Keswick. To try to figure it out separately under something not proposed and physically not contemplated cannot be done. It would be nice if you could do it that way. But you run the Trinity powerhouse in connection with Keswick and Shasta.

Senator WATKINS. You have a counterpart of Glen and all the other dams.

Representative ENGLE. It is like trying to unscramble the eggs.

Senator ANDERSON. Thank you very much.

Senator Kuchel, did you have something you wanted to put in the record at this time?

Senator KUCHEL. Yes, sir, Mr. Chairman.

I have a resolution here from the Assembly of the State of California, a letter from the State of California Department of Agriculture transmitting a factual data report, and I also have several telegrams, all of which I would like to have made part of the record, Mr. Chairman.

Senator ANDERSON. Very well.

(The material referred to above follows:)

[Assembly Journal, State of California, June 8, 1955]

#### MOTION TO MEMORIALIZE CONGRESS

Mr. Dolwig moved that the Assembly of the State of California respectfully memorialize the Congress and the President of the United States to enact such legislation as may be required to bring about the immediate authorization and construction of the Trinity-San Luis project and that in such authorization the Congress make provisions mutually satisfactory to the United States and the State of California for the integration of the San Luis project with the California State water plan; and further,

That the chief clerk of the assembly transmit copies of this motion to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the Interior and to the Secretary of the Army.

#### CALIFORNIA STATE SENATE JOINT RESOLUTION No. 26

##### Relative to the Trinity River-San Luis Reservoir project

Whereas the increasing needs of population, industry, agriculture, and national defense call for the immediate development of certain California water projects now under consideration by the Congress of the United States and the Legislature of the State of California; and

Whereas the Legislature of the State of California has made a study of many of these projects and agreement has been generally expressed that construction of the Trinity-San Luis project should be initiated immediately; and

Whereas it has been generally agreed that the Trinity River-San Luis project is economically feasible in accordance with existing standards fixed by reclamation law and integration of such project with the federally operated Central Valley project will, during this period of urgency, increase the economic feasibility of both projects and speed the day when supplemental water can be made available; and

Whereas it has been generally agreed and concurred in by the United States Bureau of Reclamation that the San Luis phase of the project can be so planned and designed that it may, in the interests of the fullest and most economic utili-

zation of the State's precious water resources, be integrated with the California State water plan; now, therefore, be it

*Resolved by the Senate and the Assembly of the State of California, jointly,* That the Congress and the President of the United States are respectfully urged to enact such legislation as may be required to bring about the immediate authorization and construction of the Trinity-San Luis project and that in such authorization the Congress make provision mutually satisfactory to the United States and the State of California for the integration of the San Luis project with the California State water plan; and be it further

*Resolved,* That provision be incorporated in any Federal legislation authorizing construction of the Trinity-San Luis project to require that the United States proceed in conformity with State water law; and be it further

*Resolved,* That the secretary of the senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the Interior and to the Secretary of the Army.

STATE OF CALIFORNIA,  
DEPARTMENT OF AGRICULTURE,  
*Sacramento, July 11, 1955.*

Hon. THOMAS H. KUCHEL,  
*Member, United States Senate,  
Senate Office Building, Washington, D. C.*

DEAR SENATOR KUCHEL: We are keenly aware of your activity in support of the so-called Trinity River project. We believed that additional support data from an official agricultural angle might include material which would be helpful to you in your effort. We have been encouraged to do this by virtue of the apparent overwhelming sentiment in favor of proceeding with this project. We send this material to you for whatever use you may care to make of it.

Very sincerely,

W. C. JACOBSEN, *Director.*

FACTUAL DATA REPORT FAVORING AUTHORIZATION FOR THE TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT, BUREAU OF RECLAMATION, UNITED STATES DEPARTMENT OF THE INTERIOR

(Compiled and submitted by California State Department of Agriculture)

The Trinity River Division in northwestern California, Trinity and Shasta Counties, is urgently needed to supply additional water to the Central Valley project of the Bureau of Reclamation for use in both the Sacramento and San Joaquin River Basins, and for additional power generating capacity for northern California.

The importance of imported water to the San Joaquin River Basin, where large areas are experiencing an alarming drop in ground water supplies as a result of heavy pumping, cannot be overemphasized.

Serious economic curtailment of farming activity portends in certain of the areas designed to be served by Trinity water.

The water of the Trinity, confluent with the Klamath, is now flowing wastefully to the sea.

California and the Nation cannot afford such extravagance.

The Department of Interior Appropriation Act for fiscal year 1956 includes \$1 million as initial appropriation for construction of the Trinity River Division, contingent upon congressional authorization. This act has been passed by both the House of Representatives and the Senate. The act would become effective, and the funds available for expenditure, if the Senate passes H. R. 4663 and the bill is approved by the President.

Farm organizations favoring construction of the Trinity River Division include: The California State Grange and the Sacramento Valley Irrigation Committee. Many individual Grange, Farm Bureau organizations and irrigation and other water districts throughout the Central Valley also are on record as favoring the proposed development.

In a letter dated April 13, 1953, the director of public works of the State of California, Frank B. Durkee, transmitted, in conformity with the requirements of the 1944 Flood Control Act, the official comments of the State on the proposed report of the Secretary of the Interior.

In his letter, the Director of Public Works concludes :

"It is the position of the State of California, based on the study and report of the Division of Water Resources, that the Trinity River project is engineeringly and economically feasible and that it should be constructed at the earliest possible date. I personally concur in this position."

On May 28, 1955, Director Durkee restated the position of the State of California as regards the Trinity River project.

In a letter on that date sent to Secretary of the Interior, Douglas McKay, Director Durkee said :

"The Trinity River project should be developed so as to make the greatest possible contribution to the power and water resources of California. It continues to be the position of the State of California that the Trinity River project should be constructed at the earliest practicable date."

Reference is made to the following paragraph from Bulletin No. 2, publication of the State water resources board, titled "Water Utilization and Requirements of California, October 1954" :

"Results of the statewide water resources investigation to date indicate that if California is to attain growth and development commensurate with her manifold resources, nearly all of the potential reservoir storage capacity of the State must be constructed and dedicated to operation for water conservation purposes."

Therefore, and following review of H. R. 4663, as the bill passed the House of Representatives on June 21, House Documents 53, 73, and 147 of the 83d Congress, and the Interior Department's supplementary report on the Trinity River division, CVP, the administrative staff of the State department of agriculture is convinced that authorization of the Trinity project will be one of the most important steps needed to promote agricultural stability in the Sacramento and the San Joaquin Valleys of California.

Firm water supplies delivered to nearly 350,000 acres of land will make it possible for California to meet the tremendously increasing demands of its growing population as well as that of the Nation at large.

For many years California has led all States of the Union in irrigated agriculture, and today about 7 million acres within the State are served with irrigation water. This constitutes by far the greatest single demand on the developed water supplies of California, and about 90 percent of the water beneficially used in the State is utilized by irrigated agriculture.

State reports show that since 1940 there has been a marked acceleration in the placing of new lands under irrigation in California. This has been caused by increased requirements for agricultural produce brought on by World War II, and by similar demands of the rapidly growing population of the State and the Nation.

The eventual need for a high degree of development of the irrigable lands of California is assured.

Specifically, as regards the Trinity River division, large quantities of dependable irrigation water are necessary to production of the forage crops so important to California's beef cattle and dairy industry.

Portions of the Sacramento Valley and San Joaquin Valley lands which would receive water developed by the Trinity River project would be devoted to the production of forage crops. Other portions will be devoted to specialty crops produced largely in California.

Analyses of the data presented in House Documents 53 and 73 lead us to believe that the net primary annual irrigation benefits of \$12,569,000, as shown in the Interior Department's supplementary Trinity report of July 1954, are conservative. There is no doubt also but that the food processing and distributing industry in California would augment these direct farmer benefits tremendously.

The Trinity River division will make available about 1,190,000 acre-feet of water annually which will irrigate the equivalent of approximately 350,000 acres of agricultural land in Sacramento and San Joaquin Valleys of California.

Likewise, the proposed development will provide about 1,067 million kilowatt-hours of electric energy annually by operating the Trinity River powerplants in coordination with the Shasta, Folsom, Keswick, and Nimbus hydroelectric plants of the Central Valley project.

This power is needed for increased irrigation pumping and the fast-growing northern California power market area.

A measure of the power needed for irrigation pumping can be obtained when it is realized that new irrigation on the west side of the San Joaquin Valley in

Madera, Fresno, and Northern Kings Counties will require over 700 million kilowatt-hours annually to move water from the delta to irrigate 500,000 acres in that area.

National recreation and fish and wildlife benefits would also result from the project.

Net annual equivalent primary benefits which will accrue to the proposed development are estimated by the Bureau of Reclamation at \$20,415,000. Irrigation water service will account for about 62 percent of this total.

It is anticipated that slightly over half of the irrigation water to be made available by the Trinity River division will be used in the Sacramento Valley.

The lands to be irrigated are virtually all in dry farming status at present with major emphasis on the production of grain and native pasture.

A relatively wide variety of crops can be successfully grown in the area; however, it is anticipated that, under conditions of full development, livestock and orchard enterprises will constitute the major basis for the area's economy.

It is proposed by the Bureau of Reclamation to divert the remainder of the irrigation water made available by the proposed development to lands on the west side of the San Joaquin Valley in the service area of the Delta-Mendota Canal. These lands are predominantly excellent in quality, suitable for a wide variety of crops, and much of the service area has been developed to irrigation through the expenditure of large sums of private capital; however, the locally available ground water and surface water supplies are inadequate for the area.

Under conditions of full development with project water available, it is anticipated that seventy-five percent of these lands will be used for the production of high value truck, field, and forage crops such as melons, vegetables, and alfalfa, destined both for cash sale and for consumption by dairy stock supplying milk to the San Francisco Bay and other urban markets.

California's present population exceeds 12,400,000 persons. Authorities in the statistical study of population estimate that there will be over 20 million mouths to feed in the State in 1975.

Live weight shipment of meat animals destined for immediate slaughter into the State in 1953 exceeded 1 billion pounds; the average population of California for that year was less than 12 million.

The indicated increase in requirement for meat can be provided in only two ways, by increasing shipments into the State and by increased meat production on irrigated land. Recourse will have to be made to both sources of supply since the meat produced with Trinity division water will only partially satisfy the increasing deficiency in locally available meat supplies.

In common with the Nation as a whole, California has experienced a surplus of fluid milk during the past decade; however, increasing demand by the State's rapidly growing population is effectively alleviating this surplus problem, and dairy technicians are in agreement as to the requirement for a considerable expansion in fluid milk production in the years immediately ahead.

A portion of this increase can be provided through conversion of existing manufacturing milk dairies to market milk production, the remainder must come from dairies to be established on nearby irrigated land.

Increased production of fruits, nuts, and vegetables in California will be required both for local consumption and elsewhere in the Nation. Increasing per capita consumption coupled with a growing national population indicates a ready market for these agricultural commodities.

The diversification of agriculture contemplated under the project development will tend to strengthen the local economy and result in additional opportunity on farms adequate in size to support a farm family.

The increased trade and service associated with more intensive agricultural development will also contribute significantly to the economic benefits resulting from the provision of additional irrigation water supplies.

As previously indicated but not detailed, the Trinity River division is consistent with the basic plan of the State of California for progressive augmentation of the water resources of the State.

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SAN JOSE, CALIF., July 11, 1955.

Senator JAMES MURRAY,

*Senate Office Building, Washington, D. C.*

The board of directors of the Water and Power Users Association of Santa Clara County urge your support of H. R. 4663. Though the Trinity project

will not be complete until we build the San Luis Dam and Canal with Federal funds and use project power to send the water south into the San Joaquin Valley.

ALDEN B. CAMPEN, *Secretary-Treasurer.*

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WEAVERVILLE, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,  
*Washington, D. C.*

Approval of your bill for the Trinity River division is recommended on the basis of need, feasibility, and as development of a known resource. Also approve 18-month study period on P. G. & E. "partnership" proposal. As county of origin benefits in bill to local government are economically vital.

TRINITY JOURNAL,  
By JOHN STEPLING, *Publisher.*

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REDDING, CALIF., July 13, 1955.

Senator THOMAS H. KUCHEL,  
*Senate Office Building, Washington, D. C.:*

The board of directors of Shasta Cascade Wonderland Association whose membership comprises six northern California counties is on record in support of immediate construction of the Trinity River project. It is our belief that full development of this project is vital to agricultural economy and will furnish needed power for immediate future. Will you please make our organization's position at Senate hearings on Trinity River project.

WAYNE LEITZELL,  
*President, Shasta Cascade Wonderland Association.*

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REDDING, CALIF., July 41, 1955.

Senator KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Redding Junior Chamber of Commerce respectfully requests you take favorable action in connection with the Trinity River project.

REDDING JUNIOR CHAMBER OF COMMERCE.

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ORLAND, CALIF., July 14, 1955.

THOMAS H. KUCHEL,  
*Senate Interior and Insular Affairs Committee,  
Washington, D. C.:*

Maywood Grange No. 479 of Corning instructed me to wire and urge you to exert every effort to get the Trinity River project started now as part of the Central Valley project. We need power and water both from this project.

M. CLAIRE FORBES.

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REDDING, CALIF., July 14, 1955.

HON. THOMAS H. KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Intercounty chambers of commerce of northern California representing one-sixth area our great State urgently ask your all-out effort to secure favorable action Trinity project authorization. This development essential to future prosperity our area. Regards.

JACK MAYNE, *Secretary.*

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REDDING, CALIF., July 13, 1955.

Senator THOMAS H. KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Northern California looking to you for leadership of Trinity development.

JACK C. BUTLER,  
*Manager, Redding Chamber of Commerce.*

RED BLUFF, CALIF., July 6, 1955.

Hon. THOMAS H. KUCHEL,  
*United States Senator, Washington, D. C.:*

Retel Tehama County Board of Supervisors in session today desire to urge your continued support of the Trinity project but impossible to be there to testify.

C. A. MENDAHL, *Chairman.*

REDDING, CALIF., July 8, 1955.

Hon. THOMAS H. KUCHEL,  
*United States Senator,  
Senate Office Building, Washington, D. C.:*

Answering your telegram re hearings on H. R. 4663, Shasta County appeared before House Committee and presented full testimony which is part of the record. Desire to submit brief statement for your committee and the record. Will probably authorize Redding Chamber of Commerce representative to also appear in behalf of county board of supervisors.

J. E. PATTEN,  
*County Water Engineer.*

REDDING, CALIF., July 8, 1955.

The Honorable Senator KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Redding and Northern California eagerly awaits passage of S. 178. We thank you for your efforts and feel confident that the Trinity project will shortly be reality through your leadership.

GEORGE C. FLEHARTY,  
*Mayor, City of Redding.*

REDDING, CALIF., July 8, 1955.

The Honorable Senator KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Urge your strong support of S. 178 for construction of Trinity project.

JOSEPH SMITH,  
*Councilman, City of Redding.*

REDDING, CALIF., July 7, 1955.

The Honorable Senator KUCHEL,  
*United States Senator, Washington, D. C.:*

California counting on your continued effort to make S. 178 a reality. Trinity development a must for California.

BILL ANTHONY,  
*Councilman, City of Redding.*

REDDING, CALIF., July 7, 1955.

Hon. Senator KUCHEL  
*Senate Office Building, Washington, D. C.:*

Urge your continued efforts for passage of S. 178, as coauthor we are counting heavily on your able leadership.

HERB A. HOLYFIELD, *Councilman.*

REDDING, CALIF., July 7, 1955.

Hon. Senator KUCHEL  
*Senate Office Building, Washington, D. C.:*

Strongly urge your strong support of S. 178 for authorization and construction of Trinity project. Believe it vital to continue development of our great State.

W. D. SIMONS, *Deputy.*

REDDING, CALIF., July 8, 1955.

Hon. Senator KUCHEL  
*Senate Office Building, Washington, D. C.:*

Northern California strongly urges your unfailing support of S. 178. Trinity project vitally important to California.

ROBERT W. COWDEN,  
*City Manager.*



SACRAMENTO, CALIF., July 9, 1955.

THOMAS H. KUCHEL,  
*Member, United States Senate,  
 Senate Office Building, Washington, D. C.:*

It will not be possible for me to be in Washington, D. C., to appear at committee hearings. Will appreciate it if you will advise the committee that California State Grange urges the adoption of the bill to start construction on Trinity project. The construction of this important. Development of water conservation should be undertaken at the earliest possible date.

---

GEORGE SEHLMAYER.

WEAVERVILLE, CALIF., July 13, 1955.

HON. THOMAS H. KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Regret unable to attend Trinity project hearing July 14. Urge the committee consider the following: Trinity project has been in the planning stages for over 30 years. Authorization of the Trinity project was given serious consideration prior to construction of Shasta Dam. Estimated population of California by 1970 is 20 million people. Underground water supplies in California are dropping at alarming rate. Some of most productive land in State is in danger of reverting to desert. Additional water must be made available to even maintain the status quo. Waters of the Sacramento are already overcommitted. The Trinity project because of engineering and economic feasibility is the best remaining undeveloped project of its size in the United States.

ARMON HEFFINGTON,  
*President, Californians for Trinity, Sacramento-San Luis.*

Senator KUCHEL. There is also a group of telegrams favoring Trinity from individuals.

REDDING, CALIF., July 13, 1955.

HON. THOMAS H. KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Urgent by request that you use your most diligent efforts to have Trinity River project approved.

W. H. MACKIMMOND,  
*Trinity Center, Calif.*

---

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Continued support of the Trinity program will be greatly appreciated.

---

FRANK D. PLUMMER.

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Your continued interest in Trinity project will be appreciated.

---

R. A. THOMAS.

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,  
*Senate Office Building, Washington, D. C.:*

Trinity development important to California your support needed.

---

ELMER JUNKANS.

Senator THOMAS KUCHEL,  
*Washington, D. C.:*

Water facilities and water resources are greatly needed in this area. Your continued support of the Trinity project will be greatly appreciated.

CLARK L. MORFORD,  
*A Shasta Union High School Teacher,  
 and Farmers Insurance Agent.*

REDDING, CALIF., July 13, 1955.

Senator KUCHEL,

*Senate Office Building, Washington, D. C.:*

Important to this district your continued support of Trinity bill.

WILLIAM B. NYSTROM.

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,

*Senate Office Building, Washington, D. C.:*

We urge you to give your wholehearted support to the Trinity River project, H. R. 4663, and do everything possible to secure passage of same.

FRED AND MURIEL DUSEL.

REDDING, CALIF., July 13, 1955.

Senator THOMAS H. KUCHEL,

*Senate Office Building, Washington, D. C.:*

I earnestly urge anything you can do to effect passage of the Trinity River Project.

EARL LEE KELLY, Jr.

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,

*Senate Office Building, Washington, D. C.:*

Your many friends in this area urge your support on the Trinity River Project.

WELDON OXLEY, C.

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,

*Senate Office Building, Washington, D. C.:*

Urgently request your continued approval of Trinity River diversion project at this time in view of California's united stand.

CAREY GUICHARD.

*Redding Record Searchlight.*

REDDING, CALIF., July 13, 1955.

Senator THOMAS KUCHEL,

*Senate Office Building, Washington, D. C.:*

Please support the Trinity River bills; as they are most important to this area as well as the State.

SIG KRIEGSMAN, Jr.

REDDING, CALIF., July 13, 1955.

THOMAS KUCHEL,

*Senate Office Building, Washington, D. C.:*

I urge you to favor the passing of the Trinity County Dam project that we so badly need, both for irrigation and power.

H. W. K. WITTNER,

*Publicity Chairman, Republican Central Committee.*

REDDING, CALIF., July 13, 1955.

Senator KUCHEL,

*Senate Office Building, Washington, D. C.:*

This is to request your enthusiastic and active support on the Trinity River project. Our representative, Laurence Carr, and Mayor George Fleharty, are appearing in Washington today supporting this project.

McCOLLS DAIRY PRODUCTS Co.,

JOHN FITZPATRICK.

Senator ANDERSON. Thank you very much. The meeting is adjourned.

(Whereupon, at 4 p. m., the hearing was adjourned.)

X



# HELENA VALLEY IRRIGATION DISTRICT

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HEARING  
BEFORE THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
AT  
A CONFERENCE WITH MONTANA RESIDENTS AND INTERIOR-  
RECLAMATION OFFICIALS REGARDING REPAYMENT-  
CONSTRUCTION PROGRAM

---

SEPTEMBER 29, 1955

---

Printed for the use of the Committee on Interior and Insular Affairs



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1955

## COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

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**GOODRICH W. LINEWEAVER, *Committee Assistant for Reclamation***

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## HELENA VALLEY IRRIGATION DISTRICT

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THURSDAY, SEPTEMBER 29, 1955

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D. C.*

The conference was convened, pursuant to notice, at 10:30 a. m., in room 224, Senate Office Building, Hon. Joseph C. O'Mahoney, acting chairman of the Committee on Interior and Insular Affairs, presiding.

Present: Senator O'Mahoney.

Present also: Goodrich W. Lineweaver, staff assistant for reclamation and irrigation of the Committee on Interior and Insular Affairs; Floyd E. Dominy, Chief, Division of Irrigation, Bureau of Reclamation; and Edward Frye, assistant to the Assistant Secretary of the Interior Aandahl; Charles Murray, administrative assistant to Senator James E. Murray, of Montana, on behalf of Senator Murray; James Sullivan, administrative assistant to Senator Mike Mansfield, of Montana, on behalf of Senator Mansfield; Merrill W. England, administrative assistant to Representative Lee Metcalf, of Montana, on behalf of Representative Metcalf; E. W. Rising, on behalf of the State Water Conservation Board of the State of Montana; William W. Woodruff, professional staff member, Committee on Appropriations of the United States Senate.

Senator O'MAHONEY. This session is being held at the request of Senator Murray, chairman of the Committee on Interior and Insular Affairs, who, under date of September 22, wrote me from Butte, Mont., asking me to hold this conference in order to determine when construction on the Helena Valley unit of the Missouri River Basin project in Montana is likely to begin.

I announced last week that the hearing would be held on Thursday afternoon, and thereafter received a telephone call from Mr. Herrin, of this area, asking to be heard for himself and two companions. Of course, I said we would hear him. The three of them arrived yesterday, and are here this morning.

In the meanwhile, we have been unable to secure the presence of Secretary McKay, Assistant Secretary Aandahl, or Commissioner Dexheimer, each of whom is out of the city. But in view of the fact that Mr. Rossiter and the other three gentlemen from the valley are here, it was deemed desirable to proceed with the hearing.

Mr. Lineweaver, let me ask you to make an opening statement with respect to the basic facts of this case. The construction, I think, was authorized when the Flood Control Act of 1944 was enacted, and an appropriation has since been made.



**STATEMENT OF GOODRICH W. LINEWEAVER**

Mr. LINEWEAVER. Yes; that is correct. The Helena Valley unit was authorized through the approval of Senate Document 191, referred to in the Flood Control Act of 1944. Subsequent to that, the Bureau of Reclamation proceeded with investigations of the Helena Valley unit area, and the plans for the unit as presently conceived are substantially different from what they were originally outlined. Also, the cost of the unit has gone up from about \$1.8 million to an estimated cost of somewhere between eleven and twelve million dollars.

In 1954, the Budget Bureau sent to the Congress a supplemental estimate for several projects in which it included the Helena Valley unit, with an estimate for \$250,000 and with a proviso that construction or no expenditures of this fund should be made until a repayment contract covering 30 percent of the estimated cost had been executed.

After hearings before the House and Senate Appropriations Committees, the Senate finally modified the proviso to state that none of the funds for the Helena Valley unit should be expended until a repayment contract was executed. The 30-percent limitation was eliminated. So the appropriation was finally passed in the supplemental appropriation bill for 1955 toward the close of the last session of Congress.

Senator O'MAHONEY. Where was the limitation requiring 30-percent repayment made?

Mr. LINEWEAVER. The Budget Bureau recommended that.

Senator O'MAHONEY. Which committee of Congress altered that?

Mr. LINEWEAVER. The Senate committee altered that. The House included the items in the supplemental appropriation bill as it passed the House with the 30-percent proviso included. When it came before the Senate, the Appropriations Subcommittee, over which Senator Cordon was then presiding, modified the proviso to eliminate any percentage.

Senator O'MAHONEY. When was that appropriation passed?

Mr. LINEWEAVER. Along in July of 1954.

Senator O'MAHONEY. A year ago.

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. It was in the appropriation bill.

Mr. LINEWEAVER. In the supplemental appropriation bill.

Senator O'MAHONEY. Was it for fiscal 1955?

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. When did the fund become expendable?

Mr. LINEWEAVER. It would be expendable when a repayment contract was executed.

Senator O'MAHONEY. Regardless of the fiscal year?

Mr. LINEWEAVER. Yes, sir; it is a continuing fund.

Senator O'MAHONEY. Is that your understanding, Mr. Dominy?

Mr. DOMINY. Yes, that is our understanding.

Senator O'MAHONEY. What was done then with respect to the repayment contract?

Mr. LINEWEAVER. Under instructions, as the record shows, the negotiations were opened with the local interests out there, of which Mr. Rossiter, president of the district, can tell more in detail.

Senator O'MAHONEY. Opened by whom?

Mr. LINEWEAVER. By representatives of the Bureau of Reclamation.  
Senator O'MAHONEY. Is it to be understood, then, that the Bureau of Reclamation and some of the settlers formed an irrigation district?

Mr. LINEWEAVER. Yes, sir, I will touch on that.

Senator O'MAHONEY. But they entered negotiations?

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. Is there any question about that, Mr. Dominy?

Mr. DOMINY. No, sir.

Senator O'MAHONEY. That is the fact?

Mr. DOMINY. Yes, sir.

Mr. LINEWEAVER. I don't think it proper for me in this opening statement to go into the details of the negotiations.

Senator O'MAHONEY. No, I just want you to state the bare facts.

Mr. LINEWEAVER. Yes, sir. Along about last fall, then, the Budget Bureau heard the recommendation of the Department, and sent up an estimate in January, following hearings before the Budget Bureau, for the Helena Valley unit for \$3 million to continue construction, assuming that the \$250,000 would have been expended.

Senator O'MAHONEY. To continue construction?

Mr. LINEWEAVER. Yes, sir. They had an initial appropriation of \$250,000 in the supplemental bill. They set up \$3 million to continue construction.

Hearings were held on that during the appropriation hearings before both the House and Senate committees.

The House committee reported out the public works appropriation bill for 1956 in which an appropriation for the Bureau of Reclamation was included, and eliminated the \$3 million estimate for Helena Valley.

Senator O'MAHONEY. Was that the bill in which the House Committee on Public Works eliminated almost all of the reclamation projects?

Mr. LINEWEAVER. No, sir; I would not say almost all of them; probably half a dozen.

Senator O'MAHONEY. Half a dozen were eliminated.

Mr. LINEWEAVER. Yes, sir. We can place in the record why the committee, without naming Helena Valley, eliminated several items for the Missouri River Basin project, because of a lack of report or finding by the Department with respect to adequacy of future power revenues to discharge the cost of the irrigation works over and above the ability of the water users to repay. Later the committee in its report said it had eliminated Helena Valley because of no repayment contract.

Senator O'MAHONEY. What happened after that action by the committee?

Mr. LINEWEAVER. The bill was reported out to the floor and under an amendment offered on the floor, the entire amount for reclamation construction was restored, including the \$3 million for Helena Valley.

Senator O'MAHONEY. Was that the amendment offered by Congressman Miller of Nebraska?

Mr. LINEWEAVER. I believe it was Congressman Miller, the ranking minority member of the House Interior Committee?

Senator O'MAHONEY. And the House adopted that amendment?

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. And several projects were restored.

Mr. LINEWEAVER. Yes, sir. Then the bill came over to the Senate and the Senate reported the bill out practically as it passed the House so far as reclamation was concerned.

Senator O'MAHONEY. You say practically; was there any change?

Mr. LINEWEAVER. Not insofar as Helena Valley was concerned. There were several other items added, including the Owl Creek unit in Wyoming for \$900,000, which was urged by you, and \$4 million for the Yellowtail Dam, in Wyoming-Montana. Those were two items that I recall offhand.

If you desire, I will have the entire list inserted in the record.

Senator O'MAHONEY. That is not necessary.

Mr. LINEWEAVER. Those two items were written in by the Senate Appropriations Committee, and approved by the Senate and accepted in conference, along with the restoration of \$3 million for the Helena Valley unit.

Senator O'MAHONEY. So what we have is an appropriation bill substantially approving the budget estimate.

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. But changing the provision with respect to the repayment contract?

Mr. LINEWEAVER. No, sir; there is no proviso with respect to the \$3 million appropriation. That was tacked onto last year's \$250,000 appropriation.

Senator O'MAHONEY. The repayment contract had already been negotiated?

Mr. LINEWEAVER. No, sir; it had not been completed, but negotiations were in progress.

Senator O'MAHONEY. Would it be your understanding, and do the facts show, that it had progressed far enough to justify a recommendation from the Department of the Interior to the Bureau of the Budget, and approval by the Bureau of the Budget of the \$3 million appropriation?

Mr. LINEWEAVER. Yes, sir, Mr. Chairman, on pages 3 and 4 of the committee print, there is a copy of the appropriation justification filed by the Department and the Bureau with the Appropriation Committees, and which presumably was approximately the same as filed with the Budget Bureau. In this justification which is reproduced on pages 3, 4, and 5 of the committee print, at the top of page 4 appears this statement:

A draft of a repayment contract has been approved by the Commissioner.

Further on down on page 4, it states:

A draft of a 40-year repayment contract with a 5-year development period was approved by the Commissioner on November 5, 1954, for use in the formation of an irrigation district. The contract provides for repayment of \$832,000 of construction costs from full supply lands assigned for repayment by irrigation in a 40-year period. An additional contract may be considered to provide a water supply for 4,623 acres needing supplemental water. All proposed revenues are consolidated to achieve a projectwide payout of reimbursable construction costs. No specific allocations have been shown to other than irrigation in the tentative allocation other than the \$6,000 specific cost to recreation.

Senator O'MAHONEY. This lays the basis for the reason for this hearing.

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. Senator Murray indicated to me that the Interior Department and the Bureau of Reclamation seem to develop some hesitation about proceeding with the construction.

Mr. LINEWEAVER. Yes, sir. May I complete the chronology a little more, Senator?

About the time that the hearings were going on before the House and Senate Appropriations Subcommittees (you will recall, because of the change in the nomenclature of the Appropriations Committee setup in the House) the hearings on the public-works bill—which is a new name for an appropriation bill this year—were delayed until late in the spring. Almost simultaneously with the hearing before the Appropriations Committee, Judge Fall, of the District Court of Helena—

Senator O'MAHONEY (interposing). The Appropriations Committee of the House.

Mr. LINEWEAVER. The House in May and the Senate later in June.

Judge Fall, on the petition of more than 60 percent of the full supply landowners of the Helena Valley, entertained a petition for the formation of the Helena Valley Irrigation District under Montana law. Judge Fall heard a number of witnesses. I have his statement here, and his final order. Subsequent to the hearing, he took the case under advisement and gave both sides opportunity to file briefs.

Along in the latter part of June, Judge Fall entered an order forming the district of some twelve or thirteen thousand acres of full supply land. He did not include any of the supplemental water land in the district. He signed the order on the 28th day of June 1955.

Senator O'MAHONEY. Who were the parties to this action?

Mr. LINEWEAVER. The owners of full supply land, of whom Mr. Rossiter was named as commissioner for division No. 1, Mr. John Baucus for division No. 2, Mr. Albert L. Olson for division No. 3, Mr. Henry Hibbard for division No. 4, and Mr. Al Hrella for division No. 5.

Senator O'MAHONEY. Were there any other participants in the case?

Mr. LINEWEAVER. Mr. Rossiter can give you the full story on that.

Senator O'MAHONEY. Was the Interior Department represented?

Mr. LINEWEAVER. Mr. Aldrich, the project manager for the Bureau of Reclamation in the Great Falls area, was a witness and excerpts of his testimony appear in the committee print.

Senator O'MAHONEY. On what page?

Mr. LINEWEAVER. Page. 16.

Senator O'MAHONEY. What is the position of Mr. Aldrich?

Mr. LINEWEAVER. He is projects manager of the Bureau of Reclamation at Great Falls, Mont.

Senator O'MAHONEY. He has jurisdiction over this project.

Mr. LINEWEAVER. I would say it comes within his jurisdiction.

Senator O'MAHONEY. Who asked the questions, do you know, which are set forth here?

Mr. LINEWEAVER. I would not know. Judge Fall simply sent this excerpt.

May I say this, Mr. Chairman: at the time that Judge Fall concluded the hearings, he made a statement from the bench, a copy of which will be inserted in the record, in which he said it had been a

long hearing, and he had given everybody an opportunity to be heard, and that he had come to his conclusion after thorough consideration of all phases of the case.

Under date of August 30, Judge Fall wrote to Senator Murray commenting on the action of the Bureau of Reclamation in not going ahead with the repayment contract and the construction as outlined in his court.

On August 17, Commissioner Dexheimer wrote to Senator Murray advising that additional repayment contract coverage would be required before construction could proceed. That letter appears in the committee print.

Senator O'MAHONEY. Let this letter of Commissioner Dexheimer be inserted in the record at this point in the presentation of Mr. Line-weaver together with replies.

(The documents referred to which appeared in the committee print are as follows:)

LETTER TO SENATOR MURRAY

DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION,  
Washington D. C., August 17, 1955.

HON. JAMES E. MURRAY,  
*United States Senate, Washington, D. C.*

MY DEAR SENATOR MURRAY: A repayment contract with the Helena Valley Irrigation District, Montana, is now before the Department for approval as to form. As soon as it is approved and executed, contract coverage will be attained for 12,533 irrigable acres of the 17,631 used in the definite plan report as the basis for the initiation of construction of the unit.

In order to assure compliance with the directives of Congress, however, and adhere at the same time to long-established Bureau policy, contract coverage for an additional 5,100 acres is needed to reach the full 17,631 acres mentioned in the definite plan report and in presentations to the Bureau of the Budget and the Congress. These 5,100 acres are lands now provided with a partial water supply through facilities constructed by the water users.

Perhaps because of differences in benefits to be derived from construction of the Helena Valley unit along with other reasons, the supplemental lands did not join with the lands in the Helena Valley Irrigation District which are to receive a full supply through the unit. Efforts thus far to organize the supplemental lands into a separate irrigation district have been unsuccessful. We believe, however, that supplemental irrigation service is essential and that in time suitable arrangements can be perfected to permit district organization and contract execution.

Since submittal of the definite plan report, a third water market has entered into the picture—that being the municipal and industrial market for the city of Helena. The city has retained a firm of consulting engineers to review water supplies and help develop a long-range plan. In this connection discussions between the city, its engineers, and the Bureau are in progress. However, they have not entered into the stage of contract negotiations. The existence of this potential market in itself does not offer the necessary assurance of financial returns to justify initiation of construction on the Helena Valley unit.

To summarize as matters now stand, a contract is before the Department which would be adequate to return to the Government full operation and maintenance costs and approximately \$800,000 of the estimated \$12 million construction cost of the unit within a period of 40 years. This contract will cover the Helena Valley Irrigation District which includes the lands to receive a full irrigation supply through project works. Thus far local support for the organization of a second irrigation district covering the lands to receive a supplemental irrigation supply has not been forthcoming. In addition to the supplemental lands which would return an amount approximately equal to full supply lands on the construction cost of the unit within a 40-year period, a potential municipal and industrial market exists in the city of Helena. Although the contribution of the city toward the capital costs of the unit is yet to be determined, it is known that this could be a significant amount.

In view of the above and with much regret, we are instructing the regional director in Billings to advise interested local groups that construction of the Helena Valley unit will not be initiated until the requirements for water service and repayment arrangements in advance of construction, as presented to and recognized by the Congress, have been met. This would be accomplished when suitable contracts have been negotiated with either the city of Helena or the supplemental lands, or with both of them.

Sincerely yours,

W. A. DEXHEIMER, *Commissioner.*

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LETTER FROM REPRESENTATIVE METCALF

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., August 23, 1955.

Mr. W. A. DEXHEIMER,  
*Commissioner, Bureau of Reclamation,  
Department of the Interior, Washington, D. C.*

DEAR MR. DEXHEIMER: Your letter of August 17, 1955, informing me of your instructions to the regional director of the Bureau in Billings to delay the construction of the Helena Valley unit until a repayment contract has been executed by those who would use water from the project for the purpose of irrigating supplemental lands, has been forwarded to me by my Washington office.

I have been in close touch with the people who organized this project from the beginning. A secretary from my field office was present at the first meeting held in the State capitol 2 years ago. It has never been contemplated that the owners of the lands which would receive supplemental irrigation benefits would form an irrigation district, would execute a contract, or join with those receiving a full supply of water. I have talked with some of those who would make only a partial use and they have been adamant in their refusal to enter into a contract.

However, we have all recognized the situation you suggest in your letter, "that supplemental irrigation service is essential" and therefore the plan provided for the sale of water to these individuals. Most of the early negotiations with the Bureau and officials of the Billings regional office were concerned with the solution of this problem of the refusal of the supplemental users to enter into a contract or form an irrigation district, and I am sure that in your files you have correspondence and reports stating that if the supplemental users were required to execute a contract the project might as well be abandoned. The alternate proposal for disposition of water to the supplemental users on a sale basis was adopted. My files contain a summary of negotiations by my field secretary confirming this, and I have today talked with Mr. W. A. Rossiter who confirms this. He is preparing a chronological account of the entire history of the development of the project and will submit it to you in the next few days.

Of course the need for water for the city of Helena was never considered in the early stages of negotiations, as you point out in your letter. What the city does or does not do is dependent on the engineering report and waiting for action on its part would delay construction several years. My own opinion is that the city will ultimately turn to the Helena Valley for a source of supply for additional water, but this should be regarded as a development since the project was suggested that gives an additional reason for construction and not as a condition precedent to construction.

If I had ever been told that the Bureau was going to insist on repayment contracts from the supplemental users, I wouldn't have turned a hand for the project. Mr. Rossiter would never have made trips to Washington to testify before congressional committees. Helena citizens would never have gone to the trouble and expense of organizing an irrigation district. Because we all knew that the supplemental users would only come in on a sales basis. But we all did work for the project, relying on assurances from the Bureau that the contract which was recently submitted would be approved and with faith that after the construction was finished ultimately even the supplemental users would appreciate the benefits to be derived and help pay for it.

Your recent directive is like changing the rules in the middle of the game. The contract submitted is in conformity with our understanding all along and in conformity with the expressed declarations of the Bureau. The residents of Helena Valley will regard it as an unwarranted breach of faith on the Bureau's part if now you insist on the execution of a contract by the supplemental users, something that was never anticipated and that was always accepted as impossible.

I urge you to reconsider your recent directive, approve the submitted contract, and begin construction on the Helena Valley unit.

Very truly yours,

LEE METCALF, M. C.

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LETTER FROM SENATOR MANSFIELD

UNITED STATES SENATE,  
Washington, D. C., September 14, 1955.

Mr. W. A. DEXHEIMER,  
*Commissioner, Bureau of Reclamation,  
Department of the Interior, Washington, D. C.*

DEAR MR. DEXHEIMER: On my return from abroad on an assignment for the Senate Foreign Relations Committee, I was most distressed to learn that the Bureau of Reclamation had advised local groups that construction of the Helena Valley unit be held up until contracts have been negotiated with either the city of Helena or the supplemental water users, or with both.

At the time of my departure early in August, I understood that the only remaining obstacle to construction was the approval of minor adjustments in a repayment contract with the Helena Valley Irrigation District, Montana, which is now before the Bureau. This insistence on a contract with the supplemental water users or the city of Helena is an about-face on the part of the Bureau, according to all the information I have at my disposal.

At the time of the hearings on the negotiation and formation of the plans for the irrigation district, allowances were made for supplemental water users, but it was agreed that the feasibility of the project did not depend upon additional water users becoming part of the Helena Valley Irrigation District. If this had been required, I am sure that the district would never have been formed. This action is a repudiation of statements made by regional representatives of the Bureau in the State.

Your letter of July 27, 1955, gave no indication that repayment contracts would be necessary from additional water users prior to construction of the unit. You made reference to service for the supplemental water users, but certainly not by contract.

As you know, Congress appropriated \$3 million to begin construction on this unit, believing that everything was ready except for signing the contract. If Congress had been advised to the contrary, it is likely that such a large appropriation would not have been approved. All indications lead me to believe that this recent reversal was made in haste and without proper study.

Attached is letter from the Governor of Montana, J. Hugo Aronson, and a copy of resolution No. 905 of the State water conservation board urging that the Bureau withdraw this recent order and begin construction on the Helena Valley unit. Please return the enclosures when they have served their purpose.

In closing, I wish to restate my protest of August 25, by telegram, and ask that you reconsider your recent directive, approve the submitted contract, and begin construction on the Helena Valley unit in the interests of the farm and rural economy of western Montana.

With best personal wishes, I am,

Sincerely yours,

MIKE MANSFIELD.

Enclosure.

## LETTER FROM ACTING CHAIRMAN TO ASSISTANT SECRETARY AANDAHL

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
September 27, 1955.

HON. FRED G. AANDAHL,  
*Assistant Secretary of the Interior,  
Department of the Interior, Washington, D. C.*

DEAR GOVERNOR AANDAHL: Senator Murray has referred to me as acting chairman of the Senate Committee on Interior and Insular Affairs, your letter of September 23 with respect to the Helena Valley repayment-construction program. The enclosed copy of your letter to Senator Hayden, chairman of the Senate Appropriations Committee, has been noted.

The conference on Thursday afternoon, September 29, at 2 p. m. in room 224, Senate Office Building, will be held as scheduled because Helena Valley residents have asked to be heard at that time. Your assistant, Mr. Frye, has advised that Secretary McKay, yourself, and Commissioner Dexheimer will not be available for this conference due to previous commitments. However, I respectfully request that an authoritative spokesman for the Secretary of the Interior and the Department of the Interior be present at the conference Thursday afternoon.

I am enclosing additional copies of the committee print on the Helena Valley situation.

Copies of this letter are going to Secretary McKay and Commissioner Dexheimer by riding page.

Sincerely yours,

JOSEPH C. O'MAHONEY, *Acting Chairman.*

Enclosures.

## LETTER FROM ASSISTANT SECRETARY AANDAHL TO CHAIRMAN MURRAY

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D. C., September 23, 1955.

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
Washington, D. C.*

MY DEAR SENATOR MURRAY: We wish to acknowledge your letters of September 6, 1955, and September 13, 1955, concerning the extent of repayment contract coverage prerequisite to commencement of construction of the Helena Valley unit, Missouri River Basin project.

This matter has been reviewed fully in the light of the views expressed at the Appropriations Committee hearings and in the light of developments with respect to prospective arrangements with the supplemental water-supply lands. This review forced us to the conclusion that the proposed repayment contract with the Helena Valley Irrigation District which includes only the full water-supply lands could not be construed as satisfying what we interpret to be the views of the Appropriations Committees with respect to adequate repayment coverage prior to commencement of construction.

In view of the representations made by you and the other members of the Montana congressional delegation as well as State and local officials with regard to the urgency of immediate commencement of construction of the Helena Valley unit and in view of the circumstances leading to the formation of the Helena Valley Irrigation District, we are seeking the counsel and guidance of the Appropriations Committees in this matter. A copy of our letter of today to the chairmen of the House and Senate Appropriations Committees is enclosed.

We regret the confusion that has arisen with regard to Helena Valley unit repayment requirements and ask your indulgence pending receipt of the views of the chairmen of the Appropriations Committees. Please be assured that upon receipt of those views, this matter will receive immediate attention.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*

Enclosure.



## COPY OF LETTER TO CHAIRMAN HAYDEN OF SENATE APPROPRIATIONS COMMITTEE

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D. C., September 23, 1955.

Hon. CARL HAYDEN,  
Chairman, Appropriations Committee,  
United States Senate, Washington, D. C.

MY DEAR SENATOR HAYDEN: We earnestly solicit the counsel and guidance of the Appropriations Committee with regard to the repayment and construction program for the Helena Valley unit, Missouri River Basin project.

The Supplemental Appropriation Act, 1955 (Aug. 26, 1954, 68 Stat. 800, 814), and the Public Works Appropriation Act, 1956 (July 15, 1955, 69 Stat. 354, 357), made available \$250,000 and \$3 million, respectively, for the construction of the Helena Valley unit by the Bureau of Reclamation. A serious question has arisen with regard to the extent of repayment contract coverage which should be obtained before construction of the unit should be commenced.

The Helena Valley unit as now designed and proposed for construction includes capacity and facilities to serve some 13,000 irrigable acres with a full water supply and also capacity to provide a supplemental water supply to some 4,600 acres currently being irrigated. Federal construction of irrigation distribution works is limited to the 13,000 acres of full supply lands. It was contemplated that the full and supplemental water-supply lands in addition to meeting full operation and maintenance costs of the unit would repay approximately \$1.5 million in 40 years or about 13 percent of the construction cost of the unit. The Bureau of the Budget in connection with the initial appropriation request for this unit recommended that construction of the unit not be undertaken unless the water users had executed a contract to repay approximately 30 percent of the construction cost. The Congress in considering and approving the initial appropriation of \$250,000 in the Supplemental Appropriation Act, 1955, omitted any reference to the 30 percent but stipulated: "That no part of this appropriation shall be used to initiate construction of the Helena Valley unit, Montana, until a repayment contract has been executed."

Initially, it was contemplated that there would be a single contract executed with one district encompassing all of the lands to be served by the Helena Valley unit. Subsequently, the prospect of inclusion of the supplemental water lands in the proposed irrigation district became less likely as considerable discussion developed around suggestions of other means by which the supplemental water lands might arrange to procure project water. As the matter proceeded, it became clear that the supplemental water lands were not to be included in the district. Accordingly, on November 5, 1954, the Bureau of Reclamation gave informal approval to a form of contract for use prospective to the formation of the Helena Valley Irrigation District, dealing only with the some 13,000 irrigable acres of full supply lands for which a distribution system was to be built by the United States. It was believed that in due course the owners of the supplemental lands would form an organization of their own for the purpose of contracting with the United States for a supplemental water supply. It was believed also that a repayment contract initially with the 13,000 acres of full supply lands would provide an acceptable basis for going ahead with the construction of the Helena Valley unit. We are advised that this general approach played an important part in the legal proceedings leading to the formation of the Helena Valley Irrigation District in June 1955.

On July 5, 1955, the Board of Commissioners of the Helena Valley Irrigation District approved a proposed water service and repayment contract under which the district would assume the full cost of operation and maintenance of the Helena Valley unit (estimated at \$49,500 per year, or \$3.95 per acre) and would pay over a 40-year period a total of about \$800,000 to apply on the construction cost of the unit. Thereafter the printed hearings of the Appropriation Committees in connection with the fiscal year 1956 fund request for the Helena Valley unit became available and the proposed repayment arrangements for the Helena Valley unit were reconsidered in the light of the views expressed at the appropriation hearings together with developments concerning prospective arrangements with the supplemental water-supply lands. It was then determined that construction should not be undertaken until further commitments for payment of the costs were obtained.

It was estimated that about \$700,000 additional to apply on construction cost would be paid by the owners of the approximately 4,600 acres of irrigable lands

outside of the Helena Valley Irrigation District for a supplemental water supply. Since preparation of the original plan a potential additional market for Helena Valley unit water in the city of Helena has developed. At only a slight additional cost, the unit works can serve also the needs of the city of Helena for a municipal water supply to meet the anticipated future growth of the city. Discussions with city officials and their consulting engineers are now firming up this possibility. Preliminary thinking is that the city may repay with interest as much as \$942,000 to apply on the cost of construction of the Helena Valley unit.

At this time it is not possible to predict when repayment arrangements will be completed with either the lands in need of a supplemental water supply or the city of Helena. Postponement of construction of the Helena Valley unit until repayment arrangements with either the supplemental lands or the city of Helena, or both, are completed in addition to the proposed contract with the Helena Valley Irrigation District will mean that construction of the unit will be delayed indefinitely. In view of the circumstances leading to the formation of the Helena Valley Irrigation District and the apparent understanding of the water users of the district, that upon formation of a district including only the 13,000 acres of full supply lands and execution of a repayment contract by such a district, construction of the Helena Valley unit would proceed, we have been urged to proceed immediately with construction of the Helena Valley unit. Among those urging immediate construction following execution of the proposed repayment contract with the Helena Valley Irrigation District are Senator James E. Murray, Senator Mike Mansfield, Representative Lee Metcalf, Representative Orvin B. Fjare, Governor Aronson of the State of Montana, the State of Montana Water Conservation Board, and District Judge Victor H. Fall, first judicial district, Helena, Mont.

The Governor and the board have pointed up an additional reason for urging immediate construction of the unit in that some 3,500 acres of land in the Helena Valley Irrigation District are currently being irrigated by nonfederally constructed pumping plants which are now in hazardous condition with the result that there is a real possibility of interruption of water deliveries during a critical period of irrigation. The lands in question will be served by the gravity system proposed for construction as part of the Helena Valley unit.

We shall appreciate your advice on this matter at your earliest convenience so that we may know whether or not your committee believes that the Bureau of Reclamation should proceed with immediate construction of the Helena Valley unit. A similar letter on this matter is being sent to the chairman of the House Appropriations Committee.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*

Mr. LINEWEAVER. A few weeks previous to that, on July 27, Commissioner Dexheimer wrote to Senator Mansfield in a letter that appears starting at the bottom of page 7 of the committee print, appendix A.

Senator O'MAHONEY. Is that different in any respect?

Mr. LINEWEAVER. Yes, sir.

Senator O'MAHONEY. Let that be inserted also by reference.

Mr. LINEWEAVER. That letter indicates that only a few adjustments in the contract would be necessary.

After the receipt of the letter of August 17 by Senator Murray, copies were made public. Thereupon the district people there, and members of the Montana delegation, become very much disturbed about it, also the Governor of Montana and the State water conservation board.

On that occasion, then, under date of September 6, Senator Murray wrote to Secretary McKay, asking for an explanation or information regarding the change in the status of the negotiations with the district. That is, with respect to requiring additional repayment coverage.

Again on September 13, Senator Murray wrote another letter to Secretary McKay, following representations from the people in Mon-

tana, including the Governor and Judge Fall, with respect to what was termed a "change in signals" by requiring additional repayment coverage in the form of an additional contract from the supplemental water users, or from the city of Helena.

Senator O'MAHONEY. I think that covers the situation sufficiently at this point, except for the exchange of the letters which were addressed to Senator Murray and to Senator Hayden, chairman of the Senate Appropriations Committee, by Assistant Secretary of the Interior, Fred Aandahl, in acknowledgment of the letters written by Senator Murray on September 6 and September 13.

In the letter to Chairman Hayden of the Appropriations Committee, Secretary Aandahl has said in effect that the matter was being held up for the consideration of the Committees on Appropriations of both Houses.

(The letters referred to are as follows:)

LETTER FROM SENATOR MURRAY TO SECRETARY MCKAY

SEPTEMBER 6, 1955.

HON. DOUGLAS MCKAY,

*Secretary of the Interior,*

*Department of the Interior,*

*Washington, D. C.*

DEAR MR. SECRETARY: I am very much disturbed by Commissioner Dexheimer's letter of August 17 relative to the repayment and construction program for the Helena Valley unit, Missouri River Basin project, Montana. My concern has been heightened by information from Montana, especially with respect to representations made by Interior-Reclamation spokesmen regarding the construction program in connection with court approval of the formation of the Helena Valley Irrigation District.

You will recall that last year when the Bureau of the Budget recommended a \$250,000 appropriation to start construction of the Helena Valley unit, some political capital was made in Montana about this being a new start approved by the Eisenhower administration.

The Helena Valley Irrigation District was organized in good faith with the plain understanding, I am advised, that the form of repayment contract had been approved and that construction would start when the district was formed and repayment contract agreed to. The water users, in signing up for the formation of the district, agreed to the repayment contract as presented by Reclamation, I am informed, with the understanding that construction was to start.

The understanding was reinforced by the action of Congress this year in appropriating \$3 million for construction of the unit, as recommended by you and the Bureau of the Budget. The significance of the action of the House in restoring the appropriation after the Appropriations Committee had eliminated the amount must be recognized. Testimony before the House and Senate Appropriations Committees is confirmatory.

Frankly, Mr. Secretary, I am at a loss to understand what is going on with respect to the Helena Valley unit. The attached letter to me from Judge Fall, who approved the formation of the irrigation district, together with his letter to President Rossiter, of the irrigation district, adds to my mystification.

In order that I may have a clear understanding of the matter from the beginning to the present status, I will appreciate your giving instructions that the Committee on Interior and Insular Affairs shall be furnished promptly with a chronological report that will cover the following points:

1. Original instructions to the field with respect to negotiations of a repayment contract with the district particularly as it affected terms and the construction program.
2. Reports from the field with respect to negotiations.
3. Comments of Reclamation and Interior on negotiations or commitments to Congress in appropriations hearings or to the district.

4. Copy of contract (a) reported to Congress as approved on November 5, 1954, and accepted by district commissioners; (b) amendment to article 17 subsequently submitted to district but rejected by board.

5. Explanation of the conflicting points raised by Judge Fall in his letters to me and to Mr. Rossiter as contrasted with the previous representations by Reclamation as an agency of the Department.

6. Clarification of conflicts which Interior or Reclamation can contribute including any justification for present position of Reclamation or Department as contrasted with previous commitments.

As a United States Senator from Montana and as chairman of the Senate Committee on Interior and Insular Affairs, I am concerned with results rather than recriminations. Our experience with the Yellowtail Dam controversy illustrated that if we get all of the facts on the table, a solution is forthcoming.

It is my hope, Mr. Secretary, that you will take appropriate action to bring about a prompt solution of the vexing problems involved in the Helena Valley unit program.

I am bringing this matter to your direct attention as the responsible head of the Department of the Interior. Copies of this letter and the enclosures, as a matter of information, are being sent to Assistant Secretary Aandahl and Commissioner Dexheimer.

I thoroughly appreciate the administrative responsibility of the Department and Reclamation with respect to repayment commitments before construction begins, and I am not challenging that procedure, in the Helena Valley, especially in view of the proviso in the Supplemental Appropriations Act of 1954 requiring a repayment contract before construction. What is puzzling, however, is the change in signals somewhere along the line after the landowners had agreed to what they were told was an officially approved form of contract. Plus this, of course, are the unchallenged statements in the record of appropriations hearings and the justification material filed with the Appropriations Committee of Congress on the subject of the Helena Valley repayment contract approval.

Sincerely yours,

JAMES E. MURRAY, *Chairman.*

#### LETTER FROM SENATOR MURRAY TO SECRETARY MCKAY

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*September 14, 1955.*

Hon. DOUGLAS MCKAY,

*Secretary of the Interior, Washington 25, D. C.*

DEAR MR. SECRETARY: Attached to my letter of September 6, relating to the Helena Valley Irrigation District repayment-construction program, was a request for a reply with explanations by September 20. While I have been in Montana the past week, I have been urged to expedite replies to many inquiries I have received on this disturbing matter. Therefore, I am requesting that I have a reply by September 16.

Governor Aronson has sent me a copy of a strongly worded resolution by the State water conservation board, a copy of which was forwarded to you, requesting that you withdraw the demand for additional contractual arrangements on the Helena Valley unit. He urged my help and support to that end. The irrigation district has also forwarded me a copy of its resolution of August 26 detailing the proceedings leading up to its agreement to the contract draft originally presented to the water users.

I have also received a second letter from Judge Fall, who presided at the court proceedings at which the formation of the Helena Valley Irrigation District was approved. He enclosed an excerpt from the transcript of the hearings in substantiation of the basis for his ruling.

You are doubtless aware, Mr. Secretary, of the congressional history of the initial appropriation for the Helena Valley unit in the Supplemental Appropriation Act for fiscal year 1955. When the Budget Bureau recommended an initial appropriation of \$250,000 in a supplemental estimate in March 1954 it included a proviso that a repayment contract covering not less than 30 percent of the irrigation costs of the Helena Valley unit should be executed before construction should begin. The Congress rejected the 30 percent requirement and

merely stipulated that a repayment contract was to be executed before the initiation of construction.

I am sending copies of this letter to Assistant Secretary Aandahl, and Commissioner Dexheimer, as I did with respect to my request of September 6.

I trust it will not be an inconvenience to expedite the reply to my request.

Sincerely,

JAMES E. MURRAY, *Chairman.*

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Butte, Mont., September 22, 1955.*

Hon. JOSEPH C. O'MAHONEY,  
*Acting Chairman, Committee on Interior and Insular Affairs, United States Senate, Washington, D. C.*

DEAR SENATOR O'MAHONEY: Please refer to my note to you of September 9, requesting you to serve as acting chairman of our committee.

I am advised from Washington that Secretary of the Interior McKay had not, up to today, acknowledged receipt of my letters of September 6 and 13, relative to what appears to be a disconcerting change in signals somewhere along the line with respect to repayment contract negotiations on the Helena Valley unit, Missouri River Basin project, in Montana. I telegraphed Secretary McKay today calling his attention to the failure to respond to or even acknowledge my requests, copies of which had been sent to Assistant Secretary Aandahl and Commissioner Dexheimer, who have direct administrative jurisdiction in matters of this character. However, I feel the head of the Department cannot divest himself of responsibility by inaction.

In my telegram to the Secretary, I advised him that the failure to indicate that the Helena Valley situation was not being cleared up left me no alternative but to call a conference, under the auspices of the Senate Committee on Interior and Insular Affairs, where the whole subject could be reviewed and publicly aired. A copy of this telegram is attached for your information.

While I hesitate to impose on your time, I request that for this purpose you call a conference of Interior-Reclamation officials, including the Secretary, for Thursday, September 29, at 2 p. m. In the meantime, I have instructed that, for the information of yourself and all others concerned, a committee print be prepared as a report which will reveal all pertinent correspondence, official appropriation justifications, excerpts from testimony before Appropriation Committees, et cetera. You are to be furnished a copy of the print as early as practicable so you can familiarize yourself with the problem, and the apparently inexplicable manner in which it has been handled.

Incidentally, I recall few incidents that have aroused State and court officials, and local irrigationists to the extent that has been the case with this Helena Valley matter.

I hope this inquiry can be wound up promptly and satisfactorily in an hour or so on Thursday. If it is possible for me to get back to Washington, which I doubt, I will be glad to join you in the conference.

Incidentally, you may desire to ask the Department to bring us up to date on the Yellowtail right-of-way negotiations with the Crow Indians. It seems to me we must keep on top of this problem or the Yellowtail Dam construction will be stalemated.

Sincerely yours,

JAMES E. MURRAY, *Chairman.*

#### LETTER TRANSMITTING TELEGRAM

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*September 22, 1955.*

Hon. DOUGLAS MCKAY,  
*Secretary of the Interior,*  
*Department of the Interior, Washington, D. C.*

DEAR MR. SECRETARY: On telephonic instructions from Senator Murray, I am having delivered directly to your office the attached copy of a telegram dated today at Butte, Mont., from the Senator, as chairman of the Senate Committee on

Interior and Insular Affairs. Copies of the telegram are also being delivered to Assistant Secretary Aandahl and Commissioner Dexheimer.

The telegram relates to the Helena Valley repayment-construction program in Montana and the Senator's letters to you of September 6 and 13, to which our records show no acknowledgment, as well, of course, as no clarification of the matters presented.

I will be pleased to transmit promptly any response you may have to Senator Murray.

Sincerely yours,

RICHARD L. CALLAGHAN, *Chief Clerk.*

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TELEGRAM TO SECRETARY MCKAY FROM SENATOR MURRAY

BUTTE, MONT., *September 22, 1955.*

MR. RICHARD CALLAGHAN,

*Chief Clerk, Senate Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.*

Please have delivered directly to office of Secretary of Interior McKay, with copies to Assistant Secretary Aandahl and Commissioner Dexheimer, the following telegram with a request that acknowledgment, if not a complete reply, be made to me at my Washington office before the close of business September 23:

Dear Secretary McKay: Both my senatorial office and that of the Senate Committee on Interior and Insular Affairs advise me that no replies have been received to my letters to you of September 6 and September 13. Both communications dealt with the Helena Valley repayment-construction program and requested replies by September 20 and September 16.

I will ignore so far as I am concerned what appears to be at least oversights somewhere in your Department of a respectful request from me as a United States Senator and chairman of a regularly constituted committee authorized to inquire into matters of this kind. However, since my arrival in Montana, I have been besieged with inquiries on this subject.

These inquiries have come from the Governor of Montana, chairman of the State water conservation board, the judge of the court that approved formation of the Helena Valley Irrigation District, as well as the citizen water users concerned. None of us can understand the lack of response by the Department of the Interior, which has the responsibility for administering the reclamation law.

Therefore, Mr. Secretary, you leave me no alternative but to have a public inquiry where all the facts can be made a matter of public record. Accordingly, I, as chairman of the Senate Committee on Interior and Insular Affairs, will call a conference on the subject at the earliest convenient date. You, as the responsible head of the Department, will of course be expected to be present, together with such other Interior and Reclamation officials who can assist in getting clarification of this perplexing situation. The main objective, of course, is to get a repayment contract executed so that construction of the Helena Valley unit can start as the Congress intended when the \$3 million appropriation was made for fiscal year 1956.

Sincerely,

JAMES E. MURRAY, *Chairman.*

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LETTER FROM SENATOR O'MAHONEY TO SECRETARY MCKAY

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*September 23, 1955.*

HON. DOUGLAS MCKAY,

*Secretary of the Interior,*

*Department of the Interior, Washington, D. C.*

DEAR MR. SECRETARY: Please refer to Chairman Murray's telegram of September 22 to you from Butte, Mont., relative to a conference on his behalf with Interior-Reclamation officials on the Helena Valley unit repayment-construction program problems. In accordance with a request from Senator Murray, I am scheduling the conference as acting chairman of the Senate Committee on In-

terior and Insular Affairs for 2 p. m., Thursday, September 29, in room 224, Senate Office Building. Because of Senator Murray's correspondence addressed directly to you, I trust you will find it convenient to be present.

I am sending copies of this invitation to Assistant Secretary Aandahl and Commissioner Dexheimer, who, I understand, have direct responsibility in the Helena Valley matter.

Copies of a committee print directed by Chairman Murray will be furnished all concerned before the conference.

Please have the committee staff advised who will be present at the conference both with respect to Helena Valley and as to any information on the Yellowtail Dam right-of-way progress in which both Senator Murray and I are directly interested.

Sincerely yours,

JOSEPH C. O'MAHONEY,  
*Acting Chairman.*

Carbon copy: Assistant Secretary Aandahl, Commissioner Dexheimer.

Mr. LINEWEAVER. That is right.

Senator O'MAHONEY. These committee prints Nos. 1 and 2 will be filed with the record. There is no need of inserting anything in the record except the letters which I have already indicated.

(Committee prints Nos. 1 and 2 were filed with the committee.)

Senator O'MAHONEY. Mr. Dominy, does this statement of facts accord with the Bureau's understanding?

Mr. DOMINY. Except for one minor point that I would like to mention. Mr. Lineweaver in the opening part of his summary used the word "continue" in connection with the \$3 million request in fiscal 1956. I believe he said we made the request to continue the construction on the Helena Valley unit. As a matter of fact, construction had not commenced and could not commence in our judgment until the limitation imposed by Congress concerning the actual establishment of repayment arrangements had been accomplished.

Senator O'MAHONEY. What was done with the original appropriation?

Mr. DOMINY. The original appropriation was used—what money was needed from that appropriation—to continue preconstruction activities, such as additional design and detailed investigation. But none of it was used to start actual construction work on the features of the project. The request in fiscal 1956 was therefore not on the basis of continuing construction; it was on the basis that, assuming repayment coverage to satisfy the requirements of the Congress, could be obtained, and it seemed possible and reasonable that they could be, the Department said it would like to have \$3 million additional to what was appropriated in fiscal 1955 so as to carry on an orderly construction program. But that request was predicated on satisfactory repayment arrangements being concluded.

Senator O'MAHONEY. Is it your understanding that the action of the Senate committee was to the effect that a repayment of \$800,000 would be sufficient?

Mr. DOMINY. No, sir; that is not the Bureau's and the Department's interpretation of the several actions of the Congress.

Senator O'MAHONEY. What was the actual language of the committee report? Do you have that, Mr. Lineweaver? This is with respect to the repayment contract.

Mr. LINEWEAVER. The Senate committee did not have anything in its report with respect to the Helena Valley repayment. Mr. Wood-

ruff, the clerk of the Senate subcommittee, calls my attention to the House committee report on the public works bill for 1956, in which this paragraph with respect to the Helena Valley unit—understand, this is the House committee report :

Additional funds for this project, Helena Valley unit, have been denied in view of the fact that a repayment contract has not yet been executed, and that approximately 86 percent of the project repayment must come from power revenues of the Missouri Basin project. As in the case of the Michaud Flats project, this action is taken without prejudice to the merits of the project.

Then subsequent, as I stated, the House by floor vote reinstated the funds for the Helena Valley unit, and Michaud Flats and several others.

The Senate committee report made no reference whatever to the Helena Valley unit or any requirements for repayment.

Senator O'MAHONEY. Let me ask, Mr. Dominy, if it is a fact that the repayment contract was negotiated by the Bureau of Reclamation with settlers on the proposed project.

Mr. DOMINY. Yes, sir. From the start, the Bureau urged that all of the 17,631 acres to receive water, both the lands to receive a full supply as well as the lands proposed for a supplemental supply, be incorporated if at all possible in a single district, and have a single repayment contract. That did not prove feasible. The owners of lands to receive supplemental water did not permit their lands to be included within the district. So in that event we did go ahead with a repayment contract on the basis of the 12,553 acres of full-supply lands in the district.

In our judgment that did not resolve the problem concerning the requirements of repayment, which have been laid down in the actions before the Appropriations Committees of the Congress.

Senator O'MAHONEY. Mr. Rossiter, are you ready to testify?

Mr. ROSSITER. Yes, sir.

Senator O'MAHONEY. Will you please come forward and take the stand?

Mr. ROSSITER. Yes, sir.

Senator O'MAHONEY. Let me first insert a telegram which I received yesterday from Gov. J. Hugo Aronson, of Montana. I will read it into the record. This is addressed from Helena, Mont., September 27, 1955, to me as acting chairman of the Committee on Interior and Insular Affairs.

It is very important that construction of Helena Valley unit proceed at once. Engineering details are complete and with approval of repayment contract by Bureau and its execution here construction can go forward. Present pumping facilities now being operated by State for part of district lands are in imminent danger of failure which would leave many families in a distressed position. I urge prompt favorable action on this project.

J. HUGO ARONSON,  
*Governor of Montana.*

A resolution of the State Water Board of Montana will also be inserted.

In addition to that telegram, I have 12 additional telegrams, all coming from Helena, Mont., with respect to this matter. These telegrams are opposed to the project, but in any event, I enter them in the record at this point, together with a letter from Judge Fall to Senator Murray.



(A previous letter from Governor Aronson with the resolution of the State Water Board of Montana and the telegrams referred to are as follows:)

LETTER FROM GOVERNOR ARONSON TO SENATOR MURRAY

STATE OF MONTANA,  
OFFICE OF THE GOVERNOR,  
Helena, September 9, 1955.

HON. JAMES E. MURRAY,  
Senate Office Building, Washington, D. C.

DEAR SENATOR MURRAY: The State water conservation board at its meeting September 7, 1955, adopted a resolution relative to delay in construction of the Helena Valley unit by the Bureau of Reclamation.

A copy of this resolution has been forwarded to the Honorable Douglas McKay, Secretary of the Interior, and I enclose a copy for your information.

As set out in the resolution, the board has a very real interest in securing construction of this project in that it is presently making a considerable sacrifice to furnish an irrigation supply to certain of the lands, through an antiquated pumping system. Failure of this system is going to leave many farm families in the valley in distress.

We will appreciate your help and support in this matter.

With kindest regards, I am

Yours sincerely,

J. HUGO ARONSON,  
Governor.

STATE OF MONTANA, STATE WATER CONSERVATION BOARD—RESOLUTION No. 905

Whereas, the State water conservation board has been notified that the Commissioner of the Bureau of Reclamation is requiring certain additional contractual arrangements before the Helena Valley unit can be placed under construction, and

Whereas this is a reversal of commitments made and often repeated by representatives of the Bureau of Reclamation as to conditions precedent to the construction of the Helena Valley unit and if allowed to prevail, lays open to question the integrity of an agency of the Federal Government, and constitutes a breach of faith with the water users involved, as well as this board, and will most certainly destroy the confidence of the citizens of Montana in any future negotiations with the Bureau of Reclamation, and

Whereas the requirement of such additional contractual arrangements is unwarranted from a financial standpoint in that the present repayment plan was adopted at the behest of the Bureau of Reclamation and the amount of repayment ability of the project remains unchanged, and

Whereas this board on November 12, 1953 advised Commissioner Dexheimer that it would undertake to continue irrigation service to some 3,500 acres of the lands now a part of the Helena Valley Irrigation District, which obligation it assumed pending a promise of construction of the Helena Valley unit as an integral part of the Canyon Ferry project, and to continue to furnish an irrigation supply to this 3,500 acres is rapidly becoming an impossibility because of the obsolete and worn out pumping system used for this purpose, and threatens each year to demand replacements beyond the financial ability of this board, and

Whereas citizens of Montana have made a considerable sacrifice of time, effort and money to meet all requirements previously made known to them and have formed the Helena Valley Irrigation District and are ready and willing to proceed under proposals made both orally and in writing by high officials of the Bureau of Reclamation: Now, therefore, be it

*Resolved*, That State water conservation board does hereby request the Honorable Douglas McKay, Secretary of the Interior, to withdraw the demand relative to additional contractual arrangements imposed as requirements precedent to construction of the Helena Valley unit, and immediately submit to the Helena Valley Irrigation District a repayment contract carrying terms in compliance with the negotiations and understandings heretofore reached by officials of the Bureau of Reclamation and the local water users, and upon the execution of said repayment contract that construction of the project be promptly initiated.

Resolution adopted September 7, 1955.

## LETTER FROM JUDGE FALL TO SENATOR MURRAY

FIRST JUDICIAL DISTRICT,  
Helena, Mont., August 30, 1955.

HON. JAMES E. MURRAY,  
*Senate Building, Washington, D. C.*

MY DEAR SENATOR MURRAY: Enclosed herewith is copy of letter which I have forwarded to Mr. Rossiter and to the other Members of Congress from Montana.

I want to call this particularly to your attention. I believe this copy letter is self-explanatory, and I understand that you have already been apprised of the situation with reference to the Helena Valley Irrigation District and what the Bureau of Reclamation has done recently in connection therewith. I feel very strongly about this for the reason that all of the facts are very clear in my mind, and I have never known an instance where such a gross breach of faith took place in any action by any governmental agency. I am frank to tell you that if any private individual within this jurisdiction should perform a comparable act, I should, without question, have him before me for contempt of court.

I think my views on this are probably entitled to somewhat more consideration than the litigants themselves for the reason that I was not an advocate in this proceeding at all, but presided only in the role of judge and formed the district as a result of the representations made by the representatives of the Bureau of Reclamation. In that connection, I might add that I have not the slightest question as to the good faith of the representatives who testified in my court. I am sure they spoke correctly and truthfully with reference to their own authority at the time of the hearing. This is simply a case of where someone back in Washington backed out on a committed promise made in a hearing in my court.

I am definitely disturbed about this because if we cannot accept promises by our Government made under the circumstances wherein they were made here, then it seems to me that a serious weakening is taking place in our governmental function.

I hope that you will find it possible in your good office to straighten out this situation. I know that you will give it the attention it merits, but I wanted to let you know that I feel very strongly about the situation.

Sincerely yours,

VICTOR H. FALL, *District Judge.*

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HELENA, MONT., September 28, 1955.

Senator J. C. O'MAHONEY,  
*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

I've ranched in Helena Valley 53 years. Own 240 acres, 175 under proposed project. Under project will be forced to drain, plow, and level. Will be out of production 4 to 6 years. Then buy proposed water. Now have successful, well-balanced ranch program. Am definitely against project.

Mrs. MOSENA HELBERG.

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HELENA, MONT., September 28, 1955.

Senator O'MAHONEY,  
*Senate Office Building, Washington, D. C.:*

As a landowner in the Helena Valley, I protest the formation of the Helena Valley Irrigation district. The cost is prohibitive for the 5,000 acres that can be benefited. For the remaining acres necessary it would be ruinous and totally unnecessary.

R. B. DOWNS.

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HELENA, MONT., September 28, 1955.

Senator J. C. O'MAHONEY,  
*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

Urge entire Helena Valley unit of irrigation be held up indefinitely inasmuch as millions of acres are idled by the Government. Sons of our pioneer

farmers face ruin if forced to drain pastures and abandon hayfields to drain seeped lands, giving up productive economic programs which the Bureau demands.

GEORGE and ED LAMB.

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HELENA, MONT., September 28, 1955.

Senator J. C. O'MAHONEY,

*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

We protest easing acreage requirements to activate Helena Valley unit. Millions of acres now lie idle in United States. Why put new ground into use? Established farms are to be destroyed by the project. Needed water can be had from Montana Water Conservation Board much more readily and economically.

PETER J. GROSS.

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HELENA, MONT., September 28, 1955.

Hon. JOSEPH O'MAHONEY,

*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

We have 1,000 acres in the Helena Valley and have 317 inches of adjudicated water. We do not want more water and if a canal is run above our place it would make it too wet. We are definitely against proposed Helena Valley irrigation District.

TOM HERRIN.

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HELENA, MONT., September 28, 1955.

Senator J. C. O'MAHONEY,

*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

Urge an impartial investigator come to interview farmers opposed to contract on Helena Valley project and report to Department of Interior before reclamation Bureau be authorized to squander more millions to destroy present prosperity here. Already much misinformation has been used to promote the district.

HUGH D. SMITH.

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HELENA, MONT., September 28, 1955.

Senator J. C. O'MAHONEY,

*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

We protest forming of Helena Valley irrigation project. Having farmed for 43 years, we feel from actual experience, plus hard labor, involved it would be a nonpaying proposition to enter into such an enormous cost to taxpayers, more profits gained from grazing than irrigated land, as less cost is involved.

JOHN HURNI.  
EMILIE HURNI.

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HELENA, MONT., September 28, 1955.

Senator J. C. O'MAHONEY,

*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

In regard to the hearing over the Helena Valley water project, May I as prospective supplementary water user, state that I have no desire nor intention of using any water under such any proposed project. At present I have decreed water rights and wells to supply my water needs. Would appreciate your support in this matter.

M. G. DONALDSON.

TOWNSEND, MONT., *September 28, 1955.*

HON. JOSEPH O'MAHONEY,  
*Acting Chairman, Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

Can buy Helena Valley six times for the price to build canal. Water too high priced for short growing season. Government farm-support loss during 1955 already over \$799 million. I need my meadowland and pasture as is. Do not want to be forced to raise cultivated crops. Do not want to be drained. We have had enough trouble with Government control.

HENRY A. MEYER.

HELENA, MONT., *September 28, 1955.*

Senator O'MAHONEY,  
*Acting Chairman, Senate Interior Committee, Washington, D. C.*

HONORABLE SENATOR O'MAHONEY: As a prospective supplementary user from the Canyon Ferry irrigation project, I am opposed. My land is subirrigated, and any additional water above me would necessitate a drainage system. Do not want my land cut up with ditches. Have sufficient irrigation water now.

M. A. HALVERSON.

TOWNSEND, MONT., *September 28, 1955.*

HON. JOSEPH O'MAHONEY,  
*Acting Chairman of Senate Interior Committee,  
Senate Office Building, Washington, D. C.:*

Helena Valley project too expensive to be feasible. Have included acres of subirrigated pasture land that is better as is. Have creek water. Why get more debt to grow more surpluses? Poor land won't justify the high-priced water.

PERRY L. STANFILL.

HELENA, MONT., *September 28, 1955.*

HON. JOSEPH O'MAHONEY,  
*Acting Chairman, Interior Committee,  
Senate Office Building, Washington, D. C.:*

I have a ranch in the Helena Valley and make my living by raising wild hay and pasture, also trading in livestock. My ground is subirrigated; more water will ruin my land; the water level is up 5 feet now over last year, and the driest August since 1941. If they run a canal above my place, I would have to move on account of the seeping. I am against the canal.

LEONARD FRANK.

Senator O'MAHONEY. Mr. Rossiter.

### STATEMENT OF W. A. ROSSITER, CHAIRMAN OF BOARD OF DIRECTORS, HELENA VALLEY IRRIGATION DISTRICT

Mr. ROSSITER. I am chairman of the Helena Valley Irrigation District as finally formed. I also represent the Helena Valley Water Users Association, and the Lakeside Water Users Association, which were the associations that were operating the old plant as it is now being used, and on which irrigation has for the past 30 to 40 years furnished water for the Helena Valley.

Mr. Chairman, I appreciate the opportunity of taking your time in this matter. I have been here 2 or 3 times on it, and have been intimately acquainted with the negotiations of the matter from its inception.

The present situation, as pointed out by the governor, which has brought this on, is that the plants in Helena Valley have deteriorated over a large number of years inasmuch as the Montana Power Co. originally operated them, and they had a 30-year contract.

Senator O'MAHONEY. With whom?

Mr. ROSSITER. With the people in Helena Valley, to furnish water. That was in connection with their storage on the Missouri River. It is way behind my time.

Senator O'MAHONEY. The Montana Power Co.?

Mr. ROSSITER. Yes. They had a 30-year contract which ran out in 1942. At that time they stated that they were through with being in the irrigation district, and were going to quit.

Senator O'MAHONEY. With whom was this contract made?

Mr. ROSSITER. That was with the individual farmers in the valley.

Senator O'MAHONEY. Do you know how many were participating in the contract?

Mr. ROSSITER. To be perfectly frank, I do not know the total. It would be somewhere around much the same number as are there now.

Senator O'MAHONEY. How many acres?

Mr. ROSSITER. That originally covered around 12,000. Over the years that deteriorated down so that now it is down around 5,000 that are being irrigated under that.

Senator O'MAHONEY. In other words, only 5,000 acres out of the 12,000 originally included in the Montana Power Co. contract are now receiving water.

Mr. ROSSITER. That is right, that are now being served.

Senator O'MAHONEY. Do you wish the committee to understand that the Montana Power Co. facilities were not adequate to perform the necessary job of supplying water to the 12,000 acres plus?

Mr. ROSSITER. That is right. The service was not adequate. The costs were too high so that a large part of the land went out because the farmers could not keep up the cost on an acre-foot basis which the Montana Power Co. was selling it at. They went out naturally because of that. So it deteriorated down until now it is around five or six thousand acres that are being irrigated. Their contract ran out so that they did not have to go ahead with it any more. They said, "We are out of the irrigation business."

Senator O'MAHONEY. When did that happen?

Mr. ROSSITER. That happened in 1942. Then because of the war, they agreed to go on on a stopgap basis until the war was over. When that came to an end, we felt that the water was going out, and we made an arrangement with the water conservation board to take over the operation of the plant.

Senator O'MAHONEY. You mean the State water conservation board?

Mr. ROSSITER. The Montana State Water Conservation Board, to take over the plants, and operate them under contracts with individual water users associations which were formed. Of course, the water conservation board did not have the money and facilities in any way to rehabilitate the plant and put it in operating condition as it should be, so it has just been limping along with the condition of the plant as the Montana Power Co. left it.

You can well see how that would be. As they came to the end of their contract, they did not keep up the plants, and let them deteriorate

to the point so that they were not in very good condition when we took them over.

Senator O'MAHONEY. How did the Bureau of Reclamation get into the picture?

Mr. ROSSITER. When the Canyon Ferry Dam was first instigated—when they came to Congress—one of the main features of the dam along with the other incidental flood control and power features, was that it would furnish irrigation to the area. Knowing that the power company was going out, we all felt that this was the answer to our problem. We were negotiating with the Bureau about getting water out of the Canyon Ferry Dam, that they were building.

In the construction of the dam with this in mind they left an outlet as an integral part of the dam which is now sealed off. This outlet was to take water out of the dam for this particular project.

Senator O'MAHONEY. I understand you, then, to say that when the Canyon Ferry Dam was built, it was so planned by the Bureau of Reclamation as to provide an outlet from which water could be diverted for the use of this particular project.

Mr. ROSSITER. That is right.

Senator O'MAHONEY. But that was never done?

Mr. ROSSITER. No, that was not done as an integral part of the construction of the dam. In other words, the final irrigation works were not taken in during the period of construction of the dam. Opening was left there so that when the time came for putting in an irrigation district, all they had to do was to open up the upper side of the plug, and the water would flow out into the system that was to be built.

Senator O'MAHONEY. When was that Canyon Ferry Dam completed?

Mr. ROSSITER. That was completed, I think, in 1954 finally. It started in 1952.

Senator O'MAHONEY. What were you doing for water in the meantime?

Mr. ROSSITER. Under our contract with the water conservation board, they have been operating these two pumping plants that were turned over to them without cost by the Montana Power Co. as just a stopgap proposition. We have kept up the repairs and have been limping along with the present plants.

Senator O'MAHONEY. When did you first talk of having a reclamation project of your own for this valley?

Mr. ROSSITER. All the time that the Canyon Ferry Dam was being build, we felt, and were interested in seeing what they were going to do, and kept in touch with the Bureau as to the progress being made.

In 1953—the latter part thereof—the Bureau representatives came to the people and asked a group to get together. That group was sparkplugged originally by the Lakeside Water Users Association and the Helena Valley Water Users Association.

Senator O'MAHONEY. But in 1944 the Flood Control Act containing reference to the Missouri Valley overall plan was enacted.

Mr. ROSSITER. That is right. Of course, the people in the area had gone into that. We went into it when Montana Power Co. indicated that they were going to quit. We started on the idea of getting water from any dam that was available.

Senator O'MAHONEY. With whom did you negotiate that?

Mr. ROSSITER. There was no actual negotiation at that time.

Senator O'MAHONEY. You had conversations, did you not? Whom did you approach to get the Bureau of Reclamation interested?

Mr. ROSSITER. To be perfectly frank, I was not in the matter at that time, and I am not conversant who was approached other than that I know that meetings were held, and Mr. Sloan was the first one that came out and proposed it under the Pick-Sloan Act. He held public meetings, and at that time it was gone into.

Senator O'MAHONEY. Were you there at the time that Mr. Sloan came out?

Mr. ROSSITER. I was at the first meeting that Mr. Sloan had in Helena when he described what was going to happen to the development of the Missouri River.

Senator O'MAHONEY. What statement was made on behalf of the Bureau of Reclamation by Mr. Sloan or anybody else with respect to the inclusion of Helena Valley in the Missouri Basin Pick-Sloan plan?

Mr. ROSSITER. At that time I don't think Mr. Sloan was particularly acting for the Bureau of Reclamation. He was developing the overall picture of the Missouri Basin. He described a very vast operation. He was going to irrigate 35,000 acres in Helena Valley. He was going to take water rights and transfer them up above. It was a big program. That was a public meeting. A major part of his conversation was on the benefits to be derived in the area from irrigation from this development.

Senator O'MAHONEY. Now, tell us about the more recent developments, and the initiation of negotiations with the Bureau of Reclamation and the presentation of the matter to the court.

Mr. ROSSITER. In November 1953 the Bureau representatives in our district asked the water conservation board to call a meeting of the interested parties. This meeting was held.

Senator O'MAHONEY. By that, you mean that Bureau representatives asked the State board of conservation to call a meeting?

Mr. ROSSITER. That is right.

Senator O'MAHONEY. Can you name the persons who did this?

Mr. ROSSITER. Mr. Aldrich was there, I remember, and Mr. Lubbe.

Senator O'MAHONEY. Is that the Mr. Aldrich who testified before Judge Fall?

Mr. ROSSITER. That is right.

Senator O'MAHONEY. Very well.

Mr. ROSSITER. Mr. Lubbe, another employee of that area. My recollection is that there was an attorney of the Bureau there. I am not sure of his name. I would not say what his name was. The members of the State water conservation board were there. The Governor was not present at that time. The officers of the Lakeside Water Users Association were there, and the officers of the Helena Valley Water Users Association were all present.

At that time we were informed that the Bureau had requested Mr. Aldrich to determine just what the people in the valley wanted, and what they could do in relation to forming a district, and what repayment costs they could handle. They were sent out at that time to investigate what could be done to now initiate the Helena Valley project. Several hours were taken up in that meeting.

It was determined by the various people there as to about what amount could be repaid on this project and what this land could stand and how the district could be formed, and what it would entail. At that very inception date, of this project, all the acres of land that would be incorporated were brought up.

We were well aware of the condition of interfering with decreed water rights at that time, and knew that we would have to stand or fall on the basis of full supply land. By that I mean that we felt and feel at the present time that money would be derived from sale of water to supplemental water users who had decreed rights, but as far as contracting with them and getting them to agree to a fixed amount of acreage for which they would buy a fixed amount of water, that it was an impossible situation. They felt that they were satisfied with the amount of water that they had, and that they could farm and that they would not commit themselves to a guaranteed annual charge.

Senator O'MAHONEY. Who were these individuals?

Mr. ROSSITER. Those are the supplemental water users, as we call them, and which show in the record as encompassing somewhere around 4,200 to 4,600 acres. They are people who have decreed rights on creeks that run into the valley from various directions. Of course, their only cost is the upkeep of their ditches. It is much cheaper than any pumping plant.

Senator O'MAHONEY. Do I understand you to say that you and your associates who wanted the fully supply had no intention at any time of interfering with the State water decrees which these other individuals owning 4,600 acres held?

Mr. ROSSITER. That is right.

Senator O'MAHONEY. You did not seek to have them participate in the repayment contract?

Mr. ROSSITER. That is right. In a written repayment contract, guaranteeing a yearly return or repayment to the Government, because of the fact that we had in various meetings seen what their reaction to it was. In fact, going back to this first meeting of Sloan's he proposed that.

Senator O'MAHONEY. Were they included in the contract that was negotiated by the Bureau?

Mr. ROSSITER. They were not included. They were not only not included, but during none of the negotiations which were carried on from that date in November 1953, up to July 1954, was there any attempt to include them. There was never any request direct to us to negotiate any contract with them.

Senator O'MAHONEY. When you say no request was made of you, do you mean to have the committee understand that the Bureau of Reclamation made no request to include them?

Mr. ROSSITER. The Bureau of Reclamation did not attach any strings to this project at all, that we had to negotiate a contract and get that tied down in a written contract for these supplemental lands to bear in the expense of this contract to initiate construction.

The first resolution drawn by these water-users associations, which appear in committee print on page 23—and this was the resolution which initiated the negotiations for this unit—contains this wording:

That the board of directors of the two associations go on record as recommending to their water users the acceptance of the recommended plan of the



Bureau of Reclamation with a modification that the district to be formed only take in the acreage that will have to have a full supply of water and that the acreage needing supplemental supply be handled on a sale of water basis.

That was the joint resolution of the two associations.

Then in the resolution of the Helena Valley Water Users Association, singly, which was part of this project, which starts on the bottom of page 23, the motion was passed:

That the Helena Water Users Association join with the Lakeside Water Users Association as being in favor of the recommended plan of the Bureau of Reclamation for Helena Valley on a smaller district, leaving out of the district the lands which only use supplemental water, and that the said Helena Valley Water Users Association was of the opinion that \$5.25 per acre would be the maximum amount that the water users could economically pay for the land to be irrigated.

We have never deviated from that position. If the Bureau of Reclamation was going to insist on a written contract with the supplemental water users, we never felt that the project could go. All our negotiations have been on that basis.

Senator O'MAHONEY. Let me ask you to define the Lakeside Water Users Association.

Mr. ROSSITER. Under the old original operation of Montana Power Co., there is what is known as Helena Lake, in which they have two pumping plants. One pumping plant is on the south side of the lake and one on the north side. The one on the south side of the lake pumps water in an easterly direction and takes care of a lot of the lands on the uplands, and the other plant goes around the valley and encompasses land that is out further in the valley. Montana Power Co. operated them as one system.

When we took over with the water conservation board, it split up into two systems. One association was formed to take over one plant, and the other association to take over the other plant. One was called the Lakeside, and the other the Helena Valley. That is where the two names come from.

Senator O'MAHONEY. Are any of the supplemental water users members of either of those organizations?

Mr. ROSSITER. No. The supplemental water users did not take water out of the original pumping plants and were not members of the two associations.

Senator O'MAHONEY. So that the supplemental water users were not represented in any of these actions which you described in behalf of the Helena Valley project.

Mr. ROSSITER. Not in initiating. Some of the supplemental water users became involved as this thing progressed and as the district was formed and as the confines of the district were laid out because of the fact that there were some lands that had no water at all and were lands that would be picked up by a drainage system which is encompassed in the Bureau's plan. When they were drained, they would then be in position to be formed and with good quality land.

There are one or two in the district that was finally formed who are in that classification. They have supplemental water on certain lands, and part of the lands that they have no water on came into the area of the district. So there was a dual condition there, but that was very small.

Senator O'MAHONEY. In order to clarify the relationship of the lands involved here, let me ask you, Would a geographical boundary,

including all of the full water lands, include lands of the supplemental users?

Mr. ROSSITER. No. The geographical boundary of the district as finally formed went around the supplemental water users and did not take in their lands on which they had water rights.

Senator O'MAHONEY. They were not included, then?

Mr. ROSSITER. That is right. They were not included in the formation of this district.

Senator O'MAHONEY. Although when you say the boundary went around them, what is the picture you wish to convey?

Mr. ROSSITER. The boundaries of the irrigation district were set out so that they did not include the lands of the supplemental water users where they already had water.

Senator O'MAHONEY. The lands of the supplemental water users were excluded from the district that was formed?

Mr. ROSSITER. With the exception of these ones I mentioned, one or two, who had lands separated from the ones that they had rights on. The district did take those in.

Senator O'MAHONEY. As you see from your point of view, were the owners of the supplemental water lands affected by the creation of the district?

Mr. ROSSITER. They were not. We knew that they had decreed water rights on these creeks. There was some question whether that was sufficient, but that was for them to determine whether it took effect and cut their water down. They thought it was sufficient. Therefore, they would not join with us in forming the district and entering into a contract with the Government to repay.

Senator O'MAHONEY. Are you of the opinion that the contract which was made imposes no obligation on the owners of these other tracts?

Mr. ROSSITER. The contract as submitted to us had no reference whatever to the supplemental water users.

Senator O'MAHONEY. You say that the contract was submitted to you. When was it submitted to you and by whom?

Mr. ROSSITER. It first came out in November 1953, so that we generally knew what the contract was.

Senator O'MAHONEY. Where did it come from?

Mr. ROSSITER. It came from the Bureau of Reclamation.

Senator O'MAHONEY. Was it drafted in the Bureau of Reclamation?

Mr. ROSSITER. It was drafted either in Great Falls or Washington. I don't know which.

Senator O'MAHONEY. What I want to know is whether it was drafted by your people or by the Bureau.

Mr. ROSSITER. It was drafted by the Bureau of Reclamation.

Senator O'MAHONEY. Was it satisfactory to you?

Mr. ROSSITER. It was when it was first proposed, and then in July 1955 after the district had been formed by the court, it was presented to the commissioners of the district, as formed, for their approval as to form and was agreed upon. We were then informed at that time it would be submitted to the Commissioner in Washington.

Senator O'MAHONEY. When you say it was submitted to the commissioners of the district, whom do you mean?

Mr. ROSSITER. They were the commissioners that were appointed by the court after the irrigation district was formed, as required by law.

Senator O'MAHONEY. Who were they?

Mr. ROSSITER. Myself, Mr. Baucus, Al Hrella, Henry Hibbard, and the court appointed Mr. Olson, who for reasons of his own declined to act.

Senator O'MAHONEY. In committee print No. 1, on page 23, at the top of the page, I find a list of names of persons attached to exhibit Q, which is a summary of the negotiations leading to developments and construction of Helena Valley unit of the Missouri River Basin project, and the formation of Helena Valley district. It names there John J. Baucus, H. S. Hibbard, Albert Hiller, commissioners, and then is added the attesting signature of H. Allen Shumate, secretary. Your name is not on that.

Mr. ROSSITER. That is right, because of the urgency of getting it out, I was out of town when it was mailed. The original had signed signatures, and my name was not on there.

Senator O'MAHONEY. Were all three of these names, excluding the name of the secretary, the names of the commissioners appointed by the court, excluding yours?

Mr. ROSSITER. That is right. I would like to amend the print in that Albert Hiller is misspelled. That is H-r-e-l-l-a.

Senator O'MAHONEY. Let me ask you to turn to page 4 of the committee print. There you will find the statements in the estimate submitted to the Committee on Appropriations by the Bureau of the Budget from which Mr. Lineweaver read at the opening of this session. I will call your attention to the second paragraph which follows after the total unit costs set forth as \$11,989,000. It reads as follows:

A draft of a 40-year repayment contract with a 5-year development period was approved by the Commissioner (meaning the Commissioner of Reclamation, Mr. Dexheimer) on November 5, 1954, for use in the formation of an irrigation district. The contract provides for repayment of \$832,000 of construction costs from full supply lands assigned for irrigation on a 40-year period. An additional contract may be considered to provide a water supply for 4,623 acres needing supplemental water.

Disregarding the last sentence and having in mind solely the draft of the 40-year repayment contract with the 5-year development period, which was approved by Commissioner Dexheimer on November 5, 1954, is that or is it not the contract that you and your associates, as commissioners of the local irrigation district, the Helena Valley district, also approved?

Mr. ROSSITER. That is the contract that was presented to us and under which we operated and was the final one submitted to us after the district was formed and we were appointed.

Senator O'MAHONEY. Was it acceptable to you?

Mr. ROSSITER. It was acceptable to us.

Senator O'MAHONEY. Is it not acceptable to you?

Mr. ROSSITER. It is not acceptable now. When they presented it in July again, after the district was formed, they put some minor additions onto it, such as race discrimination and things of that kind, which we agreed to. Then, in the final draft they added to it the thing that is the crux of the whole matter, wherein the Commissioner—

Senator O'MAHONEY. Where are you reading from the committee print?

Mr. ROSSITER. On page 22, under August 19, 1955, subparagraph 3 (a), modification of article 17 by adding the lines:

The commencement of construction of any works identified in this contract is contingent upon the conclusion of such further contractual arrangements as may be determined by the Secretary to be necessary and satisfactory for the disposition and employment of water in addition to the district supply which is contemplated will be made available by the unit works.

That was the amendment which they offered in their final contract which we as commissioners refused to agree to because it was a change from what we had been operating under from the very inception of negotiations and no intimation was given to us of any such thing until that was sprung on us.

Senator O'MAHONEY. Do I understand that was conveyed to you in August 1955?

Mr. ROSSITER. In August of 1955.

Senator O'MAHONEY. And that language which you have just read was not contained in the contract approved by the Commissioner of Reclamation on November 5, 1954?

Mr. ROSSITER. It was not.

Senator O'MAHONEY. It was not before the Committee on Appropriations when the committee acted in the early part of this year?

Mr. ROSSITER. It was not. It was never broached that I can find until in August 1955 when they presented it to us in the final draft.

Senator O'MAHONEY. It is evident from this, I will say to the representatives of the Commissioner and the Interior Department, that this change in the contract from its terms when submitted to the Appropriations Committee by the Bureau of the Budget at the time the estimate was made after Congress had adjourned and after the appropriation had been made.

#### STATEMENT OF FLOYD E. DOMINY

Mr. DOMINY. Mr. Chairman, the contract, of course, was never submitted to the Congress. There was nothing submitted to the Congress except a statement concerning a 40-year repayment contract with a 5-year development period.

Senator O'MAHONEY. Pardon me just a minute. I must try to harmonize what you have just said with the statement I read from the justification which was submitted to the Appropriations Committees of the House and Senate before the hearing in May 1955, set forth on pages 3 and 4 of the committee print. The sentence which I read to Mr. Rossiter I now read to you from page 4:

A draft of a 40-year repayment contract with a 5-year development period was approved by the Commissioner (meaning the Commissioner of Reclamation) on November 5, 1954, for use in the formation of an irrigation district.

You don't modify that sentence, do you?

Mr. DOMINY. No, sir; not at all. I wish to point out that the change made in the contract does not in itself affect the contract with the Helena Valley Irrigation District at all. The repayment obligation and all remain the same. The only reason for the addition of that sentence was to make clear in the contract with the Helena Valley

Irrigation District that it was now the position of the Department that the requirements imposed by Congress, and the understandings reached with Congress in the process of two hearings—1955 supplemental and 1956 regular appropriation hearing—in the judgment of the Department we are not in a position to commit the Federal Government to proceed with the construction of the Helena Valley unit with only this repayment document in hand. That was the only reason for the addition of that language. The language in and of itself has no bearing on the repayment arrangements with this district, sir.

Senator O'MAHONEY. If it has no bearing on the relations with this district, why is there any difficulty in proceeding with the arrangements with the district?

Mr. DOMINY. There is no difficulty in proceeding with the completion of the contract with the district. The problem arises, however, because this district does not embrace all of the lands to be served by the Bureau's Helena Valley unit, which has been presented to the budget and to the Congress—

Senator O'MAHONEY. My attention is called to a letter dated July 27, 1955, addressed to Senator Mansfield, which appears on page 8 of the committee print, the last sentence in the paragraph beginning with the words, "We understand," which reads as follows:

Following approval and execution of a satisfactory form of repayment contract, we will be in a position to proceed with construction of the unit.

This is a sentence taken from the letter of Commissioner Dexheimer to Senator Mansfield, dated July 27, 1955. Did that letter of Mr. Dexheimer indicate any intention on the part of the Bureau to vary its policy?

Mr. DOMINY. No, sir. That letter did not go into this problem. As a matter of fact, the problem was under active review immediately following the letter of July 27, both in the Solicitor's office and in the Department. There were many of us who had believed for a long while that the association made up of the supplemental landowners was already of such form that it would be possible for the Government to deal with that association in a second contract.

At about this time, soon after this letter was signed, the decision was reached, however, that because this association did not have the power to assess and levy taxes, it was not an organization that we would be authorized to deal with under reclamation law.

Senator O'MAHONEY. That decision was made after the justification had been submitted to the Appropriations Committee; was it not?

Mr. DOMINY. The justification as submitted to the Appropriations Committee, Senator O'Mahoney, deals only with the contract then in process for 12,553 acres. We did not go into the details except to point out in the sentence which you read a moment ago that a second contract may be necessary. That was the decision we were concerned about at the moment. Following the hearings the firm decision was reached on the basis of our review of the record that additional repayment coverage was a requirement.

Immediately upon that firm decision being arrived at, the Montana delegation and the district were so advised.

Senator O'MAHONEY. When the justification was submitted, Mr. Dominy, the repayment contract had been approved.

Mr. DOMINY. For 12,553 acres.

Senator O'MAHONEY. And that approval was on November 5, 1954?

Mr. DOMINY. It was approved by the Commissioner as a preliminary draft for organizational purposes at that time, yes. In other words, it did not have final consideration in the Department of Interior, nor did it have secretarial approval as to form. Contracts are never submitted to the Secretary for formal approval until after they have been negotiated in full with an irrigation district, and approval obtained on that draft by formal resolution of the district board.

Senator O'MAHONEY. Of course, it does say a draft of a 40-year repayment contract with a 5-year development period was approved by the Commissioner on November 5, 1954, for use in the formation of an irrigation district.

Mr. DOMINY. That is right, sir.

Senator O'MAHONEY. Then it recites what the contract provides, and then adds this other sentence:

that an additional contract may be considered to provide a water supply.

Do you know whether any testimony was given to either of the Appropriations Committees that this was merely a preliminary draft, and that, though the justification said it was approved by the Commissioner, the Interior Department wanted the committee to understand that it was approved only tentatively?

Mr. DOMINY. No, sir. As I said before, we have not changed the form of that contract except to add a clarifying statement to the effect that that contract does not cover the entire repayment arrangement for the Helena Valley unit, as had been presented and justified to the Congress.

To answer your question specifically, the Helena Valley unit repayment was discussed this year in both the House and Senate appropriation hearings. There is quoted here in the committee print prepared for use in this conference the excerpts from the House hearings. There was also testimony—and I am at a loss to understand why it was not included in the committee print—before the Senate Appropriations Committee, in which Senator Hayden asked a question on this point, and to which I replied, and Senator Ellender asked a question on this point, to which I replied.

Senator O'MAHONEY. That language will be included if you will provide it. We will see that we get it.

Mr. LINEWEAVER. Here is the language.

Mr. DOMINY. Yes. This is the testimony before the Senate committee to which I referred. But the point I want to make clear, Mr. Chairman, is that both committees in the House and in the Senate understood that this contract was with only part of the acres to be served by the Helena Valley unit, that this contract would return only 7 percent of the cost of the project, whereas in our original testimony in 1955, we made clear that while we agreed with Mr. Rossiter, and the Montana farmers, that they could not pay the 30 percent on which the Budget Bureau's approval of our request was predicated we felt that repayment arrangements could be arrived at so that the Government would be assured in 40 years of a 12 percent return of the cost allocated to irrigation. So this year we made clear in our testi-

mony that the contract under discussion here would return only 7 percent, and that additional arrangements would be necessary to secure the additional 5 percent.

Senator O'MAHONEY. Where did you contemplate that the additional 5 percent would come from?

Mr. DOMINY. From the supplemental lands that are to be served from the Helena Valley unit.

Senator O'MAHONEY. Suppose the supplemental lands which were not included in the district are not served?

Mr. DOMINY. In that event, sir, it is our judgment on the basis of the record now in hand that we cannot start construction.

Senator O'MAHONEY. Is it not a fact that it was not until after the contract had been approved by the Commissioner and the farmers represented by Mr. Rossiter and those who read this original justification were entitled to believe that the Bureau was prepared to go forward with the construction?

Mr. DOMINY. It may well be that they arrived at that conclusion.

Senator O'MAHONEY. It is my understanding that after Mr. Dexheimer had written his letter of July 27, 1955, to Senator Mansfield containing the sentence:

Following approval and execution of a satisfactory form of repayment contract, we will be in a position to proceed with construction of the unit—

there was no action by the Department looking toward the inclusion of the language included in the notice of August 19, almost a month later.

(The letter referred to is as follows:)

#### LETTER TO SENATOR MANSFIELD

DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION,  
Washington, D. C., July 27, 1955.

HON. MIKE MANSFIELD,  
United States Senate,  
Washington, D. C.

MY DEAR SENATOR MANSFIELD: We are pleased to respond to your letter of July 12 regarding the proposed Helena Valley unit, Missouri River Basin project, concerning which you received a letter from Mr. W. A. Rossiter of Helena, Mont.

A draft of water service and repayment contract proposed with the Helena Valley Irrigation District, to which Mr. Rossiter makes reference, currently is being reviewed by us. Preliminary review of the draft contract indicates that a few minor adjustments in contract language will be necessary. We anticipate that these changes, which are now under consideration with our regional director's office at Billings, Mont., can be made promptly so that the contract may be submitted in the near future to the Secretary for approval as to form.

We understand that the basic terms and conditions of the draft contract are acceptable to the commissioners of the Helena Valley Irrigation District. We believe that the final draft which we have in mind will be acceptable also to the commissioners. Following approval and execution of a satisfactory form of repayment contract, we will be in a position to proceed with construction of the unit.

Plans prepared for the Helena Valley unit encompass the delivery also of supplemental water to the existing irrigation development in the valley not within the irrigation district. Consideration is being given by the water users and the Bureau to appropriate arrangements which may be made for service of water to those lands.

If you desire further information on this matter, we shall be pleased to respond to your further inquiry. In accordance with your request, we are returning the letter from Mr. Rossiter.

Sincerely yours,

W. A. DEXHEIMER, *Commissioner.*

Mr. DOMINY. Yes, sir. As I say, the problem received very active consideration immediately following the July 27 letter and the conclusion reached as I have outlined.

As you are aware, we have referred the question to the Appropriations Committees of both the House and Senate, and if our interpretation of the understanding is in error, we certainly would be pleased to proceed promptly with the construction of the Helena Valley unit upon execution of the pending repayment contract with the 12,533-acre district.

Senator O'MAHONEY. If this contract were understood, as Mr. Rossiter understands it, namely, as a binding agreement between the Government and this Helena Valley Water District created in the court, then the Bureau would be ready to proceed with the construction of the project, and this construction would not include the lands which would require supplemental water.

Mr. DOMINY. Yes, sir. The capacity for the supplemental lands in the tunnel and in the main canals, regulating reservoir etc., would be included.

Senator O'MAHONEY. They would not be affected by the contract or by the construction, and they could go on as they now operate.

Mr. DOMINY. That is right, sir, but the Government would have an investment in a unit designed to serve 17,631 acres with a contract with only 12,553 acres.

Senator O'MAHONEY. We are to understand, therefore, that it is your position that you would rather not build the project at all than carry out the contract that was approved on November 5, 1954.

Mr. DOMINY. No, sir, that is not our position. We presented a plan to the Congress through the Bureau of the Budget for a 17,631-acre Helena Valley unit. In the process of getting the appropriations for that unit, it is our understanding that the Congress said you shall have repayment coverage for 12 percent approximately of the total costs allocated to irrigation before you proceed with construction. Admittedly that cannot be found as definite as I have just stated it. Nevertheless, our analysis of the total record, sir, leads us to that conclusion. But as I have said, if we are in error, and the Appropriation Committees advise us that we are in error, we will proceed to construct the Helena Valley unit as we have described it, and will place therein the extra capacity in the hope that the supplemental lands will ultimately take water and that the Government will receive those additional revenues beyond that contracted for with the Helena Valley District.

Senator O'MAHONEY. I think that is a very clear statement, Mr. Dominy. Are you speaking with the authority of the Bureau?

Mr. DOMINY. I believe, sir, I am speaking with the authority of the Bureau and the Department of Interior. Mr. Frye is here from the Assistant Secretary's Office.

Senator O'MAHONEY. I don't want to embarrass anybody, of course, but owing to the nature of conditions, I wanted to get this hearing so that the representatives who had already arrived could go forward.

#### STATEMENT OF EDWARD D. FRYE

Mr. Frye, do you feel that this is the correct point of view of the Department?

Mr. FRYE. I do, sir, entirely.



### ADDITIONAL STATEMENT OF G. W. LINEWEAVER

Mr. LINEWEAVER. Mr. Chairman, I would like to have inserted in the record the excerpt of the testimony before the Senate Appropriations Committee to which Mr. Dominy referred.

Senator O'MAHONEY. This is the testimony before the Senate committee which was not printed in the committee print?

Mr. LINEWEAVER. Yes, sir. I'm sorry it did not come to our attention until after the material had gone to the Government Printing Office.

Senator O'MAHONEY. It will be made a part of the record at this point.

(The document is as follows:)

EXCERPT FROM HEARINGS BEFORE SENATE APPROPRIATIONS SUBCOMMITTEE ON PUBLIC WORKS APPROPRIATION BILL (H. R. 6766) FISCAL YEAR 1956, MAY 31, 1955, FOLLOWING INTERIOR-RECLAMATION JUSTIFICATION THAT APPEARS ON PAGES 3, 4, AND 5, OF COMMITTEE PRINT

Chairman HAYDEN. How about the Helena Valley unit in Montana? There is a proposal in the budget that no part of that appropriation be used to initiate construction of the Helena Valley unit in Montana until a repayment contract has been executed.

Are you having any trouble in getting a contract?

Mr. DOMINY. We have not finished the organization of the irrigation district as yet, Mr. Chairman.

In Montana just last week, the State officials held the required hearing under Montana law to review the petitions for the formation of a district. It is a little complicated, in that part of the lands to be served are dryland at the moment, and have never been under irrigation. Additional areas have had some irrigation in the past, an inadequate supply, and would be provided with a supplemental supply under the Helena unit. There is some problem of getting those 2 groups together and in 1 organization.

Chairman HAYDEN. Well, in the meantime, you are not going to spend any money until they do?

Mr. DOMINY. That is right; the law is specific and the limitation is specific, and we are not authorized to proceed until that district is formed and a satisfactory contract completed.

Chairman HAYDEN. All you can do is hold out to them that if they do come to an accord, there is some money available to carry on the work?

Mr. DOMINY. That is right, sir.

Senator ELLENDER. Are we to understand, then, that none of this money is going to be spent until the Government is assured of recovering it all if it does spend it?

Mr. DOMINY. That is right. The repayment contract in this case, as I mentioned a moment ago for Heart River, would only recover a modest proportion from the water users. The balance would come from power revenues but we will not start the work until there is a contract.

Senator ELLENDER. Is this entire sum to be spent for irrigation? I am talking about the Helena Valley unit now. There is no power involved in that; is there?

Mr. DOMINY. No, sir; but it is part of the overall Missouri Basin plan and power revenues would be assigned to help pay out this particular unit.

Senator ELLENDER. You mean pay out under what conditions?

Mr. DOMINY. The total cost of this unit is a Federal investment of \$680 per acre, of which we expect to get back under our repayment contract \$88 per acre, and the balance of \$592 per acre, as given on page 69 of the justification, would be recovered from the overall power revenues of the Missouri Basin.

Senator ELLENDER. With interest?

Mr. DOMINY. The power portion of the Missouri Basin allocation is repaid with interest. Any subsidy of the irrigation allocation paid by power is without interest.

Senator ELLENDER. That is 40 years; is it not?

Mr. DOMINY. Yes; it would be a 40-year repayment contract.

Senator O'MAHONEY. Now, Mr. Rossiter, I have been questioning you and not permitting you to tell your story as you have intended to tell it, so you may proceed.

Mr. ROSSITER. In answer to Mr. Dominy, I would like to go into that phase of it; that is, as to the Bureau's position.

Going back to the first meeting, and the discussion that was had, and knowing the background of the supplemental water users, there was considerable discussion and we took the position right then, as I have stated before, that if the supplemental water users had to be tied down to a written contract—and I distinctly remember making the statement to the Bureau's representative—we might as well forget it. We would go into a lot of work and spend a lot of effort on the matter, and we could not put it over, because I didn't think the supplemental water users could be sold on it. Before we proceeded, we wanted that question out of the way.

I don't know what went on back and forth between the Department, but before we went ahead with this district, we were informed that we would proceed on the theory that if an irrigation district was formed for the full supply land water that construction of the unit would be gone ahead with. The original understanding was that the difference between what we would pay and what the Government expected to recover, this 12 percent, would come from the sale of water to the supplemental water users. It was all understood and pretty well agreed that they undoubtedly would have to have water in dry years, and that they would buy it and it would be sold to them on a sale-of-water basis.

The original understanding was that the irrigation district or the proponents of the irrigation district would take over that cost and would assume that cost.

Later on, when the matter went through the Bureau and finally came down, we were informed that because of regulations or legal entanglements with the Bureau and its operation that the irrigation district could not serve as the fiscal agent of the Government. Therefore, the irrigation district would assume the cost of operation and maintenance of the full supply—17,000 acres, costs of operating the system they proposed to build for the full supply—would be borne by the district as formed. That the Bureau of Reclamation would then take over the sale of water for the recovery of the difference of the construction cost to be repaid. The difference between what the district would pay and what they wanted, would come from the sale of water in gross. In other words, the Government was to take the gross amount of the sale of water and apply it.

Senator O'MAHONEY. What you are saying now is set forth in your summary statement which appears on page 21 of the committee print.

Mr. ROSSITER. Yes, sir.

Senator O'MAHONEY. I must compliment you on the accuracy with which you have summarized the language in the paragraph on page 21.

Let me summarize to see if I can understand what the picture is both from the point of view of yourself and of the Bureau of Reclamation.

Understanding as I do that the Bureau had planned a water system adequate to take care of 17,000 acres, which would include the lands which were within the district as organized in the State court, and would not include the lands which need only supplemental water, the

Helena Valley District was and is willing to undertake the responsibility itself to sell water from the 17,000-acre plant to the supplemental landowners so that you have no objection—that is to say the district has no objection—to the full construction of the 17,000-acre plant because you are confident that, as the court seemed to be confident, the owners of the supplemental land will eventually find it necessary to obtain this additional water, and it is your contemplation, Mr. Rossiter, that the district on selling this water will make adequate return to the Bureau of Reclamation.

Mr. ROSSITER. That was the original understanding on which we would have gone forward at the time. I am not in a position to say that they would agree to that now after the Government has changed and says it will take it over. If their position is correct, in other words, as a fiscal matter the irrigation district cannot be a fiscal agent of the Government; they can't do it. I am not in position to say that the district would assume that now. We want to go ahead on the basis which they changed it to. We will pay for the operation and maintenance costs and the Government will sell the water in any kind of agreement they want to make with the supplemental water users, and they will apply that in gross to their construction. They don't have to take anything out of it for operation and maintenance. We assume that.

Senator O'MAHONEY. Then my understanding is that because you have been advised by the Bureau of Reclamation that an irrigation district organized under the laws of the State of Montana cannot undertake to collect charges which were bound to go into the Treasury of the United States, you would have no objection to the Department selling that water itself and making such proper disposition of it as the law requires.

Mr. ROSSITER. That is right.

Senator O'MAHONEY. But at the same time, that leaves unsettled the question of whether or not those landowners who have land which has been described as the supplemental water land will in fact want to use that water.

Mr. ROSSITER. That is right.

Senator O'MAHONEY. But you testify, do you not, that the judge in the Montana court was of the opinion that the supplemental water would be necessary for the proper cultivation of the land of these persons who are not in the district?

Mr. ROSSITER. The testimony before the judge by Bureau representatives was that their study of water possibilities in the Helena Valley was that the supplemental water users for the land that they had only had an assured supply of 47 percent. So the conclusion was that in any kind of inadequate moisture year, the supplemental water users in order to do a good job would want to buy water. They would need it, and would want to buy it, and that the sale was there.

Senator O'MAHONEY. That was the judgment of the Bureau.

Mr. ROSSITER. That was the judgment of the Bureau and so testified. It was from that testimony that the judge drew his conclusion.

Senator O'MAHONEY. Is that your understanding, Mr. Dominy?

Mr. DOMINY. Yes. I don't disagree with that at all.

Senator O'MAHONEY. In other words, it is agreed that in the court representatives of the Bureau testified that these so-called supple-

mental lands now have only a 47 percent supply of the water needed to provide adequate cultivation.

Mr. DOMINY. That is our judgment.

Senator O'MAHONEY. The Bureau feels that they will eventually have to use this water anyway?

Mr. DOMINY. We feel that it will be highly advantageous to them in their farming operations to acquire supplemental water.

Senator O'MAHONEY. But inasmuch as they were not included in the district, and inasmuch as the contract of November 5, 1954, approved by the Commissioner, was understood by the members of the irrigation district as being the contract—I am not going to make this a question, but as a declaratory statement—those facts seem to lay the basis for the thought that the Bureau is obligated in all the circumstances to proceed with the construction of the project as it was understood by these water users when their district was formed, and when the Commissioner approved on November 5, 1954, the contract.

Mr. Lineweaver, do you have anything else?

Mr. LINEWEAVER. Yes, I think, for the record, Mr. Chairman, some reference should be made with respect to the suggestion of the city of Helena possibly becoming a customer for some of the water that was originally intended to be held for the supplemental water lands.

Mr. ROSSITER. The city of Helena has been short of water on a number of occasions. They have reached the limit of expansion of the present system. So they have to turn to some other source for their supply. We felt and we went into this when we started it, because we thought it would make a better project, all the way around—the same as we are perfectly willing to admit with the Bureau that if we could get the supplemental water users tied down to a guaranteed amount, it would make a better project—

Senator O'MAHONEY. Is there any evidence that the city would want to buy this water?

Mr. ROSSITER. The city has engaged the services of an engineering firm out of Denver who have gone into that point. They are going to make a report to the city. It is my understanding—I don't know, because I was not on the inside—that they have concluded that the only place that the city can turn to with any degree of economy, is to this system. If the system is constructed as contemplated, the city can receive any amount of water for any foreseeable expansion from this system. They are now waiting for the Bureau to submit to them what the costs will be. I understand that is pretty well agreed upon. The only thing left is that the engineer in Denver is supposed to approve it. It had to receive approval of the chief engineer in Denver before that amount was to be submitted to the city.

I have talked to 2 or 3 of the Commissioners who say they are very much interested in it, and if the plan is economically feasible, and the amount that the Bureau submits can be handled, that they are very much interested.

My own personal opinion is that just like the sale of water to the supplemental water users, eventually the city is going to take this water out of this plant.

Senator O'MAHONEY. Mr. Herrin, Mr. Olson, and Mr. Helberg, will you come forward please?

Mr. LINEWEAVER. Before they come forward, I would like to close this one point.

In Secretary Aandahl's letter to Senator Hayden, this statement was made:

The preliminary thinking is that the city of Helena may pay with interest as much as \$942,000 to apply on the cost of construction of the Helena Valley unit.

I ask Mr. Dominy, that \$942,000 would satisfy the 12 percent; is that right?

Mr. DOMINY. Yes. I would like to make one other statement. Senator O'Mahoney. We have proceeded with the preliminary work on designs and estimating of the detailed engineering so that there has, as of now, been no delay toward getting this project into construction, if it is proper to proceed, and we get that word. The first contracts would not be awarded under our plan—in other words, we would not have the specifications ready and the engineering completed—until in December and January. So there will have been no delay on the construction of the Helena Valley unit if the replies to our letter to the Appropriations Committees indicate that we have misinterpreted the record.

Senator O'MAHONEY. Do I understand that the Bureau is proceeding with these preliminary plans?

Mr. DOMINY. That is right. We will have everything ready to award the contracts on schedule if this problem is clarified and the proposed Helena Valley District contract is executed.

Senator O'MAHONEY. This time would have been necessary in any event.

Mr. DOMINY. That is right, sir.

Senator O'MAHONEY. In other words, had there been no question of this kind at all, you would not yet be ready to proceed with the construction.

Mr. DOMINY. No, sir. We could not have physically completed the engineering and advanced the detailed specifications to the point of awarding earlier than the middle of December or the early part of January in any event.

Senator O'MAHONEY. Mr. Frye, do you wish to add anything at this point?

Mr. FRYE. Not a thing.

Senator O'MAHONEY. Have I overlooked anything, sir?

Mr. FRYE. I think the Department's record is perfectly clear, sir.

Mr. O'MAHONEY. Mr. Herrin, will you speak for the group?

Mr. HERRIN. On part of it I would like them to speak for themselves, sir.

Senator O'MAHONEY. Will you take the lead?

Mr. HERRIN. Yes, sir.

Senator O'MAHONEY. Very well. Let me first ask each of you to give your full names and addresses to the reporter so that they may appear in the record.

Mr. HERRIN. Gordon Herrin, Route 1, Helena Valley, Mont.

Mr. HELBERG. Harry Helberg, Route 1, Helena, Mont.

Mr. OLSON. Albert Olson, Route 1, Helena, Mont.

Senator O'MAHONEY. Now proceed.

**STATEMENT OF GORDON T. HERRIN, HELENA, MONT.**

**Mr. HERRIN.** We are here representing the people or farmers who objected to the formation or being included in the district when it was formed by the district court in Helena. We also represent a great many of the supplemental users of the Helena Valley unit.

**Senator O'MAHONEY.** Then there are two groups.

**Mr. HERRIN.** There are two groups.

**Senator O'MAHONEY.** Those who appeared and objected to being included.

**Mr. HERRIN.** That is right.

**Senator O'MAHONEY.** Those who did not appear or make objection, but who are supplemental users.

**Mr. HERRIN.** That is correct.

**Senator O'MAHONEY.** Or likely to be.

**Mr. HERRIN.** That is correct.

**Senator O'MAHONEY.** When you say supplemental users, you really mean they don't have sufficient water now?

**Mr. HERRIN.** No, I don't, sir.

**Senator O'MAHONEY.** You don't mean that?

**Mr. HERRIN.** No, they are the people declared supplemental users by the Reclamation Service.

We feel that there are several things that should be called to this committee's attention. First, to the formation of this district. The original district was brought about by several individuals who had every right to form a district, going about selling this district to the farmers. However, while they went around selling the district, they used a definite plan report of the Bureau of Reclamation for the project which called for a 17,631-acre project, and many other statements which I will try to bring out to this committee, and consequently people signed on this basis.

After the court hearings proceeded, they have formed a district of some 13,000 acres, and have not retold the story of what the district actually was formed on. If I can make myself clear, during these proceedings this book was placed in evidence as a part of the district. While being placed in evidence, the repayment portion of the book was removed and never procured or brought into evidence.

**Senator O'MAHONEY.** Did you appear in the court?

**Mr. HERRIN.** No, sir. I was there at all the hearings, I might say.

**Senator O'MAHONEY.** Did you make any representations to the court?

**Mr. HERRIN.** Mr. Helberg and Mr. Olson were both represented at the court.

**Senator O'MAHONEY.** I was trying to find out whether you testified in the court hearing.

**Mr. HERRIN.** No.

**Senator O'MAHONEY.** Why not?

**Mr. HERRIN.** I was not asked. It was to be the full supply users that were actually forming the district. If you understand me, Senator, they were trying to form a district of thirteen-thousand-some acres. Yet in the original signing for each of the people, they signed on this proposition of 17,631 acres. That was the thought the size

of the district would be when they got the original signatures. Then somewhere along the line when they realized—and why they realized I might say I do not know—that the supplemental users are not interested, being a supplemental user, I was never contacted or asked if I wanted any supplemental water—

Senator O'MAHONEY. Let me interrupt you here. I find that time is running on. Suppose we take a recess until 2 o'clock.

(Thereupon at 12:55 p. m., a recess was taken until 2 p. m., the same day.)

#### AFTER RECESS

Senator O'MAHONEY. Mr. Herrin, are you ready to proceed?

#### STATEMENT OF GORDON T. HERRIN, HELENA, MONT.—Resumed

Mr. HERRIN. Yes, sir.

Mr. LINEWEAVER. Mr. Chairman, I suggested to Mr. Herrin and these gentlemen yesterday that they prepare a statement and then summarize orally with their statement going into the record as they have prepared it. In order to save time, if they would summarize their statement, it would be appreciated.

Senator O'MAHONEY. I want you to have your time so that you may set forth your case for the committee. So proceed, Mr. Herrin.

Mr. HERRIN. Thank you. I don't think I did before noon tell you my situation in the Helena Valley. I own 240 acres of irrigated ground in Helena Valley. I have lived there all my life. I was born there in 1918. I feel that I am capable of telling some of the conditions that have existed over that period.

Also my two associates here have also been associated in the Helena Valley all of their lives, which I think is important that the committee understand.

There are several points that we find in the definite plan report of the Bureau of Reclamation that have been altered up to date, and to our knowledge the people that live within the area have not been properly exposed to. If you would care to, I will bring those out, or if you would rather, I will file them, in my report.

Senator O'MAHONEY. I want you to be satisfied with your presentation. What you said and what you write will be before the committee, but I want you to be sure that you are stating your case as you want to state it.

Mr. HERRIN. As a supplemental user, in their report we find that they are recommending border dikes to irrigate 65 percent of the area. That is on page 26.

A group of farmers that we represent surely agree with this, and are using such at present. Our dikes were designed by the Soil Conservation Service. But we find that it takes 200 miner's inches to irrigate 10 acres and we have to use that for 24 hours in order to do it. With the use of these dikes this is the same as 1 acre-foot per acre.

We farmers know that to raise our alfalfa hay, and I might mention due to our season, we can only get 2 crops of hay in the season, have to irrigate 5 times during a normal season, which would amount to 5 acre-feet for alfalfa hay ground each year, and also small grains would require 4 irrigations per crop or 4 acre-feet. On a normal

year we have to water our potato crop 6 to 8 times which amounts to 6 to 8 acre-feet per season.

I have this type of ranch where I raise small grains, potatoes, and alfalfa hay. My water is sufficient to carry on this type of a program. So I don't feel I should be a supplemental user. However, I do feel that the overall canal that is designed to deliver 2.2 acre-feet to the farmers is insufficient to do the job.

Another thing that I think the committee should know is that the farmers we represent own only family size farms of about three to four hundred acres. This is their entire holding. I also think that the committee should know at the same time 4 people who want the proposed unit own land or are part of companies who own land totaling well over 200,000 acres. We feel that reclamation projects are designed for family size farmers.

Senator O'MAHONEY. How many of those individuals are there?

Mr. HERRIN. There are 4 individuals, and their total acreage is well over 200,000.

Senator O'MAHONEY. Not in this area.

Mr. HERRIN. Not in this unit. Going a little further, Senator, we feel that reclamation projects are designed to help family sized farmers, not large landowners, to improve portions of their large holdings. I might dwell on that just a little bit.

I happen to be a committeeman for the FHA in the Helena unit. It is our instructions to keep our loans that we O. K. there under the family size units. I understand in the definite plan of the report the FHA is considered one of the loaning agencies or the Government loaning agency that would help to finance these farmers once they are established.

We find that the definite plan report farmers pay a varied rate according to their land classification, yet they were led to believe that the cost would be \$5.40 per acre. At this time I would like to refer to page 37, if I may, of the definite plan report down toward the bottom of the page:

Payment capacity per acre by land classes by the farm budget method with delivery of full water recovery based on long-term project applies cost relationship for prices paid and received estimated as follows:

Class I, \$9.55; class II, \$7.16; class III, \$4.29. The weighted average is \$6.21.

It is my feeling that the people are not informed that if I have class I ground I will pay more than the man that has class II. This group feels that every man should know what his cost will be per acre so he can know whether he can pay these water bills or not.

Earlier today in testimony it was said that the Montana Power Co. has pumped in the Helena Valley some 30 years. I, having lived in the Helena Valley that length of time, know what happened. They pumped there at a rate of \$1.75 per acre-foot. The ranches they were pumping to eventually become owned by the Montana Power Co. due to the fact that they could not pay their water bills. I will grant anybody at that time it was a low-price period, but I also, being in the farming business right now, find that the ratio between cost of production and price received is very low, or net profit is nearly the same for both periods. I feel that should be considered definitely.

The report states on page 11 that the county's financial situation is very good. I am not quoting from the report. If you would like me to, I would.



Senator O'MAHONEY. It is not necessary.

Mr. HERRIN. And that the level of living of the farm families in this area is in the upper 10 percent of all Montana counties. Is it any wonder that these farmers do not wish to burden themselves with an irrigation project that is not economically sound? I refer you to page 54 of the plan, which is the justification of this irrigation system:

*Economic justification.*—By using the assumptions and criteria set forth below, the Helena Valley unit is not justified when comparing only primary benefits with the estimated costs. However, when the secondary and general benefits (indirect and public), as measured by the Bureau of Reclamation procedures, are combined with the primary benefits, the total benefits exceed the estimated cost.

That is according to the Bureau of Reclamation. I don't feel that our valley should be subject to an unsound economic practice by a Government agency as far as we farmers are concerned. Why, for secondary reasons, should we be subject to taxation that we can't pay?

Senator O'MAHONEY. Of course, that is not the case as described there. This is apparently a project in which the repayment from the farmers is only a portion of the repayment which the Government receives. At least a portion of this comes back from power revenues.

Mr. HERRIN. I think in this economic justification that is taken into consideration.

Senator O'MAHONEY. That is what it said there. I didn't interpret that as meaning that, considering the power revenue and other beneficial results, the project was uneconomic. If the Bureau of Reclamation had made such a finding, the Secretary could not have made such a recommendation as he did make to the Congress for an appropriation.

Mr. HERRIN. However, it says on page 55, when secondary general benefits, indirect and public, are considered, as those expected to occur indirectly from irrigation development.

Senator O'MAHONEY. That is a matter of interpretation.

Mr. HARRIS. We felt that meant that the benefits would be derived—the secondary benefits wouldn't be the power. The power is already there.

Senator O'MAHONEY. Let me see the document, please.

Mr. HERRIN. Yes, sir.

Senator O'MAHONEY. This is copy No. 44, United States Department of Interior, Bureau of Reclamation, Definite Plan Report, volume 1, General Plan, Helena Valley Unit, Montana, Helena, Great Falls Division, Missouri River Basin Project, Region 6, Upper Missouri District, Great Falls, Mont.

Mr. DOMINY, you are familiar with this document?

Mr. DOMINY. Yes, sir.

Senator O'MAHONEY. Do you know what the meaning of the language just read by Mr. Herrin is from the point of view of the Bureau of Reclamation?

Mr. DOMINY. Yes. The intent of that statement is to point out that if the increased benefits to the agricultural lands alone are taken into account, the benefits would not be sufficient to offset the approximately \$12 million cost of the project. But in addition to the direct benefits to the lands benefited, there are the corollary regional, State, and Federal enhancements from the increase in productivity that would come about through the increased water supply for this area. That is the intent of that statement; to point out that when these indirect and corollary benefits, in addition to the direct benefits from the land, are

taken into account, then the project is considered feasible. I believe the benefit ratio shown in the report is 1.37 to 1, so it is more than 100 percent on the benefit ratio; it is more than unity. Therefore, the Department did recommend this as one of the Missouri Basin units.

Senator O'MAHONEY. Measured by the standards of the Bureau of Reclamation, this is a feasible project.

Mr. DOMINY. Yes, sir.

Mr. HERRIN. May I ask a question? Wasn't that based on 17,631 acres?

Mr. DOMINY. Yes. The Helena Valley unit, which we have described to Congress, and which we propose to build, is premised on 17,631 acres.

Mr. HERRIN. Not 13,000, sir.

Mr. DOMINY. That is right, sir.

Mr. HERRIN. We find that under present plans the construction cost would be satisfied to about 7 percent in 40 years by the district. We find three alternative plans in the back of the definite plan report that are above 13 percent. Also, the Bureau admits that they are more feasible in the Helena area.

I would like to refer you to plan 3 in the back of the book. There it says that this proposed development plan would rehabilitate the existing pumping systems at Lake Helena without expanding the area now served; an irrigable area of 5,067 acres would be served with full supply of water. Pumping power would be furnished by Canyon Ferry powerplant.

#### REJECTION OF ALTERNATIVE PLAN NO. 3

This alternative plan has the best benefit ratio of any of the plans considered for the Helena Valley unit. It was rejected for the following reasons: It would be a status quo development. It would develop only 30 percent of the potential land resources. It would be difficult to meet operation and maintenance costs during unfavorable years. The repayment rate of class III land is less than required for the annual operation and maintenance. Exclusion of class III acreage would reduce the project 15 percent. This might result in excluding the remaining acreage because of the inability to pay the increased operation and maintenance costs which would result.

It is our thought here that this plan would supply the people that are now asking and wanting you to push through the Canyon Ferry unit plan. Not only would it do that but the people that wish to be excluded, who were included due to the district court's decision, could be allowed out.

Senator O'MAHONEY. How many such people are there?

Mr. HERRIN. There are approximately 5,000 acres that would like out.

Senator O'MAHONEY. Is that the total?

Mr. HERRIN. That is the total. How we arrived at that is as follows: There again is where we are kind of at a loss, Senator, because that is when we start thinking of the 13,008 acres, rather than the 17,631. There has been a very loose tie between those two figures. When they switch one from the other, as I tried to mention this morning, there seems to have been no going back over and explaining to the

people the change. They signed under the 17,631, many of them, and then when they switched to 13,008, there was no explanation.

Senator O'MAHONEY. What is your recommendation to the Bureau and to the Congress? What do you want?

Mr. HERRIN. We recommend that the alternate plan No. 3 be accepted and put into effect. There is enough money appropriated to put that total plan into effect.

Senator O'MAHONEY. Then are we to understand that it is your desire to have a program that would benefit some 5,000 acres plus, and which therefore would disregard wholly some 11,000 acres plus?

Mr. HERRIN. No. I don't feel that is right, Senator. If they represent these people, if then we can get 5,000 acres of the 13,000, and some acres that they propose for the district, and some 6,000 acres of that district wish to be eliminated or left out, then I say that a great percentage of the people that want water could be included.

Senator O'MAHONEY. Could be included in what?

Mr. HERRIN. In this program here. They would be included. The 5,067 acres which would be served by rehabilitating the present pumping system are 100 percent people that actually wanted this district. They are included in the 60 percent of the 13,000.

Senator O'MAHONEY. Were any representations to this effect made to the court?

Mr. HERRIN. May I make this statement as to that for the record? The decision of the court was made on one thing and one thing alone: Would this water benefit the land?

Senator O'MAHONEY. You don't answer my question. Were any representations to the effect of your statements made to the court?

Mr. HERRIN. These things that I am saying were rejected in every case by the judge due to the fact that it did not include whether it was a benefit to the ground or not.

Senator O'MAHONEY. Were they presented to the court?

Mr. HERRIN. Yes, sir.

Senator O'MAHONEY. By whom?

Mr. HERRIN. By the different lawyers. Mr. Swamberg as an example.

Senator O'MAHONEY. Who was he representing?

Mr. HERRIN. He was the lawyer representing the farmers who wished to be excluded from the district.

Senator O'MAHONEY. So the farmers who wished to be excluded were represented before the court?

Mr. HERRIN. Absolutely.

Senator O'MAHONEY. I take it that your position is that you reject and ask the Bureau of Reclamation to abandon the 17,000-acre program—the facilities sufficient to cover 17,000 acres plus—even though some 4,600 acres are presently excluded, and you want to substitute for that program a program that would supply water not from the new project but from the Canyon Ferry project; is that right?

Mr. HERRIN. No; from the Lake Helena pumping system as it now is.

Senator O'MAHONEY. The Lake Helena pumping system, if I understand it correctly, is now operated by the State conservation board.

Mr. HERRIN. Yes, sir.

Senator O'MAHONEY. You want the Bureau of Reclamation to take that over?

Mr. HERRIN. I don't say that I want the Bureau to take it over. I say that I think those farmers are entitled to the water. We are not here trying to stop those farmers from having water. Under plan 3, which is the Bureau's plan 3, they would receive water.

Senator O'MAHONEY. Was any appeal taken from Judge Fall's decision?

Mr. HERRIN. No appeal was taken from it for the reason that the attorney thought it would be of no avail in Montana, because they feel that it has to be beneficial to the ground.

Senator O'MAHONEY. What was the date of that decision?

Mr. LINEWEAVER. June 28.

Senator O'MAHONEY. Do you agree that the date of the decision was June 28?

Mr. HERRIN. Yes; we do agree.

Senator O'MAHONEY. Do you know when the appropriation bill was passed?

Mr. HERRIN. No; I don't.

Senator O'MAHONEY. What was the date of that?

Mr. WOODRUFF. The President signed the bill on July 15. It must have passed the Senate 10 days earlier.

Senator O'MAHONEY. Was any representation made to the committee?

Mr. HERRIN. Not that I know of.

Senator O'MAHONEY. Was any representation made to the Bureau?

Mr. HERRIN. Not that I know of.

Senator O'MAHONEY. Are you recommending that Congress should repeal this action?

Mr. HERRIN. I am recommending that this committee recommend that this whole system be rel looked into by an unbiased individual. I think you will find that our findings are correct. We are representing farmers that have been there 50 and 60 years. I think this investigation will bear out what I have said as to what they can produce and what they can do and also the ultimate outcome.

Senator O'MAHONEY. Have you made any representations to the State authorities?

Mr. HERRIN. No; I have not. This appeared in the Helena paper 3 days after Judge Fall's decision:

Six thousand acres in one block of choice land in the heart of Helena Valley is well irrigated with decreed water rights supplemented by wells. Crops normally raised on this land include 4,000 bushels of grain, 4,000 tons of hay, 26,000 sacks of potatoes, 1,000 tons of beets, and will support 3,000 head of cattle. This is very productive ground, ideal for diversification. This tract has been pooled and all ground adjoining. Land for sale includes old established and well improved ranches in the valley. Modern homes, television and telephone with superior schools, located from 2 to 8 miles from Helena. This land has never been advertised for sale previous to this time. In the heart of the Rockies with abundance of wildlife and fishing. For more information write Post Office Box 4341, Helena, Mont.

Senator O'MAHONEY. Who wrote that?

Mr. HERRIN. That was gotten together by the group that we are representing. They feel that if our neighbors are to be forced into such a program that we no longer care to farm under that kind of a condition.

I don't think that this committee realizes how serious this proposition is to individuals. I think it definitely should be brought out,

and I think Mr. Helberg here will bring that out. At this time I would like to put in the committee's evidence a letter that was written to the editor of the Montana Farmer, a Montana paper——

Senator O'MAHONEY. By whom?

Mr. HERRIN. By myself. The letter was O. K.'d by the group we are representing.

Senator O'MAHONEY. It may be received.

Mr. HERRIN. We are just farmers, Senator. We don't know what the procedures are. That is why we are here. That is how to go about it.

Senator O'MAHONEY. You are entitled to be here, and the committee has to make a record of what you say.

Mr. HERRIN. I appreciate the time to present our case. I do think that you probably wonder in part why the lack of interest until such a late date. I will be honest with you. We didn't realize that so many things could happen and so many of our individual rights be infringed upon so rapidly that we were a little asleep.

Senator O'MAHONEY. Tell me how your individual rights are infringed.

Mr. HERRIN. May I read the letter I have written?

Senator O'MAHONEY. Certainly.

Mr. HERRIN (reading):

THE EDITOR, MONTANA FARMER-STOCKMAN,

*Great Falls, Mont.*

DEAR SIR: Are the American farmers losing their individual rights they so cherish?

I'm taking time to write this letter right in the middle of haying and summer work because what I see happening to my neighbors scares me.

Not long ago one of my nearest neighbors came to me and said that a Bureau of Reclamation representative had been to see him and asked him to sign up for an irrigation district. My neighbor told him he had all the water he wanted and didn't care to be in the district. The Bureau representative informed him he would be in whether he wanted to sign or not. This seemed so ridiculous that he laughed. To think of a Government agency being able to tell a man, who owned his own ranch, that he would do as the Bureau of Reclamation said or lose his ranch. We both thought this talk was Russian.

Since this time several farmers grouped together and hired an attorney to see if they could be excluded from the district. It seemed to me a terrible thing that farmers should have to go to court to keep the Government (a government of the people, by the people, and for the people to protect the individual's rights) from forcing him to do something with his ranch that he didn't want to do, and in some cases could not do.

During the courtroom proceedings we found the Bureau representatives doing everything they could to force these people into the district. (I am fortunate—my land is not to be included in the irrigation district, but since I was intensely interested in the welfare of my neighbors, I attended the hearing whenever possible.) They evaded the truth and, in many cases, withheld evidence. A Government agency, designed for the good of all the people, was putting itself on one side of an issue, rather than presenting the true facts. I hoped I was dreaming. This sounded like a government of the few.

A report or survey, in book form, of facts, which is made on all reclamation projects, who produced in evidence at the request of the defendants, but upon inspection it was found to have several pages had been removed. These were never produced in evidence, though the defense lawyer requested it. Do we have Government agencies trying to withhold facts? Do such agencies have something to hide?

In some instances this district is forcing farmers to sell their ranches, which they have farmed all their lives. To explain this, let me tell the facts of one neighbor's plight. His entire ranch is in the district, but his ranch is a wild hay and lowland pasture operation. It is very similar to the Big Hole Basin

operation, which any rancher knows is very profitable. Now when this district is put in operation, his entire place will be drained and he will be forced to plow and level this ground for a new type of farming. Anyone who has worked this type of ground knows that it will take from 3 to 5 years to break up and get this ground in condition to produce.

During this time he will have lost his yearly income and yet have the terrific expense of working this ground. There are a very few farm operators in Montana that could stand all outgo and no income for 1 year alone, but surely not for 3. I am sure there is no bank that would extend credit on such a risk. Hence, he is forced to sell (but who will buy a ranch with such a burden facing him).

I think any fair-minded person can see that the individual farmer is in danger of losing his rights and independence. I hope your paper will investigate such Government activities and make the true facts available to all farmers who read this paper. Any further help I can give, I'll give gladly.

July 4, Independence Day, again is here. Let's all take time to recall its true meaning and value.

Sincerely yours,

GORDON T. HERRIN.

Senator O'MAHONEY. Well, you heard the testimony of Mr. Rossiter this morning that the commissioners of the district, which was approved by the court, have no desire whatsoever to have the 4,600-plus acres included in the district. Is that right or wrong?

Mr. HERRIN. That is correct.

Senator O'MAHONEY. Is that your understanding of the situation?

Mr. HERRIN. That is correct.

Senator O'MAHONEY. Well, if these 4,600 acres are excluded from the district, do you wish the committee to understand that they would nevertheless be penalized in some other way?

Mr. HERRIN. The people in the supplemental area would, if they are excluded from the district, very possibly not have any great amount of bearing, only to this part, Senator: If an irrigation project that is put in is unsound and places are improved, and yet they can't stand the burden of water, and they go back on the tax roll, that isn't going to help the other individuals that also live in the area.

Senator O'MAHONEY. Let us take it step by step. If I understood you, you said, a little while ago, that you would not be injured.

Mr. HERRIN. I said I would not be included in the district.

Senator O'MAHONEY. Well, would you be injured?

Mr. HERRIN. Yes, sir; definitely.

Senator O'MAHONEY. How?

Mr. HERRIN. I think in the economic report that you find there, there will be some 2,700 more beef cattle raised in this unit. There will be some 63,000 more dozen eggs, and several other items. Of these items, the Bureau of Reclamation's opinion is that the milk and egg production will be consumed in the city of Helena, and I have a unit now that I am raising these very things on, and if they become more abundant—and there is certainly a surplus of them all now—I might mention at this time, being president of the local farm bureau in our area for the years 1953 and 1954—I can appreciate the consequences. For the year 1954 I spent most of the time trying to do away with the surplus milk in the Helena area. I spent much time in that area trying to do something about their surplus problem. And yet they claim there will be a terrific amount of more milk, and that will be consumed in the local area. That is infringing on a market. In other words, it will create an oversupply on a market which I have built my ranch economy around. If I no longer can

sell my eggs for 30 or 40 cents a dozen, and I have to drop to 20 cents, there is no profit in it.

Senator O'MAHONEY. Well, if the situation for which you are contending is secure, then it means that the water which neighbors of yours now desire on the 12,000 acres will not get that water.

Mr. HERRIN. That is right.

Senator O'MAHONEY. So you want to narrow the area of irrigation and reclamation in your vicinity?

Mr. HERRIN. No.

Senator O'MAHONEY. You don't want it expanded.

Mr. HERRIN. No; I didn't say that. I will say this, that we have no objection to either alternate plan 2 or alternate plan 1, which are other plans that they have.

Senator O'MAHONEY. Well, would they not by increasing the water supply, increase the production too?

Mr. HERRIN. To a certain extent, yes.

Senator O'MAHONEY. Well, if they did increase the production, would they not to that extent bring about the condition you have just condemned?

Mr. HERRIN. To a smaller degree, that is right; which I am not objecting to. I am not afraid of competition. Don't get me wrong. But I do feel that a man who has developed his ranch—many of these ranchers I am speaking of have supplemental waters. Their supplemental waters were not sufficient. So they drilled wells at an expense to them.

But they went to that expense knowing what the price range, approximate price range, in their area was. This project will change that price range considerably.

Senator O'MAHONEY. Have you had any engineer go over these matters for you?

Mr. HERRIN. No; I haven't.

Senator O'MAHONEY. You have no engineering report on this?

Mr. HERRIN. No.

Senator O'MAHONEY. Do you challenge the engineering conclusions of the Bureau?

Mr. HERRIN. No; we don't challenge them. We think their plans are fair as far as they go. But we don't think that it is good for the people and good for our area to install a unit that even to their own feeling is not economically sound.

Senator O'MAHONEY. What is produced on this area now which would be included in the plan as approved by the Congress?

Mr. HERRIN. How do you mean—

Senator O'MAHONEY. The area which would receive water under the program as appropriated for by the Congress, the 12,000 acres.

Mr. HERRIN. The 12,000 acres would raise mainly potatoes and beets as a cash crop. I would say that would be their cash crop—row crops, also small grains and hay.

Senator O'MAHONEY. What do they raise now?

Mr. HERRIN. They raise potatoes and beets, also small grains and hay.

Senator O'MAHONEY. Without water?

Mr. HERRIN. No. I want to say this. I heard testimony here this morning. I understand there are only two of the people that are

included in the district that own supplemental water. I would like to correct that somewhat, and I probably won't have them all, but I can give you the names or tell you the number. We have at least 10 that have supplemental water that also have ground included in the district.

Senator O'MAHONEY. Did you consult Mr. Aldrich, of the Bureau of Reclamation, at any time?

Mr. HERRIN. Yes; we did.

Senator O'MAHONEY. Did you give him the information you are giving us now?

Mr. HERRIN. Yes; we did.

Senator O'MAHONEY. What was his position?

Mr. HERRIN. I might say it was rather vague to me, in the fact that we just couldn't seem to pin him down to an exact figure at any time.

Senator O'MAHONEY. Do you wish the committee to understand, as you said in that letter that was written to one of the papers, that officials of the Bureau—employees of the Bureau, I should say, rather—were trying to force farmowners in this area to do something they didn't want to do?

Mr. HERRIN. Senator, I would like to say at this time that I have written a letter to Mr. Dexheimer and retracted, as far as he is concerned, because I feel that Mr. Dexheimer—Commissioner Dexheimer—is trying to correct this situation that I feel was gotten into on the State or local level, and I think that Mr. Dexheimer is honestly trying, and I certainly, as I told Mr. Dexheimer in my letter, apologize to him as Commissioner. But I do think that he should—and I put that in the letter—investigate.

(The letter referred to is as follows:)

HELENA, MONT., August 26, 1955.

MR. W. A. DEXHEIMER,

*Commissioner, Bureau of Reclamation, Washington, D. C.*

DEAR SIR: I read an article in the Helena, Mont., newspaper stating you were demanding the true repayment plan for the Helena Valley irrigation project, and my respect for the Bureau of Reclamation program was restored.

I realize you do not know what has been going on up to date in respect to this project.

The letter, a copy of which I am enclosing, will give you some idea of what tactics the Bureau in Montana is using. I now realize that you don't authorize such.

Please understand that no group or member of a group is trying to stop the irrigation district for those who want it. All we are interested in is allowing farmers to make their own choice as to their own business or type of business and allowing those who choose to be excluded from the district. We don't feel it is in keeping with our American way of life and Government to have a Government agency able to break and destroy an individual's livelihood.

I wish to take this opportunity to apologize to you, for I realize the underhanded policies practiced in Montana are not your ideas.

I sincerely hope you will find time to investigate these tactics and practices.

Very truly yours,

GORDON T. HERRIN.

Senator O'MAHONEY. Have you made complaint against any individual?

Mr. HERRIN. We have made complaint as to the way the whole unit has been handled; yes.

Senator O'MAHONEY. But I say: Against any individual?

Mr. HERRIN. No.



Senator O'MAHONEY. Then do you wish to retract now the statement that some officials or employees of the Reclamation Bureau sought to force landowners to do something against their will?

Mr. HERRIN. No; I don't care to retract that statement.

Senator O'MAHONEY. Do you make it specific with respect to any individual?

Mr. HERRIN. No; I don't.

Senator O'MAHONEY. Well, why do you choose to make it a general statement and not a specific statement?

Mr. HERRIN. Because the Bureau of Reclamation at the trial in Helena had people there—several people—I wouldn't know who they were; I wouldn't want to say who they were. I think if you asked for the complete brief on the case of that trial, you will see what I mean.

Senator O'MAHONEY. Well, you mean the hearing before Judge Fall?

Mr. HERRIN. That is correct.

Senator O'MAHONEY. Of course, you are making a rather serious charge here.

Mr. HERRIN. That is right.

Senator O'MAHONEY. You are making the charge that representatives of the Bureau of Reclamation, appearing in court before a district judge, misrepresented the situation.

Mr. HERRIN. No; I am saying they avoided—and I think that is very clear to this committee. If I would put this in evidence here, this book of the Bureau's, and take out a certain number of pages, would you not say that I was trying to keep some of the evidence away from them?

Senator O'MAHONEY. Not necessarily. It may not have been relevant. I don't know. But that mere fact in itself, that some pages were not put in, is not at all conclusive that there was misrepresentation, or that that was done deliberately.

Mr. HERRIN. Well, I might mention that the pages that were removed were the repayment plan.

Senator O'MAHONEY. You had an attorney?

Mr. HERRIN. That is correct. And he asked them to deliver them, and they didn't.

Senator O'MAHONEY. Did the judge hear the request?

Mr. HERRIN. Yes, sir.

Senator O'MAHONEY. And the judge did not compel the matter?

Mr. HERRIN. No, sir.

Senator O'MAHONEY. Do you not think an assumption is justified, then, that the judge felt that they were not relevant? Of course, I do not have the issues that were before the court before me now.

Mr. HERRIN. We understand that. And that is the case of life, that you go with the decisions of your officials and your judges. We realize that. But we do want to put with this committee the thought that all the facts were not presented. And when you form a district and tell people that 17,000 acres will be included, when you sign a person up, and then later in the proceedings change down to 13,000 acres, and don't re-sign those people, we feel that that is misrepresentation.

Senator O'MAHONEY. Well, certainly you knew that you were not being included.

Mr. HERRIN. We did not know who was being included.

Senator O'MAHONEY. Well, you yourself knew that you were not being included.

Mr. HERRIN. No; I didn't know more than my neighbors did.

Senator O'MAHONEY. Do you know now?

Mr. HERRIN. I know that I am not being included. But to what extent, I do not know.

Senator O'MAHONEY. Well, I cannot see how you can have any doubt about that, in view of the statements; unless it be on the assumption that you believe that the project here approved by the Bureau of Reclamation and by the Congress is a project which is basically unsound and infeasible.

Mr. HERRIN. No. I don't think you quite get my idea, Senator. If my 2 neighbors, here, were forced into this district of 13,800 acres against their wills by the judgment of the court, I see no reason why I couldn't be forced into a supplemental contract under the same—

Senator O'MAHONEY. Were your neighbors forced into this?

Mr. HERRIN. Absolutely. Absolutely.

Senator O'MAHONEY. Are you familiar with the Montana law creating these districts?

Mr. HERRIN. Only to the extent that it was used at this trial that if they could get 60 percent of the signers in an area they would be allowed to form a district.

Senator O'MAHONEY. Well, you are challenging the action of the District Court of Montana?

Mr. HERRIN. No; no; I am not. I am challenging that the district court did not know the complete facts.

Senator O'MAHONEY. But you did not appeal?

Mr. HERRIN. No.

Senator O'MAHONEY. And you had a lawyer?

Mr. HERRIN. That is right.

Senator O'MAHONEY. All right, sir. Have you anything else to say?

Mr. HERRIN. No. I would like, though, if I may, to have my two associates to have a chance to speak.

#### STATEMENT OF HARRY HELBERG, HELENA, MONT.

Mr. HELBERG. Senator O'Mahoney and members of the Senate Interior Committee, I would like at this time to express our appreciation for having the opportunity to appear before a committee of this nature, a committee of this kind, to present a few of the facts pertaining to the Helena Valley Irrigation District as they affect some of the landowners in that area.

I am not going into a very lengthy speech, here. I am going to keep it down just as brief as I can.

Mr. Herrin, Mr. Olson, and myself are representing a number of ranchers and farmers in the Helena Valley that own land in the subirrigated area and also farmers that have water rights.

Senator O'MAHONEY. When you speak of the subirrigated area, what do you mean?

Mr. HELBERG. That is the land that the Bureau calls seeped land. And they anticipate draining this land and then selling the landowner water.

Senator O'MAHONEY. Is it seeped land?

Mr. HELBERG. It is subirrigated land. I myself have lived in the Helena Valley about 40 years. During those 40 years I have worked on my folks' ranch, for neighboring ranchers in the Helena Valley, and so forth, until 1930, when I acquired my own outfit. I went out for myself in 1930. I went ranching for myself, and since that time I have owned and operated my own ranch and am still operating a 630-acre ranch.

During the time that the discussions or this development plan for the irrigation part of this Canyon Ferry project was shaping up, we didn't have any idea—now, when I say “we,” that is myself and the ranchers that I represent that are in the subirrigated area—that this land was going to be drained to the extent that we would be forced to buy water from the Bureau of Reclamation.

So we didn't think too much about this until a short time ago; in fact, less than a year ago. I don't know just the exact length of time. We then discovered that the Bureau of Reclamation intended to drain this subirrigated land, against our will, to the extent that we had to buy water from the Bureau to raise a crop on this land.

Senator O'MAHONEY. How did you learn that?

Mr. HELBERG. They contacted us and told us that that was what was going to happen to us.

Senator O'MAHONEY. Have you any written statement from any of them?

Mr. HELBERG. No; I haven't a written statement.

Senator O'MAHONEY. Have you a report from an engineer?

Mr. HELBERG. No, sir. That was handed down by the judge's decision at the time of the hearing.

Senator O'MAHONEY. Did the judge's decision say anything about draining your land?

Mr. HELBERG. Yes, sir. He did.

Senator O'MAHONEY. I haven't read the judge's decision yet. It is here, of course.

Mr. HELBERG. What I would like to explain on that subirrigated land: At the present time it does produce a pretty fair quality of hay, somewhere in the neighborhood of three-quarters of a ton, to a ton. The pasture lands that are subirrigated will handle from one and a half to two head per acre, which is all that you can get out of irrigated pastures.

But the Bureau of Reclamation, upon putting this district in, or forming this district in the Helena Valley, maintained that they had to have the subirrigated land included in order to justify the formation of the district.

There is close to 5,000 acres of irrigable land in this area. I don't know just the exact amount, but it is somewhere in that vicinity.

If this project goes in, when it goes in, the Bureau of Reclamation will drain this land. Then the big responsibility of developing this land falls upon the operators' or the owners' shoulders. The development of that seeped irrigated ground, which is nothing more or less than just plain subirrigated land—

Senator O'MAHONEY. What is the source of the water?

Mr. HELBERG. Underground water.

Senator O'MAHONEY. If I understand you correctly, you have a farm which is presently subirrigated, and you are satisfied with that farm. You do not want any more water. You are satisfied with the

water you get from the underground source of supply. You do not want to have your land included in the district.

Mr. HELBERG. That is right.

Senator O'MAHONEY. It is not included in the district; am I right?

Mr. HELBERG. Yes; it is.

Senator O'MAHONEY. Oh, it is?

Mr. HELBERG. Yes; it is.

Senator O'MAHONEY. It was included in the district as formed by Judge Fall's decision?

Mr. HELBERG. That is right, sir.

Senator O'MAHONEY. Well, being included in the district, your ranch, you understand, will be drained.

Mr. HELBERG. That is right, sir.

Senator O'MAHONEY. Under the plan of the Bureau of Reclamation. And then you will be required to buy water from the new supply.

Mr. HELBERG. That is right, sir.

Senator O'MAHONEY. For use on the land.

Mr. DOMINY, do you understand that to be the situation?

Mr. DOMINY. Yes. The definite plan, Senator O'Mahoney, speaks of approximately 8,000 acres of so-called seeped or subirrigated lands presently being farmed, and makes the observation that some 4,400 acres of the 8,000 is, in the Bureau's judgment, capable of higher use through a drainage program and application of a surface supply of water under the Helena Valley plan.

Senator O'MAHONEY. It is capable of a higher use?

Mr. DOMINY. That is the Bureau's judgment, that by draining it and making it a part of the project, it would increase its productivity over its present state.

I understood Mr. Helberg to say that he doubts that that is true.

Is that the intent of your statement, Mr. Helberg?

Senator O'MAHONEY. No; the intent of his statement, as I understand it, is that he is satisfied with the situation as it is.

Mr. DOMINY. He mentioned that—

Senator O'MAHONEY. And he does not want to change the use of his land, even to the higher use which the Bureau thinks it could be put to.

Mr. DOMINY. The acreage quoted is 8,000 acres of the seeped and subirrigated land, and it is estimated that 4,488 acres of that can be improved.

Senator O'MAHONEY. Anything else, Mr. Helberg?

Mr. HELBERG. Yes, Senator. After this land was drained by the Bureau of Reclamation, as I started to say, the cost of the developing of this subirrigated ground falls on our shoulders. When I say "ours," I mean the farmers and ranchers that I represent that are in the subirrigated area. They will all be affected similarly to myself. Their land is similar to mine.

The cost of converting this land is tremendous. We are not in a position at this time to make a statement as to what it will cost, but it will go way beyond the cost that the Bureau of Reclamation says it will cost for diversion of this land to productivity, to farm ground.

Also, during the time that we are trying to develop this land, which will take from 3 to 5 years, we will not be able to raise a crop, very much of a crop at least, if anything, during the time that we are developing this ground. The ground has to be plowed and replowed,

disked, harrowed, leveled, sod-rotted, which will take a long time, from 3 to 5 years as nearly as we can estimate it. And I am saying these things from the standpoint that I have lived in that area for about 40 years. That is what I am basing my judgment on.

So the cost is going to be tremendous. The minute that this project is approved or as soon as this project goes into effect and the Bureau drains my ground, I am broke, along with several other ranchers that own land in this subirrigated area. And, in fact, all of the 4,800 acres are going to be under it—these ranchers will be broke. They cannot stand the pressure.

While draining that land, the 4,800 acres, there will also be affected the remaining 8,000 acres. So consequently, the remaining acres over the 4,800 will be practically ruined while developing the other, and it will also ruin the farmer that owns the ground.

Then we turn around and buy water from the Bureau of Reclamation to raise a crop on this land, providing that this land can be drained and can be farmed successfully at a profit. I am not doubting the statement of the Bureau of Reclamation or the engineers when they say it could be. I am not saying it can't be. I am not saying that it can be, either.

Senator O'MAHONEY. But you are saying that you do not want it done to your land.

Mr. HELBERG. That is exactly what we are trying to express. And we presented that same kind of a case at the hearing in Helena. And we were definitely not considered in any way.

Senator O'MAHONEY. How long did the hearing last?

Mr. HELBERG. Six days, if I remember right. We presented very good testimony, but the judge saw fit to make the decision the way he did, and so we are within the boundaries of this Helena Valley irrigation project, against our will.

Senator O'MAHONEY. You have summarized the case to your satisfaction, as you have presented it, or as it was presented to the court?

Mr. HELBERG. I was at the court.

Senator O'MAHONEY. I mean: Have you summarized the situation here, to us?

Mr. HELBERG. Pretty much; yes.

Senator O'MAHONEY. How many people feel as you do?

Mr. HELBERG. There are approximately 12 to 15 ranchers. I don't know exactly how many there are.

Senator O'MAHONEY. Why don't you know?

Mr. HELBERG. I have not got that report with me.

Senator O'MAHONEY. Well, how many people are you authorized to speak for? For how many people are you authorized to speak?

Mr. HELBERG. All the people that own land within the subirrigated area, except one whose land is advertised for sale.

Senator O'MAHONEY. How were you authorized by them to speak? Did they give you written authority?

Mr. HELBERG. We haven't the authority with us, in writing, I might say that I am chairman of this group of people in the Helena Valley that are within the subirrigated area.

Senator O'MAHONEY. Well, I was just asking you if they had given you any written authority.

Mr. HELBERG. No; no written authority. As I say, I am chairman of this group. When it came out in the Helena paper that a hearing

of this kind was to be held in Washington, these people came to me, and also Mr. Olson and Mr. Herrin, and asked us if we would not go to Washington, D. C., and try to get to present the facts before that committee.

Senator O'MAHONEY. You say there were 12 to 15 such persons? How many acres?

Mr. HELBERG. Well, they have, according to the Bureau of Reclamation records, 4,800 acres that will be susceptible to irrigation. They own around 8,000 acres.

Senator O'MAHONEY. What I am trying to find out now is: How many people, how many farmers, and how much land do you three gentlemen speak for, which is and are within the district created by the court? I am not talking of those outside of the district.

Mr. HELBERG. That is right.

Senator O'MAHONEY. You tell me, for example, that you and your land are within the district.

Mr. HELBERG. That is right.

Senator O'MAHONEY. Well, how many others are there in the same position as you? You see, Mr. Herrin is not in the district.

Mr. HELBERG. That is right.

Senator O'MAHONEY. So how many are within the district, and how many acres are within the district?

Mr. HELBERG. There are 4,800 acres within the district.

Senator O'MAHONEY. Well, how about this 4,600 acres which are not in the district?

Mr. HELBERG. Mr. Olson and Mr. Herrin are here representing them, and also myself, as far as that is concerned.

Senator O'MAHONEY. But you are not one of that crowd.

Mr. HELBERG. I am not one of that crowd.

Senator O'MAHONEY. I am trying to divide this into two categories, the number of acres which are not in the district, and the number of farmers, and then the number of acres that are in the district, and the number of farmers, both of whom are dissatisfied with the plan.

Mr. HELBERG. That is right, sir.

Senator O'MAHONEY. Now, when you speak of 12 or 15 farmers and 4,800 acres, are you speaking of 12 to 15 farmers who are in the same position as you are?

Mr. HELBERG. That is right, sir.

Senator O'MAHONEY. And who have 4,800 acres, approximately?

Mr. HELBERG. That is right.

Senator O'MAHONEY. And these are altogether different from those represented by Mr. Herrin?

Mr. HELBERG. That is right.

Senator O'MAHONEY. And Mr. Olson belongs to your classification?

Mr. HELBERG. He belongs to both. Because he is affected both ways.

Senator O'MAHONEY. I see. Your land is within and without?

Mr. OLSON. Yes, sir.

Senator O'MAHONEY. O. K.

Have you made your statement, Mr. Helberg?

Mr. HELBERG. Concluding what I have to say, taking this sub-irrigated area into consideration, that is, the farmers within this area, that would not care to be within the project, and also taking into consideration the farmers classed as supplemental water users, I

would say at this time that for a \$12 million project that is to be used, or for the \$12 million that it will cost to put this Helena Valley project to work, there will only be actual benefit to the lands that are under the present pumping plant in the Helena Valley now, which is at the present time being operated by the Montana State Water Conservation Board; due to the fact that the subirrigated lands have adequate water. In fact, what I am trying to say is that their lands are just the way they want them, or they wouldn't own them. They want those lands just that way.

The farmers that own decreed water rights have no reason to be in the project. They have water enough. There are times, I will say, when they are a little short and have been a little short. In past years they have dug and developed their own wells to make up for what water shortages most of them have.

So, upon my conclusion, I would like to recommend, along with Mr. Herrin, that alternative plan No. 3 would be a plan more suitable for the Helena Valley area, due to the fact that that plan could be expanded any way that the engineers so decided, to take in and encompass practically all the lands that at this time would like to have water from the Bureau of Reclamation as proposed for the Helena Valley area.

Senator O'MAHONEY. Well, what have you to say about the status of landowners who are in neither of the two classifications you have mentioned; that is to say, they are not owners of subirrigated lands, and they are not owners of lands which are satisfactory as they are to the owners, but are the owners of lands which want a new water supply which would be provided by this project as designed by the Bureau? What have you to say about them? Should they go without?

Mr. HELBERG. Definitely not.

Senator O'MAHONEY. What can we do for them?

Mr. HELBERG. This alternative plan No. 3 could very nicely take care of those people, with a very small percentage of cost, compared to the \$12 million project to cover the whole area.

Senator O'MAHONEY. How much would it cost?

Mr. HELBERG. I again will have to refer to the definite plan report that the Bureau of Reclamation made up. Somewhere in the neighborhood of \$1,500,000 could restore the original pumping plant.

Senator O'MAHONEY. I thought Mr. Herrin testified that enough money had already been appropriated to do this, which is about \$250,000.

Mr. HERRIN. No; \$3,250,000.

Senator O'MAHONEY. Oh, I misunderstood.

The \$3 million which has been appropriated?

Mr. HELBERG. Yes, Senator; that would be very sufficient.

Now, de are not here to tell any Government agency——

Senator O'MAHONEY. Of course, the Bureau of Reclamation turned that plan down.

Mr. HELBERG. Yes; they did. But they also made the statement that it was the best plan. Of course, that is something that we cannot understand.

Senator O'MAHONEY. Well, Mr. Dominy and Mr. Frye, I think you are on the spot right now. You have got to say something for the record.

Mr. DOMINY. Our report speaks for itself, that it is the best and most economic plan to serve the existing area and to rehabilitate the existing area. And we point out that it has the failing that it would not bring in the additional lands and give the broader benefit to this immediate area and to the State and to the region.

Senator O'MAHONEY. And what would be the cost per acre?

Mr. DOMINY. I don't know that this has it broken down per acre. But the cost is given at \$1,235,000.

Mr. LINEWEAVER. That is without the expansion.

Mr. DOMINY. A total Federal expense of \$2,035,000. Excuse me.

Senator O'MAHONEY. Would it be economically feasible?

Mr. DOMINY. Yes, sir. It has a higher benefit-cost ratio than the Helena Valley unit that we did recommend for construction. However, we do point out that in our analysis we are not certain of the class III lands included in that smaller area, and should it develop that the class III lands could not support the payment rate on which this financial analysis is predicated, then the resulting operation and maintenance costs to the class I and II lands would be prohibitive.

We make that observation, which may change the feasibility of that plan—we don't know.

Senator O'MAHONEY. Anything more, Mr. Helberg?

Mr. HELBERG. I believe, Senator, that that is about all I have to say. Thank you.

Senator O'MAHONEY. Mr. Olson?

Mr. OLSON. Senator, I think they have covered pretty nearly all there is to say, but I am coming out for the people whom we represent that have both land in and out of said district. Because I have had two kinds of land. One ranch has enough water, and the other had too much, until I put drains in it. And I have four drains in my place, so I have it regulated right so that I can farm the place the way I want to. It is wild hay meadow. And the good grasses are coming back in, a better grade of grass than I have ever had before. And I think I can farm the whole place without any water.

Now they want to make me buy water and break up that land, which is an awful expense, to break it and level it. And when they do, they are going to put in a new canal, so that I have to buy water to put it on that land. That isn't profitable to me, and I don't think it is profitable to the Government.

Senator O'MAHONEY. Did you testify before the court?

Mr. OLSON. Yes; I did.

Senator O'MAHONEY. Did you make the same argument which was made here?

Mr. OLSON. Yes; I did.

Senator O'MAHONEY. Did you show the same condition of your land?

Mr. OLSON. Well, just about.

Senator O'MAHONEY. Do you have a copy of the decision?

Mr. LINEWEAVER. Yes, sir, of Judge Fall's order of June 28, 1955 and his comments when he concluded the hearings?

Senator O'MAHONEY. You had better put that in the record, Mr. Lineweaver.



(The material referred to follows:)

LETTER FROM JUDGE FALL

HON. JAMES E. MURRAY,

*Senate Office Building, Washington 25, D. C.*

MY DEAR SENATOR MURRAY: This is in reply to your letter of September 12, 1955.

At the conclusion of the hearing before me in the district court I made a few ex cathedra remarks from the bench and enclose a record of what I then said. I am not sure that this will be particularly helpful except as reflecting my belief that the representations made by the Bureau of Reclamation were accepted by me at full face value. This was the intent of my observations as appears on page 2.

I also enclose herewith a copy of the order forming the district. It does not reflect anything that goes to the matter now raised but may be of help to you. In any event, the district was formed, essentially, as requested by the Bureau of Reclamation.

This is written in haste that it may get to you before the 20th. Thank you again for your deep interest in this matter.

Sincerely yours,

VICTOR H. FALL,  
*Courthouse, Helena, Mont.*

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STATEMENT BY JUDGE FALL

The COURT. This has been a very long case. I think we have made good progress. This court has attempted to let everyone who had any say have his say, and I hope his full say.

As has already been indicated throughout this trial, I am not unfamiliar with farm life. I was born and reared on a farm and I am personally cognizant of the fact that there is no group of people who are as fiercely independent as people who live on farms. They have a thought that is peculiarly a part of farm life, that theirs is the independent life. I think possibly that may have something to do with some of the situations which have arisen here. I want you to know that I am thinking about that. But it is one of the principles of American culture that we proceed on a proposition that the majority rule. We proceed upon that proposition insofar as it does not conflict with established rights which are of paramount importance; and by that I mean that formation of irrigation districts after all are set up on the principle of the most good to the most people. They are not wholly dissimilar to the formation of districts for paving streets, shall we say. You pave a street through the city and there is bound to be somebody along that street who is not going to like it at all, but they have to pay for their share. It just has to be that way.

According to the independent feeling, a person who finds himself with property surrounded by other property where the majority of his neighbors want to do something different is not an altogether dissimilar situation to a person who had 40 acres of good farmland and a whole city had grown up around it. The taxes go up until he can't farm. His farm is confiscated until he can't farm and has to sell because of conditions that are beyond his control.

I am not prepared to rule on this case at this time. I want to do some investigation myself. I just want you people to know, litigants and counsel alike, that I think all witnesses here have shown a remarkable degree of candor in giving their testimony. I think these objectors have told their story with a frankness that is very commendable in expressing why they think they should not be in this district; and their opinions are entitled to and will receive all the respect from this bench.

There may be some thought in the minds of some people that the representatives of the Bureau of Reclamation are primed to shove something down their throats. I don't think that is true. I am never one to believe that just because a person works for the Government he is out to saddle something on the backs of the public. I think the Government often performs a very fine function in undertaking works that the public themselves or the individuals cannot do for themselves. I am thinking of REA and some of these reclamation projects. Not every reclamation project has been completely successful. But the point I am making is just because reclamation officials and

their employees have come out here does not mean they are trying to saddle something on you just to get something done. I think they are honest in their efforts.

I am going to look into this matter further. The thing of it is that if the majority of the people in the Helena Valley pursuant to the law in the State want to establish an irrigation district and this record supports their petition, the district will be for them. What goes into the district will depend upon certain facts. The law says certain land shall be excluded. It becomes my particular job to decide what is to be excluded and included. It is up to me to decide whether your particular holdings of you protestants, whether I am entitled under the evidence here to exclude your land. You protestants want all your land excluded. I will do the best job I can, based on the testimony here. You may rest in that regard. I will undertake to do it and dispose of this case as soon as I can.

(The court's order and decree of June 28, 1955, is as follows:)

#### ORDER OF DISTRICT COURT, HELENA, MONT.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS & CLARK

NO. 24952

IN THE MATTER OF THE FORMATION OF THE HELENA VALLEY IRRIGATION DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER AND DECREE ESTABLISHING  
HELENA VALLEY IRRIGATION DISTRICT

This matter came on regularly for hearing before the above-entitled Court, sitting without a jury on the 26th day of May 1955, in the Courtroom of said Court, at the Courthouse at Helena, in Lewis & Clark County, Montana; Petitioners appearing through, and being represented by, their counsel of record, Small & Herron of Helena, Montana; and certain Objectors making their appearance at said time, both in person and by their counsel of record; The Objectors R. B. Downs and Ida H. Downs appeared by their counsel Paul W., David R., and J. Miller Smith, Jr.; and the Objectors Harry Helberg, Albert Olson, M. G. Donaldson, Perry Stanfill, Mrs. John Hurni, Ted Liebsch, Leonard Frank, Henry Meyer, Theo Smith, Mabel Smith and Hugh D. Smith, Mrs. Massena Helberg, Richard Kelly, and Matilda Kelly, Ed Lamb, and Henry A. Lamb, Albert L. Olson and Carl Olson, John Hurni, C. R. Merritt, Jed Stanfill, Pete Gross and Frank Powell, all appearing by and through their counsel of record, Swanberg and Swanberg, of Great Falls, Montana; and the following-named Objectors, to-wit: Carl Schiller, as successor in interest to property formerly owned by R. M. or Robert Mills, and Thomas Evans, appearing in person, and in their own behalf and without counsel; and thereupon, and it appearing that said matter was properly before the Court (and ready for hearing), and upon motion of counsel for Petitioners, the default of all persons not appearing at said time in this matter was duly entered in the premises, by the Court, for their failure to appear or enter their appearance or any appearance herein within the time as provided by law or at all, and after due service of notice and process upon them in this matter, in the manner as required by law, and by the Order of this Court;

Witnesses were then sworn and testified on behalf of the petitioners; and said matter continued from time to time, and for a period of several days, and after all of the evidence presented by petitioners had been heard, and after said petitioners had rested; and thereupon witnesses were duly sworn testified on behalf of the various Objectors, both collectively and individually; and each and all of said Objectors having been granted full opportunity to present his, or her, objections herein, and any competent evidence in support of such objections; and after which the said Objectors rested their case; and rebuttal testimony was thereupon introduced by and on behalf of the Petitioners herein; and said hearing having as aforesaid been continued, from day to day and time to time, by order of the Court and agreement of counsel duly entered in the record herein; and the hearing of all evidence in said matter having been finally concluded on the 3rd day of June 1955; and at said time the Court ordered and directed that counsel for Petitioners, and counsel for Objectors, should have twenty (20) days from and after the date thereof, in which to file briefs or memorandums of argu-

ment and authorities upon said matter, and that upon and after the expiration of such period for the presentation or filing of such briefs or memorandums said matter should be considered fully and finally submitted to the Court, and by the Court then taken under advisement and consideration; and the counsel on behalf of both sides having thereafter submitted such briefs and memorandums to the Court herein; and the Court thereupon having taken the matter under advisement, and having fully considered said matter, and being now duly and fully advised in the premises, now adopts and enters the following findings of fact and conclusions of law, to wit:

#### FINDINGS OF FACT

##### I

That the lands embraced within the boundaries of the proposed Helena Valley Irrigation District lie wholly within the County of Lewis and Clark, State of Montana, in which said County the hearing of this matter on said petition was held, in the manner as specified by law.

##### II

That legal notice of the hearing upon the petition for the formation of the Helena Valley Irrigation District was duly and regularly given, as required by law, and as appears from the record herein, by the publication of a notice of such hearing (together with a copy of the petition herein) in a newspaper in said Lewis and Clark County, wherein the lands of said proposed irrigation district lie; Such publication having been made in the April 14th and April 21st, 1955 publications of the Independent Record, a daily newspaper, published and circulated in the City of Helena, County of Lewis and Clark, State of Montana, the same being a newspaper of general circulation printed and published as aforesaid in said Lewis and Clark County, Montana.

And it further appearing from the proof herein, that each and all of said publications of notice were made in regular issues of said newspapers and not in any supplement thereof, and it further appearing to the Court from the affidavits and Certificate of the Clerk of the above-entitled Court, that in addition to said publications, notice was also given of said hearing by the Clerk of said Court, by mailing a copy of said petition and of said notice of the time and place of the hearing of this matter, to each person who was a nonresident of Lewis and Clark County, in which said proposed district lies; said copies of petition and the notice of time and place of hearing having been duly mailed by said Clerk by depositing the same in the Post Office at Helena, Montana, within three days after the first publication of said notice as aforesaid; and said copies of said petition and notice having been mailed as first class mail with postage prepaid, and addressed to the last known addresses of each respective nonresident owner of lands within said proposed district as stated in said petition; and all of which was done according to law and the order of this Court, fixing the time and place of hearing on said petition and directing that notice thereof be given, and said notice setting and designating the time and place fixed by said Court, when and where the hearing on said petition and of this matter would be had.

##### III

That except, as in these Findings, otherwise specifically found and not set forth, all of the allegations, matters or things, contained and set forth in the said completed petition herein, are true and correct, and amply sustained by competent evidence adduced at the hearing of this matter.

##### IV

That said petition praying for the formation of the Helena Valley Irrigation District, was filed in the above-entitled Court on the 11th day of April, 1955; and that as more fully appears from the said petition there is a gross acreage of 20,631.52 acres of land within the boundaries of said proposed irrigation district and as prayed for in said petition; and that on said 11th day of April 1955, when said petition was filed herein, there were 160 record owners of land within the boundaries of said proposed district; that more than sixty percent (60%) of the owners of land within the proposed boundaries of said proposed district, and said owners being on said 11th day of April 1955, the owners of more than 60%

of all the lands embraced within the boundaries of said district, signed the petition or petitions herein for the creation and establishment of said irrigation district; and prior to the filing of the same in this Court.

## V

That of the total acreage within the boundaries of the proposed irrigation district as prayed for in said petition herein, 12,533 acres thereof are susceptible to irrigation and that the signers of said petition herein were, on the 11th day of April, 1955, the owners of more than sixty percent (60%) of said acreage therein susceptible to irrigation.

## VI

That through inadvertence and mistake, and as a result of typographical errors, there were certain errors in the description of lands set forth in Exhibit "A" attached to the "Complete Petition" filed herein, as follows, to-wit:

The SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 5, Twp. 10 N. Rge. 3 W., was erroneously described as the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 5, Twp. 10 N. Rge. 3 W.; and

The NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 31, Twp. 11, N. Rge. 3 W., was erroneously described as NE $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 31, Twp. 11 N. Rge. 3 W.

That such errors did not result in any detriment or prejudice to any person, and does not affect the right to the inclusion of said lands within said district as hereinafter specified; and in conformity therewith, said Exhibit "A" attached to said "Complete Petition" herein shall be considered (as of the date of filing thereof), as amended, to set forth the correct description of said lands as hereinabove designated.

## VII

The Court finds that certain of the said lands lying within the proposed boundaries of said district, and as set forth in the petition herein, will not be benefited, at the present time, to a sufficient extent to warrant their inclusion within said district, and that it is not at present feasible, or practicable, to attempt to include such lands within said district; and the same should therefore be excluded from the same and the Court accordingly herein excludes such lands; the same consisting of the following; to-wit:

Lands of Richard Kelley, consisting of the following:

N $\frac{1}{2}$  of NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 9; and NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , and 11 acres of land in SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. 8, all in Twp. 10 N. Rge. 3 W. (comprising 171 acres of land).

Lands of R. B. Downs, consisting of the following:

A 9 acre tract of land situate in the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. 8, Twp. 10 N. Rge. 3 W.

Lands of Gilbert Merritt, consisting of the following:

SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  and E $\frac{1}{2}$  of SE $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , all in Sec. 31 Twp. 11, N. Rge. 2 W. (comprising about 130 acres).

Lands of Hugh D., Theo E., and Mable Smith, consisting of the following:

The E $\frac{1}{2}$  of SW $\frac{1}{4}$  Sec. 35, Twp. 11, N. Rge. 2 W. (comprising approximately 70 acres of land).

Lands of Harry Amundson, consisting of the following:

About 10 acres situated in E $\frac{1}{2}$  of SW $\frac{1}{4}$ , Sec. 35, Twp. 11, N. Rge. 2 W.

The foregoing are all that are to be excluded from the lands described in Exhibit "A" attached to said "Complete Petition" herein; and except for such specific exclusions, all of the remainder of said lands described in said Exhibit "A" and, as hereinafter specifically described and set forth, are to be included in, and as a part of, said District as hereinafter created and established.

## VIII

That the lands hereinafter described, in the Order and Decree made and given and entered by the Court herein, and based upon these findings of fact and conclusions of law, and included within the boundaries of said proposed irrigation district, as now determined by this Order and Decree, consisting of all of the lands described and set forth within the proposed district within the petition filed herein, save and except for the lands that have been specifically excluded therefrom as hereinabove set forth, are all susceptible to irrigation from the same general source and will all be benefited by drainage and/or

irrigation, in the manner and form and to the same general extent as alleged and set forth in the petition herein.

#### IX

That there are 20,242 acres of land within the boundaries of the district as herein established; and that of said acreage 12,533 acres are susceptible to irrigation from the same general source, and will all be benefited by irrigation; That there are 157 recorded owners of land within the boundaries within the said district, as herein established as of April 11, 1955, and that 106 of said record owners of land within the boundaries of said district as established herein have signed said petition or petitions to form said district; and that the said 106 owners are the owners of 13,336 acres of land in said district; and that said owners constitute and are, more than 60% of the record owners of land in said district; and are the owners of more than 60% of the lands lying within said district as herein established. That the said 106 owners of lands in said district, who have signed said petition are the owners of 8,250 acres of irrigable land, and that the number of acres of irrigable land owned by the signers of said petition constitute and are, more than 60% of the total acreage susceptible to irrigation within the boundaries of said proposed district.

#### X

That each and all of the acts necessary have been done and accomplished herein by the Petitioners, in order to vest this Court with jurisdiction to form the proposed irrigation district; and the Court specifically finds that it did have and acquire such jurisdiction on the 11th day of April 1955, when said petition was filed, and said Order fixing time and place for the hearing of said matter was given; and that it did have jurisdiction to hear and determine the issues herein, and to form an irrigation district, at all times from the 11th day of April 1955, the time of filing said petitions until the 26th day of May 1955, the time of said hearing, and that said jurisdiction has continued at all times since April 11, 1955, and up to and until the date of the signing of this Order and Decree by the Court.

#### XI

That under the proposal for the formation of the District, as set forth and requested by the petitions herein, it is understood and contemplated that lands hereby included within said district shall not be taxable thereunder unless such lands included within said district, which require drainage, can, in fact, be drained.

#### XII

That the name proposed by the petition, and hereby approved by the Court, for said District is the "Helena Valley Irrigation District."

#### XIII

That a correct general description of the lands to be included in said District is as hereinafter set forth in the Court's "Order and Decree", and as designated upon the map (marked Exhibit "1") attached to, and by this reference made a part of, these findings and conclusions and said Order and Decree.

WHEREFORE, the Court makes its conclusions of law, as follows:

#### I

That this Court has jurisdiction, at the present time, to make an Order or Decree establishing the Helena Valley Irrigation District, and to make all other orders and include all things required therein by law, and such as may be incidental or necessary therefor, in conformity with the laws of Montana and such case made and provided.

#### II

That except as in these findings or conclusions otherwise specifically set forth the objections to the formation of said District, and the requests for exclusion of lands therefrom, should be, and are hereby, refused and denied.

## ORDER AND DECREE

WHEREFORE, it is ordered, adjudged, and decreed, and this does Order, Adjudge, and Decree:

1. That each and all of the foregoing findings of fact are true, and that the prayer of said Petition for the formation of said Helena Valley Irrigation District should be allowed, and for the inclusion therein of the lands hereinafter described, and for the fixing of the boundaries of said district to include said lands.

2. That said Helena Valley Irrigation District be, and the same is, hereby created and established, and the same is declared, ordered, and adjudged hereby to be a public corporation, for the promotion of the public welfare; and that the lands included herein shall constitute all taxable and assessable property of said District for the purpose of the statutes authorizing the creation of the same, and in the manner as by the statutes of Montana and in such case made and provided.

3. That the lands to be included in said District, and included therein by this Order and Decree, are described as follows, to wit:

## EXHIBIT "A"

## LEGAL DESCRIPTION—HELENA VALLEY IRRIGATION DISTRICT

SW $\frac{1}{4}$ , Sec. 1; Lots 2, 3, 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ , Sec. 2; Sec. 3; Lot 1, E $\frac{1}{2}$  Lot 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 6; Sec. 7; W $\frac{1}{2}$ W $\frac{1}{2}$ , Sec. 8; NE $\frac{1}{4}$ , Sec. 10; N $\frac{1}{2}$ , SE $\frac{1}{4}$ , Sec. 11; W $\frac{1}{2}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 12; W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 13; W $\frac{1}{2}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 17; E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ , Sec. 18; All in Township 10 N., Range 2 W., M. P. M.

Lots 2, 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 2; Lot 1, SE $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 4; SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 4; Lots 1, 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 5; Lot 1, S $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 7; S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 8; SW $\frac{1}{4}$ NE $\frac{1}{4}$  excepting 2 acres in SE Corner, S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  excepting 25.80 acres in the NE part, Sec. 9; SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 15; Tracts recorded in the name of J. Lloyd Keyes consisting of 17.65 acres in West portion, NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 15 and 4.01 acres, Sec. 15 and Sec. 16, described as follows: Commencing at the Government quarter section corner between Sections 15 and 16 running thence west 12.04 chains to a point: Thence North 74.5° East 14.90 chains to a post; Thence South 32°30' East 5.40 chains to a post; Thence West 5.58 chains to the place of beginning; SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Plats 1-16 inclusive, plats 18, 19, 25, 26, 32, 33 in SE $\frac{1}{4}$ , Sec. 16; N $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 17; NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 22; All in Township 10 N., Range 3 W., M. P. M.

The E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ , approximately 12 acres above elevation 3638 feet SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 18; approximately 15 acres above elevations 3638 feet in E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 19; NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ , Sec. 20; SW $\frac{1}{4}$ , Sec. 21; NE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 27; N $\frac{1}{2}$ N $\frac{1}{2}$ , Sec. 28; N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Lots 3, 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 30; NE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , Sec. 31; NE $\frac{1}{4}$ , Sec. 33; Sec. 34; W $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 35; All in Township 11 N., Range 2 W., M. P. M.

The NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{4}$ SW $\frac{1}{4}$ , approximately 52.0 acres S $\frac{1}{2}$ SW $\frac{1}{4}$ , above elevation 3638 feet, Sec. 13; N $\frac{1}{2}$ , approximately 12 acres above elevation 3638 feet SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ , Sec. 14; N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ , Sec. 15; N $\frac{1}{2}$ , SW $\frac{1}{4}$ , N $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 16; Sec. 17; SE $\frac{1}{4}$ , Sec. 18; Sec. 19; Sec. 20; S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 21; NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ W $\frac{1}{4}$ , Sec. 22; S $\frac{1}{2}$ , Sec. 25; S $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$  Sec. 26; SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 27; Sections 28, 29, and 30; North 40 acres of tract recorded in name of T. G. Davidson and Edna M. Davidson comprising NE $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , lots 1 and 3, Sec. 31; N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ , Sec. 32; Sections 33, 34, and 35; E $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 36; All in Township 11 N., Range 3 W., M. P. M.

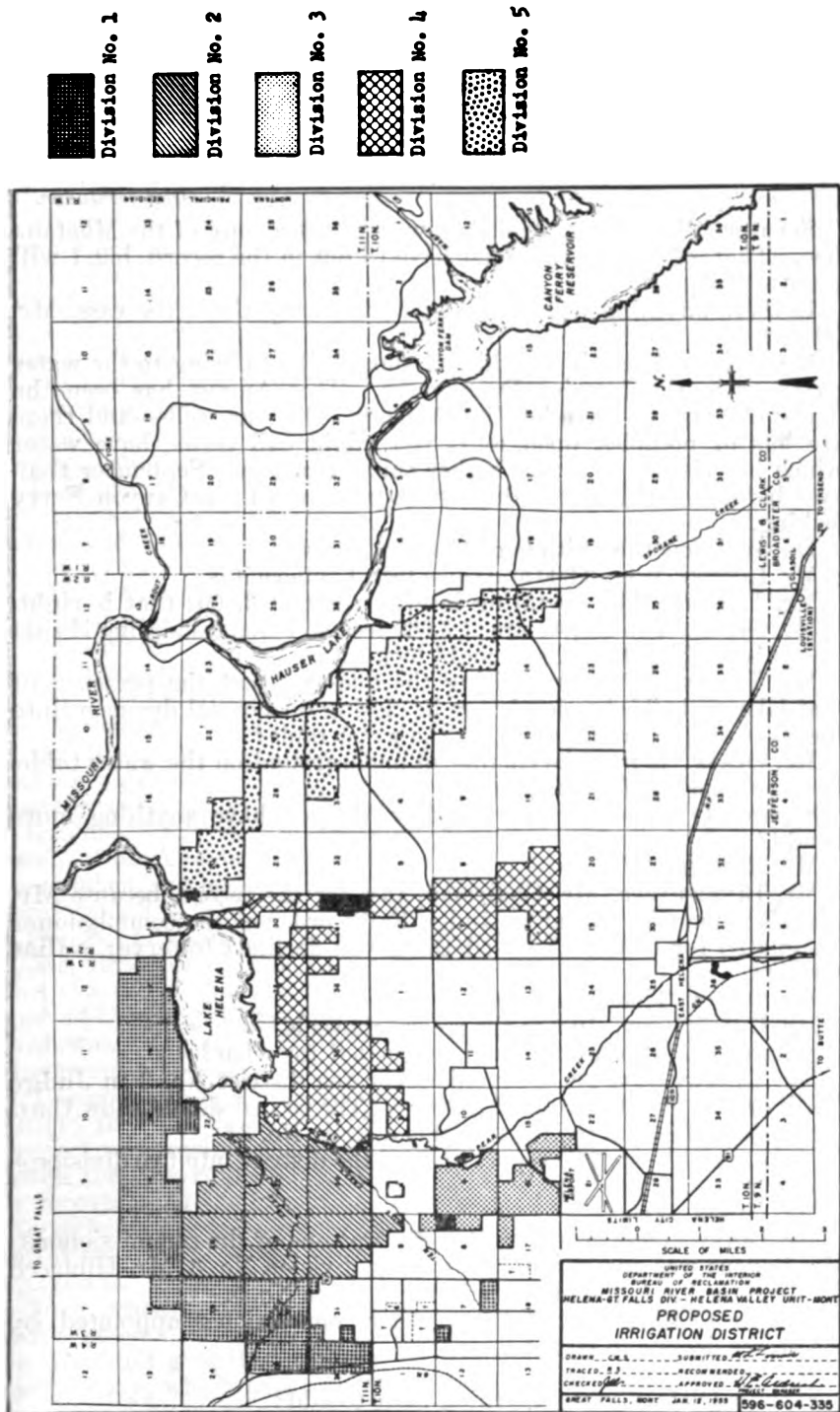
The E $\frac{1}{2}$ , Sec. 25; E $\frac{1}{2}$ , Sec. 36; All in Township 11 N., Range 4 W., M. P. M.

4. That said Helena Valley Irrigation District shall be divided into five sections, or divisions, as set forth and designated upon that certain map, or plat, of said District, marked as "Exhibit 2," hereto attached, and by reference made a part hereof.

5. There are hereby appointed as commissioners for the Helena Valley Irrigation District, the following persons who shall serve until such time as their









successors are duly elected and qualify as provided by the laws of the State of Montana, to wit:

Division No. 1: W. A. Rossiter

Division No. 2: John Baucus

Division No. 3: Albert L. Olson

Division No. 4: Henry Hibbard

Division No. 5: Al Hrella

Dated this 28th day of June 1955.

VICTOR H. FALL,  
*District Judge.*

Senator O'MAHONEY. And then we will get a copy of the Montana law. That, of course, you don't have to put in the record, but I will want to look at it.

Is there anything new that you want to say about the case, Mr. Olson?

Mr. OLSON. There is one thing I should like to bring to the water board or to the Interior Department. This August has been the driest August we have had in 43 years. But our wells—and there are lots of potholes, open wells you might call them—have water which has risen 5 or 6 feet higher this August and September than ever before. I think it is due to the pressure of the Canyon Ferry leaking.

Do you know the altitude of Canyon Ferry?

Mr. LINEWEAVER. 3,800 and some feet, I believe it is.

Mr. DOMINY. The operating level is right at 3,800; that is right.

Mr. OLSON. You see, we are at 3,660 feet, so I was wondering if that wasn't something that they should look into.

Mr. DOMINY. You are raising the question that the presence of that lake at the higher level may be closing off normal drainage into the river and otherwise affecting the water table?

Mr. OLSON. It must be coming in underground on the water table. I was wondering if it was possible.

Senator O'MAHONEY. Mr. Rossiter, do you have anything more to add?

Mr. ROSSITER. Yes.

Mr. LINEWEAVER. Mr. Chairman, just for the record, because Mr. Olson's name will appear in Judge Fall's order as the commissioner designated for district No. 3: I think you declined to serve; is that correct?

Mr. OLSON. That is correct.

Mr. LINEWEAVER. Just so the record shows it.

Senator O'MAHONEY. He was designated for what?

Mr. LINEWEAVER. As a commissioner for district No. 3 in Judge Fall's order. But he declined to serve. The record should show that.

Senator O'MAHONEY. What is this district No. 3?

Mr. LINEWEAVER. The report divided the district into five divisions, I believe.

Mr. OLSON. Yes.

Mr. LINEWEAVER. And Mr. Rossiter was one of the commissioners; Mr. Baucus was another, Mr. Olson for division No. 3, Mr. Hibbard for division No. 4, and Mr. Hrella for division No. 5.

Senator O'MAHONEY. Did any other commissioner appointed by the decree decline to serve?

Mr. OLSON. No.

Senator O'MAHONEY. Anything more to add?

Mr. OLSON. No; I think that is all.

Senator O'MAHONEY. Well, thank you very much, gentlemen. I hope you feel you have been given ample opportunity to submit your case.

Mr. HELBERG. We do.

Senator O'MAHONEY. Mr. Rossiter?

Mr. ROSSITER. I feel that there have been statements made here which can't pass, from our position. I think they were made under a misapprehension. I can't conceive that within all the facts they were intended to be as they have been put into the record.

The Bureau of Reclamation people were brought into this hearing before the court as witnesses for the proponents of the irrigation district, for the formation of the irrigation district. They were brought in to testify as to the feasibility of the project. They at no time during that court proceeding answered any questions or volunteered any information that wasn't brought out either by the attorney for the petitioners on direct examination or on cross-examination by the objectors' attorney.

It is true the people of the Bureau were in the courtroom. They were consulted by the petitioners, by our attorney, and questions were asked, and they were requested for information to be brought out, and to render assistance in that regard.

I think that is what Mr. Herrin objected to, and I can see no conclusion that can be drawn from that that they were in any way trying to mislead anybody or to force anybody into anything. They testified on the basis of the questions they were asked.

Senator O'MAHONEY. What about the elision of several pages from this document?

Mr. ROSSITER. The document that was introduced in the court did have several pages missing. Now, just where they were taken out—there were only 3 or 4 of those documents in the hands of anybody. I had one. And it is my recollection that it was my copy that was used. I don't remember taking the pages out. The pages may have been taken out because of information that somebody wanted, and they wanted to take them out. But that was brought out in court.

Senator O'MAHONEY. It was known to the court?

Mr. ROSSITER. It was known to the court that they were missing, and the pages that were deleted were pages which pertained to the cost of the project, the overall cost of the project, as to the amount that was going to be returned, in other words, the recovery to the Government to pay for this project.

The court from the bench said that that was of no interest to the court; that the Bureau of Reclamation had determined that the project was feasible and that he had no intention of going into how much the Government was going to spend, or as to what they were to recover; that the formation of the district didn't call for that, and the defendants' or objectors' attorney was told what it was, and he could see the pages, and have another one with the pages in it if he wanted it.

Now, whether he actually did go any further to check on them, I don't know. But they were available for him. In other words, if we wouldn't give them to him, he was told that the State engineer had a copy, which had to be furnished in this project. There was.

nothing in the pages to mislead anybody. And while it might give somebody a chance to give a false impression, it was there explained and there for anybody to see. So there can be no misleading as to that.

Now, as to these statements made of lack of knowledge, there were any number of public hearings held on this project.

When it first came up in connection with the advance \$250, a meeting was held in the valley, where the thing was explained, and there was a possibility of the project being able to go ahead. Mr. Herrin's father was there. I don't remember whether Mr. Herrin was there. I remember his father was there and was opposed to it to start with.

After it was explained, he made the statement that he thought it was a good thing. And the matter of expenses for sending me to Washington was brought up, and he offered to pay \$10 toward my expenses. Now, whether he did or not, I don't know. I don't remember now. It is immaterial.

There were a number of other meetings, public meetings, held, where these gentlemen were present, where the situation was explained.

Now, particularly as to this question of the seeped lands or the lands which they call subirrigated and we call seeped, because the water comes up and stands on top of the land and then goes down. That was brought up and a meeting held in the chamber of commerce, when these gentlemen were there and presented their case, and I was there, and that whole question was threshed out. And it was explained how the formation of an irrigation district worked: That if 60 percent of the people want the thing, the same as any other improvement district, the law provided that the balance would be brought in.

Now, I haven't the figures with me, and I am quoting from memory, but they won't be far off. I think there were 168 landowners involved in this thing. Of that amount we actually had signed up on petitions something like 106 to 110. The balance, with the exception of 13 of them, neither objected to the formation of the district nor signed the petitions. Some of those were people who were away. Some of them were people who were disinterested to the extent that they said, "If the district comes, okay; if it doesn't come, that is all right. We just don't want to sign the petition."

We had better than 65 percent of the landowners actually on the petition. The ones who were not interested ran it up to somewhere around 87 percent, actually, that took no action at all. There were 13, as I recall, who hired an attorney and signed the petition in objection. Two of those the Court let out. Or three of them, rather. One of them was an acreage of about 7 acres, and one of them about 60 acres, that they let out, and the other one in the same general neighborhood.

These men were on the stand and testified fully to the court as to their objection and their land, and everything else, and the court, in rendering his decision, took that into consideration and determined that their land was within the category of the statute for providing an irrigation district; that the land would be benefited and should be brought within the district.

Now, as to any kind of a project of this kind, certainly it has dislocations. I have never seen any project that was ever started, that it

just fit into everyone's plan. But the statutes of Montana provide for the formation of a district, and if the proof is there the dislocations are overcome and some of them have to join. The statute was strictly adhered to, and everything fell in line all the way down.

Senator O'MAHONEY. Have there been any withdrawals since the order of the court?

Mr. ROSSITER. There have been no withdrawals. And, just as my personal opinion, I am sure we could go back and get the same number of people if not more on the petitions tomorrow if we wanted to get them signed up.

There is that one group where there were dislocations. And I want to correct one other statement—that they represent all the people who have the seeped land. That isn't true. There are two large land-owners in there that are in the same category as they are that did sign the petition and are one of the petitioners for formation of the district. They had no water rights on their land. Their land after being drained becomes some of the best land in the valley under the Bureau's classification. They did petition in.

One other group that is in this category and who were one of the objectors, bought their land after they knew that an irrigation district was about to be formed and that that land would be included. The statement of one of them when I questioned him about it was very frank, he didn't testify the same in court as he did to me, but his statement was that he knew that the irrigation district was going to be formed but he didn't think the people were damn fools enough to go for it, so he was going to buy the land anyway. That was his reaction.

So if these people misunderstood—I am not saying they are not here telling their understanding of it, but if they misunderstood, it wasn't because they didn't have opportunity to learn and find out. Mr. Herrin's father called the Bureau of Reclamation 2 days before the court convened on this case to determine whether he was in or whether he was out; and he was definitely told that he was not involved in the project at all.

There is one other point I wish to make, and that is as to the statement made by Mr. Herrin that he was not consulted or asked about signing up the contract. The answer to that is that that part of it, at the time this irrigation district was being formed, as far as we were concerned, was not anything that we were involved in. That is just the point we are here to make today, that we were not involved and did not have to worry about supplemental water users. The Bureau of Reclamation had not projected any figures as to what the cost would be to them. We had nothing to do with them. So there was no reason, in the formation of this district, and for the construction of this project, for us to go to the individual supplemental water users and say, "Will you sign a contract? Here is the contract. Here is what it will cost you. Are you willing to go in on it?" That was an extraneous matter which we were not involved with, and therefore we didn't go into it.

Senator O'MAHONEY. Are there some people who owned land within the district as approved by the court, who objected to being within the district?

Mr. ROSSITER. Mr. Olson is one who is in that category. He has one piece of land, or one part of land, in which he has decreed rights and

irrigation rights. On another piece, which is separated from his land, he has no water right on it and it is seeped land.

Now, I know that particular piece of land, because I was going to buy it before Mr. Olson bought it. And I walked over the thing thoroughly. It was hummock land, and water was standing on it in the lower end of it, and part way up, 6 to 8 inches deep. That is land that was included in the district because the Bureau's investigation showed that properly drained and put into cultivation it would come into this No. I classification, which is the highest classification in the valley.

There is one other point that I wish to make, Senator. When they start talking from this plan here, it is true that when there was this preliminary investigation there was this question as to cost and that the overall average cost was something like \$6.71. We were apprised of that, and when we started out on this we told the Bureau that we couldn't stand that kind of a cost; that No. I lands couldn't pay the price that they had projected, nor II, nor III. And we started out, as the resolutions will show, and said we felt that the cost that the lands could support was \$5.25 an acre.

The negotiations ended up that the overall cost was \$5.40. In other words, the people in the district had to finally concede another 15 cents; because the amount the Bureau finally came up with that they had to have was \$5.40.

Now, those original figures were not presented to the people, because we wouldn't agree to it. We said it wasn't a matter of agreeing. We said it wasn't feasible.

Senator O'MAHONEY. How much acreage is within the district, as defined by the court, the owners of which would rather not be in the district?

Mr. ROSSITER. As the report said, there are 4,600 of all the lands that are seeped that could be in the district. Now, of that amount, of the ones who objected, the amount of lands actually in the district is somewhere around 2,800 to 3,000. The 4,600 acres, that is what the Bureau said, in the whole area was lands that were susceptible to drainage.

Part of that drainage land is on lands that were willing to come into the district. Part of it is a number of acres or—

Senator O'MAHONEY. You testified this morning, as I understood you, that there were about 4,600 acres of land not included in the district.

Mr. ROSSITER. The 4,600 acres is land which we call supplemental water lands, and by that we mean lands that need additional water.

Senator O'MAHONEY. It is not within the district?

Mr. ROSSITER. That is right. They are not within the district at all.

Senator O'MAHONEY. Well, I am not talking about that. I am talking about: How much land is in the district the owners of which do not want to be in the district?

Mr. ROSSITER. My best recollection is that that is between 2,800 and 3,000 acres.

Senator O'MAHONEY. But 60 percent of the land owned in the district has signed up?

Mr. ROSSITER. Better than 60 percent. Right around 64.8.

Senator O'MAHONEY. And that is a firm figure?

Mr. ROSSITER. That is a firm figure; yes.

Senator O'MAHONEY. And none of it has been altered?

Mr. ROSSITER. None of it has been altered. And in addition to that is this vast percentage of those who did not protest, but they did not sign the petition.

Senator O'MAHONEY. And the 60 percent of the land is in conformity with the Montana statute?

Mr. ROSSITER. That is right. The statute provides you have to have 60 percent of the land and 60 percent of the landowners.

Senator O'MAHONEY. Is that similar to the city-improvement district in Montana?

Mr. ROSSITER. Yes. The city-improvement district. Now, as a little sidelight on that method, right at the time we were forming this district, a weed district was started, which these gentlemen were very much in favor of—in fact, they were the sparkplugs in back of it—which operates exactly the same. You get a certain percentage signed up, and you get a weed district, and the rest over that number come in.

Senator O'MAHONEY. They come in whether they like it or not?

Mr. ROSSITER. Whether they like it or don't like it.

#### ADDITIONAL STATEMENT OF GOODRICH W. LINEWEAVER

Mr. LINEWEAVER. Senator Murray of Montana just asked over the phone that he would like to have a question answered. I think some of the people out there have asked him about it.

On page 22, Mr. Dominy and Mr. Frye, the modification of article 17 which was proposed to the district, article 17 of the contract, is the committee to understand that this amendment will not be insisted upon should the replies of the chairmen of the Appropriations Committees be affirmatively to the last paragraph of Governor Aandahl's letter to Senator Hayden and Chairman Cannon?

Mr. DOMINY. As I have stated here today, Mr. Chairman, if we receive advice from the congressional committees that in their judgment the requirements imposed by Congress concerning repayment prior to the start of construction on the Helena Valley unit are now satisfied, or would be satisfied, with the final consummation and execution of the proposed contract with the 12,553-acre district, then it would be of no consequence whether this language were or were not to be in the contract.

Mr. LINEWEAVER. That answers the question, but it would be of some consequence to the district, as I understand it, if this modification of article 17 was insisted upon.

Mr. DOMINY. Well, as I say, I don't know why it would be of any consequence to anyone. This was merely a necessary precaution, in our judgment, to make certain that in signing this contract we were not leaving the impression that that, in and of itself, was sufficient to obligate the Secretary of Interior to start the project.

Senator O'MAHONEY. Mr. Dominy, the point as I see it is this, that this modification of article No. 17 to which the Commissioners have objected and which is set forth on page 22 toward the bottom of the page in paragraph numbered 3, namely:

The commencement of construction of any works identified in this contract is contingent upon the conclusion of such further contractual arrangements as may be deemed by the Secretary to be necessary—

and so forth. Now, if the commencement of construction is contingent upon something, and that language is in the contract, then the Bureau has an out.

Now, I understand you to say that you understand the meaning of Secretary Aandahl's letter is that if the chairmen of the committees are of the opinion that the repayment of \$800,000-plus is all that was intended, then this added sentence is meaningless. You don't need it.

Mr. DOMINY. There I am saying "as deemed by the Secretary to be necessary" in my judgment will have been complied with, and whether or not this statement is in the contract will in and of itself have no bearing at that point, whether we start construction now or not. So it would seem to me to be meaningless.

Mr. ROSSITER. It leaves you open, though, to the position that you could put restrictions on in some other manner.

Senator O'MAHONEY. That contract has not been signed?

Mr. DOMINY. No, sir. No contract has been signed. I would like to have that very clear. And I think it would be well to have it in the record, that as I understand Montana law, now that the district has been formed, there is another opportunity for the people within that district to appear in behalf of their position, if they still oppose, at the time the repayment contract is confirmed.

Mr. ROSSITER. No; there may have been some misleading statements made on that, and I wish to correct that now. They don't have a chance to again go back into the fact whether they are in the district or not.

Mr. DOMINY. No. That is right.

Mr. ROSSITER. We have to go back and go through the same procedure to get the 60 percent of the people, 60 percent of the landowners to authorize the Commissioners to sign this contract. So that they have another chance to object. They can't get themselves out of the district.

Mr. DOMINY. I didn't want to leave the impression that they could get themselves out of the district.

Mr. LINEWEAVER. Let's cut the wobbling around, now. Is it the contention that the situation is that if the chairmen of the Appropriation Committees hold that the Department has correctly interpreted the intent of Congress, you would require an additional contract?

Mr. DOMINY. That is right.

Senator O'MAHONEY. I do not think there has been any wobbling around, Mr. Lineweaver. I think the testimony of the witness has been pretty clear on that.

Mr. LINEWEAVER. Perhaps, it's me that's wobbling around. If the opinion of the chairmen of the Appropriations Committees should be otherwise, the construction would start when the contract is signed.

Mr. FRYE. That is what the Secretary has said.

Mr. LINEWEAVER. I just wanted to clear that up.

Senator O'MAHONEY. And Mr. Rossiter has also said that when a repayment contract is signed, before it becomes effective, it must be cleared again in the court, and the court must hold that the 60 percent required by Montana law is still behind the contract.

Mr. ROSSITER. That is right, sir.

## FURTHER STATEMENT OF MESSERS. OLSON, HELBERG AND HERRIN

Mr. Olson, Mr. Helberg, and Mr. Herrin asked that the following closing statement be placed in the record:

We feel that the joint committee should acquire the complete transcript of the court proceedings held in Helena about June 1, 1955. This transcript would verify our above statements as to the stand the Bureau of Reclamation took at said proceedings.

The Bureau stated that the alternate plan 3 was rejected partially due to the fact that they were not sure of the No. 3 ground under this plan. This No. 3 ground is included in the present proposed district; also many like No. 3 acres. We cannot see why the No. 3 ground is any better under the present plan.

The committee should know that many farmers who thought they were not affected by the proposed project did back and try to help this project become a reality, because they wanted these farmers who needed water to have it. But when they realized that it was hurting and, in some cases, destroying farmers' livelihood who had been farming in this valley all their lives, they withdrew their support and immediately tried to stop this injustice.

We three would like to thank the Honorable Senator O'Mahoney for the wonderful way he has received us and our problem.

Mr. Rising subsequently advised Governor Aronson's telegram and the resolution of the State water board covered the State's position.

Senator O'MAHONEY. I am very grateful to all of you who have appeared. I am sorry to have taken up so much time, but you can only blame yourselves.

(Whereupon, at 4:20 p. m., the hearing was closed.)

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# DOMESTIC TIN PRODUCTION

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UNIVERSITY  
OF MICHIGAN  
APR 20 1956  
MAIN  
READING ROOM

HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON  
MINERALS, MATERIALS, AND FUELS  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-FOURTH CONGRESS  
FIRST SESSION  
ON  
S. 2648  
A BILL TO ENCOURAGE THE DISCOVERY, DEVELOPMENT,  
AND PRODUCTION OF TIN IN THE UNITED STATES,  
ITS TERRITORIES AND POSSESSIONS

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NOVEMBER 1 AND 4, 1955

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Printed for the use of the Committee on Interior and Insular Affairs



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# DOMESTIC TIN PRODUCTION

TUESDAY, NOVEMBER 1, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON MINERALS, MATERIALS, AND FUELS OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Nome, Alaska.*

The subcommittee met at 10 a. m., in the courtroom of the United States district court, second division, Federal Building, Nome, Alaska, on November 1, 1955, with Senator W. Kerr Scott presiding.

Mr. Robert W. Redwine of the professional staff of the committee was also present and participated in the examination of witnesses.

Senator SCOTT. The meeting will come to order. This hearing has been called for the purpose of hearing testimony in respect to Senate bill 2648, which has as its purpose the promotion and development of a tin-producing industry in the continental United States and its Territories. The bill reads:

[S. 2648, 84th Cong., 1st sess.]

## AMENDMENT

(IN THE NATURE OF A SUBSTITUTE)

Intended to be proposed by Mr. Scott to the bill (S. 2648) to encourage the discovery, development, and production of tin in the United States, its Territories, and possessions, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

That the Domestic Minerals Program Extension Act of 1953 (67 Stat. 417), as amended, is amended by adding the following new sections:

"Sec. 5. In order to encourage the discovery, development, and production of domestic tin, the Administrator of the General Services Administration is hereby authorized and directed to establish a domestic tin purchase program, under such rules and regulations as may be promulgated by it.

"Sec. 6. Within ninety days from the effective date of this Act, the Administrator of the General Services Administration shall designate one or more delivery points within the continental United States, to include Seattle, Washington, for the purpose of accepting delivery of not more than ten thousand long tons of metallic tin in concentrates, or for a period of not more than ten years from the effective date of this Act, whichever may be the sooner, produced in the United States, its Territories, or possessions.

"Sec. 7. There is hereby established a base price of \$1.35 per pound, c. i. f. delivery point, for metallic tin in concentrates produced from lode mining operations, and a base price of \$1.20 per pound, c. i. f. delivery point, for metallic tin in concentrates produced from placer mining operations, delivered under the provisions of this Act. Such deliveries shall be subject to freight and smelter charges, together with such premiums and penalties as provided in the rules and regulations to be established. The net purchase price shall be determined by assay at time of delivery. This section is not intended and shall not be construed to limit or restrict the Administrator of the General Services Administration from increasing the price paid for metallic tin in concentrates delivered hereunder."

Senator SCOTT. That purpose is stated in the bill, and I quote:

To encourage the discovery, development, and production of domestic tin— followed by certain definite directives addressed to the executive branch of the Government.

Several important factors are interwoven in this question of a domestic tin-producing industry, including those of national security and self-sufficiency in one of the most strategic of all minerals and metals, the unemployment problem, and the matter of maintaining a stable economy in Alaska.

To act intelligently the Congress needs documented evidence touching on all facets of the problem. It is hoped that such evidence will be forthcoming here today.

The first witness will be Mr. Ralph Lomen, who has been asked by the subcommittee to present, for its benefit, an overall picture of the various interlocking problems, and suggestions for solving them.

Mr. Lomen, for the sake of the record, will you state your full name and business connections, and proceed with your testimony, and after that I will ask Mr. Robert Redwine to take over from that point.

#### **STATEMENT OF RALPH LOMEN, ON BEHALF OF THE TIN COMMITTEE OF THE ALASKA MINERS ASSOCIATION**

Mr. LOMEN. I would like to present for the record a brief of previous committee reports pertaining to this matter. It is a summary of committee reports which I think is of the greatest importance.

Mr. REDWINE. Mr. Chairman, I will ask the reporter to include this brief in the last part of the transcript.

Mr. LOMEN. Mr. Chairman and gentlemen of the committee, my name is Ralph Lomen and I appear here on behalf of the tin committee of the Alaska Miners Association, of which I am the chairman, and on behalf of the people of Nome where I have resided for the past 52 years.

Senate bill 2648 and its companion bill in the House, introduced by our Hon. Bob Bartlett, Delegate from Alaska, are the most important bills now pending in Congress so far as the second division of Alaska is concerned, and in my humble opinion far greater than statehood. Statehood without a developed natural economy could not function, and is merely a code of procedure for the conduct of society. The development of industry is essential to our very existence unless we are to be supported by a beneficent government.

In previous hearings held before the subcommittee of the Interior Committee of the House on the companion bill to S. 2648, the Governor of Alaska and the commissioner of labor testified that western Alaska is a distress area and currently drawing a disproportionate share from the employment security and welfare funds. If S. 2648 is passed by the Congress and becomes a law it will go far toward correcting this situation. It is abhorrent to consider welfare as a substitute for honest toil and, to those who would prefer it, I say that it is immoral.

Some of us who have devoted our lives and fortunes to the development of Alaska, and particularly the Seward Peninsula, find it embarrassing that we have not done better, but we have been blinded by gold, the king of metals, over the centuries. There was a time when

the peoples of the world fell under the hypnotic power of gold and it was such as these who stampeded from all quarters of the globe to found the town of Nome and develop this section of Alaska. In their quest for gold they made the first discoveries of tin at the western extremity of the American continent. Men of the same type later discovered platinum and developed the greatest source of that metal known on our continent, both more or less by accident. Two wars have eliminated the hardy prospector, without whom there can be no mineral development in this or any land.

The Seward Peninsula contains an area of a thousand square miles which has been declared the most highly mineralized on the American continent. In this area tin, of all metals except for gold, has been the most prevalent, and is to be found on numerous creeks as placer and as lode on its four most conspicuous promontories. More recently tin has been found in the Death Valley area, far removed from the so-called tin field, in quantity sufficient to justify further exploration. Traces of tin are common on most of the creeks of the Seward Peninsula, but for the present we are concerned with those prospects or occurrences considered to be of commercial value.

Such tin mining as we have had has been sporadic and confined to those periods when the market price appeared attractive. It is obvious that a market which has fluctuated from 27 cents per pound to \$2.04 is a dangerous place for investment, but in spite of the difficulties and price fluctuations the Seward Peninsula has contributed more than \$3 million in tin to the Nation's wealth. The motor-vessel *Coastal Rambler*, which sailed from here only a few days ago, carried approximately \$150,000 worth, and earlier in the season carried a cargo of even greater value. I will not dwell on the production statistics as you are to hear from representatives of the United States Bureau of Mines and the commissioner of mines for Alaska, both of whom have all of the official statistics and are more conversant than I.

If this was a subject of local interest only we would not be justified in appealing to the Congress. Its importance is national. Of all metals, tin is one of the oldest known and the rarest of the so-called base metals; one for which there is no substitute. An adequate and dependable supply is an absolute essential to our ever-expanding economy and to our national security. We here in Nome represent the only known source of tin on the American continent except for a smaller zone close to Fairbanks which remains undeveloped or unexplored. A few tons have been produced as a byproduct in North Carolina and the Dakotas, but otherwise the only known source of domestic tin is in Alaska.

The wise precaution of stockpiling tin and other strategic minerals is the result of the crucial position which we have occupied for two wars. The Congress has been farseeing in its support of that legislation and the program is under the constant scrutiny of the Office of Defense Mobilization. The alertness of ODM and the importance of tin is emphasized by the fact that the stockpile requirements have been upped seven times, or more, since the program was inaugurated.

A further evidence of the importance of tin is the fact that a special world conference was held in Geneva nearly 2 years ago for the purpose of stabilizing the tin industry. The conference was attended by all of the tin-producing nations of the world and most of the consumers, the United States being listed only among the latter. The



purpose of the conference was to establish stability in the industry and the conclusions and recommendations of the conference were subject to a vote of the participating nations. I am not in touch, but understand that, as of a month ago, the acceptance of the recommendations was assured and the Tin Council, to meet in London, will establish a world price within the range of 80 cents to \$1.10 per pound. A stockpile will be the method of control. The United States declined to vote, as a consuming nation, but afforded its blessing and stated that our own stockpile would not be used to control the world market price.

S. 2648 is an incentive bill to encourage prospecting for, and the ultimate development of, tin mines which may be discovered. Under the Office of Defense Minerals Exploration, there is now provision for prospecting with Federal aid but there is no law which contemplates Government participation in the mining or development of mines acquired under the Exploration Act; nor does S. 2648 contemplate such action.

The United States Tin Corp. is an exception to the above, having had assistance in both phases of its operation. The DMPA provided funds for equipment and production. Presently that mine is under the direction of General Services and its affairs probably will be liquidated. I am sure that GSA will testify before your committee.

The Alaska Tin Corp., during the seasons of 1953 and 1954, did exploratory work on Ear Mountain under a DMEA program and established a deposit of low grade tin on three creeks. It also established a low grade lode deposit containing both tin and copper. Neither of these prospects could be economically operated at present but they establish a known reserve which might conceivably be important at some future time.

The Zenda Gold Mining Co. also operated under a DMEA loan and established a reserve of approximately 4 million pounds of metallic tin at Cape Creek, the average metallic tin content exceeding 4 pounds per cubic yard in the pay zone. In spite of this rich deposit they have been unable to finance the operation due to the lack of a stabilized price.

The Northern Tin Co., operating on Buck Creek, has had the most successful operation on the Seward Peninsula. Mr. Ramstad has testified before the House committee as to his experiences in marketing his product and stated that they would permit their mine to lay dormant until assured of stability of price for their product.

The Office of Defense Mobilization has made an adverse report on the Bartlett bill now pending in the House and will probably do the same when S. 2648 is further considered. Members of the administration have likewise testified that there is no necessity for this type of legislation and have minimized our estimates of known reserves. It is likely that we are not viewing the matter from the same premise as we do not have advantage of the restricted information prepared by them but which is available to you in executive session.

This legislation goes beyond the scope of its strategic importance or it would be presumptuous for us to inject our opinions. The views of the administration do not consider the economy, welfare, or tax aspects. These matters do, however, concern the Congress.

While in Washington I have frequently heard the expression, "we have tin running out of our ears". As a matter of strategic im-

portance, that may be true under a short-range program but I find it difficult to reconcile that statement with the fact that we are still purchasing tin from foreign countries to feed a smelter at Texas City.

Regardless of the quantities of tin in the stockpile it must be considered as an emergency program only which does not, in any way, provide security beyond the moment. Assuming that we had need to draw on the stockpile for our national defense, it is conceivable that the stockpile may be inadequate for the duration of a war without any consideration for the further demands of an extended period of rehabilitation. If a war should occur, which God forbid, we would probably see destroyed the very sources of tin from which we have derived our present stocks and upon which our national industries are now dependent. Our present sources of tin will surely be denied us in any world conflict.

Lacking a dependable source of tin it seems to me most reasonable and timely to investigate our domestic sources. Within the continental United States, South Dakota is the only potential source so far as I know.

It would appear highly desirable to determine the tin potential of Alaska, not only for the immediate present but for posterity. Unless this is done we shall remain a have-not Nation. Under any program it will require years to ascertain the extent of our tin fields and to raise the necessary capital for their development, but the scope of S. 2648 should be sufficient to prove, or disprove, whether our fields are sufficient to provide a generous portion of our requirements. The present consumption of tin in the United States is approximately 60,000 long tons per year, from a world production of 165,000 tons, so we do not claim that this or any other legislation will make us independent of foreign sources but we should establish our position in this respect.

Incentive programs for tungsten, mercury, chrome, manganese, and other strategic minerals have been highly successful and serve as a precedent to justify the passage of this act.

The Hon. Douglas McKay, Secretary of the Interior, appearing before the American Mining Congress in its session at Las Vegas on October 10, outlined the administration's mineral policy. Quoting from his speech he said, among other things:

We must look deeper if we are to find new commercial deposits. You know, too, that most of our high-grade ores have been depleted and that we have to learn increasingly to handle economically the submarginal ones.

There's a real job to be done by the Government and by industry.

That we have a job to do is evidenced by our growing dependence upon imports. No longer can we fight a war or sustain an industrial economy without the aid of materials from foreign sources. For tin, chromium, nickel, manganese, bauxite, we are heavily dependent on imports.

The bill now before your committee is consistent with the above policy calling for cooperation between industry and Government. The Government is very liberal in its assistance for the purpose of prospecting but that is of little importance unless the program is extended to make it possible for industry, at its own expense and risk, to develop and mine the properties proven.

S. 2648 provides the incentive that will attract capital for this development and mining.

S. 2648 is not a subsidy at the expense of the taxpayer. The productivity of a successful mining operation, in wages and taxes, will more than offset any cost to the Government anticipated in this bill. Further, unless the private investment produces tin the measure will cost the Government nothing.

All that is involved in the bill is the differential between the world market price and the guaranteed floor price which can be more than offset by advances on the open market.

The only question which remains is whether it is advisable for the Government to determine the possibility of a domestic source of tin or to remain in perpetuity dependent upon the whim or friendship of those nations which today can, as they may please, supply or deny us this essential item in our economy.

Twice, in two wars, we have found that they could not, or would not, supply us with tin. If we cannot protect ourselves in time of peace it is very doubtful that we can in time of war. It must be remembered that the 38th parallel in Korea was because of the tungsten mines.

Someday we may compromise a war because of the essentiality of tin and our inability to get it.

It should be ascertained now whether we are to be eternally dependent upon foreign sources for our supply of tin or whether it is obtainable within our own borders.

The production of \$3 million worth of any product should be ample proof that the product exists and, that being true, it is worthy of serious consideration.

The Alaska Miners Association appeals for serious consideration of this measure.

Senator SCOTT. Mr. Redwine, I will ask you to give your name and connections for the record so those present may know your connection.

Mr. REDWINE. I am Robert W. Redwine and I am with the professional staff of the Senate Interior Committee, with special assignment on matters dealing with minerals and metals.

Mr. LOMEN, what is the present world market price for tin? Do you have those figures available?

Mr. LOMEN. I am about 2 months out of date but I hope it is still approximately a dollar. So far as I can recall, since last May the price of tin has advanced from 10 to 12 cents. The last I heard it was 98 $\frac{3}{4}$  cents per pound, but that is not current.

Mr. REDWINE. I want to call your attention, Mr. Lomen, to the fact that our chairman has submitted to the Congress an amendment to S. 2648. The original S. 2648 called for a support price of \$1.25 per pound for all types of tin domestically produced. Now the amendment calls for \$1.35 a pound for concentrates produced from lode mining operations and \$1.20 base price for concentrates from placer mining. Do you think that those two prices are realistic in respect to production in Alaska?

Mr. LOMEN. I will answer that this way, Mr. Redwine. In the hearings held in May, the original bill providing for \$1.25 was discussed by the witnesses and by the professional staff of the House committee. It was later suggested by counsel of the House committee that there should be a differential between placer and lode because of the extreme importance of lode in the first place and, in the second place, to develop a lode mine requires an expenditure of usually several millions of dollars whereas several hundred thousands of dollars would

open up a very good placer operation. Because of that differential in required investment, it was agreed by all parties concerned at the time that this spread would be very realistic and could be justified by the facts. The witnesses as well as the professional staff determined this price and I think it is ultimately fair that there should be a differential because of the investment.

Mr. REDWINE. In other words, in your opinion the differential is fair and realistic.

Mr. LOMEN. Absolutely.

Mr. REDWINE. Well then, let's go to this: Do you think that \$1.20 and \$1.35 are sufficient incentive to get some tin mined in Alaska beyond what is being mined now?

Mr. LOMEN. Unless our national economy is changed a great deal in the next 18 or 24 months, that price is attractive and carries sufficient incentive. There is greater incentive for some of the other strategic minerals. However, we would be very happy, those of us who are concerned, if this price was established and at the present time, unless the economy changes, it is ample incentive and I can assure you that I know of more than 1 operation—I know of 1 that would be in operation next year, in 1956. I know a second operation that would endeavor to organize and be in operation before the close of 1956 under this act.

Mr. REDWINE. What if this act does not become law? Will those two operations that you were speaking of materialize?

Mr. LOMEN. One has made ample profit to liquidate and the other would become bankrupt, of the two I refer to now. Neither one would produce any demand for labor on the Seward Peninsula unless this bill is passed.

Mr. REDWINE. It's your view then, representing through your official capacity in the Domestic Tin Producers Association—I believe that is the name of the organization—

Mr. LOMEN. Alaska Miner's Association and then the Domestic Tin Producers Association, I have testified in behalf of both. If I wore 2 hats last night, in Washington I wore 4—

Mr. REDWINE. And the viewpoint of the people in the industry that they do not want the Government to mine these tin properties; they are not asking for any loans?

Mr. LOMEN. They prefer not to have Government participation with a control as far away as Washington. It is too difficult to secure the proper authority and I might add further that in my testimony today I spoke of a mine that is in distress which is under the control of GSA. Under this bill with the price of \$1.35 I am absolutely confident that that mine will open and furnish employment to more than 100 native people of the Seward Peninsula, and it will probably open up in 1956 under private ownership if this bill passes, and the Government will be bailed out.

Mr. REDWINE. Are you referring to the United States Tin Corp. operating at Lost River?

Mr. LOMEN. I am sir.

Mr. REDWINE. The only Government assistance they have had has been exploratory work.

Mr. LOMEN. No. They have had DMEA and DMPA. The latter is nonexistent today and the responsibility of DMPA was transferred to, I believe, General Services.

Mr. REDWINE. Reading here from a recent newspaper, I see—a part of this year they have closed down—but this year as long as they were operating they had a payroll of around \$25,000 a month. What does that do to the economy of that area?

Mr. LOMEN. Well, I don't like to confess how small our area is but \$25,000 a month on the payroll is the difference between living well and living on tomcod and seal oil for a great many people.

Mr. REDWINE. The chairman and I, also, are not too familiar with some of the items of food up here. Will you tell us what tomcod is?

Mr. LOMEN. Tomcod is a fish found in very generous quantities in our rivers here and it is not bad eating; but seal oil, unless it is kept fresh, is not very good to dip the fish in. Seal oil is very wholesome for those who like it. To get back to the importance of the \$25,000 a month payroll, the town of Teller is about 25 miles away from Lost River. That town has been, I might say, practically supported by that payroll; the Eskimo village of Wales, Alaska, has been supported by that payroll. I know of no other substantial income that either of those places has. Teller, at one time, was a supply point for gold mining in the Kougarak area which is back in the peninsula. Gold mining is dormant today. I wonder if Mr. Jackson is going to appear before you because I think he is going to give some testimony that will show you what has happened to gold mining and if he does not appear, I am in a position to testify to it.

Mr. REDWINE. We have asked Mr. Jackson to appear and I think he will be here a little later this morning. I believe we have some witnesses from the welfare people who will come a little later also.

Mr. REDWINE. The population of the second division I believe runs around 15,000 people?

Mr. LOMEN. Northwestern Alaska, yes. Embraced within the second division, we have a population of less than 15,000.

Mr. REDWINE. What is the breakdown?

Mr. LOMEN. In western and northwestern Alaska we believe we have at the present time a population of 15,000 of which 12,000 are native people.

Mr. REDWINE. About how is that broken down between Indians and Eskimos?

Mr. LOMEN. We have no Indians in this section. They are confined to the southeastern and some along the Yukon. The Eskimo people are coastal people. Then we have the Aleuts in the Aleutian chain.

Mr. REDWINE. Now you are not including in that 15,000 the military personnel?

Mr. LOMEN. No—of which we have very little now in this district.

Mr. REDWINE. Reading testimony you have given before other committees, Mr. Lomen, I note that you have, in the 50 years you have been in this area, been a rather large employer of native people.

Mr. LOMEN. Well, when the Lomen Reindeer Corp. existed we had five-hundred-and-some-odd W-2 forms in 1 year and we were then the largest employers of Eskimo labor in the world.

Mr. REDWINE. What kind of workers are they?

Mr. LOMEN. Up to the limit of their capacity, very good. Last week we had 109, I believe it was, on our payroll of Eskimo labor and we employ in longshoring here almost entirely Eskimo labor, except for key positions. They are good workers but with the high wages of the

contractors and some others, it is very difficult for us to secure the best laborers. The best natives want permanent employment and our business is very spasmodic. We discharge the cargoes of vessels that come in here and we only have 3 or 4 commercial vessels a year. Consequently we cannot maintain a large crew such as a lode mine or placer mine would do, granting continuous employment.

Mr. REDWINE. Now in the area of Potato Mountain and Lost River and so forth, is it possible to carry on a mining operation for 12 months a year?

Mr. LOMEN. Lost River has done so successfully—and there are four promontories of importance on the Seward Peninsula under this bill.

Brooks Mountain where the Lost River tin mine is located—or the United States Tin Corp.—is the most promising. At Cape Mountain, tin has been found in lode; likewise at Potato Mountain and at Ear Mountain. Now those four promontories are conspicuous and naturally were the first to attract the attention of prospectors. I don't doubt at all but what lode deposits will be discovered in many places where perhaps today they are buried, and the development of placer mines will reveal a lode mine such as has occurred in the West on many booms. Placer gold mines developed many of the good mines of the West. The same will be true here I think, and lode mining can operate here continuously for 12 months of the year. Therefore it is of much greater importance to develop the lode than the placer.

Mr. REDWINE. I would like this point to be brought out very emphatically: As far as you see it, enactment of this proposed legislation would not cost the Government anything unless you tin people produce tin, would it?

Mr. LOMEN. It would cost the Government nothing. Private capital makes an investment and develops the production of tin. If the market price fluctuates favorably, then perhaps it is conceivable that it would cost the Government nothing—

Mr. REDWINE. Then enactment of this legislation would bring about the investment of private capital?

Mr. LOMEN. I know it will.

Mr. REDWINE. Mr. Chairman, as you know, we have several witnesses here who are more familiar with the unemployment situation and welfare demands than Mr. Lomen is, and I think we will bring that out from those witnesses. I have no further questions for you at this time, Mr. Lomen, but I certainly want you to stay because I feel that we may have some more questions for you a little later.

Mr. LOMEN. Well, I intend to. I hold a 100-percent record so far as tin hearings. I have attended all of them.

Mr. REDWINE. I wonder if we could hear from Dr. Langsam. Is he present?

Mr. LOMEN. In a town of monopolies, he has a monopoly on the medical practice. I will telephone him.

Mr. REDWINE. That is all right. He sent word that he would like to be heard for some reason early this morning. I wonder if Miss Mary Jolley is here?

**STATEMENT OF MISS MARY E. JOLLEY, DISTRICT REPRESENTATIVE OF THE ALASKA DEPARTMENT OF PUBLIC WELFARE, SECOND DIVISION**

Mr. REDWINE. Would you please give your name and official title and so forth?

Miss JOLLEY. I am Mary Elizabeth Jolley and I am the district representative of the Alaska Department of Public Welfare, second division.

Mr. REDWINE. Is it Miss or Mrs.?

Miss JOLLEY. Miss.

Mr. REDWINE. We would like to know just what the welfare situation is in the area; how many on the rolls and so forth and so on.

Miss JOLLEY. The welfare picture in Alaska is a little bit different than the welfare picture in the States in that we divide the responsibility for some of the assistance programs with the Alaska Native Service. I cover the second division, which extends from Barrow to Hooper Bay. We have 52 villages and we know about these villages through our agents. We have local lay people who correspond with us about the situations there. We try to cover them once a year, but we don't always get there.

Old-age assistance, aid to the blind, and aid to dependent children are pretty much the same as they are in the States, because they are federally participated programs, but general assistance is not the same as it is in the States. We don't have aid to the chronically disabled. Our agency helps families through general assistance where the head of the household is nonnative.

Mr. REDWINE. Where the head of the household is nonnative?

Miss JOLLEY. Yes. We have no one in this category at the present time in the second division. The Alaska Native Service is responsible for general assistance to all families where the head of the household is native—and they do have some. Mr. Jenkins can speak to you about that. We have approximately 375 aid to dependent children cases at the present time.

Mr. REDWINE. How many?

Miss JOLLEY. 375. I can give you statistics if you like. How many copies would you want?

Mr. REDWINE. Will you give us about three, please? We would like you to go over these statements if you will.

Miss JOLLEY. We have about 375 aid-to-dependent-children cases, of which over half of them are on the rolls because of tuberculosis. This means that one or both parents are in the hospital because of tuberculosis, or are at home waiting to go to the hospital because of tuberculosis. This doesn't include the children who are on the rolls because one of the parents is dead because of tuberculosis.

We have about 350 old-age-assistance cases in this Division and we have approximately 20 aid-to-the-blind cases and no general assistance cases. As far as employment is concerned, your general assistance case load is one that usually contains employable people—the heads of the household who are out of work—but as you can see, this doesn't qualify me to speak too well about the degree of unemployment. In aid-to-dependent-children families, however, or where an old-age-assistance person is living with their son or daughter we repeatedly, in going over the reports of the villages, we repeatedly find 2 or 3

adults in the family who have listed as their employment "native pursuits". This means hunting or fishing and no cash income in the family and we have a system for calculating income which includes resources in kind and our biggest source of income in the Second Division is fish and game.

Mr. REDWINE. And that is food that they, themselves, eat?

Miss JOLLEY. Yes.

Mr. REDWINE. And that is included in the total income figure?

Miss JOLLEY. Yes.

Mr. REDWINE. What is the per capita income, including the hunting and fishing—what is the average per capita income, Miss Jolley?

Miss JOLLEY. I don't think I can give you a figure on that. I don't know. It is low.

Mr. REDWINE. Who could give us the figure, could you say. Do you suppose Mr. Benson could, the Commissioner of Labor?

Miss JOLLEY. He could give you the average cash income but nobody could give you the average per capita fish and game income.

Mr. REDWINE. Well, what kind of formula do you use?

Miss JOLLEY. Well, we ask our agent from Wales, say, or Shishmaref, to check whether the family gets one fourth of their income from fish and meat, from native sources, or whether they get a half or three-fourths or all of it, and the same thing for vegetables and that sort of thing, and the same thing for clothing. For instance, if they make their own clothing out of skin and they get a half or quarter of their income from native sources, we take this half or quarter and put cash value on it and turn it into the amount of money we allow them for food. If you have a family of 4 people, the allowance per adult for food would be \$42.00—or if you got one-fourth of your meat from native sources—

Mr. REDWINE. \$42.00? Over what period?

Miss JOLLEY. Per month.

Mr. REDWINE. That is for an adult?

Miss JOLLEY. Yes, an adult in a family of four. It varies according to the size of the family.

Mr. REDWINE. But what about the children? What is your allowance for food per child?

Miss JOLLEY. It depends upon the age of the child. A child up to 6 is \$24.00 a month for food. Then you have a corresponding chart in which, if one-fourth of their produce and meat is produced by themselves, you substitute \$7.00, and if it is one-half, then a different figure is used.

Mr. REDWINE. Well, what determines the amount that they produce themselves—laziness, lack of game and fish in the area in which they live, or what?

Miss JOLLEY. I think the same thing that determines how much we get for ourselves—how much we want to work and how available it is, and how hard it is, and how much incentive we have. Different areas have more reliance on native produce than others. In Nome, of course, we have very little if any. On Diomedes and King Islands, for instance, they get a great deal of theirs locally. In the Quiguk-Alakanuk-Hooper Bay area, down there the people are less adapted to agriculture and they live off the land much more than they do up here. I haven't had an opportunity to visit all the villages. I go



mostly on what I find in our correspondence and records from the agents.

Mr. REDWINE. In the funds that are administered by you, what is the average monthly allowance?

Miss JOLLEY. I can tell you what we spent last month.

Mr. REDWINE. Do you have the corresponding figure for the same month of last year?

Miss JOLLEY. Yes. For the month of September we spent \$21,390 on old-age assistance; we spent \$1,422 on aid to the blind; we spent \$33,520 on aid to dependent children. That is much less than is needed because there was a 10 percent cut on all our finances because of inadequate appropriations by the legislature and everybody automatically gets a 10 percent cut. On general assistance we spent nothing. We administer the juvenile code and child welfare programs too, which are in a separate category. For the equivalent month in 1954 we spent \$19,513 on old-age assistance; \$750 on aid to the blind; \$23,680 for aid to dependent children. In our program—we have not had a local officer for too long. The program was administered out of Juneau for awhile; then out of Fairbanks. We haven't had a full staff. Right now I am the only social worker in the Second Division. We are staffed by two people but the other person left.

Mr. REDWINE. Well, how extensive is this lay personnel?

Miss JOLLEY. Well, it varies. Some of them are very good and some of them are—well, they can't even read and write too well. They write interesting letters and interesting reports. We have 52 agents and 2 of them we don't visit—King Island and Diomedes—but the other 50 we try to cover. A village may have—well Kotzebue is a pretty good sized town and we have extensive work for an agent there. Another place may only have 10 or 12 people. We have some cases like Lost River where they are all moving away now.

Mr. REDWINE. Let me ask you this: disregarding entirely the Par-ran report or that kind of thing, what is your personal opinion as to the cause for the high incidence of tuberculosis among the natives?

Miss JOLLEY. It has an awful lot to do with diet. I am not qualified to speak medically but the change from the native diet of tom-cod and seal oil to our diet shows up in the children's teeth and lots of other ways. They take our bleached sugar and bleached flour and all the bad things about our diet and give up some of the good ones about theirs, and I think they suffer from it.

Mr. REDWINE. In other words, you think it is not altogether a shortage of food?

Miss JOLLEY. It's an educational process too.

Mr. REDWINE. It's becoming accustomed to changes in food?

Miss JOLLEY. No. In the change they pick up the bad things about our diet and don't pick up some of the good ones. You can't get very many carrots up here.

Mr. REDWINE. Mr. Chairman, do you have any questions you would like to ask Miss Jolley.

Senator SCOTT. I don't believe so except that I would like to ask—I don't want to take the time this morning—but on the question of tuberculosis—we have found in the States, in my State there has been an effort made in both livestock and humans to detect it and to prevent

it. I think we have made some progress although not nearly as much as we should have.

Miss JOLLEY. The strides we have made in this area in the last 6 months are almost amazing. People used to wait 2 years to go to the sanitarium and now they go sometimes in a matter of weeks instead of years. The active cases that are floating around are all known and we are getting them hospitalized and where we get some of these kids and feed them adequately and they get enough rest and they can live in a place where there aren't 14 to 18 people to a couple of rooms, it makes them more resistant, and I think we are making big progress and I think it is well on the way to being licked.

Senator SCOTT. You make an effort here to predetermine tuberculosis in the area?

Miss JOLLEY. The Health Department has a very active program.

Senator SCOTT. And the people are responding to it?

Miss JOLLEY. They haven't as yet gotten to the point where they force people to go to the hospital because there haven't been the beds available, but we can use all the beds they give us.

Senator SCOTT. Of course, in all such things we know we never have perfection in this world—we probably shouldn't have or we'd have nothing to work for if we did.

Miss JOLLEY. It's amazing to see the number of families with orphan kids, or kids with one parent, who have lost a parent with tuberculosis. I have never seen anything like it in my life in terms of numbers; 6 and 7 kids to a family and "Ma" goes to the hospital and "Pa" is already in the hospital and they have anywhere from 6 to 10 kids.

Senator SCOTT. Such cases as typhoid—do you have that in typhoid inoculation?

Miss JOLLEY. Probably Dr. Langsam or Miss McDonald could tell you more about this. I think they have inoculated for typhoid around here but I don't know enough about it. I haven't run into it since I have been here. I have just been here since the first of August.

Senator SCOTT. What about smallpox?

Miss JOLLEY. I don't know—I am not qualified to speak about it.

Mr. REDWINE. What about the hospital program for tuberculosis? Tell us about it; where the hospitals are and so forth.

Miss JOLLEY. Well, my big problem right now is that they are hospitalizing all these patients in the States and they get homesick for Alaska and worry about what their wives are doing at home while they are off at the hospital. I have got stacks of letters like that on my desk from social workers down at Laurel Beach and all those hospitals around Seattle about what is going on at home and who is doing what about this and how are the kids. If they live out at Quiguk, sometimes it takes me a month to get a letter from Quiguk or a month to get a letter one way. I can't tell them exactly what is going on at home. The Alaska Native Service transferred its hospitals to the United States Public Health Service you know, the first of July, and they care for tuberculosis patients at Mt. Edgecumbe and Anchorage and some in Kotzebue and I think some in that hospital over around Bethel.

However, their biggest tuberculosis program is at Mt. Edgecumbe and Anchorage; but an awful lot of native people are going to hospitals in the States for tuberculosis.

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However, their biggest tuberculosis program is at Mt. Edgecumbe and Anchorage; but an awful lot of native people are going to hospitals in the States for tuberculosis.

**Mr. REDWINE.** What agency pays those bills?

**Miss JOLLEY.** Well, the Alaska Native Service pays and I think the United States Public Health Service has some sort of an arrangement. I don't know exactly how it works, but the Territory doesn't pay for them. They pay for non-natives who are hospitalized in some sort of combination—at Seward—with the Methodist Church, but there is never any problem in getting in a hospital for a non-native person.

**Mr. REDWINE.** Do you have anything in particular that you would like to bring out, Miss Jolley, that we haven't covered?

**Miss JOLLEY.** The only thing I think about is our need for employment. It is more than just a need for jobs although that need is certainly rampant. The amount of wages a man makes in terms of what it costs to live here, and the differential between the two, has something to do with how valuable the job is to the person.

**Mr. REDWINE.** What is the average wage a native gets, would you say?

**Miss JOLLEY.** About \$1.25 an hour is the minimum wage in the Territory. In mining—a fellow who works in the mining field makes \$1.57 an hour. They work 9 hours a day for 7 days a week during the months they are working. That is the lowest paid labor. Their take-home pay averages around \$400 a month. They generally have an opportunity to buy their groceries through the company which helps a lot and they get by pretty well even with 9 kids.

**Mr. REDWINE.** What is the average family size?

**Miss JOLLEY.** Five to nine—and I have seen lots of women from 35 to 45 years of age who have had from 17 to 25 children. That is not only in this part of Alaska; that is also true with the Quiguk Indians themselves. Actually, the birth rate was less than the death rate up until about 2 years ago, so you can see how many of them were dying.

**Mr. REDWINE.** What is the child mortality rate?

**Miss JOLLEY.** I don't know what it is in his area.

**Senator SCOTT.** Is there a tendency for a person up here who is what we will call "well-employed," to save any money for a rainy day, as we express it—although I haven't seen any rainy days up here.

**Miss JOLLEY.** Well, that is one of the problems in terms of the adequacy of the wage in terms of the cost of living. Somebody has to teach these people how to handle money too. There is a cooperative type of sharing among the Eskimo people—for instance, a kid comes in and you buy him a pair of shoes. He comes in the next day and he hasn't any shoes and you say "where are your shoes?" and he says "my brother had to go to work." There is no feeling that these are "my" shoes and he can't wear them. They are "our shoes"—and you can't manage money too well if you share it with too many people and your relatives all move in to eat off of you—and it is rude to tell them to leave. So they come down and they say "Miss Jolley, so-and-so, he came from the village and he is living with me and he is eating up all my food. I can't tell him to leave. You tell him to go home." At first I wouldn't do that but I do now. It works better.

**Mr. REDWINE.** Does that mean then that you have to put him on the rolls? After he goes home?

**Miss JOLLEY.** No; not unless he fits into one of our categories—blind, or a child, or over 65. Otherwise, Mr. Jenkins, inherits him, and

they don't have a social worker. They have never had a social worker for the second division.

Mr. REDWINE. Does your office do any cooperative reporting or anything on unemployment insurance?

Miss JOLLEY. There is no employment office in the second division. There is no place to file for unemployment compensation. You have to write to Juneau to get your unemployment compensation—as near as I can tell. I haven't been able to find out what you do and there just isn't anything here. We are sort of off—with the government down in Juneau. They maybe come up to see us and maybe they don't and Juneau is, of course, controlled from Washington and we are all sort of removed. We don't have any figures on unemployment compensation.

Mr. REDWINE. Thank you, Miss Jolley, very much.

Mr. REDWINE. Mr. Sandvik, for the record will you give us your name and official title and so forth.

**STATEMENT OF PETER O. SANDVIK, MINING ENGINEER AND  
ASSAYER FOR THE TERRITORIAL DEPARTMENT OF MINES, NOME,  
ALASKA**

Mr. SANDVIK. My name is Peter O. Sandvik. I am a mining engineer and assayer for the Territorial Department of Mines here at Nome.

Mr. REDWINE. Do you have a prepared statement, Mr. Sandvik?

Mr. SANDVIK. Yes. I have a statement partially prepared by Mr. Phil R. Holdsworth, Commissioner of Mines, and partially prepared by myself, which I will present to you. This production has been primarily from placer deposits at Cape Creek and Goodman Creek on Potato Mountain and at Buck Creek on Potato Mountain, and also there has been some production at Lost River.

Mr. REDWINE. While you are up there, sir, will you point out to the chairman where Nome is on the map in relationship to the areas you have just pointed out.

(Mr. Sandvik then points out the tin production areas referred to.)

Mr. REDWINE. About what is the distance in air miles?

Mr. SANDVIK. It is somewhere around 90 to 100 miles. I am not sure of that distance.

Mr. REDWINE. What are the climatic conditions up there in respect to what they are here?

Mr. SANDVIK. The climatic conditions here are much less severe than they are up there. In that area there is a terrific amount of wind, compared to here. It is constantly windy. The United States is now paying 96¼ cents per pound of tin as of last week and to insure the domestic production of tin and to show how the tariff-based subsidy could benefit domestic tin, let me illustrate.

The 10,000-ton figure has been chosen as a possible goal for domestic tin production, an average yearly production of 1,000 tons over the 10-year period. This may or may not be possible, but assume it is. This is against a present annual consumption of 55,000 tons—more than 50 times the hoped-for domestic production under the program. The major part of our tin, then, must continue to come from imports until greater discoveries are made and developed.

An import tariff of 1 cent per pound on tin would yield 50 cents per pound to apply as a subsidy to domestic production, giving a total of nearly \$1.50 per pound at the present market price of tin.

Assuming that most of the 1,000 tons would be produced in this area, we would have about \$3 million per year in added direct income for the area as well as the considerable indirect benefit that would result. And, of course, tin is not the only metal that would be discovered. If there were an incentive, prospectors would be in the field again, and a host of other minerals as well as tin would be found—among them tungsten, copper, bismuth, mercury, uranium, and others, since there are known occurrences of all of these here. Therefore, a tin program of the nature of either the direct floor price program or the tariff-based subsidy program could be a basis for rebirth of the mining industry in this region.

Under either plan there is no money paid out until metal is produced and, therefore, the Government receives something for its money. Also, all producers benefit at the same rate. In the case of DMEA, assistance is granted only after approval. The money is then loaned out and is paid back only if and when production results. In many instances, there is never any metal produced and, therefore, no payment on the loan. This has been the case with many DMEA loans in Alaska.

It seems to me that a program of either type is far superior to anything else that has been proposed or tried to date to stimulate the production of this strategic metal, tin, in this one area under the United States Flag which has a potential to produce it.

(The following portion of Mr. Sandvik's statement was prepared by Mr. Holdsworth.)

Alaska has the only tin producing potential under the American Flag. From 1903 to date, 2,000 short tons of tin have been produced in the Cape Nome district. The United States is now consuming about 55,000 tons of tin annually, and is purchasing 20,000 tons annually in a low-grade concentrate from Bolivia. This imported product is treated at the Texas City tin smelter at a considerable cost to the Government.

The present market price of tin is not sufficient to warrant either the installation of processing equipment at known deposits or the exploration of other potential areas. To insure domestic production of this metal, some long-range program must be adopted by the Congress, which will offer the necessary incentives to justify exploration, development, and production by private industry.

DMEA has not been the answer in the case of tin. The only other type of incentive is price support. This can be offered in several ways with varying effects on the taxpayer's pocket.

Senate bill 2648 of the 84th Congress (H. R. 7145) covers one type of incentive. This bill asks that a price of \$1.35 per pound for domestic tin produced from lode deposits and \$1.20 per pound for domestic tin produced from placer deposits be established over a 10-year period, or until 10,000 long tons of tin be produced, whichever comes first. Under such a plan, only the difference between the market price and the floor price would be paid by the Government and this only if metal is produced. Domestic tin operations cannot produce this quantity from present known reserves, which means that substantial additional reserves will have to be prospected for and developed by private capital.

Another type of incentive which might be offered is a subsidy price, derived from import tariffs, to be paid to domestic mineral producers. This would reduce Government income, but would not be a charge to the taxpayer. Such a plan for tin, based on the tonnage ratio of imports to domestic production, would have practically no effect on the metal price to consumers, but at the same time would provide a very satisfactory price for the domestic producer. This type of plan is being considered for recommendation by the 11 Western States, applicable to all metals, to alleviate the problems of the domestic mining industry.

Mr. SANDVIK. There wouldn't be a thousand pounds the first year, of course, but supposedly over a 10-year period it would average out around a thousand pounds a year. This may or may not be possible. This tariff subsidy is something that came up in recent meetings of the mining industry in the States and I hadn't considered it or even heard of it until recently. However, it is just another program that could possibly bring about some tin mining in this area. Either way would help.

Mr. REDWINE. Do you know whether the Western Governors' Conference has taken that up in their meetings in Sacramento this month?

Mr. SANDVIK. I believe it is to be taken up; yes.

Mr. REDWINE. It is your judgment then and the judgment of your agency that an incentive plan or tariff that would have a minimum floor of \$1.20 in the case of placer, and \$1.35 for lode, would bring about some activity in tin mining in Alaska?

Mr. SANDVIK. Yes; and not only in tin. It is the other benefits that would be derived as well—tungsten, copper, bismuth, uranium; all these associated in this area with the other metals. There is a wide variety of mineral occurrences here.

Mr. REDWINE. In other words, among the things that are needed in the area is a greater exploration for all of the minerals.

Mr. SANDVIK. Yes. Yes—with prospectors in the field. There is no one in the field now except in very spotty cases.

Mr. REDWINE. Senator, do you have any questions—anything that you would like to ask?

Senator SCOTT. No. Not at present.

Mr. REDWINE. Mr. Sandvik, can you tell us what the Government is having to pay for Bolivia tin, this low-grade tin that is coming in?

Mr. SANDVIK. I believe it comes in at the market price of 96¼ cents.

Mr. REDWINE. Even though it is low-grade?

Mr. SANDVIK. Yes.

Mr. REDWINE. What about the difficulty of smelting it? I understand it is very difficult to smelt?

Mr. SANDVIK. That is right. It does not compare at all in grade to Alaska tin. I don't know what the average percentage of tin concentrates received from Bolivia is. However, it is much more difficult to handle than is our Alaska tin.

Mr. REDWINE. By the way, what has been the history of the richness of the concentrates shipped out of Alaska?

Mr. SANDVIK. I don't have an exact figure but I believe they run around 70 percent.

Mr. REDWINE. And that is high?

Mr. SANDVIK. Yes. That is about as high as you can get. The tin mineral concentrate is 79.6 percent tin. That is the highest percent-



age you can get for concentrate. The pure mineral is just under 80 percent tin.

Mr. REDWINE. Mr. Lomen, I wonder if you would step up here for a minute. You are more familiar with the technical angles of this matter under discussion than either the chairman or myself. I wonder if there is anything that occurs to you that this gentleman could bring out that we should ask him about.

Mr. LOMEN. One point, Mr. Redwine, I visited the Texas City smelter and spent an afternoon with Mr. ter Braake. Mr. ter Braake is the superintendent of the smelter. He told me of the difficulty in handling the low-grade ore from Bolivia which requires leaching. The Government built the smelter at a cost of \$13½ million. He told me that he could build a smelter of similar capacity, if he had only high-grade Alaskan concentrates to handle, at a cost not to exceed \$3 million. So the other \$10 million represents the difficulty of leaching the Bolivian ore and the processing of it. He has received tin from all over the world and was selected for the purpose of conducting that smelter because of his superior knowledge.

I thought it would be very well to inject here the comparative cost of the smelters because of the superiority of the Alaskan concentrates against the Bolivian.

Mr. REDWINE. Well, let me ask this: I would like both of you to answer it. Do you think there are sufficient known deposits of tin in Alaska to justify a \$3 million investment for a smelter in Alaska or Seattle or some stateside port?

Mr. LOMEN. I don't quite follow you.

Mr. REDWINE. Are the reserves—the known reserves—

Mr. LOMEN. The reserves? Now I can answer your question. The known reserves are not sufficient to justify an investment of \$3 million of private capital nor do we anticipate any such investment until we know more about the potential but \$3 million has already been invested in one lode mine and having such investment, they could operate at \$1.35 a pound at a profit with ore, as I understand it, that would approximate 1-percent tin. The placer operations would require perhaps an investment of a quarter million dollars which is more than the Ramstads invested in the Northern Tin Co. which has been the most successful operation of recent years. Their investment approximates \$175,000. To operate on Goat Creek with an efficient operation would require an investment of approximately \$300,000 to \$350,000 and the ore in sight now, under this bill—the tin site at Cape Creek now would justify an investment of about a half million dollars.

Mr. REDWINE. As a matter of getting it into the record, will you tell us where the tin smelters are located. Where they are located at the present time—worldwide?

Mr. SANDVIK. Well, of course you have the Texas City smelter. I believe there is still a smelter at Singapore—you can probably answer that better than I can, Mr. Lomen.

Mr. LOMEN. There is 1 in Holland, 2 in Japan, 1 in Brazil. The Brazilian smelter—I don't know from where they get their source but it has never been employed. The only smelters we are familiar with are the Holland and Singapore smelters—other than our own national smelter at Texas City.

Mr. REDWINE. Well, a good many years ago did they not ship a cargo of Alaskan tin concentrates—weren't they sent to Singapore?

**Mr. LOMEN.** Many of them have been sent to Singapore and one was sent to a detinning plant in San Francisco some years ago. They had a carload and that detinning plant processed the carload for metallic tin.

**Mr. REDWINE.** Well, just for the sake of the record, in that detinning process you have to have some raw concentrates to mix with it; do you not?

**Mr. LOMEN.** I am not familiar with the processes of a detinning plant; whether they require a concentrate or whether they depend upon scrap steel that comes with the pure metallic tin that is recovered.

**Mr. REDWINE.** Mr. Sandvik, is it or is it not your understanding that they need the raw concentrates?

**Mr. SANDVIK.** I am not positive of that but I believe that is right.

**Mr. LOMEN.** It may be then, that I am not well-informed on the plant in San Francisco then—what they use in connection with the tin—because it was necessary to have a concentrate. I thought it was smelted as a concentrate without the necessity of having steel.

**Mr. REDWINE.** Well, I am not sure of that either but I think that is the case. Do you have anything else you would like to take up or talk about.

**Mr. SANDVIK.** No. Nothing in particular.

**Mr. REDWINE.** Thank you very much, gentlemen.

### STATEMENT OF DR. FRED LANGSAM

**Dr. LANGSAM.** I am Dr. Fred Langsam.

**Mr. REDWINE.** Dr. Langsam, will you tell us something about the health conditions up here amongst the natives.

**Dr. LANGSAM.** Well, you probably know that we have a great prevalence of tuberculosis amongst the natives. The proportion has been variously stated. One statement is that it is 11 times as common as it is amongst the white people.

**Mr. REDWINE.** Well, let's state it another way. The national average stateside, we will say, is what per thousand?

**Dr. LANGSAM.** I can't give you an exact figure now, but roughly I would say it is about 11 times as common here as it is in the States.

**Mr. REDWINE.** What is the cause for that, Doctor?

**Dr. LANGSAM.** Well, I won't take it upon myself to give the exact cause. No one has, as a matter of fact, given a definite opinion as to the reason. There are several conjectures but there is no doubt that poverty has a lot to do with it—with the prevalence. In other words, if people don't have money to eat properly and clothe themselves properly and to live in the proper amount of space with proper conveniences, there is bound to be more sickness—they are bound to have more sickness than others. This is especially true of tuberculosis.

**Mr. REDWINE.** How successful is treatment. How well do they respond—both adults and children.

**Dr. LANGSAM.** Well, treatment has become more and more successful as these new drugs and new scientific approaches to the subject are developed. Now the outlook is quite hopeful especially if the post-treatment—the rehabilitation—is adequate, and that is what is so lacking because of bad financial conditions.

Mr. REDWINE. A great deal has not been accomplished then if you get an individual cured and he has to go back into the same old environment?

Dr. LANGSAM. That is very true. Let me give an example from a group of patients that just came to my attention very recently. A young man had been to the sanitarium and had had treatment for about 2 years and came back here. He had had surgery and was cured apparently. He came back here with an allowance of \$75 a month with instructions not to work for at least six months, preferably not for a year. Of course, one can't go very far on \$75 a month here. He did have a distant relative who has a wife with active tuberculosis, and a lot of children and he had to move in with them. Well, it may sound sort of crude to say it, but it was just a waste of money taking care of the man in the first place.

Mr. REDWINE. Because the home environment remained the same—it was not changed?

Dr. LANGSAM. Yes. If we send him right back into the same atmosphere, we are not helping him at all.

Dr. REDWINE. And it is your opinion that poverty and low income are the largest contributing factors?

Dr. LANGSAM. Yes.

Mr. REDWINE. In other words, it is a very healthy climate?

Dr. LANGSAM. Well, we don't believe any more that the climate has anything to do with the prevalence or cure of tuberculosis. It used to be, as you know, popular for a person to go to Arizona where the climate was warm and dry but now we know that really does not affect the conditions as far as the cure is concerned or as far as causing it is concerned.

Senator SCOTT. Doctor, do you know whether or not you have tuberculosis among the animals.

Dr. LANGSAM. There has been found some tuberculosis among the reindeer but research here has not been so great along those lines as it has been in the States. For one reason, there aren't very many domestic cattle. It has not been found as far as I know among the fish but, as a matter of fact, we have found just recently this year the first case of bovine type of tuberculosis that has ever been discovered in Alaska so it can't be too common. It is more the human type.

Mr. REDWINE. Doctor, what is the annual cost, if you have the figure, for this division for the tuberculosis treatment—what is the cost?

Dr. LANGSAM. How much money is appropriated by the Territory?

Mr. REDWINE. Yes.

Dr. LANGSAM. I couldn't say.

Mr. REDWINE. Who could give us the figure?

Dr. LANGSAM. The Alaska Department of Health.

Mr. REDWINE. Senator, do you have anything further?

Senator SCOTT. No; I think not.

Mr. REDWINE. Thank you very much, Doctor, for appearing. We are sorry that we were as long in getting to you as we were. Mr. Lomen, has Mr. Jackson come in yet?

(Mr. Jackson had not and Mr. Mulligan is called.)

Mr. REDWINE. Mr. Mulligan will you state your name and official title.

**STATEMENT OF JOHN MULLIGAN, MINE EXPLORATION AND  
EXAMINATION ENGINEER, UNITED STATES BUREAU OF MINES,  
REGION I**

Mr. MULLIGAN. I am John Mulligan, mine exploration and examination engineer, United States Bureau of Mines, region I.

Mr. REDWINE. The chairman would like you to give us anything and everything you can on tin resources in Alaska. Now I realize, and the Senator does, that it may be sketchy in places because I believe you have had to operate on a rather small appropriation for what you have been able to determine for the Bureau. We understand that the work has been sketchy, but please give us as complete a picture as you can, but be conservative. We don't want any guesses, just what you know or have reason to believe. You go about it in your own way.

Mr. MULLIGAN. The principal known tin deposits are located in the western part of the Seward Peninsula [indicating on the map]. The deposits that have been mined are confined to the Cape Mountain, Lost River, and Potato Mountain areas. There is also some tin in the Ear Mountain area [indicating]. Traces of tin have been found throughout the entire Seward Peninsula. There is not enough information available to make an estimate of the total reserves.

Mr. REDWINE. Going back east, are your base rocks the same type of geology throughout the entire area?

Mr. MULLIGAN. The information is sketchy but the geology and mineralization are somewhat similar. Traces of tin have been found in placer concentrates from almost all parts of the Seward Peninsula. Known deposits of commercial or near commercial value are confined to the western end of the peninsula [indicating].

These deposits are similar to those found in other tin-producing areas. Many of the occurrences are comparable, and the mineral associations are similar.

Mr. REDWINE. Well, now, it is mostly placer gravels or lode, or what?

Mr. MULLIGAN. At the present time there are more known placer deposits. The only lode deposit that has produced significant amounts of tin is at Lost River.

Mr. REDWINE. How does it compare in tin values with the placer deposits? Give us a comparable figure.

Mr. MULLIGAN. The ore mined at Lost River ran about 1 percent on the average. One percent tin would be 20 pounds to the ton.

Mr. REDWINE. And mostly your placer deposits run about 4 pounds or a little better per cubic yard?

Mr. MULLIGAN. Say from 1 to 4 pounds per cubic yard and in some places a little better.

Mr. REDWINE. What does a yard of that material weigh?

Mr. MULLIGAN. Approximately 3,000 pounds.

Mr. REDWINE. In other words, you have about a 3-percent ore.

Mr. MULLIGAN. Placer deposits cannot be compared to lode deposits due to production problems. Lode mining is more costly, although placer mines can be worked only during the summer season while lode mines work the year around. Assuming a lode and a placer deposit contained equal amounts of tin, the placer would be more valuable.

Exploration to date, except in a few instances, has been very sketchy. There is not enough data to state whether the lode or placer is more valuable.

One placer deposit that is blocked out is near Cape Mountain on Cape Creek.

Mr. REDWINE. How much?

Mr. MULLIGAN. I don't have the figures with me, but it contains more than 3 million pounds.

Mr. REDWINE. That has definitely been blocked out?

Mr. MULLIGAN. It has been blocked out by drilling.

Mr. REDWINE. Will you furnish us with the figures on that, the exact figures?

Mr. MULLIGAN. Yes; they can be furnished. Placer deposits are also known to occur on the streams heading on Potato Mountain. Most of the placer tin produced has come from streams in this area, principally Grouse and Buck Creeks.

(Mr. Mulligan subsequently submitted the following letter for the record:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF MINES, REGION I,  
Juneau, Alaska, November 21, 1955.

Mr. ROBERT W. REDWINE,  
*Interior Committee, Washington, D. C.*

DEAR SIR: At your request data on the known tin ore reserves in the Cape Mountain area, Seward Peninsula, Alaska, is submitted for inclusion in the report on the Federal tin purchase program hearing held in Nome, Alaska.

The Zenda Gold Mining Co. holds approximately 450 acres of placer ground on Cape Creek and its tributaries in the Cape Mountain area, Port Clarence district, Seward Peninsula, Alaska. The following is quoted from a summary of an engineering report on this property prepared by W. A. Richelsen, mining engineer and consultant, Central Building, Seattle, Wash.:

"Drilled ore reserves: The drilled ore reserves are estimated at a total of 1,004,323 cubic yards averaging 3.59 pounds, or a total of 3,605,523 pounds of tin. The minable yardage has been reduced to 853,123 cubic yards, averaging 4.08 pounds, or a total of 3,483,309 pounds of tin. Laboratory tests show that the cassiterite has very little impurities."

The above quoted figures are in substantial agreement with data in the United States Bureau of Mines files at Juneau, Alaska.

Yours truly,

JOHN J. MULLIGAN,  
*Mining Engineer, Region I, Alaska.*

Mr. REDWINE. How deep are these gravels?

Mr. MULLIGAN. They are shallow, 3 to 13 feet in depth.

Mr. REDWINE. How wide?

Mr. MULLIGAN. From 40 to 100 feet wide; they are small stream deposits.

Mr. REDWINE. It would require small dredging units to handle it?

Mr. MULLIGAN. Yes; the Ramstad operation uses small equipment.

Mr. REDWINE. Which makes your mining cost higher than if you had larger equipment?

Mr. MULLIGAN. Yes; at the present time there are no known deposits which would justify a large-scale dredging operation similar to that of the United States Smelting & Refining Co. in the Nome area.

Mr. REDWINE. In your judgment—we will take the deposit that is blocked out here, this 3 million pounds—what kind of price would the operator have to receive for his concentrates to justify mining?

Mr. MULLIGAN. I haven't worked out a mining cost for this deposit.

Presumably the Zenda Gold Mining Co. has worked that out and decided it could be mined for \$1.20. Mr. Lomen was an officer of that company and may know.

Mr. REDWINE. Yes; but he is not giving us any trade secrets as to how he is going to do it, and the Bureau might have some different ideas from Mr. Lomen. We want both sides. That is what I am trying to get at.

Mr. LOMEN. I want to correct the records. I am not an officer of that corporation nor do I own one share of stock.

Mr. MULLIGAN. You are not?

Mr. LOMEN. That is correct. I think Mr. Mulligan will be glad to correct the records that what I am stating is a fact; that I am not an officer of the corporation nor do I own any stock. Excuse me; in reading the full record it might be confusing because I testified at a previous meeting that I was vice president and director of it, but I am no longer an officer or a director, and I want to correct the records to that effect.

Mr. MULLIGAN. I have no other information on the total amount of tin on the Seward Peninsula.

Mr. REDWINE. Does the Bureau have definite information on any of the mineral resources of Alaska?

Mr. MULLIGAN. In this area?

Mr. REDWINE. Yes.

Mr. MULLIGAN. Very sketchy information.

Mr. REDWINE. Do you know how much money has been spent trying to develop that information?

Mr. MULLIGAN. I don't know.

Mr. REDWINE. How big a job would it be to develop it? After all, the Senator is on the Interior Committee that has to deal with these appropriations you know, and recommendations for appropriations.

Mr. MULLIGAN. I couldn't give you an offhand figure on something like that.

Mr. REDWINE. Senator, it is apparent from all the records available to us that the Federal Government has spent very little money in this area of Alaska, in the second division, to determine just what the mineral resources may be.

Mr. MULLIGAN. Is there anything else?

Mr. REDWINE. I would like you to furnish us with, we won't go over it now, Mr. Mulligan, but will you furnish the committee with, and send it to our Washington office, that chart that you showed me this morning for inclusion in the printed record.

Mr. MULLIGAN. Yes. I will send the chart on the production of tin from 1902 to the present.

Mr. REDWINE. And you have records of tin production going back continuously since 1902 to the present, I believe.

Mr. MULLIGAN. Yes. The first production was in 1902. Production was small but continuous since then, with the exception of the World War II years and another short period around 1921 or 1922.

Mr. REDWINE. Senator, do you have any questions you wanted to ask Mr. Mulligan.

Senator SCOTT. No, I think not.

Mr. REDWINE. Well, thank you very much, Mr. Mulligan. We appreciate your coming up here.

(The following table was subsequently received for the record:)

*Recorded tin production from Seward Peninsula, Alaska (subject to minor revisions)*

Year	Short tons (tin)	Value <sup>1</sup>	Average United States price per pound	Year	Short tons (tin)	Value <sup>1</sup>	Average United States price per pound
1902.....	15.0	\$8,000	\$0.27	1930.....	10.87	\$8,718	\$0.32
1903.....	26.0	14,000	.28	1931.....	3.66	1,464	.24
1904.....	14.0	8,000	.28	1932.....			.22
1905.....	6.0	4,000	.30	1933.....	2.90	2,300	.39
1906.....	34.0	38,640	.37	1934.....	4.14	4,300	.52
1907.....	22.0	16,752	.38	1935.....	46.25	46,250	.50
1908.....	25.0	15,180	.29	1936.....	99.00	91,080	.46
1909.....	11.0	7,638	.30	1937.....	159.97	172,767	.54
1910.....	10.0	8,335	.34	1938.....	105.00	88,200	.42
1911.....	61.0	52,798	.43	1939.....	25.84	25,840	.50
1912.....	130.0	119,600	.46	1940.....	43.29	43,289	.56
1913.....	50.0	44,103	.44	1941.....	49.63	51,615	1.52
1914.....	76.0	48,640	.36	1942.....			1.52
1915.....	100.0	77,300	.39	1943.....			1.52
1916.....	97.0	84,600	.43	1944.....			1.52
1917.....	85.0	104,553	.62	1945.....			1.52
1918.....	48.0	83,560	.87	1946.....			.55
1919.....	36.0	47,182	.66	1947.....			.78
1920.....	10.5	10,574	.50	1948.....	4.07	7,975	.99
1921.....			.30	1949.....	56.04	110,960	.99
1922.....			.33	1950.....	88.02	168,968	.96
1923.....			.43	1951.....	76.70	196,352	1.28
1924.....	4.34	4,357	.50	1952.....	88.70	212,880	1.30
1925.....	9.75	11,280	.58	1953.....	98.22	154,176	.96
1926.....	7.05	9,165	.65	1954.....	223.20	401,760	1.90
1927.....	14.48	31,516	.64	1955.....	95.00	182,400	1.96
1928.....	38.83	38,830	.50				
1929.....	36.65	32,985	.45	Total.....	2,247.10	2,892,922	

<sup>1</sup> This figure is the approximate price received and is not based on the average U. S. price per pound.

<sup>2</sup> Ceiling price.

<sup>3</sup> Preliminary estimate.

(Mr. Granville Jackson is called.)

## STATEMENT OF GRANVILLE R. JACKSON, PRESIDENT OF THE MINERS & MERCHANTS BANK OF ALASKA

Mr. REDWINE. Will you tell us, please, your name and business connections for the sake of the record.

Mr. JACKSON. My name is Granville R. Jackson and I am president of the Miners & Merchants Bank of Alaska.

Mr. REDWINE. The Senator would like to hear you discuss the past economic history of this area, the present economic conditions, with the thought in mind of leading up to what would be the effect upon the economy of the area if this proposed legislation, with which I believe you are familiar, were enacted; what the effect could be expected to be. That is a three-way deal so if you will take it up that way—

Mr. JACKSON. Well, I haven't had an opportunity to go into it. Of course, the economy of our section of Alaska is principally gold mining; practically all of it placer gold mined with gold dredges and hydraulic and some hand work, shoveling it, etc. In 1940 and 1941 our bank handled \$2 million each year.

Mr. REDWINE. Let me interrupt at that point, Mr. Jackson; there is only one bank here, your bank, at the present time, I believe.

Mr. JACKSON. That is right.

Mr. REDWINE. Has that been the case throughout the years?

Mr. JACKSON. At one time—we have had altogether 4 banks, but 3 at a time, and it finally dwindled down to 1. Did you want to know about it in the early days? In the spring of 1906, I think it was, there were three banks here and each bank had a million dollars in gold when the boats arrived in June. That was done by winter drifting, working on the third beach line out here. Of course they produced a lot more in the summer. I don't have those figures. I do have the figures from 1940 on what we have handled, but we don't handle all the gold. The Smelting Co., the United States Smelting, Refining & Mining Co. handle their own and they handled in 1940 and 1941. I imagine, 2 to 3 times what we handled. At that time there were 16 dredges working and it simmered down to different figures, less than a million dollars every year since until this year. There are only 2 dredges working now and we have only handled \$70,000 worth of gold. That isn't all of the gold that has been produced in this section. One or two people have shipped their own and it doesn't include that of the United States Smelting, Refining & Mining Co.

Mr. REDWINE. Would you read the figures for your bank, sir.

Mr. JACKSON. Well, I will just give you round figures. In 1940 it was \$2,110,000; 1941, \$2,032,000; 1942, \$905,000; 1943, \$349,000; 1944, \$273,000; 1945, \$233,000; 1946, \$520,000; 1947, \$795,000; 1948, \$624,000; 1949, \$731,000; 1950, \$557,000; 1951, \$401,000; 1952, \$296,000; 1953, \$347,000; 1954, \$318,000; 1955, or so far this year, \$70,000.

Mr. REDWINE. During that period the price was constant at \$35 a fine ounce?

Mr. JACKSON. Yes. That is right. Well, of course, this economy here is built on gold mining. We have other minerals which, like tin, we are trying to develop, such as copper and a number of other metals but tin is the only one that anything much has been done with. Unless we have an increase in the price of gold or a depression in the States, I imagine we will drag along as long as these contracts are being let here. It is hard to get men for a reasonable wage to mine and the men would rather work for the contractors than mine so that cuts us down. We really depend in this country on what the Government spends here. That is the way I see it anyway.

Mr. REDWINE. What is in the foreseeable future for a continuation of this contracting that is going on here?

Mr. JACKSON. Well, we always think every year it is going to be over with but there are a couple of years' work ahead now on work being done for the Government under defense and I presume that maybe after that—

Mr. REDWINE. Well, you are familiar, I assume, Mr. Jackson, with the various things that have gone into tin mining in the area?

Mr. JACKSON. Yes. We have gold dredges for mining and the hydraulic method of mining tin.

Mr. REDWINE. I want to go on another angle rather than the method of mining. Is it possible for Mr. Lomen or any other group or individual that wants to go into tin mining under present conditions to obtain financing from regular commercial sources?



Mr. JACKSON. No, I don't believe so; not at the varying prices of tin.

Mr. REDWINE. Well, what would happen, in your opinion, if this bill under discussion providing for incentive prices were passed?

Mr. JACKSON. Well, I think it would bring about the development of a lot of this property.

Mr. REDWINE. You think capital would become available?

Mr. JACKSON. I do. ~~We have~~ men here, engineers, representing large concerns who would be interested, but they take out the tin in the summer when it is 91 cents, for instance, and when they get it to the smelter it is 70 cents or 75 cents, and they can't mine that way.

Mr. REDWINE. In other words, they can't get a definite future price commitment on it? They have to take the price in effect on the day of delivery, is that right?

Mr. JACKSON. That is right.

Mr. REDWINE. Do you know of any particular occurrence in this connection where a man shipped a cargo of tin out of here and what the price was on that day and what it was on the day he sold it?

Mr. JACKSON. Well, I couldn't give you exactly that but when the Ramstad brothers were mining up there on Buck Creek, they were taking out tin and I think it was around 80 cents and when they got it to Seattle, I think they held it there quite a while because it had dropped to around 70 cents and then finally they shipped it. I don't know what they sold it at but it was much lower than they anticipated. They would continue to mine if they were sure of a price.

Mr. REDWINE. If they had a stable price?

Mr. JACKSON. Yes, like our gold at \$35 a fine ounce. Then you could prospect and know what you can produce and know your cost, but you can't do that with tin if you don't know the figure.

Mr. REDWINE. Is there anything else you want to cover on the subject, Mr. Jackson.

Mr. JACKSON. No, I think not.

Mr. REDWINE. Senator?

Senator SCOTT. No.

Mr. REDWINE. Thank you very much, Mr. Jackson.

(Mr. Steffen Andersen is called.)

#### STATEMENT OF HON. STEFFEN ANDERSEN, MAYOR OF NOME, ALASKA

Mr. ANDERSEN. I am Steffen Andersen, Mayor of the city of Nome. Twenty years ago when I came to Nome, this area had 25 to 30 gold mines operating. Every one who wanted to work was busy working in these mines, both native and white. Since then, with the increased cost of operation and the pegged price of gold, these operations have dwindled until we have only one large operation, the United States Smelting, Refining and Mining Co. at Nome, and 3 or 4 small operations spread over the Seward Peninsula. We have no other industries in this area other than mining. Although this area is rich in many minerals, very little has been done to develop them. Consequently there is very little work for the people of this area. We do have a number of Government agencies at Nome which does create some work but this is not the type of employment that will support an area. We have not had the large defense spending in the second division which has aided employment in other parts of Alaska. In

fact, one top-ranking general stated we were expendable and outside the ring of defense. In view of this it would seem a very practical move to establish a base tin price so that industry can go ahead in this area. It is a known fact that there is tin that can be mined in the second division at the suggested price of \$1.20 and \$1.35 per pound. By developing the tin in this area our country would have a source of tin on American soil; it would create employment in this area and eliminate the cost of public welfare and unemployment insurance. Our people want work and an active tin industry in the second division would give them employment at no cost to the Government.

Mr. REDWINE. I think that about covers it. Mr. Mayor, I would like to ask you this: Is there anyone in Nome who could give us any figures on unemployment-insurance situations, that you know of?

Mr. ANDERSEN. I believe you would have to get that out of Juneau because the applications for unemployment do have to go to Juneau.

Mr. REDWINE. Well, how are they filed here? If a man in this division wants to file an application, how does he file it?

Mr. ANDERSEN. He applies to Juneau.

Mr. REDWINE. By mail?

Mr. ANDERSEN. Yes. By mail.

Mr. REDWINE. I presume that everyone who is entitled to it knows what the procedure is?

Mr. ANDERSEN. Yes. I believe they are quite familiar with it here. Personally speaking, I believe that it is becoming abused. People are becoming dependent upon it rather than having it as an emergency measure. They are coming to expect it. I have known cases in my own business where we have had employees who, rather than work part time, would rather get fired or laid off so they could draw unemployment compensation and that would give them more income than we could give them on a part-time basis.

Mr. REDWINE. Well, is any field checkup made as to whether they are actually employed or not?

Mr. ANDERSEN. I don't know. I don't believe so, other than when Mr. Benson comes here.

Mr. REDWINE. Well, thank you very much Mr. Andersen. I believe that is all.

(Mr. Jack Jenkins is called.)

#### **STATEMENT OF JACK JENKINS, ASSISTANT TO THE AREA DIRECTOR, ALASKA NATIVE SERVICE, BUREAU OF INDIAN AFFAIRS**

Mr. REDWINE. Will you please state your name and position, Mr. Jenkins?

Mr. JENKINS. Jack J. Jenkins, assistant to the area director, Alaska Native Service, Bureau of Indian Affairs.

Mr. REDWINE. Mr. Jenkins, first of all, before you get into anything you have prepared, will you explain to us just what the Alaska Native Service is; how it operates?

Mr. JENKINS. Sir, the Alaska Native Service is a title that is used throughout the Territory of Alaska designating the beneficiaries of the Bureau of Indian Affairs. At the present time we have 84 day schools, 2 boarding schools, that spread from southeastern Alaska to Prince Wales Cape here on the continent, plus the Barrow, Wainwright, Lay, and Meade River areas in the Arctic down into Eagle on

the Canadian border, and the schools throughout the Prince William Sound areas. We are primarily interested in the education of the native people of entire Alaska, which is one-fifth as large as the United States. We cover a coastline here that is comparative to the entire coastline of Europe. The operations are extensively heavy financially, due to the isolated areas we cover, meaning transportation, oil, food, and so forth, in our educational program. We also cover resources, stores, reindeer, arts and crafts, welfare, construction, law and order, lands, a little bit of every situation that develops from birth until death, including the punitive father acts and checking upon the legal beneficiaries and heirs after death. We are actually a government within a government. For instance, most of your local citizens reap their benefits from a democracy either through the city, county, or State local governments. The native people are, in a way of speaking, a second-class citizen with benefits strictly from the Federal Government. In the Territory of Alaska it is not isolated in that particular frame. They do enjoy, relatively speaking, the free benefits for any and all races here. For instance, when we go back into education we also have the Territorial education system plus the education system of the Federal Government, which is a duplication of services, and as soon as the Territory can and will assume the education program, we step out. For instance, in all of southeastern Alaska we have 1 day school, just 1, which is right above Haines. All other schools in southeastern Alaska are controlled by the Territory with the same books, the same method of operation, and the same followthrough that we do for these natives.

Mr. REDWINE. And the financial burden is then borne by the Territory?

Mr. JENKINS. Yes. Now, I have not prepared any talk. This is my busy season right here. To give you a little idea, today we have everybody on Diomed Island with their groceries—and I have 22 barrels of oil on the island. It looks like it might be a cold winter. We have either got to fly oil into them at a tremendous cost, or supplement or beg or steal or borrow other oil to get in there.

Mr. REDWINE. Well, let me right at that point ask you this: That is the so-called ivory-carver group; is it not?

Mr. JENKINS. That would be Diomed, King Island, Gambell, and St. Lawrence.

Mr. REDWINE. Do the inhabitants of those islands put in for unemployment-insurance benefits; during the winter months?

Mr. JENKINS. Only the people that are employed could, and there is no way for their claims to go back and forth, and they would not be eligible for benefits as the unemployment law now reads.

Mr. REDWINE. The ones who live on the islands could not, even though they come over and work here in the summertime.

Mr. JENKINS. One of the provisions of the unemployment-compensation law states that they must be available for employment.

Mr. REDWINE. If they are over on the island, then they are not available?

Mr. JENKINS. They are not available. Going back into unemployment compensation, here we have papers that we fill out, through a courtesy only, for Territorial unemployment compensation for any and all individuals who have contacted our office. It takes a tremendous followthrough with filling out papers and filing them, and refill-

ing the same papers back and forth sometimes, but we try to accommodate any and all who come through our office for unemployment benefits. It will be very low this year for employment benefits throughout our area.

MR. REDWINE. How extensive is unemployment compensation in the second division?

MR. JENKINS. In comparison to the rest of the judicial divisions of Alaska?

MR. REDWINE. Yes.

MR. JENKINS. I am sorry I cannot give you that information.

MR. REDWINE. Well, what would you say is the total unemployment load in the second division?

MR. JENKINS. That is a very broad statement right offhand. I have prepared, as of the first of the year, a village survey for my area. I cover 33 villages from Barrow down. I did not take into consideration Barrow, Wainwright, Barter Island, and Point Lay for the simple reason that Associated General Contractors has an operation in that area benefiting the native people and, actually, they are becoming taxpayers rather than tax consumers, which is our goal. I am not sure, but my figures here will show approximately 550 family and single men that are without work. Those are purely my own figures. I have nothing to substantiate this or corroborate it outside of the agreement I have with my teachers to bring back the information for a village survey.

MR. REDWINE. Now what area does that cover?

MR. JENKINS. That covers from Stebbins and St. Michael below Unalakleet up past Norton Sound—the mouth of the Yukon River right there where she comes out into Norton Sound.

MR. REDWINE. I am not familiar with the geography. How does that compare with the second division? That is the area under discussion.

MR. JENKINS. Maybe I can illustrate a little here. Let's go back to the Alaska Native Service. Our area office is located in Juneau, Alaska. The area office is the responsible agency to the Washington, D. C., agency on procurement, property, supply, and appropriations, etcetera. In the Territory we have two district offices. Nome, Alaska, is district No. 1; Bethel, Alaska, is district No. 2. We are centrally located so that we are in direct radio contact with each village we service. Nome has 33 villages. Out of that 33 we have a direct radio contact with 29. The rest of them, Wainwright, Lay, Barrow, and Barter Island, we are just lucky if we ever hear them by radio.

MR. REDWINE. Well, what is your radio contact in each village, in each individual village?

MR. JENKINS. With a teacher. We have a schoolhouse in each of the 33 villages. Some villages have more than one teacher. It is according to the population of the particular area where the school is located. For instance, in the Kotzebue area, if my memory serves me correctly, we have a total of nine teachers. I think we have nine teachers in the particular Kotzebue area right now. This is purely from memory. There are 6 in the Unalakleet area and at Koyuk we have 1 teacher.

SENATOR SCOTT. What do you consider a teacher load?

**Mr. JENKINS.** According to the standards of education, we are greatly over that figure of 24 students. Some of our classes go into 34 and 35 students.

**Senator SCOTT.** Even then, it is low compared to some of the States.

**Mr. JENKINS.** Well, you see, we have these elements that we have to contend with in the schools. It is not so much the educational program. Our teacher is hired fundamentally as an educationalist for elementary education. That looks good on a piece of paper and that is what they are hired as. Then they arrive here and they find out that they are community educationalists. Also, in each village we have a store; they are the bookkeepers and auditors. Then someone is going to have a baby and they are the midwives; they run all the terms of medicine throughout the area. For instance, if somebody gets a broken arm, they stop class and get on the radio with a call for the doctor. The call is relayed back to a doctor so that they will have the proper method of treatment. Any visitor that goes through, who wants to take a fast tour through the Territory, we are the only ones who have accommodations or a boarding home for them. They go to the teacher's and stay and the teacher feeds them. The Public Health Service, the Sanitation team, the National Guard, the Tenth Radio, the Ground Observer Corps, officials from all branches and agencies of the Government, go into our stations to stay, including the Public Health nurses. It looks good on a piece of paper—elementary educationalist.

**Mr. REDWINE.** Now that teacher with 34 kids, she has a range from the first grade through what grade?

**Mr. JENKINS.** Through the eighth.

**Mr. REDWINE.** So she is teaching really eight grades?

**Mr. JENKINS.** Yes—plus a nutrition program, in each class that we have. In some places they feed a breakfast and in some places they feed a noon lunch—a hot meal if possible. It is supplemented with native foods as conditions exist. We have teachers running communications for Alaska Communication System. For instance, if a wire comes for John Doe it is handled through the teacher's radio and the teacher's time. I have a lot of respect for our teachers and it is lucky that we are able to get the type of teachers that we have.

**Senator SCOTT.** What is your salary range for that type of individual.

**Mr. JENKINS.** All the way from a GS-7 to a GS-9 and that is for a 12-month period and not a 9-month period. They work 12 months a year. In the summertime they repair, paint, replace glass, put on new roofs, fix chimneys, and do a little bit of everything.

**Mr. REDWINE.** What is their contract period?

**Mr. JENKINS.** 12 months. For instance, if they are employed in the States, they are brought here on a 2-year contract with their way paid back. If we recruit a teacher in the Territory they receive none of the fringe benefits of being hired outside. Actually it encourages an outside hire; they can go to Michigan, for instance, and hire out again and come up here for a 2 year contract and be returned to Michigan at Government expense. There is a little discrimination against the local Alaskan people. I am sorry I have nothing to offer on any tin company. I know nothing about tin and could probably fall over it and not know what it looked like, but I do have a village survey.

Mr. REDWINE. Will you leave a copy of that with us?

Mr. JENKINS. Yes. It includes the name, age, number of dependents, past experience, etc., but I do want to bring out at this time in this hearing that the Federal Government is here to aid and assist these people in becoming taxpayers rather than tax consumers, and the prevailing wage scale throughout Alaska and throughout my history of 16 years, Alaska is the lowest paid area that I have come into contact with; that is, the Second Division is the lowest paid area that I have come into contact with. In Nome, for instance, when you go down to a basic wage of \$1.40 an hour and apply that against the high freight cost, lighterage cost and the commodity cost inside the store, you can't come out on it. There is no way in the world these people can regain their health and become full citizens and taxpayers under the conditions now existing in this area. I don't care whether it is tin mining or anything else.

Mr. REDWINE. What is the average per capita income for the Division?

Mr. JENKINS. I cannot give you that. I do have in my files for last year, information on the average earning capacity of each village. Each different village would have a different average, but we have not broken it down into an average. For instance, in Barrow all the native people who are working are putting in a full shift and drawing full standard wages that the so-called nonnatives are making.

Mr. REDWINE. Will you furnish us with, and mail it to the committee in Washington, the per capita by village. Would that be a terrible task?

Mr. JENKINS. As soon as I get rid of this boat that we have.

Mr. REDWINE. Well, I mean in the next few days. We would like to have it by the first of December if possible.

Mr. JENKINS. We will do our best to get it to you.

Mr. REDWINE. We would like to have it village by village in the Second Division.

Mr. JENKINS. All right, sir. Would you like the standard rate of pay that the Government has produced for that area?

Mr. REDWINE. Yes.

Mr. JENKINS. This fluctuates with the different areas, of course. In our Second Judicial Division or the First Division of our Native Service we have paid, for instance, a carpenter here is drawing \$3.41 an hour. That means throughout Stebbins and Barter Island and down we pay carpenters, regardless of race or creed, \$3.41 an hour.

Mr. REDWINE. Well, we saw three working at Kotzebue yesterday when we came through and under the conditions that they were having to work, building a quonset hut out there in that wind, I think they earned every cent of it.

Mr. JENKINS. To me it is vitally important. If we of the Federal Government are to keep these people happy and healthy and get them acquainted with the white man's culture, so-called, then we must assume part of the obligation of making them full citizens when it comes to wages. I have this all down. It is actually demonstrated—would you like me to give you a little of that?

Mr. REDWINE. Yes, please.

Mr. JENKINS. For instance, when we train under our setup what we call a carpenter-trainee, we pay him \$3.06 an hour while under training. For instance, a man that would be picked as a carpenter

is one who would be able to handle tools and well-qualified in the knowledge of tools, but he would still be a trainee as far as we are concerned. He wouldn't be a qualified carpenter to send out on a job with blueprints and for us to say we want this or that done. An electrician under the Government setup gets \$4.55 an hour; an electrician's helper gets \$3.22 an hour. A carpenter-foreman is \$4.45 an hour. A foreman of electricians is \$5.12 an hour and a labor foreman is \$2.85 an hour. A laborer is \$2.50 an hour. Of course, there is time and a half for overtime over 40 hours. To be honest, it would be an emergency if they worked it. We usually try to control it to 40 hours. A painter gets \$3.73; a painter's helper \$2.97. Now we have this just roughly glancing through it and that is all I have on this.

**Mr. REDWINE.** Now the total labor force, either as trained workers or as trainees, to what percentage of that labor force are you in a position to offer employment?

**Mr. JENKINS.** Our regulations are specific on it. For instance, any labor that we hire, the first labor that is hired is a native. The native comes first with our organization. If there was a Tlinget Indian who was qualified for my job in this particular area and myself being non-native, and we were both qualified right down the line, he would get the job. That is the setup in the native service. We felt that they should be given the leadership—

**Mr. REDWINE.** In actual practice does that happen?

**Mr. JENKINS.** Yes.

**Mr. REDWINE.** Has anyone been replaced—a nonnative replaced?

**Mr. JENKINS.** In my particular area?

**Mr. REDWINE.** In your area. Not your particular level, you understand, but I mean in the area that you serve. Has there ever been a case where a native replaced a nonnative worker?

**Mr. JENKINS.** Well, right off-hand I couldn't give you one but I might clarify the situation by stating that throughout our area all our teacher aides in the educational program are native people and we have several native teachers who are fully qualified teachers, handling and doing a very good job of education in their particular villages. In fact, just a short time back, we had a native man retire who received the meritorious award from the Department of the Interior for over 30 years service.

**Mr. REDWINE.** What is the attitude of industrial management toward the wage scale that the Government pays? What is their attitude?

**Mr. JENKINS.** Going back into this village survey that I gave you here, I took this personally to the Associated General Contractors, both in Anchorage and Fairbanks, for the specific purpose of showing these contractors that when they placed a bid in our particular area that they could figure that we could supply them with some laborers, some skilled laborers, some qualified laborers. For instance, going into Morrison-Knudsen, just using this as an example, we brought forth a Little Diomedé. Here is a man who is 34 years old with three children and who has experience as a painter but he does not belong to a union. He is willing to go anyplace for employment and willing to take any kind of employment. Now the first thing, the contractor comes back at me and states, "Mr. Jenkins, we would like to hire your people but when we go into hiring what assurance do we have that

these people are not contagious TB carriers?" That is easily remedied because at the present time, up to July 1, we still had medical. As you know, Public Health Service has taken it over.

It would be a simple matter for us to check on any John Doe so we could give a result of his last X-ray and sputum. There is an up-to-date sputum in the last 6 months and if it was necessary to bring it further up to date, it would be a matter of getting it into the lab which would be in Anchorage and getting it back, so we could prepare a manpower survey for any contractor throughout any area and give him the best qualified men of the area without subjecting him to tuberculosis or any other adverse situation. I don't think we can go to the contractor with the theory in mind that we have 550 people unemployed, 550 unemployed natives. I don't think he cares if we have 550 unemployed natives but I do feel that if we can show him as a business man that we can save transportation costs on, say, 1 carpenter or 10 laborers, that he can benefit and his firm can benefit by hiring local people and the community can benefit by the hiring of these people, we will bring these communities up, but it cannot be just from the Federal Government. It must be a community program, including Nome and all surrounding areas.

Mr. REDWINE. Well, the point I want to get at is: Are you, or is the Government, setting the wage scale standard and is the standard that you are setting objectionable. Is it too high or too low or what, to the private employers? What is their attitude?

Mr. JENKINS. In his particular area? I could not answer you that.

Mr. REDWINE. Well, let me ask you this: If a private employer brings a carpenter in from the States, what does he pay?

Mr. JENKINS. He pays the prevailing wage scale that we have set.

Mr. REDWINE. You set the prevailing wage scale?

Mr. JENKINS. No sir. That is handled through the Associated General Contractors and their labor unions.

Mr. REDWINE. Well, take Point Barrow, how does the prevailing wage scale up there compare with your wage?

Mr. JENKINS. That we have locally?

Mr. REDWINE. Yes.

Mr. JENKINS. Well, there is no comparison whatsoever. At Point Barrow they pay the prevailing wage scale that is set for it. If a man is an electrician, he draws electrician's wages plus time and a half for overtime. For instance, in rough figures, I would say that \$1.50 in Nome is what they call a prevailing wage scale. There is no comparison between \$1.50 and \$4.

Mr. REDWINE. But the prevailing wage scale would be \$1.50.

Mr. JENKINS. Locally.

Mr. REDWINE. I am trying to pin point it to a local situation.

Mr. JENKINS. I see your point and I am trying to give you an honest answer. For instance, it is my understanding that the longshoring here is \$1.40 an hour. To give you a specific example of that, the contractor is offering \$3 an hour plus time and a half for all over 40 hours. Now the worker that is making \$3 and some cents an hour plus time and a half for over 40 hours, if he is living here and his family is here, is spending money here. He is paying the same price for a case of milk that my native man who is working 40 hours at \$1.40 is paying. You are making him definitely a second-class citizen as long



as he is drawing \$1.40 while the man next to him is working the same machine and drawing \$3. Basically it costs him just as much to live. He has just as much pride in his family. He wants to be on his own and he wants his children home when they go to school.

Fundamentally he is the same as you and I inside and he is thinking of the future for his family. In a way of speaking, this Territory was formed by the way it was settled. Your First Judicial District was formed with the salmon and canning industries. Those people down there have had a hundred years of the so-called white man's culture. The Second Judicial Division for over 50 years has been in contact with the white man and there are exceptions to the rule. Some of them take their welfare check and drink it up. Well, they do that in New York City too. It doesn't matter what the race is. You are going to have exceptions. But if we keep these children healthy, warm, and educated, maybe in a little time we will have full benefits for all concerned. I do believe I might clarify myself here. I don't say every native man in town is available for employment. You might pay him a good wage today and he might be sober tomorrow but he might be drunk tomorrow too. There is no doubt in my mind that that isn't true. At the same time, that is in every race. For any progress in civilization, there are a few who are going to drop behind. We are not going to take the exceptions; we are going to take the rule as a whole. For instance, here we already have the tin mine closed up and I have three families, who, when they returned home, were completely broke. They are big families and we immediately started in to supplement their income by feeding their children the Federal check. Now maybe we waste money by feeding the best we can. At the same time, we are saving money if we have to bring them up to Teller, for instance, and fly them in here, put them in a hospital at so much per day.

Mr. REDWINE. What is the overall cost of your hospital program?

Mr. JENKINS. Like I explained before, sir, the fiscal year of July 1—

Mr. REDWINE. Well, last year, what was it?

Mr. JENKINS. We got \$6½ million appropriated to handle the hospitals in Alaska. This year the Public Health Service got \$10 million, and I don't begrudge them the appropriation because we were 3,000 beds short at the end of the fiscal year last year for those with tuberculosis and contagious diseases.

Mr. REDWINE. What did you have the year before, do you recall?

Mr. JENKINS. It would be only a guess. I can't remember. I can give you a breakdown for everything but hospitalization on the appropriations for this year for the native service.

Mr. REDWINE. Well, are you going to be able to leave all those papers with us, Mr. Jenkins?

Mr. JENKINS. Whatever you so desire.

Mr. REDWINE. Well, a copy of everything you think we might be interested in, we would like to have for further study.

Mr. JENKINS. I assure you that there is nothing on this about tin.

Mr. REDWINE. Tin is only part of the problem up here. Let me ask you another question. Diverting from the hospitals, your agency also handles timber sales does it not?

Mr. JENKINS. Under our lands and realty officer the timber sales that have been existing in southeastern, in reference to the Japanese sale of timber and others?

Mr. REDWINE. Just the overall picture. I am not trying to pinpoint anything at all.

Mr. JENKINS. Under our present setup, under the Indian laws, these people have sort of a restricted deed to this land. It is under the supervision of the Federal Government and can be assigned and sold and delivered to an outsider only upon recommendation of the Bureau of Indian Affairs. This gives the individual landowners the protection of exploitation of their land. We have tried to protect their interests.

Mr. REDWINE. Like a trusteeship?

Mr. JENKINS. Yes. That is correct. And it works that way on a little bit of everything that they have in southeastern. Of course you realize that Juneau being in southeastern, they have a little bit more help than we have here. We have one district office here and we still do not have a welfare worker. For instance, if we have a welfare case, it is usually an emergency when it comes in. They don't come in and say "I've got \$20 and it will last me until next Wednesday." They come in that morning and say "I am out of oil." So if it is cold, we must stop right then and get oil to protect the minor children or the ill or the aged and it stresses a little more on welfare. Up until this year we have been able to supplement on any welfare cases that the Public Welfare has, like the Old-Age Assistance or Aid to Dependent Children. We have had a dividing line down through the so-called marginal cases where we assume our part and they assume theirs. This year we are without funds and are not supplementing on any of Public Welfare's program. I know that the Public Welfare lady has just herself here. She is short a worker. We are short a welfare worker and we are without sufficient help in this area to do a justifiable job. The elements of nature are so severe; for instance, like today we have people on an island without oil. We don't intend that to happen but there is 75 miles of ice between the island and the boat and there is no way we can get in.

Mr. REDWINE. Winter came earlier than you expected?

Mr. JENKINS. No. We got tied up a little bit on the Barrow discharge. There was more ice there this year than ever before in the history of that particular area.

Mr. REDWINE. We appreciate your coming in, Mr. Jenkins. We know you are busy and now you get back and take care of that oil problem. Thank you so much for coming in.

Mr. JENKINS. We have our office right down the hall and we will be glad to furnish any further information that you need. I will get this ready and bring what I can for you.

Mr. REDWINE. Thank you, Mr. Jenkins. Senator, do you have anything further?

Senator SCOTT. No. I think not.

Mr. REDWINE. Mr. Lomen, whom do we have next on the list? Is there anyone present who would like to testify?

Mr. LOMEN. I think we should call upon Mr. Walsh.

Mr. REDWINE. Is there anyone else who would like to appear?

Senator SCOTT. If you have any statements you would like to make, we would like to have them.

(Mr. Walsh is called.)

### STATEMENT OF M. J. WALSH, NOME, ALASKA

Mr. WALSH. I have been a resident of this Nome area for the last 50 years. I didn't expect to be called today and I have nothing prepared. I will, however, be glad to answer any questions. I have been engaged in prospecting and mining for gold during my entire stay here in this area. As you know, gold mining is a rather sick industry at this time, especially here at Nome. In 1934, the gold was raised from \$20.67 an ounce to \$35 an ounce and there was a brief revival in placer gold mining. We don't have any lode mining developed here yet and this Seward Peninsula profited a great deal by the advance in the price of gold at that time.

As you know, gold was discovered in Nome in 1898 and it was worked by the only known method at that time—hand mining; and on the creeks and open cuts, bench ground, drift mining. Other areas too deep didn't have hydraulic mining. The cream, as we call it, of the rich placers was mined out by underground mining for the first 10 years or more. Then hydraulic mining took its place and we were able to handle much larger quantities at a lower cost and they brought water down from the mountains for more than 40 miles which has developed a great placer gold hydraulic area here. Later when dredging came into force, this peninsula supported—I think there were some 20 dredges on this peninsula, especially after gold advanced in 1934. Now you might say when you look around and see that there are only two large dredges working in this area, that the area is probably worked out. That is not the case. There are still large, very large, gold deposits here in this area. They are not of as high a grade of gold as originally, of course, but had the economy not changed from that of 1934 or, we will say, of 1939, to what it is at the present day, we would still have probably 20 dredges working in this area. When I say "this area", I mean that Nome is a hub, a distributing point, for the area for a radius of probably 200 miles. Ground that could be profitably operated in 1934 up until, say, 1939, cannot be mined at all now because the cost of operating has increased by 100 percent in that period of years and the price of gold remains the same so that is your answer.

The economy of this area has always depended upon gold mining and is still to a great extent dependent upon it and unless the economy changes or unless the cost of production is lowered or the price of gold raised, neither of which is very likely to happen, then gold mining will diminish more and more and only the very rich areas can be mined. In gold mining we refer to marginal ground which is ground that, while not rich, has pockets or salvages which could be operated by large dredges such as the corporation has now out here, which handle 10,000 yards a day. They can handle ground at a very low cost. Nevertheless that cost has increased due to the inflation in the cost of materials and the cost of labor, of course, but more so the cost of materials and shipping. So if another industry is not developed here; if the other metals that you spoke of this morning, the tin and bismuth and other things, if they are not developed here, the economy of Nome is going to suffer very much.

Mr. REDWINE. Well, Mr. Walsh, the prospector is really the bird dog that finds mineral deposits, isn't he?

Mr. WALSH. I was a bird dog for a long time.

Mr. REDWINE. Do you think if we were able to set a stable price for tin that would have the effect of getting the old-time prospector back out into the field? There are not many of them left. Do you think that they would find a lot more tin and other kinds of metals?

Mr. WALSH. In answering that question, you say the old-time prospector isn't around any more—you would soon find that they would get around if the incentive was there. In other words a man going out and prospecting for one of those metals with a fluctuating price, as you refer to tin, if he knew that there was a set or stable price he would, not alone for himself but he would represent others in the field, go in the field and prospect as he always did.

Mr. REDWINE. Senator, that is what happened in the case of uranium, sir. We didn't think we had any uranium when we found all of a sudden that we needed it and had a use for it. Then the prospector went out and, of course, he used the modern devices such as the Geiger counter, and found it. Now they say we have it running out of our ears.

Thank you very much Mr. Walsh. I wonder if we might speak with Mr. Mulligan again for a moment.

(Mr. Mulligan is recalled.)

Mr. Mulligan, don't you think that it would be very helpful to the future discovery of resources of the area, if the prospector was out in the field?

Mr. MULLIGAN. That is the only way to really cover the field.

Mr. REDWINE. Despite all of our new scientific instruments and all of that, the basis of discovery and activity is still really the old-time prospector?

Mr. MULLIGAN. Yes; the prospector, and the company to go ahead and develop what he finds. That is the basis of finding any mineral deposits.

Mr. REDWINE. Thank you, Mr. Mulligan. I think that pretty much outlines the situation here, Mr. Chairman. Mr. Lomen, unless you have something further to offer I am going to suggest to the chairman that he adjourn the meeting.

Mr. LOMEN. I would say the missing links here are those which will be picked up in Fairbanks. There you will have Territorial issues and you will have detailed information. I am sorry that we couldn't bring out today witnesses who had complete information. We could go on for hours discussing the things that have been broached here but I don't think it would accomplish anything important for your purpose.

Senator SCOTT. Does anyone here have anything else to contribute to this hearing? We would like everybody to be heard.

Mr. LOMEN. Senator, we have one man in the room who has devoted his entire life to gold mining and he might have a question or two that Mr. Redwine might like to develop and I refer to Mr. Ben Gillette.

Mr. GILLETTE. I have been interested to hear everything that has gone on here but I think the witnesses have covered it very thoroughly; these people that have been called upon here, especially Mr. Walsh, whose résumé of what happened here in this country, covered it. I don't think I can add anything to it.

Senator SCOTT. If there is nothing further, then, this hearing will stand adjourned.

(Following is the brief, previously referred to, for inclusion in the record.)

#### A BRIEF IN SUPPORT OF H. R. 7145

To encourage the discovery, development, and production of tin in the United States, its Territories and possessions

#### 1. SECURITY

##### *Senate Preparedness Subcommittee Report, Resolution 18, tin 1951*

"Tin is more vital to our way of life than most people realize, either in peacetime or in wartime. It is essential for the packing, transportation, and preservation of a substantial portion of our food supply. It is essential for keeping the wheels of industry and transportation turning. \* \* \* While under the pressure of necessity during World War II the amount of tin in these essential uses was decreased but no complete substitutes have been developed for most of them. And thus we are still dependent upon tin for both our civilian needs and our preparations for defense."

##### *Minerals, Materials, and Fuels Economic Subcommittee Report No. 1627, July 9, 1954 (Senate)*

"The testimony before the committee is alarming: To a very dangerous extent, the vital security of this Nation is in serious jeopardy. We are dependent for many of our essential raw materials on sources in far-off countries, many under the control of possible fickle allies or timid neutrals, some veritably under the guns of our potential enemies. And what is perhaps a more devastating conclusion of this committee is that none of this vulnerability need exist. Long overdue corrective measures should be undertaken at once. \* \* \* It is vital to our domestic welfare, economy, and security that maximum economic production be maintained, first, within our own borders, and, second, in the Western Hemisphere."

#### 2. STOCKPILE

##### *Committees on Armed Services and Banking and Currency, Report No. 215, 84th Congress (Senate)*

"As recently as March 21, 1955, the stockpile goals of tin, both long term and minimum, were revised. The revision was upward, and, as of March 23, ODM's figures showed that the Government had on hand and on order a quantity of tin in excess of the minimum objective, but several thousand tons below the long-term objective. Thus, even to complete the long-term stockpile goal, it is necessary for the smelter to continue operations beyond June 30, 1955, or purchases of refined tin will have to be made on the commercial market. Moreover, it should be noted that the tin stockpile objectives have been revised seven times since the first goal was set on November 20, 1944. The number of these changes must be borne in mind in determining whether the stockpile at any given time represents the kind of tin security this Nation and the free world require."

##### *Committee on Interior and Insular Affairs, Report No. 359, 84th Congress (Senate)*

"Dealing with the contention of the Office of Defense Mobilization as expressed in various hearings that the stockpile objectives of some minerals have been nearly met, or that there is enough on hand to fight a war, it may be noted that ODM is operating within a fixed formula and appears to be bound thereby. Some elements of the formula are arbitrary, some are matters of judgment, and all may be considered variable according to opinion. All depend upon a complex number of factors. The objective might well be greater than as now fixed. That the basic stockpile formula is not sacrosanct is evidenced by the fact that stockpile objectives have changed from time to time and there are minimums as well as long-term (maximum) objectives. Either the formula itself must have been modified or opinions or informed guesses must have altered the quantities comprising the components of the formula."

## 3. POLICY

*Public Law 206, 83d Congress, chapter 339, H. R. 2824*

"Declaration of policy: Section 2. It is hereby recognized that the continued dependence on overseas sources of supply for strategic or critical minerals and metals during period of threatening world conflict or of political instability within those nations controlling the sources of supply of such materials gravely endangers the present and future economy and security of the United States. It is therefore declared to be the policy of the Congress that each department and agency of the Federal Government charged with responsibilities concerning the discovery, development, production, and acquisition of strategic or critical minerals and metals shall undertake to decrease further and to eliminate where possible the dependency of the United States on overseas sources of supply of each such material."

*Report of the Cabinet Committee on Minerals Policy, November 30, 1954*

"Mines of the future must be planned today \* \* \* not a decade hence. The Committee believes that the Government has an obligation to assure that the mineral resources of the Nation be developed, conserved, and utilized in the best possible manner over the longest possible period in order to enhance its security and commerce. Development of mineral resources is, of course, primarily a function of private enterprise. The Government must, however, continue to assist in many ways. The Committee believes that the search for new sources of mineral wealth within the United States needs to be pressed more vigorously. Evidence obtained through geologic investigations suggests that abundant mineral wealth awaits discovery."

## 4. WELFARE

*House Subcommittee on Mines and Mining, 84th Congress, May 20, 1955*

(Statement by the Hon. B. Frank Heintzleman, Governor of Alaska:)

"The Alaska Legislature in recent session passed two memorials addressed to Congress and Federal agencies urging that ore-purchasing depots for strategic minerals be set up in Alaska and that an assured market at a living price be established for domestic tin. I heartily concur in this action by the legislature and again wish to point out the importance of such measures to the welfare of the local people, especially Eskimos and Indians who live in the undeveloped northwest section of Alaska. Unless we can find some source of livelihood to replace the dwindled gold-mining industry and arrange to take over as the military defense projects there are completed, the Federal Government will have a continuing public welfare program on its hands more costly than this proposed program which we are advocating to encourage mining in the second division of Alaska."

(Statement by Mr. Henry A. Benson, Commissioner of Labor:)

"I know nothing about tin. I do know about the people who live in this area and, as the Governor pointed out, this particular area has been classed as a distress area for the reason that the people have had no opportunity for employment other than what has been imposed by direct Government grants. The major economy, if you can call it an economy, in that area is welfare payments, and it is our feeling that the program which has been outlined by these people who are ready and willing to make substantial investments in tin operations, granted some opportunity for stability, will provide employment for approximately 2,000 people of the 15,000 people that Governor Heintzleman mentioned. \* \* \* We think that a tin industry there will solve 75 percent of the [welfare] problem."

## 5. SPENDING

*Mining World July 1955*

"WASHINGTON, D. C. \* \* \* The office of Defense Mobilization has revealed that the Government now has on hand metals and minerals valued at \$800 million in its long-term stockpiling program. Total goal was set at \$3,100 million. By June 3, 1956, it is expected that 62 minimum objectives of the 76 materials now being stockpiled will be 75 percent or more completed."

It has been noted above under "stockpile" that the long-term objectives for tin have not been met by several thousand tons. H. R. 7145 calls for the purchase of 10,000 long tons of metallic tin. Experts will testify that domestic tin operations cannot produce this quantity from the present known reserves. That is exactly the point of this bill. If the price established by this bill is to be taken advantage of by domestic producers, it will mean that substantial addition reserves of

domestic tin will have been prospected for and developed by private capital. This bill may properly be described as an "incentive" bill. Under the price set forth in H. R. 7145, it is possible for the appropriate agencies of the Government to expend some \$28 million over a long period of years in the purchase of domestic tin. It may be pointed out, however, that the actual cost to the Government would only be the difference between current world market price at the time of sale and the stabilized price called for in this bill; and even more importantly that if no tin is produced under this program, the cost to the Government would be nothing.

## CONCLUSION

*Minerals, Materials, and Fuels Economic Subcommittee Report No. 1627—July 9, 1954, Senate*

"Congress generally has been more farsighted than the Government in matters of this kind and, when the nature of the stockpile objective formula is considered, though the Office of Defense Mobilization may consider itself to be bound by that formula and perhaps must act accordingly, the Congress is not so bound and the committee believes Congress has the final responsibility of charting and setting a more reasonable domestic mining policy in the interests of the national defense and the national economy. There is little question but that under a proper, long-range, congressional directed policy the United States can become self-sufficient in the production of these metals which are indispensable in time of war."

(By direction of the Chairman the following is made a part of the record:)

STATEMENT FILED BY CARL S. GLAVINOVICH, MANAGER, NOME DEPARTMENT  
UNITED STATES SMELTING REFINING AND MINING COMPANY

Historically, the first successful mining in the Seward Peninsula resulted from the discovery of placer gold deposits in the council district in the spring of 1898.

Since the original discovery of gold and the consequent development and operation of deposits, the basic economy of the Seward peninsula, and in large part that of the second judicial division, has been mining.

Tin was first discovered in 1903 in the Cape Prince of Wales—York District. Development and active operation have been intermittent. Production and possible future potential have already been stressed in previous testimony, therefore a repetition of figures is not deemed necessary in this statement.

With the advent of World War II, living and operating costs rose to an all time high in this area. Since the war, the already high and continuing upward trend of both costs have resulted in a steady decline in mining until presently the industry is of relatively minor importance in the economy. It is readily understood that the increased costs of operation cannot be passed long in the sale price of the industry's products. Any further appreciable added costs to operation without a commensurate return to the producer, will hasten the complete shutdown of the industry, whether large or small operations.

It may be well to emphasize at this time some of the varied factors which contribute heavily to the decline of mining and with which—excepting an increased and stabilized price for metals from this area—the industry cannot compete.

(1) Water-borne transportation rates to this area are the highest in the world. For example, the freight and lighterage rate on mining machinery is approximately \$40 per ton. On foodstuffs the rate ranges between \$50 and \$60 per ton.

(2) The base hourly wages paid by the industry are lower than those prevailing in defense construction and other operations of the government. A typical comparison follows:

	Base hourly rate, labor	Base hourly rate, top- skilled
Mining—Nome area	\$1.57	\$2.17
Alaska road commission	2.88	3.72
Civilian-military installations	2.81	4.81
Defense construction-contractors	3.30	4.40

The present major economy of this area, disregarding certain Government defense expenditures which are only transitory stop gaps, is welfare payments in one form or another to the larger segment of the population. Of the 15,000 people resident in the second division, approximately 2,500 make up the available labor force. A large percentage of this number are unable to find gainful employment under the existing economic climate, with the net result that some sort of welfare program is essential. A relatively small number find year round employment, the balance obtain seasonal work only, usually ranging from 3 to 7 months. This means a possible bare annual existence without many of the creature comforts which we now deem so essential.

Unless some incentive is furnished tending toward the encouragement of exploration and development in our mineralized areas, the already large public welfare problem will become a still greater burden. We are not proud of this condition. To offset this dole in some measure, the following suggestions are made:

(1) The construction of trunk and access roads to mineralized areas. This would materially reduce transportation costs from supply centers to active operations and may assist in the re-opening of some operations which have closed down.

(2) The application of some form of the point 4 program toward development of this and other impoverished sections of our Territory. The American citizen, permanently a resident of this area, is equally if not more deserving of benefits to be derived as compared to populations of foreign nations.

(3) Federal income tax: The 25 percent cost of living allowance be applied to all permanent residents. Federal employees only enjoy this relief. They are usually salaried and have year round employment.

I shall be glad to answer any questions or supply more detailed information on the economy of this area to the best of my ability.

(Whereupon at 12:30 p. m., Tuesday, November 1, 1955, the hearing was adjourned.)



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	Base hourly rate, labor	Base hourly rate, top- skilled
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Alaska road commission.....	2. 88	3. 72
Civilian-military installations.....	2. 81	4. 81
Defense construction-contractors.....	3. 30	4. 40

The present major economy of this area, disregarding certain Government defense expenditures which are only transitory stop gaps, is welfare payments in one form or another to the larger segment of the population. Of the 15,000 people resident in the second division, approximately 2,500 make up the available labor force. A large percentage of this number are unable to find gainful employment under the existing economic climate, with the net result that some sort of welfare program is essential. A relatively small number find year round employment, the balance obtain seasonal work only, usually ranging from 3 to 7 months. This means a possible bare annual existence without many of the creature comforts which we now deem so essential.

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I shall be glad to answer any questions or supply more detailed information on the economy of this area to the best of my ability.

(Whereupon at 12:30 p. m., Tuesday, November 1, 1955, the hearing was adjourned.)



# DOMESTIC TIN PRODUCTION

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FRIDAY, NOVEMBER 4, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON MINERALS, MATERIALS, AND FUEL OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Fairbanks, Alaska.*

The subcommittee met, pursuant to call, at 10 a. m., November 4, 1955, in the Northward Building, Fairbanks, Alaska, with Senator W. Kerr Scott presiding.

Mr. Robert W. Redwine of the professional staff of the committee was also present and participated in the examination of witnesses.

Senator Scott. This hearing has been called for the purpose of hearing testimony in respect to S. 2648, which has as its purpose the promotion and development of a tin-producing industry in the continental United States, its territories and possessions.

That purpose is stated in the bill and I quote: "In order to encourage the discovery, development, and production of domestic tin," followed by certain definite directives addressed to the executive branch of the Government.

Several important factors are interwoven in this question of a domestic tin-producing industry, including those of national security and self-sufficiency in one of the most strategic of all minerals, the unemployment problem and the matter of maintaining a stable economy in Alaska.

To act intelligently, the Congress needs documented evidence touching on all facets of the problem. It is hoped that such evidence will be forthcoming here today which will supplement testimony previously offered in Nome and in Washington.

We are privileged to have with us today Alaska's own Delegate Bartlett; and, Bob, I am going to ask you to participate in conducting this hearing. You have introduced, on the House side of the Congress, companion legislation to S. 2648, and your personal knowledge of the problems here involved, will be invaluable in presentation of the testimony which we can expect today. Your presence is appreciated, and, quite properly, you will lead off the testimony. Please proceed.

## STATEMENT OF HON. E. L. BARTLETT, DELEGATE FROM THE TERRITORY OF ALASKA

Delegate BARTLETT. Thank you very much, Senator Scott. At the outset I want to say, on behalf of everyone interested in mining in Alaska, that we are sincerely grateful to you and the members of your staff for coming to Alaska in this season of the year so that we

could inform you, first hand, of the situation so that S. 2648 may be considered early in the forthcoming session of Congress.

It has been your idea and my idea of introducing companion bills in the Senate and in the House; that they offer possibility for the development of the tin industry, particularly in Alaska.

We have been told by competent witnesses that it is improbable existing or foreseeable tin price will make it possible for a substantial Alaska tin industry to be developed. By payment of a fixed and sure price, as set forth in your bill, there will be an opportunity to demonstrate that substantial reserves of placer and lode tin may be discovered, particularly on the Seward Peninsula. The advantages of the formula set forth in your bill, Chairman Scott, are twofold.

In the first instance, Government will not be required to pay anything at all unless tin is produced. In the second, there is specific provision that the effective date of the formula's application will not be for more than 10 years from the time the law takes effect or until 10,000 tons of tin have been delivered, whichever comes sooner. The mining men who have previously testified on this subject have stated they are convinced that by the end of a decade substantial knowledge will have been acquired as to the amount of tin in Alaska. They have expressed confidence that with the relatively small amount of financial help which the bill would provide, the industry could be firmly established.

Another factor of importance to you as a member of the Senate Interior and Insular Affairs Committee which has jurisdiction over so many matters pertaining to the territories, is the depressed economic situation in the area where it is hoped tin mining may be launched on an impressive scale. Gold mining used to be of major consequence throughout the Seward Peninsula region and is still first in respect to value of mineral production and to number of men employed. Nevertheless, gold mining has been greatly curtailed with the price remaining constant and production costs mounting ever upward. For 3 years now the nearby Bristol Bay region has been declared a disaster area by the President and it has been necessary to send food and other supplies there. This situation has reacted to the disadvantage of many Eskimos who formerly travelled down to Bristol Bay from the Arctic Coast to work in the canneries. If they cannot have gainful employment, they will become a burden on the taxpayers. So anything that can be done within the boundaries of common sense to promote a tin mining industry will have the subsidiary but important results of putting people to work. These Eskimos are anxious to work. They want to work. They greatly prefer to make their own way than to have Government doles conferred upon them.

When the House subcommittee on mines and mining was considering my bill, H. R. 7749, earlier this year, Government witnesses testified against it. They suggested that there is enough tin in stockpiles to last through any crisis. I submit to you that this is only conjecture. The situation in Southeast Asia has deteriorated ever since then and there is no way for any person in this country to say categorically that we shall be supplied indefinitely with tin from Malaya. If we are able to develop within our own borders tin reserves sufficient to meet even part of our requirements then we shall have made a distinct contribution to national security. So far as I am aware, the Seward

Peninsula is the only place on the North American continent under the American flag where there is a possibility that tin may be mined in sufficient amount to make us partially self-sufficient in the supply of this vital metal.

I hope, Chairman Scott, that when the Congress reconvenes in January prompt and favorable action will be taken on the similar bills which are pending before the Senate and House Committee on Interior and Insular Affairs.

I thank you very much for coming to Alaska so late in the year to hold hearings here in Fairbanks and in Nome on the proposed tin legislation.

Mr. REDWINE. Delegate Bartlett, I have one or two questions I am sure the chairman would like to get answers to; we had intended asking Governor Heintzleman these questions but have been informed that due to his having to make a speech at 10 o'clock he cannot be at this place. We would like to have an answer to these questions and hope you can answer them.

Delegate BARTLETT. I hope I can.

Mr. REDWINE. First, is the area you spoke of as a disaster area—does that prevail at the present time?

Delegate BARTLETT. Yes, sir, it is now a disaster area by presidential proclamation. The salmon pack in Alaska in 1955 was the smallest in almost 50 years. Historically Bristol Bay has been the richest and most productive source of red salmon. The pack has gone down year by year until it now may be most difficult to rehabilitate the fish run. This sad state of affairs has occurred under Federal administration. Alaska is a Territory. It remains the responsibility of the Federal Government. If some of the unemployment slack can be taken up in such a constructive manner as is proposed by your tin bill, Chairman Scott, I say that it is justified entirely aside from the benefits which would accrue to the Nation as the result of enlarging our source of domestic tin.

In reference to what you said about Governor Heintzleman's inability to appear at this time, I should like the record to show that he appeared before the House committee in Washington and testified in favor of the corresponding House bill.

Mr. REDWINE. The Governor has informed the Senator that he will file a written statement in favor of this bill as he is unable to appear here and testify.

The next question: I believe the Alaska Legislature filed two memorials in Congress asking for legislation of this type.

Delegate BARTLETT. That is correct. The legislature was concerned with the economic status of the citizens in that area of Alaska. The legislature was rightfully concerned also about the mining industry. Mr. Crawford, vice president of the United States Smelting, Refining & Mining Co. in charge of Alaska operations, is in the room now and can testify much more expertly than I as to the sad state of gold mining and the need wherever and whenever possible to encourage other type of mining. The legislature felt it would be helpful if anything can be done to bring about more tin production, or production of any other metal.

(The statement of Governor Heintzleman subsequently filed and with covering letter follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE TERRITORIES,  
December 2, 1955.

HON. W. KERR SCOTT,  
*Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.*

DEAR SENATOR SCOTT: In line with my expressed desire during your recent hearing in Fairbanks on tin, I am submitting the attached statement by me, that can be added to the testimony on the problems confronting present and potential tin producers in the Territory.

Sincerely yours,

B. FRANK HEINTZLEMAN,  
*Governor of Alaska.*

STATEMENT OF HON. B. FRANK HEINTZLEMAN, GOVERNOR OF ALASKA

An assured supply of tin is vital to the industrial economy of the United States, but only a fraction of our annual requirements of approximately 55,000 tons of tin are produced under the American flag. The only place where tin has been found in any quantity in United States territory is in northwestern Alaska, which has produced approximately 2,000 tons of tin during the past half century. The total tin resources of that area are not known. It is very improbable that they are sufficient to supply the entire United States demand, but if fully developed, they could supply a substantially larger portion of the demand than they are today.

At the same time, development of Alaska's tin deposits would be of tremendous economic benefit to the northwestern part of the Territory, where mining is almost the sole productive industry. This has for some time been somewhat of a hard-ship area because of its dwindling gold-mining industry.

Senate bill 2648 of the 84th Congress (H. R. 7145) would provide an incentive to develop the tin resources of northwestern Alaska. This bill would establish a price of \$1.35 per pound for domestic tin produced from lodes and \$1.20 per pound for domestic tin produced from placer deposits. Northwestern Alaska has both types of tin deposits. The proposed price-support program would remain in effect for 10 years or until 10,000 long tons of tin were produced, whichever occurs first. The Government, under this plan, would pay only the difference between the market price of tin and the floor price provided by the bill, and these payments would be made only after the tin had been produced. This plan, I believe, would result in an immediate effort by the mining industry to prospect and develop additional reserves of tin and this development would be financed by private capital. This would be beneficial to the Nation by increasing our domestic supply of this important metal and beneficial to Alaska by providing additional industry in an area of present economic distress.

MR. REDWINE. Delegate Bartlett, we have had testimony heretofore in Washington, also in Nome, at which time it was shown that 15 percent to 25 percent of this Nation's tin supply comes from Bolivia; are you familiar with the fact that during several months of World War II 85 percent of our ships seeking passage through the Caribbean were sunk by enemy subs?

DELEGATE BARTLETT. Yes, we all recall that the mortality rate was terrific at that time, an occasional ship got through—there could be a repetition in another war. I am more concerned at the moment with the probability that in the next war our tin supply from Malaya might be cut off—that's the area I think should concern us particularly, and due to that fact we should build up our domestic supply of this metal that is necessary in peacetime and wartime.

MR. REDWINE. Delegate Bartlett, you are on home grounds here, you know all of the gentlemen that are going to appear as witnesses and I am sure that the chairman will appreciate it if you will call them

in the order they should testify and take over as assistant chairman at this time.

Delegate BARTLETT. That is very fine of you. I am going to call them, not to establish a priority, but simply in the order they are seated at the table. I think every one of them has useful information to give.

Senator SCOTT. Each has a case in his own rights?

Delegate BARTLETT. Yes, each has a case in his own right.

I would first like to introduce to you, Dean Beistline of the School of Mines of the University of Alaska.

Mr. REDWINE. Will you please state your name and full title for the record purposes?

### **STATEMENT OF EARL H. BEISTLINE, DEAN OF THE SCHOOL OF MINES AT THE UNIVERSITY OF ALASKA**

Mr. BEISTLINE. Yes, sir; if I might explain first that I am Earl H. Beistline, dean of the School of Mines at the University of Alaska, and I am appearing here today, with your permission, to present a statement prepared under the direction of Dr. Ernest N. Patty, president of the University of Alaska.

Mr. REDWINE. Would you like to read it?

Mr. BEISTLINE. Yes, I would—

Delegate BARTLETT. Before you do that is it not correct for me to say that President Patty, who is an old-time miner himself and formerly was dean of the School of Mines, had intended to appear here in person but he was called to Anchorage to dedicate the new high school?

Mr. BEISTLINE. Yes, he was called to Anchorage to dedicate the new high school and is unable to appear here in person—he sends his regrets.

(Mr. Beistline then read the following statement:)

Mr. Chairman, I am Ernest N. Patty, president of the University of Alaska. By profession I am a mining engineer and have spent much of my adult life in Alaska as manager of mining operations and in consulting work which has taken me into most of the mining districts of the Territory.

Nature has been very bountiful in supplying the crust of the North American Continent with mineral resources. The one metal that was withheld is tin. Almost as an afterthought, some tin mineralization was deposited in the north-west corner of the continent in what we call the western end of the Seward Peninsula, in northern Alaska. The total production of tin in the United States is in the neighborhood of \$2 million, and fully 95 percent of this total production has come from Alaska.

Tin is a vital industrial metal with a variety of uses, but its chief use is for food containers and as a bearing metal. We cannot get along without it. In normal times we are supplied from richer deposits in the Malay states, Bolivia, and some other countries; but the chief deposits are located in areas where Communist control is quite a menace and in wartime we could be shut off from our foreign source of supply. I understand that our stockpile of tin would suffice for about 1 year.

Our Alaskan tin deposits occur in two forms: placer deposits and lode deposits. The placer deposits and their reserves are pretty well known. The extent and value of our lode deposits are not yet determined. We would have to be very optimistic to assume that they could be developed to the point where they could begin to supply us in wartime. There is some exciting geology around these deposits and you never know until you get started probing around underground what you are going to uncover. The unexpected in mineral discoveries has fooled our best geologists and engineers, for history is replete with examples of limited mineral exposures which have developed into big and important ore-bodies when explored.



Under the present price of tin it is not possible to get risk capital to fully explore the known deposits because the known grade of ore will not yield a profit under present prices. The operators believe they can attract venture capital and get the necessary exploration if they can be guaranteed for a few years a price of \$1.25 to \$1.35 per pound of tin.

It seems to me just good, common sense, when you balance all equations, to give them this incentive. If they produce the metal it can go into the national stockpile to form good insurance for our country. While they are doing this there is the geologic gamble that they may make some important new discoveries and this would enrich our Nation. If they don't, the loss to the Government will be very slight. If they don't produce the tin, the Government pays nothing.

There is one more factor. These tin mines employ mostly Eskimo labor. If there isn't some place where they can find employment, they are going to be on welfare and this is going to cost the Government money. I am old-fashioned enough to want to see the Government spend some money in an attempt to create honest employment in this isolated area. I feel that welfare money destroys the character of our people and should be avoided if possible.

Mr. REDWINE. Dean Beistline, for the sake of the record——

Mr. BEISTLINE. Yes, sir.

Mr. REDWINE. Will you explain what is meant by the words tin is a "bearing" metal?

Mr. BEISTLINE. In the production of bearings for machinery; that tin is used in the manufacture of bearings.

Mr. REDWINE. All bearings do contain a certain amount of tin?

Mr. BEISTLINE. For the most part, yes.

Mr. REDWINE. In other words, you can't have modern machinery without bearings?

Mr. BEISTLINE. Yes.

Mr. REDWINE. And you need tin in most of them?

Mr. BEISTLINE. I would say "Yes."

Senator SCOTT. You didn't mention the source of supply from Africa; what do you know about that?

Mr. REDWINE. Mr. Holdsworth, you have some statistics, I believe, that you can probably bring before us as to where our supplies come from, don't you?

Mr. HOLDSWORTH. No; I don't have that.

Mr. REDWINE. Senator Scott, I think what we can do, unless you want an answer to that testified to now, is that we can include it in the record later on.

Senator SCOTT. All right. I don't believe we'd object to tying our little mine in Lincolnton, N. C., to the record.

Mr. REDWINE. Senator, in answer to your question about world production: several months ago it was testified to by Mr. Wiley F. McKinnon, Director, Office of Tin, Federal Facilities Corporation, that Malaya produces about 58,000 tons per year; Bolivia produces from 34 percent to 32 percent of the production. We get about 25 percent of our supply from Bolivia and about 60 percent from the Malayan area. We get some from Thailand and a little bit from Indochina; and, I believe, as Delegate Bartlett mentioned a while ago, that it has been testified time and time again by the military before congressional committees that in this atomic age we probably won't have to worry about subs sinking ships—the sources themselves will be atomized.

Delegate Bartlett, do you want to ask Dean Beistline any questions?

Delegate BARTLETT. I am going to ask Dean Beistline if the School of Mines ever investigated the tin potential on the Seward Peninsula?

Mr. BEISTLINE. No, we haven't investigated it in such a way that it would be useful here.

Delegate BARTLETT. Is it your understanding that the Geological Survey has conducted extensive examinations or that only preliminary work has been done by the Geological Survey?

Mr. BEISTLINE. I am not familiar with the exact work that has been done by the Geological Survey, Delegate Bartlett; however, I think the statement can be made that the underground work that is and has taken place on the Seward Peninsula has to me shown more evidence—and as the evidence becomes known, in our belief, we do have a big operation; but I think there should be additional evidence.

Delegate BARTLETT. My recollection of the Geological Survey's research on Seward Peninsula is that they felt the reserves were not large but it is necessary to add the qualification that witnesses stated no considerable amount of investigations have been made. I have talked much in Washington with Mr. Clifford Smith, Jr., concerning Seward Peninsula tin potentials. Mr. Smith is now with the Atomic Energy Commission in Washington. He formerly had interests in tin property on the Peninsula and for all I know may have them yet. In any case, as a mining engineer it is his professional opinion that the entire area has a huge tin potential.

Mr. REDWINE. Delegate Bartlett, in amplifying what you have just said about the Geological Survey, the record formerly made in the House hearings gives testimony on that and at this time I will read the following from that record:

Mr. BARTLETT. I would like to ask Dr. Reed, Mr. Chairman, what the views of Geological Survey are as to the tin potential in Alaska, with special reference to Seward Peninsula area.

Mr. REED. The first statement that we would have to make in answer to that question, Mr. Bartlett, is that we do not know the size of the tin potential of the Territory of Alaska. We do have some information on that subject. As has already been brought out in the testimony this afternoon, tin occurs in Alaska both in placers and in lodes. The resources of tin in terms of available data might aggregate for the whole Territory at the present time between six and eight thousand tons. Of that, let us say, 6,000 tons—and remember that is perhaps a minimum—probably 4,000 would be on the Seward Peninsula, which is the general region that has been emphasized this afternoon. Of that on the Seward Peninsula perhaps two-thirds would be in the lode at Lost River, the United States tin property, and the rest in placers such as that talked about by Mr. Lomen and Mr. Ramstad. Let me emphasize, however, that the final extent is unknown to anyone at the present time.

Mr. BARTLETT. Is that calculation based upon a thorough exploration or minimum exploration? Has much been done by the Government or by private industry in seeking to determine the overall amount of tin which might be found there?

Mr. REED. This is a relative sort of thing, Mr. Bartlett. Some detailed work has been done in a few places. Taking an overall view of the tin resources of the Territory, a most inadequate job has been done up to the present time.

Delegate BARTLETT. Dean, is it your professional opinion that this area is worthy of further examination, and second, do you believe the bill now being considered will be helpful in developing the tin industry around here?

Mr. BEISTLINE. Delegate Bartlett, in answer to your first question: I do believe additional prospecting should be done in the area, tin being the major consideration here today. Now, would you repeat—

Delegate BARTLETT. I think I should rephrase my second question and ask you if you would agree with me that in my opinion if this bill were enacted into law it would be a magnanimous help?

Mr. BEISTLINE. I certainly agree with you. I think an increase in price is going to have some effect on that area; I think the very history of the Alaska mining industry indicates that \* \* \* Southeastern Alaska had a lot of quartz mines but the mining men moved on into the interior because of the incentive offered.

Delegate BARTLETT. Is it not true that Alaska miners are penalized when they are required to accept the prices for tin because the production prices are so much higher?

Mr. BEISTLINE. Yes, that's true—it's one way of looking at it. We have higher operating costs and the high freight rates and all—tin is a bulky metal compared to gold.

Mr. REDWINE. Does this not also enter into it? You have such a short operating season the return on capital investment is penalized because of the short operating season?

Delegate BARTLETT. That would be true—lode mines would be somewhat different.

Mr. REDWINE. This is a technical question: In an area where there is lode mining what is the water supply?

Mr. BEISTLINE. I'm not sure—I think Mr. Holdsworth can give you more on that point.

Delegate BARTLETT. The next witness is Phil Holdsworth, Territorial Commissioner of Mines.

#### **STATEMENT OF PHIL HOLDSWORTH, TERRITORIAL COMMISSIONER OF MINES OF ALASKA**

Mr. HOLDSWORTH. Mr. Chairman, and Delegate Bartlett, to avoid repetition, the information I have here (indicating a paper) was presented during the hearing at Nome, and it might be better if I answer specific questions.

Delegate BARTLETT. Do you have a written statement, Phil?

Mr. HOLDSWORTH. Yes, I have a written statement, and I believe the representative at Nome presented it.

Delegate BARTLETT. Let me see it a moment. (Mr. Bartlett was handed the paper). There is one question here: I see in your concluding paragraph in your statement at Nome you mention another type of incentive—that is a subsidy price derived from import tariffs to be paid to domestic mineral producers.

Mr. HOLDSWORTH. That type of incentive has been discussed by the Western Governor's Mining Council and it was thoroughly discussed at Sacramento 7 or 8 months ago—it is similar to what is known as the San Francisco wool plan. Let's take tin for example, up here. We use 55,000 tons of tin a year in the United States. In the course of that you might say  $\frac{1}{2}$  of 1 percent would be an Alaskan product. Under our present scale if we would impose a  $\frac{1}{4}$ -cent import duty on tin imported and prorate that money against tons of tin produced domestically you can see how much you could pay to local producers without any money out of the taxpayer's pocket.

Delegate BARTLETT. You would give them practically all of the money that comes in?

Mr. HOLDSWORTH. It could be prorated.

Mr. REDWINE. On  $\frac{1}{2}$  cent per pound on 55,000 tons, what would that figure out?

Mr. HOLDSWORTH. Well, I haven't figured it out—

Mr. REDWINE. In other words, how much money would be available?

Mr. HOLDSWORTH. I would say at  $\frac{1}{2}$  cent per pound—

Mr. REDWINE. I would just like to see how much subsidy would be available for the domestic tin producers under such plan.

Mr. HOLDSWORTH. It would be equivalent to—

Delegate BARTLETT. Mr. Holdsworth, is there a tariff now on tin, and if so, in what amount?

Mr. HOLDSWORTH. I believe there is no tariff on tin \* \* \*

Mr. REDWINE. I believe there is at the instigation of the State of South Dakota; I believe that was put on several years ago. I believe it is still on—I am not sure though.

Delegate BARTLETT. That's my recollection, too—I believe there's something on that in the House hearings. We can check on that later. Did you calculate how much it would come to? How much did we produce in Alaska last year?

Mr. HOLDSWORTH. One hundred and sixty tons, I believe, sir.

Delegate BARTLETT. If we produce 200 tons how much would they receive under the so-called San Francisco plan?

Mr. HOLDSWORTH. Well, that's one-half of 1 percent—\$50 per pound.

Delegate BARTLETT. I have no further questions.

Mr. REDWINE. Mr. Holdsworth, since we've been here we've heard of some tin downriver from Fairbanks; how does that look?

Mr. HOLDSWORTH. I believe you're kind of previous—I might clarify that—there should be a discussion made between the various agencies operating in the Territory \* \* \* Delegate Bartlett mentioned the amount of work done by the Geological Survey; the work done by the Geological Survey generally is comprised of topographic and geologic mapping whereas actual operations are first done by the U. S. Bureau of Mines and later \* \* \* we have a very small amount of funds \* \* \* we go in. That's one reason we don't know as much as we should about the reserves. When you ask about tin in this area I think the Federal Bureau of Mines can furnish that information. Sometimes that information is not available soon after it is collected and some of it is not public information.

Delegate BARTLETT. Phil, are you referring to the placer deposit at Manley Hot Springs?

Mr. HOLDSWORTH. Yes.

Delegate BARTLETT. Has your department done anything there?

Mr. HOLDSWORTH. Our department has done nothing other than some work to ascertain the geophysical—

Delegate BARTLETT. How about the Bureau of Mines?

Mr. HOLDSWORTH. The Bureau of Mines has done considerable work.

Delegate BARTLETT. What have their findings been, in essence?

Mr. HOLDSWORTH. Well, their findings—let's take one stream for example—there's 4 million pounds of tin.

Mr. REDWINE. Running about 4 pounds to a yard?

Mr. HOLDSWORTH. Yes.

Delegate BARTLETT. Is that a large deposit?

Mr. HOLDSWORTH. Yes.

Mr. REDWINE. How much loss in treatment is involved?

Mr. HOLDSWORTH. As a rule the recovery is high, about 90 percent.

Mr. REDWINE. What area is that?

Mr. HOLDSWORTH. That's Cape Creek.

Mr. REDWINE. Where is Cape Creek in relation to Potato Mountain?

Mr. HOLDSWORTH. It's south and a little west. What we would like to find out is more about that one known potential and there are three other streams in the same general area that also have potential and an incentive such as this bill offers would, of course, promote exploration.

Delegate BARTLETT. How has the prospecting been done on one stream?

Mr. HOLDSWORTH. That's under the DMEA program.

Mr. REDWINE. As a personal opinion, what do you think about the tin potential over there?

Mr. HOLDSWORTH. I personally feel there is quite a potential and it's going to take exploration to prove it—but it won't come about without some incentive.

Mr. REDWINE. You do believe it will come about by reason of enactment of this bill.

Mr. HOLDSWORTH. I do.

Mr. REDWINE. What drilling has been done up there then, has been the result of private industry going in and doing it and submitting a report to DMEA and DMEA helping do the exploration, is that not true?

Mr. HOLDSWORTH. Yes, that's true.

Mr. REDWINE. And enactment of this bill perhaps would give private industry the incentive to go in and try to develop a tin-producing industry. They would put their money up and get matching funds from DMEA for exploration work; would that be, or not be, the result of this bill, in your opinion?

Mr. HOLDSWORTH. I know it would take the cost of exploration off of DMEA and private industry would do it. The only load on the Government then would be payment for the metal.

Mr. REDWINE. This then would really, according to you, Mr. Holdsworth, be a money-saving project for the Federal Government. One other question, and I am not pointing to any particular company, Mr. Holdsworth, we're not here for that. I would like you to answer a question about the water situation up there; what is the water situation in that area, Mr. Holdsworth?

Mr. HOLDSWORTH. Well, in that area—an example of developing a suitable water supply, it cost roughly \$150,000 to merely put in a pumping installation to deliver water for the Lost River mine and they do have a steady flow of water except for a slack period early in February through late March. They did develop a satisfactory water supply. One other thing that should be mentioned is that the continued development of any ground will in time produce underground sources of water. At Lost River it was developed 250 feet below the surface; that was with diamond drilling.

Delegate BARTLETT. How expensive is diamond drilling?

Mr. HOLDSWORTH. That was for ore, not for water.

Mr. REDWINE. That's all I have, Mr. Bartlett. Thank you very much, Mr. Holdsworth.

Delegate BARTLETT. Jim, do you have anything?

Mr. CRAWFORD. No, I don't.

Delegate BARTLETT. All?

Mr. ANDERSON. Yes.

Delegate BARTLETT. The next witness will be Al Anderson, director of the Alaska Resources Development Board.

### STATEMENT OF AL ANDERSON, DIRECTOR OF THE ALASKA RESOURCES DEVELOPMENT BOARD

Mr. ANDERSON. Senator Scott and Delegate Bartlett, I should like to state that I feel there is no tin mining possible on the Seward Peninsula under the present price scale of 96 cents a pound. It is not possible for producers to operate or for them to complete necessary exploration. Mr. Bartlett asked about the cost of drilling—the information from the United States Bureau of Mines is that it costs \$10 to \$12 a foot; that gives you some idea of the difficulties mining people have encountered. The amount of money involved in the subsidy itself is relatively small at the present price of tin. Tin is 96 cents a pound and this legislation provides the price of \$1.20 to \$1.35 a pound—the amount of money involved is very small. The total production of tin in that area in 1954, according to information I have, amounted to 327,919 pounds. The payroll for the one operating mine in the area, which operated on a year-round basis, amounted to \$347,839.59. Until that payroll was established up there there was nothing for those people to do. The one lode tin mine furnished daily employment for 365 days a year for 56 men. These 56 men were Eskimos who ordinarily have no other source of employment. There are about 15,000 people there, and in winter there is nothing whatsoever for them to do. Perhaps this bill might provide the incentive to send private companies into the field to discover new deposits and they might also uncover additional metals. That's one opportunity for that area to have some employment other than in the summertime.

Mr. REDWINE. In the Nome hearings it was brought out that the families, the size of the families, in that area are rather large by comparison to what we recognize as big families Stateside. Of the 15,000 in the area you refer to—that's the second division, I believe?

Mr. ANDERSON. Yes.

Mr. REDWINE. Is it true that about 12,000 of the 15,000 are native; that is approximately?

Mr. ANDERSON. Yes.

Mr. REDWINE. Of that 12,000 how many would you say are employable as labor—taking into consideration the large families?

Mr. ANDERSON. Of the 12,000 I would say that perhaps 20 percent.

Mr. REDWINE. Looking over some earlier testimony given in Washington I see that someone says that they believe that if a going tin industry could be developed in that area it would probably give employment to 2,000 individuals. You used 56 in your testimony—that's in the mine operation itself?

Mr. ANDERSON. Yes, that's correct.

Mr. REDWINE. Assuming you have mines operating and employment given to others that would multiply several times?

Mr. ANDERSON. Yes.

Mr. REDWINE. Let's put it this way: If year-round employment were provided for 500 individuals in that area what would it do to the overall economy in the second division; in your opinion?

Mr. ANDERSON. Of course it would be one of the most wonderful things that could happen if you could have 500 people working in the wintertime where there are none now.

Senator SCOTT. Will protection be given; will those people be given work rather than a white man, or not?

Delegate BARTLETT. Mr. Chairman, in that connection I think Mr. Crawford of the United States Smelting, Refining, and Mining Company, can answer that. I should like him to comment on employment of the Eskimo by his company at Nome.

Mr. CRAWFORD. If my memory is correct I understood Mr. Anderson to say there is no employment on the Seward Peninsula during the winter.

Mr. ANDERSON. No employment in the lode mines.

Mr. CRAWFORD. That is correct; we employ Eskimos—about 240 men during the mining season, 75 percent of them are Eskimos and about 50 or 60 of them continue working through the winter on thaw drilling. Recently we curtailed our thaw drilling program but ordinarily some work during the winter as far as the weather will permit.

Delegate BARTLETT. What has been your experience with them as workmen?

Mr. CRAWFORD. Generally satisfactory. They have certain natural adeptness at picking up operations of mechanical equipment. In certain work I think they are every bit as well qualified as a white man.

Senator SCOTT. Could women be considered as a source of labor in this field? The reason I ask that is that in the textile industry—I don't know what the percentage is, but we employ women in that. That's far removed from your situation here, but looking toward that—in other words, is a woman capable of filling in somewhere?

Mr. CRAWFORD. I don't know anywhere in that particular line of work.

Senator SCOTT. I was just asking for information because I know in other parts of the world they use women quite a bit.

Mr. REDWINE. Mr. Crawford, what happens when the season closes and these men are laid off until next spring—do they go on unemployment compensation?

Mr. CRAWFORD. The ones that apply are entitled to it.

Mr. REDWINE. What is the average amount an individual receives per week in unemployment compensation?

Mr. CRAWFORD. It would depend, of course, on his dependency allowance to some extent. I couldn't say.

Mr. REDWINE. Could you give a rough idea?

Mr. CRAWFORD. It would range from \$35 to \$70.

Mr. ANDERSON. That would be \$35 to \$70 per week.

Mr. CRAWFORD. For 26 weeks.

Mr. REDWINE. Does 26 weeks cover the period of unemployment; do they have as much as 26 weeks of unemployment? In other words, what is the length of your mining season?

Mr. CRAWFORD. The mining season on Seward Peninsula is about 6 months.

Mr. REDWINE. Then about half of the time they are on the payroll and half the time off?

Mr. CRAWFORD. The major portion of the payroll is off about 6 months.

Senator SCOTT. It has been called to my attention that those on relief rolls would rather have those checks and do no work at all than to do work when available; is there some truth to that?

Mr. CRAWFORD. I think it is true in certain industries.

Mr. REDWINE. I'd like to direct a question to Mr. Anderson. Mr. Anderson, have you any figures—we have asked several places before and have been unable to obtain them—as to what the average per capita income, not including the compensation check, of the native population is; both for the Territory and the second division?

Mr. ANDERSON. No; we do not have that.

Mr. REDWINE. Who would have that figure?

Mr. ANDERSON. The only figure available is the average weekly earnings by class of workers.

Mr. REDWINE. Do you have that in printed form?

Mr. ANDERSON. I have one copy of it, and I could make it available to your committee.

Mr. REDWINE. Will you do that and have the copies mailed to Washington?

Mr. ANDERSON. Yes; I will.

Delegate BARTLETT. Is it broken down by races?

Mr. ANDERSON. No; it's never broken down by races.

(The following material was subsequently supplied:)

ALASKA RESOURCE DEVELOPMENT BOARD,  
Juneau, Alaska, November 30, 1955.

Mr. ROBERT W. REDWINE,  
Senate Office Building,  
Washington, D. C.

DEAR MR. REDWINE: Pursuant to the committee's request in Fairbanks for additional data on Alaska, I am enclosing certain information which I hope will be of value to Senator Scott and his colleagues in considering Senate bill 2648.

The following was extracted from a statement submitted to Senator Magnuson's Committee on Interstate and Foreign Commerce:

"Alaska has a total area of 586,400 square miles, and in it live about 208,000 people, 49,000 of whom are in the armed services. Of the 159,000 civilians in Alaska, between 30,000 and 35,000 are Eskimos, Indians, and Aleuts. The people of Alaska produced from their raw materials in 1954 products valued at approximately \$117 million. Fishery products were valued at \$77,879,446; minerals at \$24,328,000; raw furs, exclusive of fur seals, at \$1,440,706; timber products at \$10,158,830; and agricultural products at \$2,877,925.

"Alaskans' principal source of income is derived from these raw materials, from military construction payrolls, other Government activities, sales and service industries, and transportation which supports both Government activity and private industry.

"The total estimated labor force in Alaska in 1954 amounted to about 56,500 people, and of these 15,000 were civil-service employees. In employment covered by employment-security laws in 1954, 28.2 percent worked in the construction industry; 5.3 percent in the mining industry; 17 percent in manufacturing; 14.3 percent in transportation, communication and utilities; 33.3 percent in retail, wholesale, and service industries; and all others 1.9 percent.

"The unfortunate and inescapable facts are that the mining industry, the construction industry, and the fishing industry are unable to provide work for their employees on a full-time basis. The mining and construction industries operate from 5 to 8 months out of the year, and most of the fishing industry operates only during spring and summer months and is highly seasonal within the various fishing districts of Alaska.

"Total taxes collected in Alaska by the Federal Government amounted to about \$50 million, and an estimated additional \$25 million was collected in Federal taxes outside of the Territory. Alaskans paid approximately \$45 million in Federal incomes taxes. Alaskans paid approximately \$15 million toward the support of their own Territorial Government. This means that Alaskans



paid a total of about \$90 million toward the support of the Federal Government and the Territorial government. On a per capita basis, Alaskans paid \$75.59 each toward the support of Territorial government. On this per capita basis there were only 17 States which had a higher tax rate than Alaska. However, ordinary per capita tax figures do not correctly reflect the impact of taxes on Alaskans, because of the fact that about 23½ percent of Alaska's population is military. Military personnel are exempt from the payment of Alaska's income tax, which is the Territory's principal source of revenue. Other Territorial taxes which military personnel pay are incidental because in most cases a substantial amount of their purchases are made from military exchanges and commissaries.

"These tax figures are cited so that you will appreciate that Alaskans are not shirking their responsibilities as taxpayers."

Since these figures were compiled, the United States Bureau of Mines has released revised figures on Alaska's mineral production for the years 1953 and 1954. These figures are attached. From it you will note that the mineral production on the Seward Peninsula in 1953 amounted to \$1,703,526 and dropped to \$1,447,480 in 1954. United States Bureau of Mines records show that tin produced in Alaska for 1953 was 49 tons, valued at \$105,917, and that tin produced in 1954 amounted to 199 tons, valued at \$409,953.

Official figures supplied by the Bureau of Census in 1950 indicate that the population of the second judicial division was 12,272 people. Of these 2,342 were of the Caucasian race and the remainder of approximately 10,000 were mainly Eskimos and Indians. Economic figures compiled by the Bureau of Census in 1950 show that the income of nonwhites in all of Alaska was distributed in the following categories:

*Income of nonwhite persons 14 years old and over, rural, 1950*

<i>Income level</i>	<i>Rural nonwhite</i>
Persons 14 years old and over.....	19,798
Persons with no income.....	5,666
Persons with income.....	12,048
Less than \$500.....	4,497
\$500 to \$999.....	3,080
\$1,000 to \$1,999.....	2,372
\$2,000 to \$2,999.....	987
\$3,000 to \$3,999.....	565
\$4,000 to \$4,999.....	249
\$5,000 to \$5,999.....	146
\$6,000 to \$6,999.....	72
\$7,000 to \$9,999.....	38
\$10,000 and over.....	42
Income not reported.....	2,044
Median income for persons with income.....	\$748

It appears to us these figures forcibly demonstrate the deplorable economic plight of our nonwhite residents in rural areas.

About 30 percent of the native inhabitants of Alaska reside in the second judicial division, and a substantial portion of these natives reside on the Seward Peninsula. Until the advent of the defense early warning line, these native inhabitants were solely dependent upon trapping, mining, and fishing for their livelihood. It is true that, with the construction of new radar installations in Arctic Alaska, some employment has been furnished these people, but a great number of them are still without means of support and are dependent upon health and welfare programs of the Territory, the Alaska Native Service, and the employment-security fund to supplement their meager earnings in order for them to exist.

The total value of furs shipped from the Seward Peninsula amounted to \$12,748. This coupled with the gross value of minerals produced in the area, amounts to a gross income for the area of about \$1,460,228.

From these bleak statistics, I believe that it is evident that the residents of the second division and the Seward Peninsula desperately need some kind of economic assistance so that an industry can be started in the area. We feel that Senate bill 2648 would at least provide some basis for the establishment of industry in the second division.

Officials of the Territorial Department of Mines and other Government agencies have already submitted to this committee information on the strategic role that

tin plays in the United States and that the United States is now wholly dependent upon imports of this critical metal from areas of little political stability which are remote from the United States.

Senate bill 2648 provides that the General Service Administration will purchase tin at one or more delivery points within the continental United States, including Seattle, Wash., at a price of \$1.25 per pound for metallic tin produced from placer deposits and \$1.35 per pound for metallic tin produced from lode deposits. This program shall be effective until such time as the Government of the United States has purchased 10,000 tons of metallic tin.

With the current price of tin at approximately 96 cents per pound, this would mean that the United States Government would be required to subsidize tin producers in the amount of 29 and 39 cents per pound respectively. It appears to us that this is a relatively small price for the Government of the United States to pay in order to give the tin producers of the Seward Peninsula and northern Alaska an opportunity to establish an industry which could give some employment to those who desperately need it.

The only lode tin producer in the area has been closed down because the current price of tin will not support their operation. This shutdown has occurred despite the fact that promising new showings of ore were uncovered this summer. The only placer producer in the area has stated that the present price precludes their operation. Other placer deposits which are substantial cannot be financed without assurances of a higher and a stable price. We believe that the assistance provided for in Senate bill 2648 is sufficient to support a profitable operation of the lode deposits in the Lost River area and that the price of \$1.25 per pound for placer tin is sufficient to assure the operation and development of this type of stream bed deposit.

Sincerely,

AL ANDERSON,  
*Executive Director.*

MR. REDWINE. Mr. Crawford, is there any unionization in the native labor force in your work?

MR. CRAWFORD. Not at Nome; we employ about 100 in Fairbanks and they are represented by the union here.

MR. REDWINE. But not in the Nome area?

MR. CRAWFORD. No.

MR. REDWINE. What is the difference, if any, in the wages between the Fairbanks and Nome areas?

MR. CRAWFORD. It is slightly lower at Nome in certain classifications, but more or less uniform in skilled lines. They work longer hours in Nome, and of course earnings are larger.

MR. REDWINE. Delegate Bartlett, in the Territory do you have a Territorial minimum wage, or do you use the Federal minimum?

DELEGATE BARTLETT. There is a Territorial minimum wage, too.

MR. REDWINE. What is it?

DELEGATE BARTLETT. It was elevated to \$1.25 from \$1.00.

MR. ANDERSON. To set the record straight—we didn't have a Territorial minimum wage act until this year.

DELEGATE BARTLETT. This is the first year.

MR. REDWINE. Does it apply on all types of labor, including agriculture?

MR. CRAWFORD. I don't think it applies to agricultural workers; I'm not sure.

MR. REDWINE. Are agricultural and forestry workers classed together in the Territory?

MR. ANDERSON. No.

MR. REDWINE. Is forestry work unionized?

MR. ANDERSON. No; it is not.

MR. REDWINE. That's all I have, Mr. Chairman.

DELEGATE BARTLETT. Mr. Anderson, how does mining stand now in Alaska, is it number 1, 2, 3, what is it?

Mr. ANDERSON. Well, the largest producer of natural resources is the fishing industry. Our mining industry is still second but it's way below what it should be. We produced from our mineral resources approximately \$24 million last year; of that \$8 million was coal and another \$8 million gold.

Mr. REDWINE. I wonder if it would not be useful to Senator Scott if Mr. Anderson will furnish for the committee at a later date a list showing the value of the different products in dollar value.

Senator SCOTT. Yes; it would be.

Mr. ANDERSON. I would be very happy to:

Mr. REDWINE. I would like to suggest he furnish that information and accompany it with a brief as to why this proposed legislation should or should not be enacted.

Mr. ANDERSON. Let the record be clear that there's no doubt in my mind why it should not be enacted.

Mr. REDWINE. Is there anyone else who would like to offer something? We've had a very fine discussion here this morning.

The CHAIRMAN. We'd like to hear from anyone.

Mr. LOMEN. I'd like to know if Mr. Mulligan would like to add anything?

(Mr. Ralph Lomen and Mr. John Mulligan were seated in the audience at the hearing).

Mr. REDWINE. Mr. Mulligan, have you anything you'd like to say?

Mr. MULLIGAN. I doubt if there's anything we could add.

Mr. REDWINE. I would like to ask one further question; I would like to address this to Dean Beistline and Mr. Holdsworth. I would like to have a little discussion on the part that the oldtime prospector might play in finding additional tin and other minerals in the Territory if such legislation as proposed under this bill was enacted.

Dean BEISTLINE. As to my opinion on the subject I believe very definitely when an incentive is offered you're going to get prospectors in the field—I can't say how many or what they will find, but it's going to draw people back into the hills again if they can see a chance of making a small stake. The more incentives that are offered the better it will be for the mineral industry and more discoveries should be made. The more men there are in the field the more the chance of locating mineral deposits. I don't mean though that everything should be provided by the Government, but as far as mining is concerned that's the way Alaska came into being.

Mr. HOLDSWORTH. To answer your question about oldtime prospectors, I think our experience this year points out that prospecting presently being done is not by oldtime prospectors, it is by qualified men—let's say more qualified than the oldtimers. It's being done now by either local groups of businessmen or an established mining company.

Incentive to get these men out increased the activities this year on uranium and with the present price of copper and other strategic minerals such as chromium—

Mr. REDWINE. I have heard recently in Las Vegas that the uranium people are concerned—

Mr. HOLDSWORTH. That's true, industry is very much concerned because of the lack of policy by the AEC on the purchase of uranium. That goes back to the same thing we've been referring to—the mining

industry gets definite doldrums because of the lack of a long-range program.

Mr. REDWINE. There is still a place for the oldtime prospector, is there not?

Mr. HOLDSWORTH. Yes.

Mr. REDWINE. Mr. Crawford, do you agree with that evaluation of oldtime prospectors in the discovery of mineral deposits?

Mr. CRAWFORD. Yes, I think that history shows that a lot of ore has been found by the prospectors that worked in the hills and made the discoveries.

Mr. REDWINE. Isn't that about the cheapest way for the Government to bring about the discovery of these additional deposits of mineral resources?

Mr. CRAWFORD. I don't know about that for sure, but I would say that an incentive—I would agree with Mr. Beistline and Mr. Holdsworth—an incentive will take prospectors out in the field and there is a better chance of finding new mineral deposits and developing new possibilities.

Mr. REDWINE. Mr. Chairman, I don't have anything further.

The CHAIRMAN. Isn't this true: I think history proves that as you find new minerals, a mineral now considered of no value if combined with different alloys would be of value. Isn't it true that some minerals we now think nothing of could be of value?

Mr. HOLDSWORTH. That is true. Some of the difficulty is that we don't have records of some of these apparently worthless minerals that have been seen. We don't have cooperation on turning the information over to us on some of these minerals they feel are not worth much today—but in the future they might be.

Mr. REDWINE. Mr. Anderson, can you think of anything that is being proposed now in the way of developing the resources of Alaska, in the way of legislation, that has more value to Alaska than this particular legislation?

Mr. ANDERSON. No; there is nothing that is in the form of legislation, however, there are proposals—requests to the Bureau of the Budget to make money available to the United States Geological Survey and Bureau of Mines and requests for more road moneys, but at the present time this is the only specific bill I am aware of that benefits individuals and offers incentive for the mining industry.

Mr. HOLDSWORTH. You might put in H. R. 7055.

Delegate BARTLETT. That's a good bill; what is it?

Mr. HOLDSWORTH. On tidelands.

Mr. REDWINE. You might make a brief explanation for the benefit of Senator Scott.

Mr. HOLDSWORTH. Well, as conditions stand in the Territory today if the pulp industry or mining companies acquire tidelands it takes special action in Congress.

Mr. REDWINE. Looking at the calendar, Senator Scott, for the last session I think the people in the Territory kept Delegate Bartlett rather busy submitting individual bills along that line. I think our committee considered several on the Senate side.

The CHAIRMAN. Considered many.

Delegate BARTLETT. I want to offer a postscript to what Mr. Holdsworth has said. We have a situation here where many major oil companies are greatly interested in prospecting for oil in the Territory. They have acquired leases under the act of 1920 on tidelands that are held for administration by the future State of Alaska. The oil companies are absolutely foreclosed from searching for oil in the tideland areas. Mr. Holdsworth spoke of the necessity of having special bills in Congress to acquire tidelands—I had a bill this year on a timber company near Wrangell for 45 acres of tideland and it would be the same thing as far as time if they asked for 100,000 acres—all we're trying to do on that is bring the same status as the coast States have under the Submerged Lands Act of 1953.

Mr. REDWINE. Senator, I don't have anything else.

Senator SCOTT. Has anyone else anything?

Mr. ANDERSON. We want to thank you officially, Senator, you and your staff for coming here.

Senator SCOTT. We are happy to come—but as you know, we are a long way from Haw River, N. C., up here.

Mr. ANDERSON. We are delighted to have you, it shows the interest of Congress in us and it looks well for Alaska.

(The hearing adjourned at 11:40 a. m.)

(By direction of the chairman the following is made a part of the record:)

TABLE 1.—*Mineral production in Alaska, 1953-54*<sup>1</sup>

Mineral	1953		1954	
	Short tons (unless otherwise stated)	Value	Short tons (unless otherwise stated)	Value
<b>Metals:</b>				
Chromite.....gross weight.....			2,953	\$208,257
Copper (recoverable content of ores, etc.).....			<sup>2</sup> 4	2,435
Gold (recoverable content of ores, etc.).....				
.....troy ounces.....	253,783	\$8,882,405	248,511	8,697,885
Lead (recoverable content of ores, etc.).....	9	2,240		
Mercury.....76-pound flasks.....	40	7,721	1,046	276,552
Silver (recoverable content of ores, etc.).....				
.....troy ounces.....	35,387	32,027	33,697	30,497
Tin (content of ore and concentrate).....long tons.....	49	105,917	199	409,953
<b>Nonmetallic minerals (except fuels):</b>				
Sand and gravel.....	7,689,014	5,079,681	6,639,638	6,301,939
Stone.....	47,086	169,711	283,734	465,423
Mineral fuels: Coal (bituminous).....	861,471	8,451,542	<sup>3</sup> 667,153	<sup>3</sup> 8,339,412
Undistributed: Clay (1954), gem stones, platinum-group metals (1953-54), tungsten (1953).....		1,520,782		1,576,380
<b>Total.....</b>		24,252,000		<sup>3</sup> 26,309,000

<sup>1</sup> Production as measured by mine shipments or mine sales (including consumption by producers), except that fuels and mercury are strictly production.

<sup>2</sup> Includes 3,265 pounds of copper recovered from ore shipped from an inactive mine in 1954. Ore was mined in years before 1954.

<sup>3</sup> Preliminary and subject to revision.

TABLE 2.—*Value of mineral production in Alaska, 1953-54, by regions*

Region	1953	1954	Commodities produced in 1954 in order of value
Aleutian Islands.....	(1)	-----	None.
Bering Sea.....	(1)	-----	Do.
Bristol Bay.....	\$965	\$6,717	Mercury, sand and gravel.
Cook Inlet-Susitna.....	4,415,008	6,266,440	Sand and gravel, coal, gold, stone, clay, copper, silver.
Copper River.....	336,045	548,182	Sand and gravel, gold, silver.
Kenai Peninsula.....	(1)	437,062	Sand and gravel, chromite, gold, silver.
Kodiak Island.....	(1)	(1)	Stone, sand and gravel.
Kuskokwim River.....	2,316,047	2,552,029	Platinum-group metals, gold, mercury, silver.
Northern Alaska.....	(1)	(1)	Coal.
Northwestern Alaska.....	\$39,660	67,683	Gold, gem-stones, silver.
Seward Peninsula.....	1,703,526	1,447,480	Gold, tin, sand and gravel, silver.
Southeastern Alaska.....	578,462	663,306	Sand and gravel, stone, gold, copper, silver.
Yukon River.....	14,099,608	14,087,036	Gold, coal, sand and gravel, stone, silver.
Undistributed <sup>1</sup> .....	762,705	232,798	
Total.....	24,252,000	26,309,000	Gold, coal, sand and gravel, platinum-group metals, stone, tin, mercury, chromite, silver, gem stones, clay, copper.

<sup>1</sup> Included with "Undistributed" to avoid disclosure of individual output.<sup>2</sup> Value of gem stones included with "Undistributed."<sup>3</sup> Includes values from regions which must be concealed for particular years (indicated in appropriate column by footnote references 1 and 2).

## EMPLOYMENT STATISTICS

TABLE B.—Average weekly earnings in covered employment in Alaska by industry, 1940-54

Industry	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954
Total, all.....	\$35.51	\$42.63	\$48.11	\$59.33	\$81.62	\$66.60	\$57.88	\$77.32	\$84.33	\$89.11	\$92.01	\$109.54	\$120.16	\$120.70	\$120.94
Agriculture, forestry, fishing.....	29.45	31.98	31.13	27.99	35.58	43.54	67.18	65.16	62.56	88.29	79.13	86.90	86.70	83.45	103.87
Mining.....	34.38	48.27	80.88	63.38	83.60	69.13	80.19	89.94	70.03	101.81	108.67	121.56	130.99	131.75	126.78
Contract construction.....	45.04	70.13	56.56	87.61	121.87	125.67	81.82	94.80	109.45	124.78	130.22	151.56	166.06	169.71	170.60
Building contractors.....	(39.35)	(27.14)	(63.32)	(46.41)	(67.65)	(55.63)	(61.67)	(86.73)	(96.30)	(98.30)	(132.33)	(145.40)	(155.61)	(161.12)	(161.14)
General contractors.....	(48.90)	(69.88)	(56.38)	(88.13)	(123.01)	(132.37)	(90.59)	(94.19)	(111.99)	(123.70)	(133.37)	(159.21)	(164.43)	(218.05)	(182.19)
Special trade contractors.....	(38.02)	(47.33)	(85.59)	(73.99)	(73.31)	(44.52)	(75.06)	(96.84)	(106.39)	(120.95)	(115.36)	(160.73)	(167.53)	(174.88)	(178.30)
Manufacturing.....	29.59	31.89	39.40	43.09	48.91	46.59	53.47	80.49	90.25	82.96	86.47	80.43	102.87	104.09	103.28
Food processing.....	(28.93)	(30.78)	(41.31)	(43.98)	(48.11)	(45.90)	(52.16)	(80.40)	(90.98)	(84.76)	(85.66)	(91.40)	(101.10)	(100.52)	(94.75)
Lumbering.....	(31.26)	(27.65)	(28.76)	(48.03)	(46.11)	(47.05)	(47.74)	(74.21)	(79.49)	(103.08)	(85.86)	(94.50)	(96.08)	(119.08)	(117.98)
Other manufacturing.....	(29.59)	(29.18)	(31.31)	(41.04)	(55.48)	(52.08)	(68.20)	(87.06)	(94.41)	(88.57)	(92.62)	(91.78)	(77.35)	(111.09)	(128.97)
Transportation, communications, utilities.....	17.31	17.26	24.01	31.64	36.21	42.42	52.89	52.53	58.88	66.87	69.83	85.62	100.66	103.31	103.10
Wholesale and retail.....	23.84	30.37	37.70	39.74	44.84	47.17	61.78	62.67	70.87	75.93	73.10	84.63	88.48	94.98	96.83
Finance, insurance, real estate.....	48.02	48.31	50.56	51.81	55.83	62.57	52.81	63.61	69.59	69.93	73.83	75.66	88.60	101.91	101.91
Service.....	26.22	27.04	43.75	34.94	39.93	41.16	46.08	58.69	63.57	67.69	67.93	91.06	101.23	90.53	86.67
Not elsewhere classified.....									27.76	87.83	76.61	91.51	92.36	105.80	124.01

Source: Compiled by reports and analysis section of the Employment Security Commission of Alaska, Juneau, Alaska, May 12, 1955

TABLE C.—Average number of workers in covered employment in Alaska, by industry, 1940-54

Industry	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954
Total, all.....	10,916	16,566	20,540	15,838	18,169	13,780	15,408	24,784	23,479	23,089	25,208	32,755	32,901	30,661	27,331
Agriculture, forestry, and fishing.....	85	91	66	91	102	83	56	107	136	142	145	171	207	166	129
Mining.....	2,878	3,290	2,122	989	693	675	1,440	182	1,538	1,937	1,869	1,637	1,744	1,627	1,384
Contract construction.....	1,236	4,262	10,321	6,069	8,301	3,402	1,650	7,461	5,441	5,512	6,228	10,492	9,829	8,676	7,330
Building.....	(1,311)	(94)	(119)	(128)	(153)	(251)	(363)	(502)	(592)	(2,360)	(2,686)	(6,046)	(5,961)	(5,565)	(4,328)
General.....	(1,159)	(4,125)	(10,365)	(5,657)	(8,144)	(3,106)	(1,031)	(6,298)	(4,033)	(2,350)	(2,603)	(2,253)	(899)	(736)	(783)
Special trade.....	(66)	(32)	(34)	(33)	(3)	(53)	(256)	(678)	(817)	(803)	(934)	(2,183)	(2,990)	(2,375)	(2,219)
Manufacturing.....	3,416	4,567	3,930	4,560	4,660	5,890	5,379	6,101	6,387	5,540	5,733	6,275	5,990	5,239	4,368
Lumbering.....	(2,922)	(3,878)	(3,282)	(3,544)	(3,624)	(4,018)	(4,473)	(5,084)	(5,244)	(4,438)	(4,485)	(4,720)	(4,595)	(3,972)	(2,752)
Other manufacturing.....	(278)	(419)	(444)	(669)	(584)	(107)	(459)	(505)	(525)	(858)	(619)	(774)	(773)	(666)	(661)
Transportation, communication, and utilities.....	(216)	(279)	(193)	(346)	(439)	(406)	(447)	(516)	(518)	(516)	(630)	(617)	(596)	(501)	(925)
Wholesale and retail.....	1,511	1,961	1,747	1,664	1,660	1,554	1,833	2,788	3,064	3,146	3,449	4,125	4,218	4,409	4,314
Finance, insurance, real estate.....	1,291	1,762	1,468	1,674	1,830	2,098	3,288	4,260	4,246	4,286	4,903	5,762	6,875	6,464	6,029
Services.....	53	81	105	117	117	144	248	274	324	352	439	598	752	836	795
Not elsewhere classification.....	402	550	583	674	817	946	1,543	1,950	2,011	2,164	2,412	3,638	3,300	2,955	2,754
									1	11	41	56	144	309	426

Source: Employer reports to Employment Security Commission of Alaska, compiled by reports and analysis section, May 12, 1955.

(Whereupon the hearing was adjourned.)

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# THE AL SARENA CASE

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JOINT HEARINGS  
BEFORE A  
SPECIAL SUBCOMMITTEE ON THE  
LEGISLATIVE OVERSIGHT FUNCTION  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
AND THE  
SUBCOMMITTEE ON  
PUBLIC WORKS AND RESOURCES  
OF THE  
GOVERNMENT OPERATIONS COMMITTEE  
HOUSE OF REPRESENTATIVES  
EIGHTY-FOURTH CONGRESS  
FIRST AND SECOND SESSIONS  
PURSUANT TO  
PUBLIC LAW 601, 79TH CONGRESS  
(Legislative Reorganization Act of 1946)

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NOVEMBER 25, 1955, PORTLAND, OREG.  
JANUARY 10, 11, 17, 18, 19, 26, AND 31, 1956, WASHINGTON, D. C.

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Printed for the use of the Committee on Interior and Insular Affairs  
United States Senate  
and the  
Committee on Government Operations  
House of Representatives

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**WILLIAM L. DAWSON**, *Illinois*

*Ex Officio:*

**CLARE E. HOFFMAN**, *Michigan*

**ARTHUR PERLMAN**, *Staff Director*

**JAMES A. LANIGAN**, *Chief Counsel*

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<sup>1</sup> Senator Scott transferred to Senate Public Works Committee after completion of hearings but prior to filing report.

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## THE AL SARENA CASE

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FRIDAY, NOVEMBER 25, 1955

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION  
OF THE SENATE COMMITTEE ON INTERIOR AND  
INSULAR AFFAIRS;  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Portland, Oreg.*

The subcommittees met at 2:30 p. m., in the Department of Interior Building, Hon. W. Kerr Scott (chairman of the Senate subcommittee) presiding.

Present: Senators W. Kerr Scott, North Carolina; Richard L. Neuberger, Oregon;

Representatives Earl Chudoff, Pennsylvania, and Clare E. Hoffman, Michigan.

Also present: Representative Harris Ellsworth, Oregon.

Also present: William H. Coburn, chief counsel; Robert W. Redwine, counsel (Senate subcommittee); Arthur Perlman, staff director; James A. Lanigan, counsel; Robert E. Wolf, consultant; and Helen M. Boyer, minority staff member (House subcommittee).

Senator Scott. The subcommittees will come to order.

We will now go into another matter that is not specifically a "timber sales policy problem."

Rather, it involves the question, or questions, of how certain agencies are following the intent of the Congress, the letter and spirit of the laws of the land and the democratic processes that are demanded by the Constitution of the United States in respect to our forests and mineral resources.

The transcript of the hearing held by this joint committee in Roseburg, Oreg., on November 17, 1955, discloses that certain segments of the Department of Interior are in a hassle with an aged, disabled veteran over his rights under the mining laws of the United States Government.

There appears to be a concerted effort to hustle him off his three mining claims based on the allegation that the claims are not mineral in character.

In sharp contrast to this case, I am mindful of a considerable amount of talk in the past 18 months concerning what is known as the Al Sarena mining claims located in Jackson County, Oreg.

There are many Government records involving the Al Sarena mining claims and their background and their value, or lack of value, as mineral lands that have been cloaked in obscurity and covered with the dust of more than fifteen years.



The Congress needs to know, and the people of America are entitled to know what the facts are in connection with this case which was finally decided at the highest level of the Department of Interior.

This Senate subcommittee, and this House Subcommittee of the Government Operations Committee, and the Congress, would be derelict in its duty if it did not seek to determine the truth or falsity of the charges that have been made that, as a result of high level interference in the Department of Interior, weasel-word legal opinions and questionable mineral sampling and assaying practices have been substituted for the dedicated judgment and experience of men trained in the art of determining which lands are, or are not, eligible for patent under the mineral laws of the land.

It is either true, or untrue, that the lands of the 15 Al Sarena disputed claims are mineral in character or just a site for a timber mining operation. It is the purpose of this inquiry to seek the answer to this question, and the one of just why and how the unprecedented step was taken of bypassing the Forest Service and the Bureau of Land Management to accomplish what was accomplished.

Because of the serious nature of this inquiry, going, as it does, into the very fountain springs of the question of government by laws or government by influence and special privilege, all witnesses will be sworn before testifying.

In the interest of saving time and avoiding confusion, I am also asking that all members of both subcommittees refrain from asking any witness any question until after the staff has completed its questioning of each witness.

I am directing Mr. Redwine and Mr. Coburn to initiate the questioning, to be followed by Mr. Lanigan, after which I will call upon each member of the committees, in turn, to propound such inquiries as each may desire.

Please proceed, Mr. Redwine.

MR. REDWINE. Will the following witnesses please come forward: Mr. Rice, Mr. Hattan, Mr. Leavengood, Mr. Sanborn, Mr. Wood, Mr. Kansky, Mr. Ashe, and Mr. Appling.

Senator SCOTT. Congressman Hoffman, will you swear these gentlemen in, please?

Representative HOFFMAN. All at once?

Senator SCOTT. Yes, sir.

Representative HOFFMAN. Please stand. Hold up your right hand. Do you and each of you solemnly swear that the testimony which you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. RICE. I do.

MR. HATTAN. I do.

MR. LEAVENGOOD. I do.

MR. SANBORN. I do.

MR. WOOD. I do.

MR. KANSKY. I do.

MR. ASHE. I do.

MR. APPLING. I do.

MR. REDWINE. Mr. Rice, will you please take the stand, and the other gentlemen find places.

Representative HOFFMAN. I want to put on the record my objection to the witnesses sitting in the room, each hearing the testimony of the other. Apparently their story is about the same transaction or same event, and that is the request that is customary in a court proceeding.

Senator SCOTT. This is not strictly a court proceeding and there is nothing in the rules to prevent it, as I understand it.

Representative HOFFMAN. I understand it is not a court proceeding, but a great deal will depend upon the accuracy of the testimony, and each witness has been sworn and should be required to give his own individual recollection, except as some witness wishes an attorney present.

Senator SCOTT. This is a public hearing.

Representative HOFFMAN. So is a court trial.

Mr. REDWINE. Mr. Chairman, I think at this time that the record should show that all these witnesses who have been asked to appear this afternoon have given no information to the staff or committee. Any communication that has been had with them, either orally or in writing, was in response to specific questions asked them.

#### TESTIMONY OF PIERCE M. RICE, MANAGER, OREGON LAND OFFICE

(The witness was previously duly sworn.)

Mr. REDWINE. Mr. Rice, will you state your full name?

Representative HOFFMAN. The record should also show, Mr. Chairman, that some of these witnesses have appeared at prior hearings.

Mr. REDWINE. Will you state your full name and official position, sir?

Mr. RICE. My name is Pierce M. Rice. I am Manager of the Oregon Land Office.

Mr. REDWINE. How long have you held that position, Mr. Rice?

Mr. RICE. I have held that position approximately 3 years, from 1949 to 1952, at which time I became area adjudicator, and served in that capacity for approximately 2 years, and recently reassumed the duties of the manager of the land office upon the resignation of the recent manager.

Mr. REDWINE. Are you familiar with a document entitled: Mineral Entry Oregon 0665, Contest No. 38, Al Sarena Mines, Inc.?

Mr. RICE. I am.

Mr. REDWINE. Were you the hearing officer in that case?

Mr. RICE. I was.

Mr. REDWINE. Do you have a copy of the transcript with you, Mr. Rice?

Mr. RICE. I do.

Mr. REDWINE. Will you tell the committee the chronological order and what happened so that that matter came before you for a hearing?

Mr. RICE. An application was filed for a mineral patent by the Al Sarena Mines, Inc., involving 23 lode mining claims within the Rogue River National Forest.

Representative HOFFMAN. Pardon me, Mr. Chairman. I would like to have a copy of any statement that these gentlemen have furnished the committee, any questions that the committee counsel has asked, so that I may intelligently, if possible, examine the witness.

Mr. REDWINE. None of them has made any statement that I know of.

Representative HOFFMAN. If I understood you a few moments ago, you said that the information you have came in response to questions that you asked them.

Mr. REDWINE. Yes.

Representative HOFFMAN. Counsel has a statement of the issues here, and at least some information as to the issues involved, and I say that fairness demands that the minority member of the House committee, which is a part of the joint committee, is entitled to those records so that he knows what is going on.

Mr. REDWINE. The information that I have, Mr. Chairman, is a copy of the official transcript of the hearing held before this hearing officer.

Representative HOFFMAN. What I am asking for is the information on which you are now conducting the hearing, questions you have previously asked of these witnesses, memoranda from them. As a member of the subcommittee, I think I am entitled to know what the records are of a member of the staff.

Mr. REDWINE. There has been no such record made, Mr. Chairman.

Representative HOFFMAN. You said that the information had come from replies to questions which had been propounded by the staff. Why all this secrecy?

Mr. Chairman, as one seeking the facts, sitting here to judge what the facts are and to assist in writing a report, why am I not entitled to know what the issues are or what the claim is? Even a defendant before the court is entitled to a copy of the indictment.

Senator SCOTT. I think, Congressman Hoffman, that as the two staff counsel here will ask these questions, and they are all new to me and new to you and new to the Senator here as well, that we will all be in the same boat, and if you will just listen——

Representative HOFFMAN. Maybe you and I will but the staff knows what it is doing and are rehashing here an issue that was decided here at the polls at least a year or more ago, and the only remedy they can get here is through the FBI and the Department of Justice. There is no legislation that the Congress can enact that would correct this situation.

Mr. COBURN. At the request of Senator Murray of the full Senate Interior and Insular Affairs Committee made 6 months ago——

Representative HOFFMAN. Is it in writing?

Mr. COBURN. Yes.

Representative HOFFMAN. May I have a copy?

Mr. COBURN. I do not carry copies of Senator Murray's communications with me.

Representative HOFFMAN. As long as it is officially to the committee.

Mr. COBURN. It was from Senator Murray, chairman of the full committee, not this committee.

Representative HOFFMAN. Senator Murray, as chairman of the full committee, issued a statement about what these issues were that has no relation to this case. This is something dragged in afterwards.

Mr. COBURN. Could I finish my statement as to what he asked for? He asked the Department of the Interior for the full file on the Al Sarena case. That full file was submitted to Senator Murray as chairman of the Interior Committee by a special messenger, a lawyer from

the Department, who sat there every day while Mr. Redwine and I went through those records. We examined the records. We obtained photostatic copies and if the Congressman wants that full file, I think we could furnish it to him when we get back to Washington.

Mr. REDWINE. Proceed.

Mr. RICE. In view of the fact that these claims are located in a national forest and are governed by the Code of Federal Regulations 43 C. F. R. 205 providing that such copies of applications for mining claims shall be forwarded to the Forest Service, a copy of the application in the present case was forwarded to the Forest Service. The application was thereafter processed by the Land Office in the usual manner, requiring documentary evidence of title to the lands, a publication for the required period as required by law, the payment of the purchase moneys and other requirements, leading up to the issuance of a final mineral certificate as a basis for the issuance of a patent.

During the processing of this case in the Land Office, the Land Office received from the regional office of the Forest Service a protest, a protest which stated, in effect, that the approval and issuance of the entry and the issuance of the patent was to be withheld pending a field examination by the Forest Service to determine the validity of the claims in compliance with the requirements of the mining law.

Mr. REDWINE. Mr. Rice, was that the usual procedure?

Mr. RICE. That was the usual procedure.

Thereafter, the Forest Service made a field examination and submitted a report.

On that occasion, the Forest Service requested a representative of the Bureau of Land Management to assist the Forest Service in conducting a joint examination of these claims.

The Mineral Examiner of the Bureau of Land Management, in company with examiners for the Forest Service, conducted such a joint investigation, and submitted a report which became the basis for charges against 15 of the 23 mining claims embraced in the application.

Those charges were that a valid discovery of minerals as required by law had not been made on either of the 15 claims in question.

Mr. REDWINE. Mr. Rice, just what does that mean, that a valid discovery has not been made? Do you mean that there was something technically wrong, or the land was not sufficiently mineralized, or what? What was that based on?

Mr. RICE. That was one of the charges that the lands were non-mineral in character and that the applicant had not expended the sum of at least \$500 on or for the benefit of each claim as required by law, such as to entitle the company to a patent.

Mr. REDWINE. Did that last reason go to all 15 claims?

Mr. RICE. That last charge was involved, I believe, in 5 of the 15 claims only. The charge as to the non-mineral character of the land and that valid discoveries of mineral had not been made, applied to all 15 claims, protested by the Forest Service.

In response to your question as to what constitutes a valid discovery, the courts and the Department have issued many and varied definitions as to what constitutes a valid discovery. I believe that in the case reported in 252 United States, in the decision of that court in the case of Cameron against the United States the court very well, it seems to me, summed up a proper definition, which, as I recall, was to effect that a valid discovery of mineral was such a discovery of

minerals contemplated by the mining law, the Act of 1872, and in such quantities and quality as would warrant an ordinary prudent person in the further expenditure of capital and labor in the development of the claim as a paying mine.

Another definition has been described to the effect as to whether or not it would be paying would depend upon whether the expenses incident to the extraction and marketing of the mineral would not exceed the cost of production.

Mr. REDWINE. Mr. Rice, is there anything either required by law or in practice that the amount of money that a person has spent on a mining claim prior to application for patent will determine whether or not it is mineral in character?

Mr. RICE. Oh, no. It has no relevancy whatever as to the amount of expenditures made.

Mr. REDWINE. Is that a relevant matter to present to a hearing officer in a contest of this kind?

Mr. RICE. Not under a charge as to the validity of the claim.

Mr. REDWINE. That is what I mean.

Mr. RICE. No, sir.

Mr. REDWINE. Go ahead, please.

Mr. RICE. Charges growing out of this joint examination were served on the Al Sarena Mines, Inc. The Al Sarena Mines, Inc., filed an answer and requested a hearing. The hearing was arranged and due notice was served on the parties in interest including the Forest Service, the Al Sarena Co., and other parties.

On the date of the time of the hearing the United States, through the Forest Service, was represented by counsel, and the Al Sarena Mines was likewise represented by counsel at this hearing.

Mr. REDWINE. Let me interrupt you at that point, Mr. Rice.

That was just an automatic procedural matter?

Mr. RICE. That is right.

Mr. REDWINE. No appeal was made to anybody for a hearing in Washington, or pressure put on anybody to get a hearing? The Forest Service filed a protest against the granting of the patents and it was automatic that a hearing should be held before a field officer?

Mr. RICE. Charges served and an answer filed requesting a hearing. If they did not respond to the notice of the charges, then under the governing regulations, the charges are taken as admitted and no hearing is required, but they have the privilege of filing an answer and requesting a hearing. That they did in this case. They requested a hearing and that hearing was granted.

Mr. REDWINE. Go ahead.

Mr. RICE. At the time of the hearing, I opened the proceedings by reading the protest filed and the charges preferred and the answer filed. At that time, Mr. MacMahon, special counsel for the contestee, the Al Sarena Mines, demanded a ruling upon various motions that he had filed, various motions and I believe a demurrer that he had filed preliminary to these proceedings, and he asked for a ruling on these motions, and they were presented and argued and a ruling was had on each at that time. The demurrer was overruled and the motions were dismissed and reasons and citations of authority were cited for that action.

Mr. REDWINE. At that time did the Al Sarena Co. and counsel leave the hearing without presenting evidence?

Mr. RICE. Not at that particular time. At the conclusion of the ruling on the demurrer and the motions, the counsel for the Forest Service asked for permission to proceed with the hearing. At that point, the counsel for the contestee—

Representative HOFFMAN. Mr. Chairman, may I interrupt?

This morning I was told that the hearings were not being taped. Now I discover that they are being taped. I would like to know whether they are being officially taped or whether they are not.

Representative CHUDOFF. They were not being taped this morning.

Representative HOFFMAN. I do not like this secrecy business. I have no objection to a recording—have so stated.

Representative CHUDOFF. Mr. Hoffman, we did have a mike here.

Representative HOFFMAN. We did have a recorder at the Chairman's right. I just came from the other room and the hearings are being taped. I do not think it is fair not to let us know whether a recording is being made.

Senator SCOTT. I have no knowledge of it.

Representative CHUDOFF. I know that the tape microphone thing which was on yesterday was not on this morning.

Representative HOFFMAN. If you follow the wires you will see that it is being taped.

Senator NEUBERGER. It is a public hearing. I do not know if it is being taped or if so who is taping it.

Representative HOFFMAN. Who is taping it and for what purpose? I am in favor of recordings and TV at these hearings. You are having the witnesses sworn. At none of the other hearings were they sworn except one witness.

Senator SCOTT. Has anyone in the Interior Department asked that these recordings be made?

Representative HOFFMAN. I just went out and asked the operator if he was taping it, and he said he was.

Representative CHUDOFF. Mr. Chairman, I just checked, and I found that a radio station is not taping this which they had done in our previous hearings but some Government agency is taping it without permission and without a request. Now, I do not know who it is, but I understand Paul Ewing of the Bureau of Land Management, whoever he might be, without asking permission of this committee, is taping these hearings. Now, I do not know why, but I feel that with all due respect to the committee, he certainly should have asked permission. We had given permission to the radio station.

Representative HOFFMAN. I do not care what they do so long as I know what is going on.

Mr. Chairman and Senator, our House rules provided for one thing but it is none of my business what the Senate does nor am I critical. I just wish to know what is being done.

Representative CHUDOFF. Mr. Chairman, I have no objection to anybody taping anything, but when the radio station wanted to tape it, they came and asked my permission, and I asked the committee's permission and said without objection they could tape it.

This Government agency now comes in without permission and tapes this. I think that is in violation of the law even if we agree to it.

Representative HOFFMAN. I am in favor of recording, but I want to know about it.

Senator SCOTT. Mr. Ewing, for whom is this being recorded?

Mr. EWING. It is being taped for check-back here if we need it.

Senator SCOTT. If who needs it?

Mr. EWING. The Department, if we want to check back on anything that was said.

Representative CHUDOFF. Now, Mr. Chairman, let me say this to you. I feel this way, Mr. Chairman: that I have no objection if the testimony is taped here for the purpose of public information and sent out over the air, but if this agency, without permission, is going to take that testimony in a back room and then use it for their own purposes, I do not think they have the right to do it under pretext of saying "in case we want to check back." We have an official reporter if we want to check back.

Representative HOFFMAN. You do not want the Department to take an accurate record of what happens?

Representative CHUDOFF. They can get it from us.

Representative HOFFMAN. If they get it from us its accuracy depends on the stenographer's ability.

Senator NEUBERGER. You were the one who made the protest.

Senator SCOTT. Let us have order.

Representative CHUDOFF. Mr. Chairman, do you not think the Department could have asked permission to take this?

Mr. EWING. Mr. Chudoff, the members of your staff have known this since Monday.

Representative CHUDOFF. The only request I had was from a radio station. That is the only one I gave permission to tape. You had no permission.

Senator SCOTT. I never did approve or think well of this business of tapping telephones to get conversations in Washington or anywhere else. I do not think that is morally right, and I do not know who told you. If you want to tell us who told you to tape this, all right. You can still tape it as far as I am concerned and let it go but who told you?

Mr. EWING. Nobody told me, sir. I ordered our boys do it so that we could have a record if we needed it.

Representative CHUDOFF. What is your position with the Department of Interior?

Mr. EWING. I am Special Assistant to the Administrator of Bonneville Power Administration. I am also regional information officer for the Department of Interior.

Representative CHUDOFF. You are with the Bonneville Power Administration. Why have you followed this committee around for the last week?

Mr. EWING. I have told you that I am regional information officer for the Department of Interior.

Representative CHUDOFF. Do you not think it was your duty to request from the chairman of this committee the right to tape this?

Mr. EWING. Not necessarily. You were not concerned about taping it for playing over the radio.

Representative CHUDOFF. You can play it all you want over the air, but I do not want you to play it back in a room and bring in these people and browbeat them.

Representative HOFFMAN. He has no intention of browbeating anybody.

Representative CHUDOFF. I think this is the same as tapping a telephone conversation without the consent of the person who is on the telephone.

Mr. EWING. I repeat, Mr. Chudoff, that members of your committee have been going in and out of this back room since Monday and have known this tape was being made.

Representative CHUDOFF. I think it is reprehensible, Mr. Ewing, and you ought to be ashamed of yourself for taping it without permission.

Mr. REDWINE. Would you read Mr. Rice's last comment?

(Record read.)

Mr. REDWINE. Mr. Rice, now that we have had that interruption, would you proceed and be as brief as possible in getting the story over to the committee as to what happened?

Mr. RICE. At that time, the counsel for contestee demanded the right to be heard on appeal from my rulings on the motion and demurrer. I cited the Federal Code of Regulations and the rules of practice governing the case under consideration which provided that in the event that motions are overruled the case shall proceed in the usual manner for the taking of testimony.

The counsel for the contestee, the Al Sarena Mines, then stated that he had been back in Washington, D. C., that he had an express agreement with the then Solicitor of the Department of the Interior to the effect that the Federal Code of Regulations and the rules of practice prescribed by the Department would not govern in this particular case.

I asked counsel if he had any evidence of this alleged agreement, and he informed me that he did not, that it was an oral agreement that he had with Mr. Mastin White, the then Solicitor. I informed the counsel for the contestee that I could not accept his representation because I had not been informed officially of the substitution of the rules as obtain in court for those prescribed by the Secretary of the Interior governing the proceedings in this case.

Mr. COBURN. Could I interrupt you there?

Was that understanding that he said he had with Mr. White ever substantiated at a later date?

Mr. RICE. It was not.

Mr. COBURN. In other words, it was proven to have been a false statement?

Mr. RICE. Mastin White repudiated the alleged agreement that he contended that he had with the Solicitor to the effect that he would be entitled to be heard on the appeal over a ruling of the motions before proceeding to try the case on its merits.

Mr. REDWINE. In that connection, in furtherance of that, may I ask you to identify this document I now hand you?

Mr. RICE. That is a decision, January 6, 1954.

Mr. REDWINE. In the Al Sarena case?

Mr. RICE. In the case of the United States against the Al Sarena Mines, Inc., by the Solicitor of the Department of the Interior.

Senator SCOTT. That may be received.



(The document referred to is as follows:)

UNITED STATES V. AL SARENA MINES, INC.

A-26248 DECIDED JANUARY 6, 1954

Mining Locations—Application for Patent—Jurisdiction of Department

This Department may entertain a protest filed by the Department of Agriculture and thereafter institute adversary proceedings against the validity of mining claims at any time prior to the issuance of patents covering such claims.

When an applicant for a mineral patent, after proper notice and full opportunity to be heard, withdraws from a hearing held to determine the validity of its claims without putting in its evidence, it is proper for the manager to proceed with the hearing and to base his decision on the evidence submitted against the claims.

When an applicant for a mineral patent charges that it submitted evidence at a hearing which does not appear in the transcript of the hearing and when the manager admits that a complete transcript at the hearing was not obtained because of the conduct of the applicant's counsel, this Department will not undertake to render a final opinion on a record admittedly incomplete.

When the evidence which the appellant claims is not included in the transcript consists largely of the reports of an assay and where it is admitted that the transcript of the hearing is not complete in that respect, then in order to prevent the very substantial delay necessarily occasioned by a remand of the proceedings, appellants are permitted under supervision of employees of this Department, to take new samples and submit new assay reports for the record in place of those alleged to have been omitted from the original transcript.

It appearing from all of the evidence including new assay reports of samples taken jointly by the appellants and the Bureau of Mines that a sufficient mineralization of appellants' claims is established to justify a prudent man in the further development of the property and the other requirements of the statute having been complied with, patent to the appellants should issue.

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UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., January 6, 1954.

A-26248

UNITED STATES V. AL SARENA MINES, INC.

Oregon 0665 Mineral Contest No. 38

Mineral entry held for cancellation in part

Remanded

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Al Sarena Mines, Inc., has appealed to the Secretary of the Interior from a decision of the Assistant Director of the Bureau of Land Management dated April 27, 1951, holding for cancellation mineral entry Oregon 0665 in so far as that entry embraces 15 lode mining claims situated within the Rogue River National Forest in Oregon.

I

On October 4, 1948, Al Sarena Mines, Inc., applied for mineral patents covering 23 lode mining claims situated in secs. 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., W. M., Oregon. Thereafter, in accordance with the provisions of 30 U. S. C., 1946 ed., sec. 29, notice that application had been made to patent the claims was published. No adverse claims were made during the period of publication and, thereafter, the purchase price was paid. On April 6, 1949, a Final Certificate of Mineral Entry was issued to the applicant. The certificate recited that upon presentation of the certificate to the Director of the Bureau of Land Management "together with \* \* \* the proofs required by law, a patent shall issue \* \* \* if all then be found regular." The certificate contained the added statement that

"Patent will be withheld by the Bureau of Land Management pending a report by the Regional Administrator, Region I, upon the bona fides of the claims."

On April 13, 1950, a protest against the validity of 15 of the 23 claims was filed with the land office by the Regional Forester, North Pacific Region, Department of Agriculture. The protest included a request that the 15 claims be declared null and void and that the application for patents on the 15 claims be rejected. On April 25, 1950, adversary proceedings were instituted by the United States against the validity of the 15 claims involved in this proceeding and embraced in the entry of Al Sarena Mines, Inc. The notice of the contest, which was addressed to "Al Sarena Mines, Inc.," set forth the charges that the land involved in the 15 claims listed in the notice is nonmineral in character, that minerals have not been found on any of the claims in sufficient quantities to constitute a valid discovery, and that, as to five of the claims, the requisite expenditure of \$500 in improvements and development had not been made.

On May 22, 1950, Al Sarena Mines, Inc., filed an answer to the charges, embodying what it designated as demurrers and a motion to dismiss.

A hearing was set for September 13, 1950, before the manager of the land office at Portland, Oregon. At the appointed time, representatives of the contestee appeared with counsel and the Department of Agriculture was represented by counsel. The contestee demanded at the outset of the hearing that its demurrers be acted upon before proceeding with the hearing on the merits of the case. The manager thereupon ruled on the demurrers as motions and denied them. The contestee then noted an appeal to the Solicitor of the Department. Contestee and its counsel then withdrew from the hearing.

Before the contestee departed, counsel for the Department of Agriculture stated that the intention of that Department was not to have the claims declared null and void but only that the application for patents be denied.

After the departure of the contestee and its counsel, counsel for the Department of Agriculture introduced its evidence relating to the validity of the claims.

On December 14, 1950, the manager sustained the protest and canceled the mineral entry with respect to the 15 claims. On April 27, 1951, the Assistant Director of the Bureau of Land Management affirmed the decision of the manager, stating that his decision did not invalidate the claims and that the claimant could retain possession of the claims for the purpose of continuing its efforts to make valid discoveries.

On appeal, Al Sarena Mines, Inc., makes 18 assignments of error. Briefly stated its contentions are: first, that it was entitled to a patent prior to the filing of the protest and therefore that this Department had no authority to entertain the protest; and, second, that there were certain irregularities in the protest and in the manner in which the hearing was conducted.

## II

The appellant's first contention is that it had acquired equitable title to the claims by reason of its payment of the purchase price, the submission of its proofs, the acceptance of those proofs by the local land office, the issuance to it of a final certificate, and the fact that no adverse claim had been made during the period of publication, and therefore that this Department had no jurisdiction to entertain the protest of the Department of Agriculture.

The contention is untenable. The power of this Department to supervise and control the sale and disposition of the public domain, including mineral lands, has long been recognized. *Knight v. United States Land Association*, 142 U. S. 161 (1891). Its jurisdiction to inquire into the extent and validity of rights to public land claimed against the Government does not cease until the legal title to the land has passed. *Michigan Land and Lumber Co. v. Rust*, 168 U. S. 589, 593 (1897). "A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws." *Cameron et al. v. United States*, 252 U. S. 450, 460 (1920). As the Supreme Court said in the *Cameron* case, " \* \* \* the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void."

Thus, there must be a determination by this Department, the tribunal in which jurisdiction is vested under the public land laws, that the requisites of the mining laws have been fulfilled. *Cf. Cosmos Exploration Company v. Gray Eagle Oil Company*, 190 U. S. 301, 312 (1903). Among the requisites to obtain a patent to

a lode mining claim is the discovery of "valuable mineral deposits" "within the limits of the claim located" (30 U. S. C., 1946 ed., secs. 22 and 23). In determining whether mineral deposits discovered on public lands are "valuable" the test to be applied is whether they are "such as would justify a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a paying mine." *Cameron et al. v. United States*, *supra*, 252 U. S. at p. 459.

The fact that the protest by the Department of Agriculture was not filed until after the expiration of the 60 days of publication of the application for patent does not deprive this Department of jurisdiction to inquire into the merits of the patent application nor does the fact that no adverse claim was filed within that period vest equitable title in the appellant.

Section 2325 of the Revised Statutes (30 U. S. C., 1946 ed., sec. 29), after providing for the publication of the notice of application for patent, provides :

"\* \* \* If no adverse claim shall have been filed \* \* \* at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent \* \* \* and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter."

Under section 2325, third parties may object to the issuance of a mineral patent, even after the period of publication has passed, upon a showing "that the applicant has failed to comply with the terms of this chapter." If equitable title vested upon the expiration of the publication period in the absence of an adverse claim, there would be no justification for permitting third parties to show non-compliance with the law.

Section 2326 of the Revised Statutes (30 U. S. C., 1946 ed., sec. 30) provides that where an adverse claim is filed during the period of publication all proceedings shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived. That provision, however, has application only to claims of rival mineral claimants and has no application to adversary proceedings instituted by the Government. *Cameron et al. v. United States*, *supra*, 252 U. S. at p. 463.

The regulations of the Department relating to mineral entries within national forests (43 CFR, Part 205) require that the Department of Agriculture shall be notified of applications for patents (43 CFR 205.2) and they do not impose a mandatory time limit within which a protest against a mineral entry must be filed by the Department of Agriculture. In fact, the regulations provide that a protest on behalf of that Department may be initiated against any claim, mineral or nonmineral, embracing lands within a national forest "at any time prior to patent" (43 CFR 205.6).

The fact that the appellant had paid the purchase price, submitted its proofs, and received a final certificate does not detract from this Department's authority to inquire into the merits of the claims. Unless there has been a discovery of valuable minerals within the limits of the claims, there have been no valid locations and the claims cannot go to patent.

The payment of the purchase price and the submission of proofs are but two of the requisites of the mining laws and although the possession of a final certificate has been regarded by some courts as vesting equitable title in the holder thereof, nevertheless the courts recognize the authority of this Department to cancel such a certificate if it be shown that there has not been a compliance with the requirements of the law. *United States v. Record Oil Company, et al.*, 242 Fed. 746 (D. C., Calif., 1917); *El Paso Brick Company v. McKnight*, 233 U. S. 250 (1914). Even after a judgment of a court in a proceeding by an adverse claimant under section 2326 of the Revised Statutes on the question of the right of possession, this Department may pass upon the sufficiency of the proofs to ascertain the character of the land and to determine whether the conditions of the mining laws have been complied with. See *Lane v. Cameron*, 45 App. D. C. 404 (1916). The cases cited by the appellant are not to the contrary. They deal with the right of possession as between rival mineral claimants and not with the question of title as between the Government and an applicant for a mineral patent. As between the Government and such an applicant, equitable title does not pass until the applicant has done everything which, under the law, is required of him to secure the legal title. *Teller v. United States*, 113 Fed. 273, 280 (8th Cir., 1901).

The final certificate issued to Al Sarena Mines, Inc., certainly does not imply that equitable title passes therewith. It recites on its face that patents will issue upon the presentation of the proofs required by law and it contains the additional statement that the patents will be withheld pending a report on the bona

fides of the claims. This latter statement is in accordance with the requirements of the departmental regulations that the Department of Agriculture must be notified of applications for patents to mineral leads within national forests and with the recognized authority of this Department to inquire into the question whether equitable title has vested. *Cf. Brown v. Hitchcock*, 173 U. S. 473, 476 (1899).

Thus, all that can be claimed by the appellant through the possession of the final certificate is that patents will be issued if all is found proper, i. e., if full compliance with the mining law is shown.

It is apparent therefore that until this Department had determined that all the requirements of the law had been met, it had ample authority to entertain the protest of the Department of Agriculture and to order adversary proceedings against the validity of the claims.

### III

Turning now to the assignments of error respecting the protest and the conduct of the hearing to determine the validity of the claims, for the most part, they appear to be immaterial and without substance.

It is asserted that the protest was fatally defective because it was directed against the "Al Sarena Mining Company" and not "Al Sarena Mines, Inc.," was undated, and was not under oath.

The misnaming of the appellant in the protest was cured by the notice of contest addressed to the appellant under its proper name. The appellant responded to the notice, and it was not misled or harmed in any way by the slight error made by the Department of Agriculture in naming the locator. *Cf. Cole v. Ralph*, 252 U. S. 286, 293 (1920).

As to the other two alleged irregularities in the protest, it is sufficient to say that the regulations of the Department do not require such protests to be dated and they specifically provide that they need not be under oath. 43 CFR 205.6.

Of the numerous irregularities in the conduct of the hearing alleged by the appellant, only a few require mentioning.

The first of these is that the manager erred in conducting the hearing in accordance with the regulations of the Department as embodied in Title 43 of the Code of Federal Regulations instead of under the "rules of evidence and the rules of practice and procedure as obtain in Federal and State courts" as allegedly agreed upon between the appellant and the former Solicitor of the Department. The former Solicitor of the Department has denied that any such agreement was made.

The second charge to be mentioned is that the manager erred in continuing the hearing after the appellant had noted its appeal from the rulings on the demurrer, and that all the testimony offered by the Department of Agriculture after the appellant had withdrawn from the hearing is inadmissible and may not be considered.

This contention is based upon the assertion that the Federal Rules of Civil Procedure were applicable to the hearing and that under those rules evidence on the merits of a case cannot be received during the pendency of an appeal from a ruling on demurrers filed in the proceeding. The Federal Rules of Civil Procedure were not applicable to the hearing and the rules of practice of the Department (43 CFR, Part 221) do not provide for any such procedure. The purpose of the hearing under the Department's rules of practice is to give both parties full opportunity to present their evidence and if a claimant chooses to withdraw from the hearing without submitting his evidence or subjecting the Government witnesses to cross-examination, he must bear the consequences.

The appellant's claim that this Department refused to give the appellant a bill of particulars is without foundation. The notice of contest set out explicitly the charges brought against the claimant.

Nor was the appellant harmed in any way by the fact that the manager permitted the Department of Agriculture to change its plea that the claims be declared null and void to one that the application for patent be denied.

The contest was initiated to determine the validity of the claims. All that this Department was seeking to do was to obtain sufficient information upon which to base a determination of the validity of the claims. Any charges made by the Department of Agriculture had to be proved to be substantiated, and the purpose of the hearing was to give the appellant a full opportunity to overcome these charges and to sustain its claim to a right to receive the patents. The appellant, having had full opportunity to participate in the hearing, chose to withdraw therefrom without submitting its evidence. The manager was, in such

circumstance, fully justified in permitting the contestee to submit its evidence against the validity of the claims, and thereafter to base his decision on the testimony adduced at the hearing.

## IV

However, after the present appeal reached the Department for consideration, representatives of the appellant were accorded an opportunity to present an oral argument to the then Solicitor. Following that oral argument, representatives of the appellant were permitted to examine the transcript of the hearing in the Office of the Solicitor. Subsequently, the Solicitor received a letter dated June 23, 1951, from the appellant's Secretary-Treasurer in which the assertion is made that at the hearing there was read by the appellant into the record

"\* \* \* a wealth of legal prima facie evidence, which evidence was received therefor without objection, but which evidence could not be found in the record by an inspection thereof."

The Manager admits that a complete transcript of the proceedings was not made up to the point where the appellant and its counsel withdrew. He attributes the failure of the reporter to get a complete transcript to the boisterous conduct and the rapid and incoherent manner in which the counsel for the appellant proceeded.<sup>1</sup>

Neither the Manager nor the reporter are to be censured if the conduct of counsel for the appellant was such that it was impossible to get a complete transcript. On the other hand, it is not the wish of this Department to penalize any claimant for the conduct of his counsel.

However, the reports of assays of samples of the various claims were not included in the file when it reached this office, and although copies thereof were later supplied, owing to the insistence of appellant that it had been greatly prejudiced by this and many other omissions in the formal record and because of the confusion resulting, it was determined to require new assays to be submitted. Pursuant thereto by agreement between the claimant and this office, new samples were extracted from outcrops on each of the claims by a joint group consisting of a competent and registered mining engineer representing the appellant and a team of employees of the Bureau of Mines representing the Government. This group visited the property, inspected all the claims and took samples from all of the claims which were carefully retained in their possession during the five days required to crush the samples and prepare them for shipment, and thereafter, under the control of this joint group, the samples were shipped to an acceptable laboratory for analysis. The resulting assay reports submitted and now on file show that the samples contained silver and gold of sufficient value to justify a person of ordinary prudence in further expending his time and money in an effort to develop a paying mine.

A report of the mineral examiner of the Department made in 1949 contained this statement:

"The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined and milled at a profit by low-cost, large-scale mining methods. The topography is such that any one of three methods might be employed, i. e., glory holing, shrinkage system and open pit mining. \* \* \*"

The examiner further discusses the costs under these various methods, and the costs estimated by him of mining and milling the material of the claims are well below the lowest of the assay reports of value. This would seem to confirm that by careful and prudent operation the appellants may continue to develop the property with reasonable hope of success. The assays, therefore, showing mineralization in paying quantities on all of the claims, and the cadastral engineer on September 27, 1948, having certified that more than \$500 has been expended in development and improvements on each claim, the requirements of the statute would seem to be met.

While it may not be of legal significance, it should be noted that all of the persons, including Government employees, who have inspected this property, report that these appellants have quite obviously spent amounts estimated from \$150,000 to \$200,000 over a long period of years in the operation of the works, tunnels, removal of overburden, installation of a mill, etc., and this fact alone would seem to indicate that at least the appellants are themselves convinced of a future profitable development of the property. It might also be noted that

<sup>1</sup> See the Manager's letter of October 2, 1950, to the Director.

the amounts already expended by the appellants are estimated to be two or three times the value of such timber as is located on the premises, which would seem to negative the suggestion which appears in the record that the appellants are more interested in the timber than in the mine.

The entire matter has had the most careful examination by this Department from all available sources, including the securing of new and independent assays of the claims under the Department's immediate supervision, and it seems that the statutory requirements have been complied with.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F. R. 6794), the case is remanded to the Bureau of Land Management with instructions to process the application for patent.

(Signed) CLARENCE A. DAVIS,  
*Solicitor.*

Mr. REDWINE. I call your attention to this section in his decision. Will you read that paragraph there, please?

Mr. RICE (reading):

The first of these is that the manager erred in conducting the hearing in accordance with the regulations of the Department as embodied in title 43 of the Code of Federal Regulations instead of under the "rules of evidence and the rules of practice and procedure as obtain in Federal and State courts" as allegedly agreed upon between the appellant and the former Solicitor of the Department. The former Solicitor of the Department has denied that any such agreement was made.

Mr. REDWINE. That is in the present Solicitor's decision in this matter?

Mr. RICE. That is correct.

Mr. REDWINE. Proceed.

Mr. RICE. I informed the counsel for the contestee that I had not been advised officially of the alleged agreement and that, in view of the fact that it was very unusual, that if there was such an agreement I was not prepared to accept his interpretation of the agreement.

Mr. COBURN. In your experience, had there ever been such an agreement?

Mr. RICE. Not to my knowledge. The counsel for the contestee then stated that he would not participate in the proceedings, that he would offer no evidence, that he would not interrogate any of the witnesses, that he would not cross-examine the Government witnesses, and that he would offer no evidence orally, documentary or otherwise, at this hearing. He stated that the hearing officer was guilty of insubordination and refusing to honor an agreement that he had with the Solicitor, and that he would not be present or bound in any manner by the proceedings had, and that the only thing that he would be bound by was the agreement he had with the Solicitor.

With that statement, why, he advised his client to not attend the proceedings, and they departed.

Mr. REDWINE. Just prior to that, you did offer to recess the hearing and communicate with your superiors to find out whether there had been such an agreement as Mr. MacMahon had alleged there was?

Mr. RICE. That is correct.

Mr. REDWINE. And he said, "Go on but do it at your own peril"?

Mr. RICE. In view of the fact that he insisted that there was such an agreement.

Senator SCOTT. At that point, what did he mean by "do it at your own peril"?

Mr. RICE. That was Mr. MacMahon's language. I suppose the inference I drew from it was that any proceedings had would be a nullity

and that he would go to the Secretary of the Interior and demand the right to be heard on the appeal from the adverse rulings on his motions in accordance with the alleged agreement.

Senator SCOTT. That is not in my language what "peril" means, but it is all right. Go ahead.

Mr. RICE. I then suggested that with his consent that I would adjourn the proceedings temporarily and communicate with my superiors to verify this alleged agreement.

He refused, and stated that it would be time consuming and otherwise unnecessary.

Mr. REDWINE. I would like to read into the record at this point from the certified copy of the transcript of that hearing. Counsel for the contestee answered:

No, sir. We will let it go as it is and find it out in Washington. I think that my word is good and that he will tell you that it is good, and that you will ascertain from him that I have told you nothing but the truth.

The "he" he is referring to is obviously Mr. Mastin White, because that was the name under discussion.

Mr. RICE. After he departed, the counsel for the Forest Service then asked for permission to offer its evidence.

Mr. REDWINE. Then you proceeded to hear evidence as offered by the Forest Service?

Mr. RICE. Yes, sir.

Mr. REDWINE. You heard testimony by Mr. Leavengood, Mr. Hattan, and Mr. Sanborn. I will not ask you to recount that. They are here and will speak for themselves.

You had known all these three men for some time?

Mr. RICE. I had known Mr. Hattan for a good many years. I was not so well acquainted with some of the other witnesses.

Mr. REDWINE. Did Mr. Hattan appear in other matters of this same kind before you?

Mr. RICE. Yes.

Mr. REDWINE. Had his judgment in such matters ever been questioned?

Mr. RICE. Not to my knowledge.

Mr. REDWINE. You heard their testimony and the matter was closed. You gave your decision in the matter?

Mr. RICE. At the conclusion of the testimony, the case was closed and the transcript was prepared, and in view of the personal and violent charges leveled at me by the counsel for the contestee, I prepared the case and transmitted it to the Department with a covering memorandum in which I asked the Director of the Bureau of Land Management to issue the original decision since I had been charged with being prejudiced and highhanded.

Mr. REDWINE. However, he sent it back to you?

Mr. RICE. He returned the record to me with instructions to go ahead and render a decision in the case.

Mr. REDWINE. According to what your judgement was?

Mr. RICE. Exactly.

Mr. REDWINE. With no direction as to what that decision should be?

Mr. RICE. None whatever. I rendered a decision in which I found the charges brought by the Forest Service having been sustained by

the evidence and the company was allowed 30 days within which to apply for a new trial or to appeal, and the company appealed.

Mr. REDWINE. Now, Mr. Rice, you could have decided that, however, without hearing the Government evidence, could you not?

Mr. RICE. That is right.

Mr. REDWINE. On account of the behavior of counsel and his client?

Mr. RICE. According to the rules, if counsel does not appear at a hearing or does not appear and participate in hearings or refuses to do so, then the charges may be taken as confessed, but in order to make out a prima facie case as brought by the Forest Service, the Forest Service was permitted to put its evidence in.

Mr. REDWINE. In that decision, you found, based upon the testimony of witnesses Leavengood, Hattan, and Sanborn, that these 15 claims were not sufficiently mineralized to meet the tests of the mining laws for issuance of patent.

In the five claims on which the Forest Service alleged that there had not been sufficient patent expenses, what did you find there?

Mr. RICE. I found that the evidence submitted by the Forest Service substantiated that charge as to the lack of patent expenditures on the five mining claims protested.

Mr. REDWINE. Now, Mr. Rice, when a petitioner for a patent appears and wants to get a patent, how does he show that patent expenses have been met?

Mr. RICE. In his application he describes the minerals alleged to have been discovered and it is supported by a statement as to the improvements that have been made on the claims for patent purposes. That is later supplemented by the field notes of a mineral surveyor who is employed by the mineral applicant to make the mineral survey for the lands. That mineral surveyor not only surveys the lands but in his field notes he also recites conflicts, if any, with other mining claims, and computes the errors and sets forth the improvements on the claims.

Mr. REDWINE. Now, Mr. Rice, where it comes in as in some of these pleadings and one thing and another in this, and also in the decision of the Solicitor that the cadastral engineer's certificate sets forth so and so, will you tell the committee what the cadastral engineer's certificate means?

Mr. RICE. Up to 1925, I believe, that certificate was issued by the Surveyor General. Since that time it has been issued by the Area Cadastral Engineer. That is based upon information furnished the cadastral engineer by the mineral surveyor's field notes which accompany the mineral surveyor's plat on which the mining claims are shown.

Mr. REDWINE. This mineral survey plat is a plat which is filed with the mineral survey application, a plat prepared by an engineer hired by the petitioner for a patent; is that correct?

Mr. RICE. And approved by the Area Cadastral Engineer.

Mr. REDWINE. The Area Cadastral Engineer never goes on the ground himself, does he?

Mr. RICE. Not to my knowledge.

Mr. REDWINE. Did the Forest Service offer testimony that sufficient work had not been done or did they just charge it?

Mr. RICE. They charged it and they offered evidence substantiating their charge.



Mr. REDWINE. Then the only way that that could have been controverted by the Al Sarena people would have been for them to have offered testimony, would it not?

Mr. RICE. Well, such testimony was not offered.

Mr. REDWINE. But that is the only way it could have been controverted, is it not, unless some irregular proceeding was taken subsequently?

Mr. RICE. Well, I am not aware of the extent of the supplemental investigations made, but at the time the case was before me, those charges were substantiated, in my judgment, clearly.

Mr. REDWINE. That is, the Forest Service charges?

Mr. RICE. That is right, by the testimony at that hearing.

Mr. REDWINE. Mr. Rice, later on this matter was passed on by your superior, was it not?

Mr. RICE. An appeal was taken from my decision to the Director of the Bureau of Land Management.

Mr. REDWINE. What happened to that?

Mr. RICE. The Director of Land Management rendered a decision in which he approved and affirmed the entire proceedings and the decision based thereon.

Mr. REDWINE. Then, after many, many months had rolled by, there was further action in the case?

Mr. RICE. They appealed to the Secretary of the Interior.

Mr. REDWINE. What happened there?

Mr. RICE. The Secretary of the Interior rendered a decision.

Mr. REDWINE. To what effect?

Mr. RICE. The Secretary rendered a decision——

Mr. REDWINE. Do not go into details but did it sustain your decision or overrule it?

Mr. RICE.—sustaining the Director and, in turn, the decision and proceedings had here.

Mr. REDWINE. What date was that, Mr. Rice?

Mr. RICE. The Secretary's decision?

Mr. REDWINE. Yes, sir.

Mr. RICE. There is a copy of the decision right there.

Mr. REDWINE. This does not sustain your decision, does it?

Mr. RICE. That decision there sustained the findings of the Director of the Bureau of Land Management which affirmed the proceedings and the decision rendered here in Portland but stated, in effect, that in view of the fact that there had been a misunderstanding and confusion on the part of counsel for the contestee, why, he had authorized a supplemental investigation to be made and that he was designating personnel from the Bureau of Mines and with representatives of the company to make that investigation and that, based upon that supplemental report ordered and authorized by the Secretary after the case reached the Department and concerning which neither the Director's Office nor my office knew anything about, based upon that supplemental showing, the Secretary rendered a decision in which he found that the record as supplemented, in the judgment of the Department, was sufficient evidence of the mineral character of the lands, mineral discovery, and that the required patent expenditures had been made. He therefore returned the record to the Director of the Bureau of Land Management for the issuance of the patent.

Mr. REDWINE. Mr. Chairman, we will suggest that you put this document in the record in a few minutes.

What was the date of that?

Mr. RICE. January 6, 1954.

Mr. REDWINE. Prior to that time, you say that without the Bureau of Land Management and Forest Service knowing anything about it, the Secretary ordered a supplementary investigation?

Mr. RICE. I could not state that because I am not aware of any communications had by the Department of Interior with other agencies, particularly with the Director or the Forest Service, none to my knowledge.

Mr. REDWINE. Mr. Rice, you say you have known Mr. Hattan and his work for a long time.

Mr. RICE. Yes, sir.

Mr. REDWINE. I am going to ask you to look on page 6 of the Secretary's decision of January 6, 1954, and tell this committee if you can as to this indented language quoting a report made in 1949 by Mineral Examiner Hattan, whether that has any bearing on the matter that was before you, and up for review by the Solicitor.

Representative HOFFMAN. May the excerpt be read so I know what it is?

Mr. REDWINE. Congressman, I believe I have an extra copy of it.

Mr. RICE. In this connection, I would like to make this statement: that this document here represents the judgment of the Department and it is supreme, as far as I am concerned as the subordinate official of the Department, and I do not feel——

Mr. REDWINE. I am not asking you to question it, Mr. Rice. I am asking you to tell me whether that was in the record that was before you, if that 1949 report of Examiner Hattan was in the record before you when the matter was being heard by you.

Representative HOFFMAN. Again, may I ask counsel, will you mark what you are reading from and asking him to look at?

Mr. REDWINE. Yes, sir.

Mr. RICE. That statement appearing on page 14 of the Solicitor's opinion states that "A report of the mineral examiner of the Department made in 1949 contained this statement"——

Do you want me to read the statement?

Mr. REDWINE. Yes, sir, read the statement.

Mr. RICE (reading):

The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined and milled at a profit by low-cost large-scale mining methods. The topography is such that any 1 of 3 methods might be employed. I. e., glory holing, shrinkage system and open pit mining. \* \* \*

Mr. REDWINE. Was that report before you?

Mr. RICE. The report was before me but I did not consider that report.

Mr. REDWINE. Why?

Mr. RICE. Because it is not evidence. That statement is based upon a field examination which was made the basis for the charges brought, and as a result of the charges brought testimony was taken, and based upon Mr. Hattan's testimony together with that of others, I based my decision and not upon the field report because the field report——

**Mr. REDWINE.** If that field report had been offered by the Government as evidence before you, what would you have ruled?

**Mr. RICE.** That is was inadmissible. That is the confidential field report by a field examiner and it may be a proper basis for charges to be formulated concerning which testimony may be developed, but it is not, in my opinion, proper evidence for evaluation and consideration in connection with a decision rendered by me.

**Mr. REDWINE.** Mr. Rice, did you ever have any knowledge, official or otherwise, that the backdoor supplemental investigation was being made in the matter until such time as the order came through to go ahead and issue the patent?

**Representative HOFFMAN.** Now, Mr. Chairman, I object to that question, if I heard it right. Was not the word "backdoor" in there?

**Mr. REDWINE.** Yes, sir.

**Representative HOFFMAN.** Why, I have no objection to supplemental, but why an investigation made by Government officials should be characterized as a "backdoor investigation," I cannot understand.

**Senator SCOTT.** I might say at that point that we are having backdoor testimony taken there that I knew nothing about and I agreed with you that it was all right. If he wants to use the term "backdoor," it is all right with me.

**Representative HOFFMAN.** May I ask him to describe what he means by "backdoor" before the question is answered?

**Senator SCOTT.** Just call him up later. Let the examination proceed.

**Mr. REDWINE.** Read the question, please.

(Question read)

**Mr. RICE.** No, I am not familiar with any backdoor or any other similar term procedure involved in this case.

**Mr. REDWINE.** Let me ask you, did you have any knowledge, official or otherwise, Mr. Rice, that there was any kind of supplemental investigation going on, that some other agency of the Government had been called in to examine these mining claims?

**Mr. RICE.** I heard informally—incidentally, not officially but informally—that one of the reasons why the case had not been protested, why a decision had not as yet been rendered by the Department, was that the Department was exercising its discretionary authority, and developing what it considered such additional evidence as was required and proper for the Department to render a decision and that was the reason for the delay in rendering a decision.

**Mr. REDWINE.** Have you ever known of another case where another Government agency was called in to gather supplemental information in a mining claim contest involving two governmental agencies?

**Mr. RICE.** Well, it is my understanding that the Secretary of the Interior has authority.

**Mr. REDWINE.** We are not going into what his authority is but have you ever heard of another case like this one as it finally turned out?

**Mr. RICE.** Well, I am not aware of any case which I have ever handled that reached this point. However, there have been cases that have gone up on appeal from my decisions involving irrigation districts and reclamation projects and cases of that kind in which the Secretary of the Interior communicated with the Bureau of Reclamation and which was under the Department of the Interior for verification and for supplemental reports, and in going to the Bureau of Mines in this case, I see nothing irregular or improper in doing so.

Mr. REDWINE. I am not saying that it was improper. I was merely asking if, in your experience, you had ever known it to have happened before.

Mr. RICE. Not in a mineral case that I recall. I would like to make one statement, if I may.

Mr. REDWINE. Surely.

Mr. RICE. At the time of this hearing, owing to the more or less belligerent attitude in which counsel for the contestee proceeded in this case in the preliminary proceedings, in fairness to the Al Sarena Mines as represented by the McDonald brothers, I think it is only proper that I should make the statement that the McDonald brothers were most cooperative at all times and that I requested their counsel, in fact I urged their counsel to submit his evidence, which they apparently had come prepared to submit at this hearing, and that the company was prevented from doing so by reason of the unusual conduct on the part of their counsel.

Senator SCOTT. Do you have any questions, Mr. Coburn?

Mr. COBURN. Mr. Chairman, I have one question.

At any time was there any question raised about Mr. MacMahon's qualifications or standing as an attorney?

Mr. RICE. No, sir.

Mr. COBURN. That is all.

Mr. RICE. He entered his appearance as special counsel and under part 1 of the Federal Code of Regulations he may be accepted upon his representation for appearance.

Senator SCOTT. Mr. Lanigan, do you have any questions?

Mr. LANIGAN. No.

Senator SCOTT. Mr. Chudoff, do you have any questions?

Representative CHUDOFF. No questions.

Senator SCOTT. Congressman Hoffman?

Representative HOFFMAN. Thank you, Mr. Chairman, yes.

Do you know Ford McCormick?

Mr. RICE. I met Mr. Ford McCormick this morning for the first time.

Representative HOFFMAN. And Richard Appling?

Mr. RICE. I met Mr. Richard Appling last Wednesday for the first time.

Representative CHUDOFF. Mr. Hoffman, who is Mr. Appling and who is Mr. McCormick.

Representative HOFFMAN. They were the two gentlemen who took samples of the mining property.

Representative CHUDOFF. They took them for the Bureau of Mines. Are they Federal employees?

Representative HOFFMAN. Not so far as I know. I may be mistaken.

Senator NEURERGER. Is it improper for a member of the committee to ask who the persons named are so that we may have some identification in following the questions? I have never heard the names before and wondered who they were.

Representative CHUDOFF. Mr. Chairman, I would like to ask the witness who they are.

Representative HOFFMAN. I will tell you who they are if you will permit. So far as I know, they are the two gentlemen who had something to do with the taking of samples on this mining property.

Representative CHUDOFF. Are they Government employees, or independent engineers, or what are they?

Representative HOFFMAN. They are engineers, if I understood. He says he met them last week.

Representative CHUDOFF. If he knows who they are, he ought to tell us and save a lot of time.

Who were those three gentlemen? I do not remember their names.

Senator SCOTT. Mr. Rice, will you identify them?

Mr. RICE. Mr. Appling—

Representative HOFFMAN. Richard Appling.

Mr. RICE. My information was that Mr. Appling is an engineer with the United States Bureau of Mines located in Spokane, Wash.

Representative HOFFMAN. All I wish to ask is do you know his reputation for ability and integrity and I understand you just met him. The same applies to Ford McCormick. Is he a Government employee?

Mr. RICE. Not to my knowledge.

Representative HOFFMAN. You do not know who he is or what he does?

Mr. RICE. I was just introduced to Mr. McCormick. I do not know.

Representative HOFFMAN. When this matter came before you, the attorney for the mine, and I will refer to them hereafter as the McDonalds—is that right?

Mr. RICE. Sure.

Representative HOFFMAN. He walked out on you, did he not?

Mr. RICE. Yes.

Representative HOFFMAN. So all you had before you was one side of the case.

Mr. RICE. That is correct.

Representative HOFFMAN. And you decided it as you saw it.

Mr. RICE. That is correct.

Representative HOFFMAN. I do not know how you could have done otherwise. When was this application first made?

Mr. RICE. I believe that application was initiated before I came out to Portland, probably about 1948 when the application was originally filed.

Representative HOFFMAN. What work was done on the claims, if you know?

Mr. RICE. The only work done on the claims, so far as I know, is shown by the testimony of the witnesses.

Representative HOFFMAN. The Secretary had authority and discretion, did he not, to overrule the previous decisions, if he so desired?

Mr. RICE. Yes, sir.

Representative HOFFMAN. I have no further questions.

Mr. RICE. And it is not within my province to question the judgment of the Secretary or the wisdom of the action taken by the Secretary.

Representative HOFFMAN. Yes, and he had evidence additional to what you had?

Mr. RICE. That is right.

Representative HOFFMAN. For example, he had before him this report of Mr. Hattan, who was a Government employee, was he not?

Mr. RICE. Yes, sir; he was a Government employee.

Representative HOFFMAN. Well, now, you did not have this statement on page 14 from Mr. Hattan, who is a mineral examiner, did you?

**Mr. RICE.** That report was a matter of record, but it was not considered by me.

**Representative HOFFMAN.** That is what I mean. You could not consider it as evidence.

**Mr. RICE.** That is right.

**Representative HOFFMAN.** And the Secretary could?

**Mr. RICE.** Well——

**Representative HOFFMAN.** He did, anyway, did he not?

**Mr. RICE.** It is in his decision.

**Representative HOFFMAN.** This matter of the validity of those claims and the action of the Secretary has been hashed and relashed in this area since when?

**Mr. RICE.** Well, I am not familiar with just to what extent it has been hashed and relashed in the area.

**Representative HOFFMAN.** It was a subject of discussion in a political campaign a year ago, was it not?

**Mr. RICE.** Well, I am not concerned with the political angles of this question one way or the other.

**Representative HOFFMAN.** I know you are not.

**Mr. RICE.** No, sir.

**Representative HOFFMAN.** And you did not make any decision based on any political angles?

**Mr. RICE.** None whatever.

**Representative HOFFMAN.** What I am asking is whether this issue which is brought up today before this committee is an old one which has been subject of discussion in this area.

**Representative CHUDOFF.** Mr. Chairman, before Senator Neuberger questions the witness, can I ask one question?

**Senator SCOTT.** Yes.

**Representative CHUDOFF.** Mr. Hoffman said something about Mr. McDonald, counsel for the mining company.

**Mr. RICE.** Mr. MacMahon.

**Representative CHUDOFF.** He said something about somebody walking out.

**Mr. RICE.** That is, the special counsel, Mr. MacMahon, advised his clients who were represented by the McDonald brothers to withdraw from the case and not attend the proceedings, and they departed.

**Representative CHUDOFF.** In the middle of the hearing?

**Mr. RICE.** No, before the hearing.

**Representative CHUDOFF.** You mean when it appeared that you were making certain rulings that they did not like they got up and left? Is that what you mean?

**Mr. RICE.** They demanded the right to be heard on appeal before the Secretary on the adverse rulings against the motions and pursuant to an agreement that they allegedly had with the Solicitor, and since I had not been advised of the agreement that he stated that he had with the Solicitor, and it was contrary to the Federal Code of Regulations governing this matter issued by the Department, I refused to accept his recommendation, and at that time he became belligerent and stated that he would be bound by no agreement other than that which he had with the Solicitor, and he would not attend the hearings, interrogate the witnesses, or have anything to do with the proceedings.

Representative CHUDOFF. Subsequent thereto, were you advised by your superiors that such an agreement existed?

Mr. RICE. No, sir.

Representative CHUDOFF. Did you try to determine whether it existed?

Mr. RICE. I submitted the question to the Director of the Bureau of Land Management in which that representation was repeated to the Director. The Director of the Bureau of Land Management called upon the Solicitor of the Department for an explanation and the Director was informed that no such agreement had ever been had with the counsel for the contestee.

Representative CHUDOFF. As the result of your decision an appeal was taken to the Secretary, is that right?

Mr. RICE. No, to the Director.

Representative CHUDOFF. The Director of the Bureau of Land Management. Did the group come before the Director later on and try to be heard?

Mr. RICE. I do not know.

Representative CHUDOFF. You were not there?

Mr. RICE. That was in Washington, D. C.

Representative CHUDOFF. But the Director did affirm your decision?

Mr. RICE. He did.

Representative CHUDOFF. And it was only the Secretary who overruled the decision of the Director finally?

Mr. RICE. Upon the submission of the supplemental report.

Representative CHUDOFF. On the basis of after-discovered evidence or whatever you call it.

Mr. RICE. Based on a supplemental investigation ordered by the Secretary.

Representative CHUDOFF. So that as it were the supreme authority or the Supreme Court overruled all the lower authorities in this particular case?

Mr. RICE. He did not necessarily overrule. He approved the action taken locally in the proceedings and the decision rendered as well as that of the Director in the main and then ordered a supplemental investigation, and upon the basis of the supplemental investigation, he rendered his decision.

Representative CHUDOFF. I understand what you are telling me. As a result of the subsequent supplemental investigation, did he have a new hearing or was this just an investigation given to him on which he based his decision?

Mr. RICE. I am not aware of any new hearing on the proceeding other than set forth in the Secretary's decision.

Representative CHUDOFF. So we would have to get that from some other Bureau or from the Secretary himself.

Mr. RICE. That is right.

Representative CHUDOFF. Thank you.

Representative HOFFMAN. I have more questions, Senator.

Senator SCOTT. All right.

Representative HOFFMAN. When this case came before you, you did not have all of the evidence that was presented to the Secretary when it came before him, did you?

Mr. RICE. Oh, no.

Representative HOFFMAN. All right. When it came before you, did you have the 1949 and the 1950 supplemental assay reports?

Mr. RICE. What was that?

Representative HOFFMAN. The reports.

Mr. RICE. Those assay reports that were offered in evidence as exhibits at the trial by the Forest Service.

Representative HOFFMAN. But then those were not the 1949 and 1950 records, were they?

Mr. RICE. Now you are speaking about the field report, are you?

Representative HOFFMAN. I am speaking about the supplemental ones, yes.

Mr. RICE. About the field examiner's report in 1949?

Representative HOFFMAN. Yes.

Mr. RICE. That was not evaluated or considered by me.

Representative HOFFMAN. Does the comparative value have anything to do with whether or not the patent should be issued?

Mr. RICE. Comparative value of what?

Representative HOFFMAN. Of the timber and the ore. Well, that is all, Senator.

Mr. REDWINE. Mr. Rice, I think that we got a little bit confused here a while ago in an answer that you gave to Congressman Hoffman about the Hattan report of 1949 and the consideration apparently given it by the Secretary's Office. Does the record that was made in the hearing conducted by you show that this section of the Hattan report of 1949 that was quoted in the Secretary's decision had nothing to do with the fifteen claims in dispute, that that language applied to the eight claims that were not disputed by the Forest Service?

Mr. RICE. I did not consider it.

Mr. REDWINE. You did not consider that language?

Mr. RICE. I did not consider that language.

Mr. REDWINE. I will bring that out when Mr. Hattan testifies.

That is all I have.

Mr. COBURN. Senator Neuberger advised me that he had no questions, Senator Scott.

Senator SCOTT. The next witness.

#### TESTIMONY OF ELTON M. HATTAN, LAND AND MINERALS OFFICER, OREGON

(The witness was previously duly sworn.)

Representative HOFFMAN. Mr. Chairman, could Mr. Ellsworth make his statement now?

Senator SCOTT. Not at this time.

Representative HOFFMAN. You said he could make it today.

Senator SCOTT. Today will still be in order at 12 o'clock tonight.

Representative ELLSWORTH. Mr. Chairman, I am Congressman Ellsworth. I am going home tonight and have to drive 200 miles. I do not necessarily have to go now but I would like to make my summary statement after this next witness.

Senator SCOTT. I am 3,000 miles from home and would have liked to have gone home yesterday, but I did not get to go.

Representative HOFFMAN. You promised yesterday that he could put it in, but I would suggest that you give it to the press now and give it later.



Mr. REDWINE. State your name, please.

Mr. HATTAN. Elton M. Hattan.

Mr. REDWINE. What is your position and how long have you held it?

Mr. HATTAN. I am now Land and Minerals Officer under the State Supervisor for Oregon. I have been in that position since May 1954.

Mr. REDWINE. Prior to that time?

Mr. HATTAN. I was evaluation engineer under the area administrator under the regional administrator for the old region which included the States of Oregon, Washington, and Idaho. Prior to that time I was a field examiner examining mining claims for the Branch of Field Examinations out of San Francisco, Calif. Prior to that I was in Salt Lake City, with that area for about a year, commencing my work with the Interior Department in September of 1939.

Mr. REDWINE. What has been your experience other than in Government work in the mining field, please?

Mr. HATTAN. For about 10 years, between 1919 and July of 1932, I was actively employed by various mining companies throughout the Western States, in Mexico, and in Canada. My principal work in the mines was with the Calumet & Arizona Mining Co. at Bisbee, prior to consolidation with the Phelps-Dodge Corp., and with the 85 Mining Co. at Lordsburg, New Mex., and then I left there for a period and later returned to the Calumet & Arizona Mining Co. at Bisbee and was only there a short while when I went into Mexico, where I was for a matter of 2 years.

Thereafter, leaving Mexico, I went to the Coeur d'Alene District, where I was construction engineer on the construction of the Sullivan Mining Co.'s zinc plant at Kellogg.

Thereafter I went for a period of 6 months as an architect engineer in Canada to examine and make maps of and sample and assay samples from a small mine that was being developed with the idea of construction of a hundred-ton mill.

Mr. REDWINE. Mr. Hattan, I think that everyone here will probably grant that you are well qualified and have a lot of experience.

Mr. HATTAN. Thank you, sir.

Mr. REDWINE. You have done a great deal of work in sampling and surveying and assaying of gold, lead, and zinc, and such minerals, have you not?

Mr. HATTAN. I have. Sampling has been my pet hobby, especially with Phelps-Dodge Corp. at Morenci, where I was for some 3 years.

Mr. REDWINE. I think that is enough qualification, Mr. Chairman; do you?

Senator SCOTT. It satisfies me if it does the rest of the committee.

Mr. REDWINE. Mr. Hattan, you have heard the testimony of Mr. Rice in respect to the contest filed by the Forest Service on the group of Al Sarena mining claims. In your official capacity, you took a group of samples, three groups of samples, I believe, did you not?

Mr. HATTAN. I did.

Mr. REDWINE. Will you briefly tell the committee of how those samples were taken, to whom they were submitted, what the results were, and the times at which they were taken? Make it as brief as you can, Mr. Hattan.

Mr. HATTAN. My first visit to the property was based upon a request by the regional forester, dated December 15, 1948. After making ar-

rangements, I went on the property on May 20, 1949, and was there through May 24 of that same period. I was alone; that is, I was the only mineral examiner representing Government. Mr. Aultland, the caretaker on the property, accompanied me in taking these samples. Mr. Aultland pointed out the places of discovery.

Mr. REDWINE. He is an employee of the Al Sarena mines?

Mr. HATTAN. Yes, sir.

Mr. REDWINE. And he was with you at all times and pointed out the points of discovery?

Mr. HATTAN. He was. These samples, by the way, were all taken to Annes Engineering Co.

Mr. REDWINE. Will you spell that?

Mr. HATTAN. A-n-n-e-s Engineering Co. for assay. The assay certificate was dated May 31, 1949.

Mr. REDWINE. Do you have a copy of that assay certificate with you?

Mr. HATTAN. Yes, I do have a copy here.

Mr. REDWINE. Will you submit it for inclusion in the record if the chairman so desires?

Mr. HATTAN. Yes, you may have it.

Mr. REDWINE. Will you proceed?

Mr. HATTAN. Because of the low results which were secured from the analysis reported on the assay certificate——

Mr. REDWINE. May I look at the assay sheet, please?

Do you mean by low results just "trace, trace, trace"?

Mr. HATTAN. Yes, sir.

Mr. REDWINE. One exception shows value of 14 cents to the ton of silver, and only a trace of gold. What is a trace of gold in an assay report?

Mr. HATTAN. A trace of gold as given to me by the assayer who assayed this particular set of samples was that it would be less than 17 cents per ton of gold, and the silver would be less than 14 cents per ton. It figures out that way.

Mr. REDWINE. I notice on this report, however, that they show this particular company as showing a trace of gold as being under 21 cents and a trace of silver as being under 7 cents.

Mr. HATTAN. I had forgotten.

Mr. REDWINE. In the case of silver.

Mr. HATTAN. The assay certificate itself shows what he means by a trace. I had not looked at it.

Mr. REDWINE. May this go into the record, Mr. Chairman?

Senator SCOTT. It may be received in the record.

(The certificate referred to follows:)

GRANTS  
MINING  
MANAGEMENT  
RESOURCES

# EXHIBIT I ANNES ENGINEERING COMPANY

CONSULTING MINING AND GEOLOGICAL ENGINEERS  
BATES BLDG.  
GRANTS PASS, ORE.  
800 1/2 EAST G ST.  
TEL. 431. P. O. BOX 444

EXAMINATIONS  
SEPARATION  
MANAGEMENT

## Certificate of Assay

Bureau of Land Management  
May 31, 1949

Dear Sir: The sample received from you assays as follows:

May 31, 1949

Laboratory No.	DESCRIPTION	trace under 214		trace under 74		trace under 74	
		GOLD 35		SILVER 004		Per Cent Per Cent Per Cent	
		Oz/Ton	Value/Ton	Oz/Ton	Value/Ton	Per Cent	Per Cent
1911	879	1	trace	trace	trace		
1912	2	trace	trace	trace	trace		
1913	3	trace	trace	trace	trace		
1914	4	trace	trace	trace	trace		
1915	5	trace	trace	trace	trace		
1935	5a	trace	trace	trace	trace		
1916	6	trace	trace	trace	trace		
1936	6a	trace	trace	trace	trace		
1917	7	trace	trace	trace	trace		
1918	8	trace	trace	trace	trace		
1919	9	trace	trace	trace	trace		
1920	10	trace	trace	trace	trace		
1937	10a	trace	trace	trace	trace		
1921	11	trace	trace	trace	trace		
1922	12	trace	trace	trace	trace		
1938	12a	trace	trace	trace	trace		
1923	13	trace	trace	trace	trace		
1924	14	trace	trace	trace	trace		
1925	15	trace	trace	trace	trace		
	No number 16						

CHANGES:

By C. F. Anderson

Certificate of Assay

Bureau of Land Management

May 31, 1949

Dear Sir: The sample received from you assays as follows:

May 31, 1949

Laboratory No.	DESCRIPTION	GOLD		SILVER		Per Cent Per Cand Per Cent	
		Oz/Ton	Value/Ton	Oz/Ton	Value/Ton	Per Cent	Per Cand
879	17	trace		trace			
1927	18	trace		trace			
1928	19	trace		trace			
1929	20	trace		trace			
1930	21	trace		trace			
1931	22	trace		trace			
1932	23	trace		trace			
1933	24	trace		11	12¢		
1934							

CHARGES: \$51.00

By C. F. Anderson

Mr. HATTAN. There are several assayers who have issued certificates which I have seen and the normal amount is less than 17 cents as a trace, because they did not weigh that amount unless they take a very large sample and they do not do that except under unordinary circumstances.

Mr. REDWIN. Will you go ahead, please?

Mr. HATTAN. Because of these low results I was a little perturbed about the assays and wondered whether I had made a mistake, whether the watchman who was at the mine may have pointed out the wrong places or possibly the assayer could be in error, and consequently I wrote to Mr. H. P. McDonald, who was agent for the Al Sarena Mines Co., Inc., and made arrangement for a reexamination on July 12, 1949, and I also requested the Forest Service to allow one of their mineral examiners to come to this place, and arrangements were made by them.

Mr. REDWINE. Who was that man?

Mr. HATTAN. Mr. W. C. Sanborn, from San Francisco, came to assist me in this second examination. Then both Charles and H. P. McDonald were present.

Mr. REDWINE. They belonged to the owner group of McDonalds?

Mr. HATTAN. Yes, sir, they were the agents for the applicant. They went along with us in making our second series of samples. That was the first series for Mr. Sanborn, but the second for me.

Mr. COBURN. You say they were the agents of the corporation. Were they not also officers of the company?

Mr. HATTAN. I believe they were, but they were representing the company so far as we were concerned. They pointed out the places where the discoveries were supposed to be and we took samples in every case at places pointed out.

Mr. REDWINE. Let me interrupt. Do you mean by that that they pointed out to you the spots where the samples should be taken?

Mr. HATTAN. Yes, sir, where the alleged discovery was situated.

Mr. REDWINE. Where the alleged discovery was situated?

Mr. HATTAN. Yes.

Mr. REDWINE. Go ahead.

Representative HOFFMAN. Just a moment; Mr. Chairman, I understand the witness had started to say that they also took some from other places that the McDonalds did not point out.

Mr. HATTAN. Yes, sir, places that looked favorable to us as engineers as comparing the ground pointed out to us as to other spots and in some cases the agents pointed out one, two, or possibly three possible places of mineralization.

Mr. REDWINE. Mr. Hattan, do you have your records so segregated you could give the committee an assay report on the samples that were taken responsive to the spots pointed out by the McDonalds and the ones that you took on your own?

Mr. HATTAN. No, I have not segregated.

Mr. REDWINE. They are not segregated?

Mr. HATTAN. My notes, I am sorry to say, do not show that.

Mr. REDWINE. Go ahead, please.

Mr. HATTAN. This second set of samples that were taken were given to Mr. Sanborn, who was returning part way to San Francisco. The samples, by the way, were at all times kept in the back of our car and we transferred them to his car in the warehouse at Medford. He took

them to Redding, I believe, it is, and I will leave it to Mr. Sanborn to say what happened from there on.

**Mr. REDWINE.** Mr. Hattan, for the benefit of the committee, just what does a sample consist of? How heavy is it?

**Mr. HATTAN.** It depends upon how big a sample we originally take. In these cases, Mr. Sanborn's samples and mine were, I would judge, from 4 to 8 pounds. They were taken mostly on a canvas. We cut a channel or we picked a channel where the ground was soft enough or we used a hammer and maul where it was hard. All of the sample was put on the canvas. The larger pieces were broken and we rolled the sample and quartered it or halved it so that we had a representative sample not too heavy or cumbersome to transport or ship.

During the course of our examination of the property, we were supplied with three sample maps by the company agents and on these maps were shown the workings as they existed. These maps I do not remember by whom they were prepared. They had a large number of assay results reported in gold and silver with sample numbers before each of these results.

Based upon these maps, Mr. Sanborn and I, after consultation, decided that if we could substantiate these samples by having them checked with the assayer and if they were about the same or reasonable, we could assume that the sampling was correct insofar as we could use it for the underground development, the spots that we could not get into, the drifts we could not get into and also some of the outside places.

We found in storage the old pulps that had been stored after the sampling had been done. They were properly numbered and we could recognize where they were taken from from the assay maps.

We picked from these pulps at random three such samples and Mr. Sanborn took them with him to San Francisco along with the other samples.

After Mr. Sanborn reached San Francisco, I took two of the pulps that Annes Engineering Co. had left. In fact, they had all of the pulps and I had recovered them after they had assayed them. I kept those pulps for several years, but I sent two of those pulps by mail to Mr. Sanborn, and he took them along with the others to have them checked for accuracy by Abbot A. Hanks.

**Mr. REDWINE.** You were making a check?

**Mr. HATTAN.** That is right.

**Mr. REDWINE.** That is the usual procedure in sampling and assay work, is it not?

**Mr. HATTAN.** Very often.

**Mr. REDWINE.** Particularly where there is a dispute?

**Mr. HATTAN.** Because of all of these low samples that I got in those original analyses, I mean the results that were reported were so low that I wanted to check the Annes Engineering Co. I did not ask them whether I could or not. They might not have been happy, but I did check them and the results will show that they checked.

**Mr. COBURN.** Mr. Chairman, could I interrupt for just 1 or 2 questions?

**Senator SCOTT.** Yes.

**Mr. COBURN.** Now, the information furnished you on this map by the company showed some assay reports on the map?

Mr. HATTAN. Yes, they did. There were a large number.

Mr. COBURN. By what company were those made?

Mr. HATTAN. They were made by the company that was in operation and while the investigators that were there—I think Mr. Ford McCormick was one engineer who made a report and we saw his report.

Mr. REDWINE. These were people that were representing the company?

Mr. HATTAN. Yes, sir, they had worked for the company during the time of operation.

Mr. COBURN. You said Mr. D. Ford McCormick?

Mr. HATTAN. Yes.

Mr. COBURN. What was the assay?

Mr. HATTAN. They ran the operation.

Mr. COBURN. As I understand, your first company was A-n-n-e-s Engineering Co.

Mr. HATTAN. Yes.

Mr. COBURN. The second was Abbot A. Hanks?

Mr. HATTAN. Yes.

Mr. COBURN. The results of the Annes Co. checked out with Abbot A. Hanks?

Mr. HATTAN. I would say the Abbot A. Hanks checked the Annes Engineering because they came later.

Mr. REDWINE. We would like to have for insertion in the record the Hanks report.

Mr. HATTAN. May I say here that I did not know these were going in the record. I have put in red pencil here on the third sheet, which is my own writing, the total amount, I believe, of, for instance, number 23 here, that was our assay, what Abbot A. Hanks found, and after that, I put in red the total value of the sample as recorded on the map. I can take those off, if you wish.

Mr. REDWINE. Let me look at those. [Handed.]

In the interest of time, we will just take it as it is.

(The information referred to follows:)

## REPORT OF ASSAY

ABBOT A. HANKS, INC.,  
ASSAYERS, CHEMISTS, ENGINEERS,  
San Francisco, August 10, 1949.

Sample of: Ore.

Deposited by: United States Department of Interior, Bureau of Land Management.

Laboratory No.	Mark	Gold, per ton of 2,000 pounds		Silver, per ton of 2,000 pounds		Percentages
		Troy ounces	Value at \$35 ounce	Troy ounces	Value at—	
10082.....	1	.095.....	\$3.32	0.06.....	\$0.05	
10083.....	2	.01.....	.35	None found.....		
10084.....	3	.02.....	.70	0.33.....	.34	
10085.....	4	Trace.....		None found.....		
10086.....	5	.005.....	.17	do.....		
10087.....	6	Trace.....		do.....		
10088.....	7	Trace.....		do.....		
10089.....	8	Trace.....		do.....		
10090.....	9	Trace.....		do.....		
10091.....	10	Trace.....		do.....		
10092.....	11	Trace.....		do.....		
10093.....	12	.005.....	.17	Trace.....		
10094.....	13	Trace.....		None found.....		
10095.....	14	Trace.....		do.....		
10096.....	15	Trace.....		do.....		
10097.....	16	Trace.....		do.....		
10098.....	17	Trace.....		do.....		
10099.....	18	None found.....		Trace.....		
10100.....	19	Trace.....		None found.....		
10101.....	20	Trace.....		do.....		
10102.....	22	Trace.....		Trace.....		

NOTE.—The term "trace" denotes that the element indicated is present but in such small amounts as to be unweighable. A trace of gold is less than 17 cents a ton. A trace of silver is a fraction of 1 cent per ton.

ABBOT A. HANKS, INC.,  
Original signed by JNO. L. MARTEL.

## REPORT OF ASSAY

ABBOT A. HANKS, INC.,  
ASSAYERS, CHEMISTS, ENGINEERS,  
San Francisco, August 10, 1949.

Sample of: Pulp.

Deposited by: United States Department of Interior, Bureau of Land Management.

Laboratory No.	Mark	Gold, per ton of 2,000 pounds		Silver, per ton of 2,000 pounds		Percentages
		Troy ounces	Value at \$35 ounce	Troy ounces	Value at—	
10071.....	#25	<sup>1</sup> Trace		None found		
10072.....	#23 #499 #26	.19	\$6.65	0.31	\$0.27	15.37 Supp. 6.92.
10073.....	#26 1619-20	<sup>1</sup> Trace		None found		7.03 Supp.
10074.....	#679 1619-21	.22	7.70	1.83	1.64	9.34.
10075.....	#695	.02	.70	<sup>1</sup> Trace		1.11 Supp. 0.70.

<sup>1</sup> The term "Trace" denotes that the element indicated is present but in such small amounts as to be unweighable. A trace of gold is less than 17 cents a ton. A trace of silver is a fraction of 1 cent per ton.

NOTE.—Italic denotes handwritten additions.

ABBOT A. HANKS, INC.,  
Original signed by JNO. L. MARTEL.



Mr. REDWINE. Then what happened, Mr. Hattan?

Mr. HATTAN. When these results came back?

Mr. REDWINE. Were they disappointing, too, from the standpoint of the applicant?

Mr. HATTAN. Yes, they were disappointing from his standpoint, although they were not disclosed to the applicant that I know of.

Mr. REDWINE. Well, were the results sufficiently good to have justified you making your opinion of the mineralization of the ground?

Mr. HATTAN. It justified my opinion of the ground. It confirmed it more fully and on this I prepared my report.

Mr. REDWINE. That was the report of 1949?

Mr. HATTAN. 1949, which was concurred in by Mr. Sanborn.

Mr. REDWINE. At this point, I want to break up the continuity of what you are saying.

You heard the testimony a few minutes ago in respect of January 6, 1954, in which your 1949 report was quoted. That is the paragraph that you have, Congressman Hoffman.

Mr. HATTAN. Yes, sir.

Mr. REDWINE. Does that section of your 1949 report have anything to do whatsoever with the 15 claims under dispute or does that apply to the 8 claims that were not disputed? Do you have a map that would show the area of this zone that is referred to?

Mr. HATTAN. Transmitted with my report, copy of which went to the Director, was attached a map which showed outlined in blue the central mass as I have described.

Mr. REDWINE. Well, is that central mass located on the 8 claims that were not contested or is that central mass located on the 15 claims that were contested?

Mr. HATTAN. The central mass, as outlined, takes in portions of six claims which were contested.

Mr. REDWINE. But does not touch the other nine?

Mr. HATTAN. I don't believe it does. My report of 1949 states that the central mass as outlined in blue in dotted lines—may I say something on that?

Mr. REDWINE. Certainly.

Mr. HATTAN. Under the agreement of 1915, the Forest Service, the regional forester called upon the Bureau of Land Management for examinations of mineral applications within national forests. That report, prepared by a mineral examiner of the Bureau Land Management is directed to the regional forester. As a courtesy, a copy of that report is always transmitted to the Director so that he may be advised of what we have told the regional forester concerning the mineral application. Based upon that report, the regional forester brings the charges. He either accepts the recommendation, if there is one by the mineral examiner, or he rejects it and makes his own charges. That is all.

Mr. REDWINE. Let us get on to the third examination of the property.

Mr. HATTAN. Because of the fact that the agents for the applicant submitted to me some assay certificates of samples taken after our visit to the property in July 1950, and prior, I wished to confirm, or so that I would be in a better position to accept or reject these samples for the assay results of the samples in the contest which was scheduled in September of 1950, I returned to the property on September 5 and 6, 1950, and with Mr. Aultland, who was the caretaker, went back to

several of the places from which he stated those samples submitted by the applicant's agents had been taken. This was merely to confirm or see how new samples would check out with the results that were submitted on the assay certificate.

During this visit, I took seven samples. These samples were rather large but I took them to the Bureau of Mines at Albany for analysis.

At the day of the hearing—I think that was September 13, 1950—upon request, the Bureau of Mines telephoned the results and I submitted the assay certificate or copy thereof for the record.

**Mr. REDWINE.** What did that certificate show in respect to the other two samplings that you had done?

**Mr. HATTAN.** Well, it confirmed the samplings taken by Mr. Sanborn and I and my previous samples. It did not coincide with the assay results that were sent to me on the assay certificate sent by the agents.

**Mr. REDWINE.** Mr. Hattan, on the basis of your knowledge, experience, 3 visits on the property, taking of the samples and the consideration that you have given to those 3 sets of assay reports on samples that you personally took, is it your judgment that no valid discovery has been made on those 15 claims?

**Mr. HATTAN.** Based entirely on my examination of the property, the information that I had up to my last visit—I have never been back to the property—I do not know what has taken place since my last visit, but based on the things that I saw and found, I would say there was not at that time a discovery, that a discovery had not been demonstrated within the limits of any of the 15 claims.

**Mr. REDWINE.** You say "at that time." Has anything happened since that time that you have personal knowledge of that would cause you to change your opinion?

**Mr. HATTAN.** No.

**Mr. REDWINE.** What is the usual procedure where there is any question about the validity or the integrity of a mineral sample? Do you send the whole thing to the assayer or what do you do with it? What is the procedure?

**Mr. HATTAN.** If there is a question as to the integrity of the assayer.

**Mr. REDWINE.** Not of the assayer but if there is any question about those do you quarter it and keep a part of it? What do you do, send the whole sample to the assayer? What is the usual procedure? If you do not want to answer it, that is all right.

**Mr. HATTAN.** There are 2 or 3 different ways. I didn't know whether you wanted to listen to any dissertation on it. I worked as a sampler in the Kingman Mining Co. in Kingman, Ariz., for a matter of 2 months. There I was in the sampling department.

**Representative HOFFMAN.** Mr. Chairman, I have no objection to showing what the usual course is in the department, but I do object to his going into the method some other plant employs.

**Mr. REDWINE.** I think, Mr. Chairman, we will drop the matter here.

**Representative HOFFMAN.** I have no objection to counsel stating the practice.

**Mr. REDWINE.** Is not the usual procedure, if there is any argument or dispute about it, that you have one in reserve, an umpire sample?

**Representative HOFFMAN.** I object to the word "umpire."

**Mr. REDWINE.** That is the word that is used by the craft, Congressman.

Mr. HATTAN. If I figured there was going to be a contest, a difficulty, I would take one sample and send it to my assayer for assay. I would give the other sample to the other person. He could send it to his assayer if he wanted to. The third sample I think would be kept under lock and key.

Mr. REDWINE. What is that third sample usually called?

Mr. HATTAN. It is called the umpire sample in smelter parlance.

Representative HOFFMAN. May I interrupt? I understand that is true as to the first ones, but on the subsequent ones, they would not have an umpire sample.

Mr. HATTAN. Mr. Hoffman, I am afraid I do not understand.

Mr. REDWINE. Mr. Coburn?

Mr. COBURN. How long has the Annes Engineering Co. been in business?

Mr. HATTAN. They were in Grants Pass there for about 3 or 4 years before I took the samples there and I went through their assay office. I talked to Mr. Anderson, the assayer. I was interested in the kind of equipment they had and the work that they were doing.

Mr. COBURN. What kind of reputation do they enjoy?

Mr. HATTAN. They had a good reputation.

Mr. COBURN. The same question on Abbot A Hanks.

Mr. HATTAN. Abbot A. Hanks is taken without question.

Mr. COBURN. What about the Bureau of Mines, or is that an unfair question?

Mr. HATTAN. It might be. I accepted their assay results without any question.

Mr. COBURN. That is all I have.

Representative HOFFMAN. Would you ask him about the other consultants, when they took samples?

Mr. COBURN. I do not want to ask him that.

Senator SCOTT. I want to get all the truth and information we can but let us get on with the information. We will be here too long.

Are there any further questions? Mr. Chudoff?

Representative CHUDOFF. No questions.

Senator SCOTT. Mr. Hoffman, do you have anything further?

Representative HOFFMAN. I certainly do.

Do you know Ford McCormick?

Mr. HATTAN. Yes, sir.

Representative CHUDOFF. Mr. Hoffman, will you get him identified? I have been trying to find out since we started.

Representative HOFFMAN. You will find out if you let me alone. I do not know who he is. He is a gentleman who took samples from this property.

Representative CHUDOFF. Is he from Alabama?

Representative HOFFMAN. I do not know whether he is from Alabama or Podunk.

How long have you known him?

Mr. HATTAN. I do not know the gentleman personally.

Representative HOFFMAN. Do you know his reputation?

Mr. HATTAN. He is an excellent engineer, a registered professional engineer in the State of Oregon. He has his license to practice professional engineering, I believe it is in the mining degree.

The fact of it is that when I took my examination for professional engineer in the State of Oregon, I think Mr. McCormick was on the board.

Representative HOFFMAN. One of the examiners of the board which qualified you?

Mr. HATTAN. Way back in 1920.

Representative HOFFMAN. And his reputation for integrity is good?

Mr. HATTAN. It certainly is.

Representative HOFFMAN. Do you know Richard Appling?

Mr. HATTAN. I do not.

Senator SCOTT. Are there any further questions?

Representative CHUDOFF. I would like to know, Mr. Chairman—

Representative HOFFMAN. Mr. Chairman, I had not finished.

Senator SCOTT. Let us get going.

Representative HOFFMAN. You need not worry about me "getting going."

Representative CHUDOFF. Would you please identify Mr. McCormick a little more? What did he do in this thing? I am trying to find out what are his connections with this case.

Representative HOFFMAN. All I can tell you is that he is one of the gentlemen who took further samples.

Representative CHUDOFF. He is the one that found out these ores were worth a lot of money when the other fellows said they were not.

Representative HOFFMAN. I understand that he found when he took samples that this was a valid mining claim.

Representative CHUDOFF. In spite of the fact that the others found it was not?

Representative HOFFMAN. Appling was the same.

Representative CHUDOFF. I do not know.

Representative HOFFMAN. Are Mr. Appling and Mr. McCormick going to testify? I think they should because they had something to do with the decision finally made.

Representative CHUDOFF. We will probably call them in Washington.

Representative HOFFMAN. I am waiting, Senator. I will go ahead?

Senator SCOTT. Yes.

Representative HOFFMAN. You took samples first on May 20 to 24, in 1949?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. And the result was so low in mineral content that you took some more?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. You were suspicious of the samples, that is, of the results that were obtained from them?

Mr. HATTAN. I was suspicious at the time, yes, sir.

Representative HOFFMAN. You did ask the Forest Service to send a man to help you?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. That was out of abundant precaution, I assume.

Mr. HATTAN. It was.

Representative HOFFMAN. Now, how much in value had been taken from these mines at the time you took the first samples, the value in ore?

Mr. HATTAN. It was reported that a value of from \$30,000 to \$40,000 in gold had been extracted since the claims were located in 1897, up until that time from approximately four of the claims which were clear-listed for patent.

Representative HOFFMAN. Do you know how much money the people had spent in attempting to develop the mines? I realize this only goes to their good faith.

Representative CHUDOFF. That does not put gold in the ore. If they spent a million dollars they could not put gold in ores if there was not any ore.

Mr. HATTAN. I do not know how much they spent.

Representative HOFFMAN. My purpose is to show good faith.

Representative CHUDOFF. I understand they sold about \$300,000 worth of stock and they had to spend some.

Representative HOFFMAN. You say six of the contested claims were covered by that report you made that was quoted here?

Mr. HATTAN. Beg pardon? I believe I misunderstood your question.

Representative HOFFMAN. On page 32 they read a paragraph to you about a report that you made. I understood you to say that six contested claims were covered in that report.

Mr. HATTAN. Portions of six of the contested claims.

Representative HOFFMAN. All right. What is your complaint about the finding of the Secretary?

Mr. HATTAN. I haven't any complaint about the finding of the Secretary.

Representative HOFFMAN. Were you working for Forestry or BLM?

Mr. HATTAN. Bureau of Land Management.

Representative HOFFMAN. But Forestry contested the claim.

Mr. HATTAN. Yes, sir, Forestry contested the claim.

Representative HOFFMAN. And your position coincides with what they claimed?

Mr. HATTAN. Yes, sir, I recommended in this case.

Representative HOFFMAN. Now, you knew about this mine and you knew about the people. You were familiar with them before they applied, when they filed their application, were you not?

Mr. HATTAN. I never knew a thing about them.

Representative HOFFMAN. When did you first become acquainted with them?

Mr. HATTAN. When I first went on the property in May.

Representative HOFFMAN. Of 1949?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. What was your duty as a registered mineral surveyor?

Mr. HATTAN. I am not a registered mineral surveyor. I as a registered professional engineer in the State of Oregon. I was at that time commonly called mineral examiner, but my title was evaluation engineer, mining.

Representative HOFFMAN. What was your duty then?

Mr. HATTAN. My duty was to examine in cases of mineral application for patent to examine the claims and see that the mining laws had been complied with under the rules and regulations laid down by the Secretary.

**Representative HOFFMAN.** Were you familiar with the work of the mineral surveyor?

**Mr. HATTAN.** I usually make some check of his work, yes, sir.

**Representative HOFFMAN.** Just what does he do?

**Mr. HATTAN.** The mineral surveyor?

**Representative HOFFMAN.** In connection with these claims. I am not concerned with any others.

**Mr. HATTAN.** In connection with these claims he surveyed the boundaries of the claims put in corners at the corner of each of the claims. He measured and surveyed the tunnels. He measured the cuts, shafts, and all of the improvements, at least he was supposed to have, all of the improvements within the limits of each of the claims, and he set a value on those improvements.

**Representative HOFFMAN.** Did you agree with his estimates of the value?

**Mr. HATTAN.** On five of the claims I did not.

**Representative HOFFMAN.** On the others you did. We are talking about the 15, now, are we not?

**Mr. HATTAN.** Yes, sir. On the other claims that were located in 1897, the work on these claims along tunnels, the raises and the interconnecting drifts and crosscuts, all except, I believe, a crosscut known as the south crosscut and the north drift were constructed as nearly as I could tell prior to the location of the mining claims located subsequent to 1932. I say this because there is a map which appears in USGS Bulletin 893 and that was spoken of here today, there is a map in there which shows the work which was measured and listed by two men who were on the property during 1930 and 1931.

**Representative HOFFMAN.** Did you have an engineer, too, in connection with this? Was there some other engineer?

**Mr. HATTAN.** These people whom I spoke of were for the United States Geological Survey. They make examinations and reports on property and it was along with and in cooperation with the organization, Department of Mines I believe it was at that time, now Department of Geology and Mineral Industries.

**Representative HOFFMAN.** And your report contradicted the report they made?

**Mr. HATTAN.** No, sir.

**Representative HOFFMAN.** Are you sure?

**Mr. HATTAN.** I am sure of that.

**Representative HOFFMAN.** How did you become involved in the first place as a mineral examiner on these claims?

**Mr. HATTAN.** Because the Forest Service requested that the Bureau of Land Management supply a mineral examiner to examine and report on these claims.

**Representative HOFFMAN.** Who in BLM sent you for the Forestry?

**Mr. HATTAN.** The regional administrator at that time. They didn't send me over. The Forest Service makes request in writing.

**Representative HOFFMAN.** That is all right. You are the one who went over, then, from BLM to Forestry and made the contest?

**Mr. HATTAN.** I made the examination of the claims and based upon what I found, the certificate proceedings were recommended to the Forest Service.

**Representative HOFFMAN.** And that decision was made on March 18, 1949, after public hearings?

Mr. HATTAN. That was when my report, I believe, was made.

Representative HOFFMAN. Request for the hearing?

Mr. HATTAN. I do not know what happened on March 18. I have no record here of March 18, 1949. I believe Mr. Rice stated that.

Representative HOFFMAN. Do you know who made the request for your office to have the field examination made on these claims?

Mr. HATTAN. I happened to be field examiner and mineral examiner and worked out of the office at that time. My superior directed me to work in my schedule the requests of the Forest Service.

Representative HOFFMAN. All right. The request came in a letter dated April 14, 1949, from Leonard Netzorg, did it not, who was then regional counsel and acting administrator for BLM and that letter stated that the Forestry Service made the request for you to be signed over?

Mr. HATTAN. The letter of request was directed to Mr. W. H. Horning, regional administrator, and was dated December 15, 1948.

Representative HOFFMAN. That is the letter that was signed by you, was it not, the one that was dated December 15, 1948?

Mr. HATTAN. No, sir.

Representative HOFFMAN. You did not sign that?

Mr. HATTAN. December 15, 1948, was signed by Mr. K. Wolf, of the Forest Service. He signed for Frank B. Folsom, assistant regional forester.

Representative HOFFMAN. Have you seen a copy of a letter in the file dated April 14, 1949, addressed to McDonald?

Mr. HATTAN. Yes, sir, I have a copy right here.

Representative HOFFMAN. What did that letter request?

Mr. HATTAN. That was signed by Leonard B. Netzorg, acting regional administrator, addressed to Mr. McDonald.

Representative HOFFMAN. That is the one I was asking about before you referred to this last letter.

Mr. HATTAN. I am sorry. Do you wish me to read it?

Representative HOFFMAN. No. If anybody wants it, it is all right with me. All I want to know is if you had the request come in.

When you took these first samples they aroused your suspicion because of the low mineral values shown, then you took the second lot and that confirmed your first opinion that it was not a valid mining claim, did it not?

Mr. HATTAN. The 15, yes, sir.

Representative HOFFMAN. All I am talking about is the 15. Then you took the third one?

Mr. HATTAN. Yes, sir, I went back to confirm some assay results found on an assay certificate which had been submitted to me by Mr. McDonald.

Representative HOFFMAN. Did anybody request that you take the third ones?

Mr. HATTAN. No, sir, I went back so that I would be in a position to testify at the hearing.

Representative HOFFMAN. At these hearings?

Mr. HATTAN. No, sir, at the hearing September 13, 1950.

Representative HOFFMAN. And you had learned that someone else had taken samples, the report of which did not agree with yours?

Mr. HATTAN. That is correct.

Representative HOFFMAN. So in effect you were going back to confirm your previous judgment?

Mr. HATTAN. That is right, sir.

Representative HOFFMAN. And that you did, to your satisfaction anyway?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. Do you know the men who took the others, who they were and when they took them?

Mr. HATTAN. You mean those samples that I went back to check?

Representative HOFFMAN. Yes.

Mr. HATTAN. No, I do not know who took them. I think perhaps one or both Messrs. McDonald or Aultland. I do not know.

Representative HOFFMAN. Will you give me an outline of just how the samples are handled when they are taken, usually, that is?

Mr. HATTAN. These samples and most of them, as I stated before, were taken by a pick in a channel if the ground was soft enough. If it was too hard, we had a 4-pound hammer and maul in which we chiseled out the rock in a channel about 2½ inches wide and from a foot to 3 or 4 feet long.

Representative HOFFMAN. I do not care so much about your taking them. I wanted to know the procedure after they come into your possession.

Mr. HATTAN. Those which I took first in May, I took personally after I had put them in the sack and marked them.

Representative HOFFMAN. No one was with you at that time?

Mr. HATTAN. I took them personally to the assay office.

Representative HOFFMAN. No one was with you except the caretaker at that time?

Mr. HATTAN. No, sir. That is right.

Representative HOFFMAN. And you delivered them personally?

Mr. HATTAN. I delivered them personally to Annes Engineering Co. in Grants Pass, Oreg.

Representative HOFFMAN. And the next one?

Mr. HATTAN. The next group of samples, Mr. Sanborn and I were Government representatives, we together took the samples. We kept them in our possession at all times and, as I have said before—

Representative HOFFMAN. Before you delivered them to the assayer?

Mr. HATTAN. I did not deliver them. Mr. Sanborn can testify as to what he did with them.

Representative HOFFMAN. You did not deliver those yourself?

Mr. HATTAN. No, sir.

Representative HOFFMAN. And you do not know what date they got to the assayer?

Mr. HATTAN. No, sir. I only received back the assay certificate.

Representative HOFFMAN. Do you know of your own knowledge that those samples were in the possession of Mr. Sanborn continuously until they reached the assayer?

Mr. HATTAN. The last time I saw them I helped Mr. Sanborn put them in the back of his car.

Representative HOFFMAN. Well, there was a period of some 30 days lapse between the time he put them in his car and the time the assayer got them, was there?

Mr. HATTAN. I do not know whether it was 30 days.



Representative HOFFMAN. How long a period, in your judgment, was there before you learned that they went to the assayer? Give us the dates?

Mr. HATTAN. The assayer reported on August 10, 1949. Mr. Sanborn and I parted company on, I believe it was, the 15th of July, but I can verify it.

Representative HOFFMAN. That is near enough.

Mr. HATTAN. On the 15th of July. It was late at night when we got back.

Representative HOFFMAN. And they got to the assayer on the 10th of August.

Mr. HATTAN. That is when the assayer reported.

Representative HOFFMAN. That is when he reported?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. Now, in the event that someone fraudulently gets title to a mine or gets a patent issued on a mining claim, what remedy has the Federal Government?

Mr. HATTAN. I believe upon the proper showing if it is in the national forest, it can be cancelled.

Representative HOFFMAN. By whom?

Mr. HATTAN. I think it is the Secretary, but I am not legally minded on that.

Representative HOFFMAN. And, of course, if there is fraud, they can go to the United States district attorney.

Mr. HATTAN. I believe they can, sir.

Representative HOFFMAN. And they have available the FBI to make investigations.

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. What arrangement, if any, was made for the mining people to submit that on samples and reports?

Mr. HATTAN. Upon the submission.

Representative HOFFMAN. Did you not suggest an arrangement that in the interest of fairness they take their own samples and have their own assay?

Mr. HATTAN. I was charged with the investigation of this particular application. I told the agents for the company that if they wished to they could submit assays of samples to me.

Representative HOFFMAN. That was because you wanted to be fair about it?

Mr. HATTAN. So as to further substantiate their claim. The last group of samples came in after my report had been filed, sent over to the Forest Service. I went over their assays and there was some mixup in the description of where they were taken. I wrote back and got a further reply, but I still could not verify where all of them had been taken.

Representative HOFFMAN. Well, part had been taken in August and part in September.

Mr. HATTAN. I am speaking, sir, now of the samples that were taken by the applicant's agents and I understood those are the one you asked me about.

Representative HOFFMAN. All right.

Mr. HATTAN. I had already recommended that a hearing be held and it is the right of the contestee in such hearings to present this evidence at a hearing about any samples they may have taken after

I had last been on the property or any other samples that they desired to submit.

Representative HOFFMAN. Well, in a letter dated January 4, 1950, you acknowledged receipt, did you not, of the reports?

Mr. HATTAN. Yes, sir.

Representative HOFFMAN. One report was on a sample taken in August and 1 in September and 1 in December.

Mr. HATTAN. Are you referring now to a composite assay certificate?

Representative HOFFMAN. Yes, these reports. You acknowledged one in August, but they never got the others, as I understand it.

Mr. HATTAN. No. Those were for my own investigation of these claims. I make my own investigation of my own samples and take the word of other people if I can, if I think that I should. In this case I felt that there should be a further substantiation of the samples, and the assays that were submitted to me, because I had gone back, I had taken samples at the same places which were indicated on these assay certificates, and the results that I had were nil.

Representative HOFFMAN. And the one taken by the McDonald outfit showed something?

Mr. HATTAN. They did.

Representative HOFFMAN. By whom were those assays made?

Mr. HATTAN. They were made by—this particular one was A. W. Williams Inspection Co., countersigned by, I believe, G. F. Bailey. Maybe I can't read it right.

Representative HOFFMAN. Did you know that Congressman Boykin had asked that that firm make an assay?

Mr. HATTAN. No, sir.

Representative HOFFMAN. That is a reputable firm?

Mr. HATTAN. I do not know.

Representative HOFFMAN. Do you not know anything about them?

Mr. HATTAN. No, sir.

Representative HOFFMAN. You never heard of them until this thing came up?

Mr. HATTAN. I never heard of them before this thing came up.

Representative HOFFMAN. You did not know they had offices in other cities?

Mr. HATTAN. No, sir.

Senator SCOTT. Where is that firm located?

Mr. HATTAN. Alabama, I believe, is the address on this certificate.

Representative HOFFMAN. It is in Congressman Boykin's district, I think.

Mr. HATTAN. Mobile, Ala.

Representative CHUDOFF. Had this firm ever made any other assays, to your knowledge, for the claims up in Oregon?

Mr. HATTAN. Not of any other claims that I ever ran across, no.

Representative CHUDOFF. Other than Al Sarena, you do not know of them; is that right?

Mr. HATTAN. I do not know of them, no.

Representative CHUDOFF. Have they ever made any for the State of Washington, to your knowledge?

Mr. HATTAN. Not that I know of.

Representative CHUDOFF. Or Idaho?

Mr. HATTAN. I don't know, no.

Representative CHUDOFF. They would be absolute strangers to this part of the country, then?

Mr. HATTAN. Yes.

Representative HOFFMAN. They had an office in Eugene, did they not?

Mr. HATTAN. A. W. Williams?

Representative HOFFMAN. Yes.

Mr. HATTAN. I do not know. There was no assay office there that I know of.

Representative HOFFMAN. Mr. Chairman, I have quite a long matter here. I can not very well finish this evening. I wondered if Congressman Ellsworth could be permitted to make his statement. It is about time to adjourn or aren't you going to adjourn at 5?

Representative CHUDOFF. We find that the building is going to be closed tomorrow and they would have to open it specially for us. We are going to go tonight until we finish.

Representative HOFFMAN. If you are going to finish tonight, I will go ahead, unless you want to let Congressman Ellsworth in so he may go home.

Senator SCOTT. I would like to go home myself.

Representative HOFFMAN. You do not have a chance to go home.

Senator SCOTT. I would have had a chance if it had not been for this. Proceed with your questioning.

Representative HOFFMAN. I have some other questions. Perhaps I could shorten them after these other witnesses come on the stand.

Senator SCOTT. I think it would answer a lot of your questions if you would let these other witnesses be called and let us hear from them.

Representative HOFFMAN. I would just as soon suspend temporarily.

Mr. REDWINE. I want to ask another question, if I may.

Senator SCOTT. Yes.

Mr. REDWINE. Mr. Hattan, when you examined the property in 1949, was there any mining going on?

Mr. HATTAN. No, sir.

Mr. REDWINE. On any of the claims?

Mr. HATTAN. No, sir.

Mr. REDWINE. When you examined it the next time, was there?

Mr. HATTAN. No, sir.

Mr. REDWINE. And the third time?

Mr. HATTAN. No, sir.

Mr. REDWINE. Have you been back since?

Mr. HATTAN. No, sir.

Mr. REDWINE. Have you heard of any mining up there since your last visit?

Mr. HATTAN. I haven't.

Mr. REDWINE. Have you heard whether there is any timber cutting going on up there?

Mr. HATTAN. I have heard there was but I haven't been there.

Mr. REDWINE. That is all I have.

Senator SCOTT. Senator Neuberger?

Senator NEUBERGER. I have just one question.

Mr. Hattan, was there anything unusual, abnormal, or extraordinary about the way in which you entered this case at the request of your superiors?

Mr. HATTAN. No, sir.

Senator NEUBERGER. That was the usual routine that you would follow in your regular employment by the Bureau of Land Management?

Mr. HATTAN. It is, sir.

Senator NEUBERGER. That is all I have, Mr. Chairman, except to say that the very frank and forthright way in which Mr. Hattan has answered many difficult questions confirms again my high opinion of the career people who serve us in our various Federal agencies connected with natural resources.

Mr. HATTAN. Thank you, sir.

Senator SCOTT. The next witness.

Mr. REDWINE. Mr. Leavengood.

**TESTIMONY OF G. ROBERT LEAVENGOOD, DISTRICT RANGER,  
MOUNT HOOD NATIONAL FOREST, ESTACADA, OREG.**

(The witness was previously duly sworn.)

Mr. REDWINE. State your name, please.

Mr. LEAVENGOOD. Robert Leavengood.

Mr. REDWINE. And your position?

Mr. LEAVENGOOD. I am district ranger on the Mount Hood National Forest, Estacada, Oreg.

Mr. REDWINE. You were a witness at the contest hearing before Mr. Rice on the Al Sarena claims, were you not?

Mr. LEAVENGOOD. Yes, sir; in September of 1950.

Mr. REDWINE. You accompanied Mr. Hattan on one of his visits to the property?

Mr. LEAVENGOOD. I have never accompanied Mr. Hattan to this property.

Mr. REDWINE. Excuse me. You are with the Forest Service?

Mr. LEAVENGOOD. Yes, sir.

Mr. REDWINE. Tell us something about the timber on that property up there, Mr. Leavengood.

Mr. LEAVENGOOD. I spent a very short time in examination of the timber on the contested claims. I recall it was approximately three days in early September of 1950. There was a scattered stand of old growth, principally Douglas-fir, running approximately 25,000 board feet per acre. From 10 to 15 percent of the old growth timber is in sugar pine.

There was quite a thick understory of both Douglas-fir and some sugar pine which came in as a result of a fire approximately 50, 55 years ago.

Mr. REDWINE. There is a total of about 25,000 feet per acre you say?

Mr. LEAVENGOOD. About 25,000 feet to the acre was my estimate of the net merchantable stand.

Mr. REDWINE. That is leaving a stand there for seeding purposes, and so forth, too?

Mr. LEAVENGOOD. Well, as I recall, that was the total net merchantable stand of the old growth timber.

Mr. REDWINE. What percentage of it is sugar pine?

Mr. LEAVENGOOD. Well, as I recall, it ran about 10 to 15 percent sugar pine.

Mr. REDWINE. And the rest of it was principally Douglas-fir?

Mr. LEAVENGOOD. The remainder was just about all Douglas-fir.

Mr. REDWINE. What is the annual growth of that timber up there?

Mr. LEAVENGOOD. Well, I made a very short investigation of the growth, I made a few instrument borings on the young stand and, as I recall, the estimate was around 250 board feet per acre per year on this young stand. The overmature timber was just about—I think the mortality would just about stand still, so to speak.

Mr. REDWINE. And it was 1950 that you made this survey, was it not?

Mr. LEAVENGOOD. Yes.

Mr. REDWINE. So since then there has been a net increment estimated of some 2,500 board feet per acre, has there?

Mr. LEAVENGOOD. This estimate you would actually have to have a growth study to get to the bottom of it, but it ran about 250 board feet per acre per year.

Mr. REDWINE. It would be about a thousand or twelve hundred, then.

Would the timber bring the premium price?

Mr. LEAVENGOOD. Well, in southern Oregon, the sugar pine is considered the most valuable.

Mr. REDWINE. What, if you can recall, was the average price being received for sugar pine in 1950?

Mr. LEAVENGOOD. Oh, I would almost need to consult the district records. I think at that time it was bid up in the neighborhood of \$25 a thousand, average. Shortly after that, we had some terrific bids of up to \$80, but I think they would average around \$25.

Mr. REDWINE. That was in 1950?

Mr. LEAVENGOOD. Yes.

Mr. REDWINE. What is the status in respect to price today?

Mr. LEAVENGOOD. I have not been in southern Oregon for about 4 years and I would suggest that you check with some of the fellows that live there now.

Mr. REDWINE. At that time what was the average price of Douglas-fir?

Mr. LEAVENGOOD. There again, if you would check the district records, you could get it very specifically, and it would only be a recollection. In 1950 it would be my recollection that Douglas-fir was bringing in the neighborhood of \$7, somewhere in there. It depended on the road development that was necessary, of course.

Mr. REDWINE. That is all I have.

Mr. COBURN. Mr. Leavengood, you were the district forester down there in this area?

Mr. LEAVENGOOD. Presently I am the district ranger on Mount Hood. At the time of this examination, I was a timber management assistant on the district involved in these contested claims.

Mr. COBURN. You say you estimated at that time that in 1950 it ran about 25,000 board feet to the acre in Douglas-fir?

Mr. LEAVENGOOD. The net merchantable stand was about 25,000.

Mr. COBURN. And there are 20 acres on each of these claims, is that correct?

Mr. REDWINE. About 20.6, the records show.

Mr. COBURN. And there are 15 claims in dispute. That would come to 300 acres in all. You have not testified as to the value, have you?

Mr. LEAVENGOOD. No, as I recall at the time of the other hearing, I believe they asked a question regarding our cutting methods that we might use on these contested claims if we were to cut, and I believe under Forest Service practice in this particular area, about 75 percent of the merchantable timber would be removed and the value of that timber was around \$77,000 at that time.

Mr. COBURN. \$77,000 at that time?

Mr. LEAVENGOOD. Yes.

Mr. COBURN. Mr. Leavengood, do you think you can get \$30 a thousand for Douglas-fir today?

Mr. LEAVENGOOD. Well, I would only be speaking on the Mount Hood Forest. Our bid prices have been averaging somewhat above that recently.

Mr. COBURN. You could say that \$30 is a reasonable price to put on Douglas-fir, could you, under present market conditions?

Mr. LEAVENGOOD. Our appraised prices have been running a little less than \$30.

Mr. COBURN. I am talking about fair market value. I do not want to get too technical. I am referring to what can you get today for Douglas-fir. Can you get \$30?

Mr. LEAVENGOOD. Are you asking the question for the Mount Hood area or for southern Oregon?

Mr. COBURN. We can confine it to the Mount Hood area.

Mr. LEAVENGOOD. I would say you would get in excess of \$30 at the present time.

Mr. COBURN. But you cannot testify as to what they would get down in the Medford district?

Mr. LEAVENGOOD. Well, I wouldn't be qualified.

Mr. COBURN. Do you think that Douglas-fir could bring \$30 down there?

Mr. LEAVENGOOD. Well, wouldn't it be better to check with some of the boys that are working right in that area? They could tell you more specifically.

Mr. COBURN. I understand from counsel that there will be a witness from that area but you will agree that \$30 is a pretty fair price, that is, a very reasonable price on the Mount Hood area?

Mr. LEAVENGOOD. I would say our appraised prices have been running less than that on the average sale. However, the bid price currently is somewhat more.

Mr. COBURN. Somewhat more than \$28?

Mr. LEAVENGOOD. Yes, sir.

Mr. COBURN. That is all.

Senator SCOTT. Senator, do you have anything?

Senator NEUBERGER. I have no questions of Mr. Leavengood, Mr. Chairman.

Senator SCOTT. Mr. Lanigan?

Mr. LANIGAN. You were talking about the merchantable timber. Did I understand correctly that you said there is an undergrowth of about 50-year-old timber coming up, on that land?

Mr. LEAVENGOOD. Yes, sir, there was in 1950 when I examined the area. It was somewhat a two-story stand. The old growth was the

upper story and this younger growth about 50 years old coming up quite densely.

Mr. LANIGAN. When would that be matured and ready for cutting?

Mr. LEAVENGOD. Oh, I would imagine that at that growth rate, I imagine it would be perhaps 100 years.

Mr. LANIGAN. You mean 100 years total?

Mr. LEAVENGOD. One hundred years from now it would be in the mature stage.

Mr. LANIGAN. It would be what?

Mr. LEAVENGOD. Mature.

Mr. LANIGAN. Does it have any value at the present time?

Mr. LEAVENGOD. The value at the present time is its potential for the future.

Mr. LANIGAN. Could you estimate the acreage value of the undergrowth if somebody were to sell it to, say, a tree farm or company operating a tree farm?

Mr. LEAVENGOD. Well, it perhaps would take a little calculation.

Mr. LANIGAN. Could you just figure it out?

Mr. LEAVENGOD. I probably could but it would take a little while probably.

Mr. LANIGAN. Would it be substantial?

Mr. LEAVENGOD. There would be a fair value to it. It was a very nice stand as I recall. The average growth rings were about nine rings to the inch which is fair growth for that country.

Mr. LANIGAN. I just wanted to ask, Mr. Redwine, would you be interested in getting that?

Mr. REDWINE. Yes.

Mr. LANIGAN. Would you submit your estimate of the present value of the undergrowth?

Mr. LEAVENGOD. If it meets with your approval, I could check with the fellows now there and come up with a figure for you.

Mr. REDWINE. We wish you would, please.

When you were on the property, were any mining operations going on?

Mr. LEAVENGOD. There were none, to my knowledge.

Mr. REDWINE. That is all.

Representative HOFFMAN. Pardon me, Senator. I have some questions.

When were you on the property?

Mr. LEAVENGOD. You mean the last time?

Representative HOFFMAN. Were you on there in October of 1954 or around about that time?

Mr. LEAVENGOD. No, sir.

Senator SCOTT. Just hold your answer. I am going to ask Senator Neuberger to take over.

Record should show Senator Neuberger taking over

Mr. LEAVENGOD. I was transferred from that country in June of 1952 so I haven't been down in that area since then.

Representative HOFFMAN. In October of 1954, there were extensive mining developments which substantiated the company's claim that it has a sincere interest in mining were there not?

Mr. LEAVENGOD. Sir, I haven't been down on the ground since, well, it would be back in 1951.

Representative HOFFMAN. Would it not be ridiculous to describe the timber involved, and I quote, as "one of the finest stands of Douglas-fir in the Northwest?"

Mr. LEAVENGOOD. Would you repeat that again?

Representative HOFFMAN. I say, would it not be ridiculous to describe the timber on those claims as "one of the finest stands of fir in the Northwest?"

Mr. LEAVENGOOD. I think your question is a little misleading. As I recall, in the September hearing—

Representative HOFFMAN. I am not talking about those at all.

Mr. LEAVENGOOD. If you will permit me?

Representative HOFFMAN. I asked a simple question. If you do not want to answer it, all right. I did not ask about any other hearings.

Representative CHUDOFF. What has that got to do with the question?

Representative HOFFMAN. What has that to do with it? Well, the whole case, as I understand, is that so far as this witness is concerned, that under the guise of a mining claim, they got timber. Is that it, Mr. Coburn?

Mr. COBURN. I am not on the witness stand.

Mr. LEAVENGOOD. If you repeat your question, I will be glad to answer to the best of my ability.

Representative HOFFMAN. I say, would it not be ridiculous to describe the timber on these claims as one of the finest stands of Douglas-fir in the Northwest?

Mr. LEAVENGOOD. I couldn't agree to that. I can only give you a picture of the timber as I saw it back in 1950. At that time it was a very good average for the Elk Creek drainage.

Representative HOFFMAN. "For the Elk Creek drainage" that does not cover the whole Northwest.

That is all.

Senator NEUBERGER (presiding). When were you first assigned at Union Creek?

Mr. LEAVENGOOD. I came to Union Creek in the fall of 1947.

Senator NEUBERGER. When you visited the Al Sarena property was there any mining taking place there then when you first visited?

Mr. LEAVENGOOD. No, sir, not to my knowledge.

Senator NEUBERGER. There was none taking place to your knowledge?

Mr. LEAVENGOOD. There was a caretaker there that spent most of his time during the summer months, this Fred Aultland, I believe his name was.

Senator NEUBERGER. There was no commercial mining taking place there?

Mr. LEAVENGOOD. Not to my knowledge at that time.

Mr. REDWINE. I have no further questions.

Senator NEUBERGER. Thank you, Mr. Leavengood, for your help and cooperation.

Representative ELLSWORTH. Mr. Chairman, I wonder if the Senator from Oregon would allow the Congressman from Oregon to make a statement at this time?

Senator NEUBERGER. I have no objection. I would be happy to have you do so, Congressman Ellsworth.



Representative CHUDOFF. Congressman, you should have made that statement when I asked you to before we started in.

Congressman ELLSWORTH. It is just as good now.

Senator NEUBERGER. I would like to say that we are happy to have you here. I think that you represent, if I am not mistaken, the district in which there is more commercial lumbering and timber activity than any other congressional district in the United States. I think that is correct.

Representative ELLSWORTH. I believe that is a correct statement.

Senator NEUBERGER. We are very happy to have you here.

#### **STATEMENT OF HON. HARRIS ELLSWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Representative ELLSWORTH. Mr. Chairman and members of the subcommittees, as you know, I have attended as an observer all of the hearing sessions you have held in western Oregon. I am the member of Congress representing the Medford, Roseburg and Eugene areas where hearings were held. I have a feeling of personal gratitude that you gentlemen have expended the time and energy necessary to make the trip out here to hold public hearings regarding the many problems which are faced by the largest part of our economy, the logging and wood products industry.

Since the raw material upon which our greatest payroll industry is based is more than 50 percent owned by the Federal Government, the administration of this raw material supply is a matter of great concern to the Federal agencies and is of utmost importance to our State.

As you have discovered, and which is clearly set out in the voluminous record you have made, the Federal agencies and the industry are agreed that there are problems common to all which seem at this time almost without solution.

You have heard it stated many times that the manufacturing capacity of the area far exceeds the availability of timber. This obviously creates the question as to which manufacturer will receive enough logs and which will do without or operate on short supply.

Contributing to the problem of short supply is the inadequacy of the timber access road system in several areas. Contributing also to the short supply problem is the fact that the available cut on Federal Government lands is deemed to be based upon outdated inventory figures which are considered too low. If and when a modern inventory is computed, it is anticipated the allowable cut, hence the available timber for processing, will be substantially increased.

You have heard also that certain harvesting restrictions known as marketing area boundaries were established several years ago in the O & C area by Bureau of Land Management. Witnesses have appeared before you to insist that marketing area restrictions be eliminated. Others have insisted they be left in force.

The authority for creating similar marketing area protection in national forest areas was given the Forest Service by Congress in 1944. You have heard representatives of some communities insist that such marketing areas or sustained yield units were essential to their communities. You have heard other representatives declare such units were inadvisable.

Obviously, all of these problems are serious and most of them are highly controversial. All of them are subject to Federal action, either by Congress or administrative agencies. I am certain that the comprehensive record you have written will be of material assistance, both to congressional committees concerned and also to the Bureau of Land Management and the Forest Service.

There is another industry, smaller in volume at this time in Oregon, but of great potential. I refer to the mining industry. Little mention of this potentially great Oregon industry has been made in these hearings before today, but for the reason that undeveloped minerals in vast quantities are below the surface in the same mountainous on which our timber grows, the people of Oregon have a vital concern that laws and regulations which are designed to protect and perpetuate the forest resources do not have the effect of harassing, discouraging, or eliminating the development of what ultimately must be our second greatest industry.

It has been clear to many of us for a long time that there is nothing incompatible between the complete and total protection of Federal forest values and the development of a vigorous mining industry.

Until recently, however, the development of mineral properties on Federal lands has been based on the old mining laws of 1872. These old laws take little or no account of the value of standing timber on the mountainous areas subject to mineral exploration and entry. Such timber did not, in fact, have dollar value worth mentioning until motortruck logging was developed and until quite recently the price of timber stumpage has become so high.

Meanwhile, down through the years most of the mineral and mining industry of our Nation has developed under the 1872 laws which permit the filing of mining claims and the patenting of them under very liberal terms which were designed to encourage exploration and development.

Since it became apparent that the value of timber on mineralized areas is considerable, I and other Members of Congress have been working to secure the passage of legislation to separate and preserve to the United States the timber on such lands, while permitting exploration, mining claim filing and patenting of mineral areas.

When the O & C lands were placed under the statute passed in 1937, no mention was made in that law of mineral rights, so that land was withheld from entry from 1937 until the bill I sponsored in the House of Representatives became law in 1948. That law gives the mining element everything he has under the 1872 mining laws except the timber on the claim.

In the first session of the 84th Congress, this Congress, I and others introduced bills identical in nature to provide substantially the same restrictions with respect to mining claims on lands in national forests and other Federal lands.

Thus, no Federal timber may now be acquired under the provisions of the mining laws but the rights of miners to discover and develop minerals in forested areas are not impaired.

We must remember, though, that until the 1948 law and the 1954 law were enacted, the laws of 1872 were in full force and effect. Bona fide mining claims filed under these laws may still be taken to patent under them. Thousands of such patents have been heretofore granted and unquestionably many other patents on such claims will be granted

in the future. The obligation of the Secretary of the Interior to grant such patents is clearly set out in the law. When a mining element has complied with the provisions of the laws, the Secretary of the Interior has no choice but to grant the patents. His failure to do so and to comply with the laws can be and has been remedied by the courts.

We know, however, that hundreds of attempts during the past several years have been made by people seeking to obtain valuable Federal timber under the mining laws when in fact they had made no mineral discovery. Such claims will be voided. The provisions of the laws are clear that bona fide mineral discoveries must be made and proven.

On the other hand, bona fide mining claims can, have been, and will continue to be patented. Nevertheless and for political purposes, the fact that Secretary McKay is bound to carry out the provisions of the laws and has issued certain mining claim patents in Oregon has been branded with the political smear word "give-away."

It would seem from the developments in the "Timber" hearings at this point that an important part of their purpose is to now dig out and warm over a completely discredited smear attack used in the political campaign against the administration and Republicans in Oregon last year.

The attempt then was to mislead people into believing that there was something bad or illegal or underhanded in the granting of final patent papers to a Southern Oregon mining company, the Al Sarena Mining Co. The implication was made that the company had thus obtained valuable timber lands and that Secretary McKay and the administration were guilty of giving away Federal property. No proof at all was ever offered. No facts were presented to back up that smear.

During the 1954 campaign the Eugene Register-Guard, aware of the unfairness of the attack, if it were indeed without foundation, sent a reporter and investigator to the mine to get the facts and to get the story. The result was a series of articles printed over some 2 weeks in that newspaper which told the whole Al Sarena story. The implication that there was any give-away or scandal in the case was completely exploded by those articles.

The Al Sarena property is a long established mine. It was once known in Jackson County, I believe, as the old "Buzzard Mine." The first of the claims in question was filed in 1897; the last in 1936—when timber was of little or no value in that area. I am told that some \$225,000 has been expended in mining development, and that during World War II Al Sarena Mine filled an emergency zinc quota for the Metals Reserve, employing as many as 50 men at that time.

Following the war the company began the long, tedious and expensive process of taking the claims to patent—or deed. I understand that they have plans for full scale development of the property in the future.

When the claimants had complied with all of the requirements of the mining laws to the satisfaction of the Department of the Interior, that department had no choice under the laws but to issue the patents.

It is regrettable, I think, that two great legislative committees of the United States Senate and House of Representatives now are proceeding to allow this hearing to be used in an effort to revive the previously discredited smear attempt. Very little advance notice of this revival of the attempted character assassination of Secretary

McKay was given either to Republican members of the committee or to Department of Interior top officials.

The department files on the Al Sarena matter are, of course available to this committee and have been at all times. No one has the slightest objection to a full and complete investigation. When it was rumored that this committee might bring up the matter here, the Al Sarena Mine principal owners came to Portland and I believe they are here in the room today. They feel that they, too, have been smeared by the unproven statements made on this subject. Earlier this year they went to Washington and to Senator Neuberger's office. They presented him with some statements of facts regarding the matter and at that time urged that a full and complete airing be made of the case before a Senate or congressional committee and their good names cleared. I'm sure that their feeling in this regard is exactly the same as of this minute. However, it is obvious, I think that what this committee is doing today does not clear any air but can serve only to further harass those people.

However, it is obvious, I think, that what this committee is doing today does not clear the air but can only serve to further harass these people and Secretary McKay.

It is obvious that no full and complete hearing on this case can be conducted in the remaining hours today. It is equally obvious that, had the committee intended to conduct such a full and fair hearing on this subject, it could have done so earlier and at length during this week in Oregon. As it stands however, some witnesses are being called, enough, no doubt, to establish the question that there is something questionable called the Al Sarena case, and then the committee will adjourn here and go on its way. The political purpose will have been served. I feel that this is unfair and I take this means of voicing a protest against it.

Representative HOFFMAN. You wrote some letters about this, did you not?

Representative ELLSWORTH. I have written several letters about it. That is true.

Representative HOFFMAN. Back a year or two ago?

Representative ELLSWORTH. Shortly after I first heard of the problem faced by these men who are constituents of mine in southern Oregon, I made inquiry of several reputable mining engineers as to whether or not in their judgment as licensed mining engineers there was a legitimate mining property.

Representative HOFFMAN. Did those letters state your position at that time?

Representative ELLSWORTH. My position then, now, and always is only this: that my constituents came to me along in, I think, 1951, or thereabouts, the first time, and said that they felt that they were being abused and mistreated by the great Federal Government, that they had not been able to get the proof of their claims, their mine, before the Department, so that they could have their patents processed, either denied or granted; and when I went over their problem and contacted some mining engineers and determined that it was, in fact, a legitimate mine not just a timber application, I requested the Secretary in a letter—

Representative HOFFMAN. To cut it short, and I know you want to, I have in my hand here photostats of some of these letters that you

wrote and also this investigation that was made, and I would like to offer that in evidence as a part of the record.

Representative CHUDOFF. That is the Eugene Register-Guard?

Representative HOFFMAN. Yes.

Representative CHUDOFF. It is a good paper when it is on your side, and a bad paper when it is against you.

Representative HOFFMAN. I am following the precedent you established today.

Representative CHUDOFF. It just does not make sense to me. I think the Eugene Register-Guard probably reports the news as it sees it.

Representative HOFFMAN. Don't you think we ought to have it, then? Do you object?

Representative CHUDOFF. I object? I can't object to something I never saw.

Representative HOFFMAN. You are interested in the facts.

Representative CHUDOFF. I am interested in the facts as developed by witnesses.

As soon as I read it, I will let you know whether I object to it.

Representative HOFFMAN. There are photostats of letters you wrote are there, Congressman?

Representative ELLSWORTH. Let me finish my statement bearing on that letter. When the McDonalds explained the situation to me, I urged them to take the matter to the courts because they were apparently aggrieved and had a case. They attempted that route, I think, and filed a suit in the Federal Court in 1951, but the delays and costs involved were tremendous and they again appealed to me to see if there could not be some better way of handling a matter like that. They had paid some 2 or 3 thousand dollars to the Secretary of Interior Chapman or his office previously for the patents. They had been issued some kind of papers indicating that they were to be given patents. They then appealed to the Department to grant the patents, and that is where they sat for about 3 years.

Under those conditions, I did what I have done many times before and will do every time that is necessary in the future. I requested the Department to take some action. I knew nothing about the merits of the case. I merely said to the Department, "These people have paid their money. They want it back and the claims denied or they want the patents to the claims."

I said, and you will find it in the letter, words to the effect that "I am not concerned myself one way or the other but those are the facts and something should be done"; and I learned later that something was done.

Representative CHUDOFF. Mr. Chairman, I have been looking over these papers and I feel that the Eugene (Oreg.) Register-Guard is a reputable newspaper and report the facts as they find them in accordance with their editorial policy, and I feel that certainly we introduced into the record some newspaper articles printed about Mr. Stewart and the mining claims there, and I personally have no objection to allowing this to go into the record.

Senator NEUBERGER. I think very definitely with you that the articles from the Eugene Register-Guard should be admitted for the record.

Representative ELLSWORTH. Thank you very much.

(The articles referred to follow:)

[Eugene (Oreg.) Register-Guard, October 9, 1954]

# REPRESENTATIVE ELLSWORTH RELEASES LETTER ON MINE CASE

(EDITOR'S NOTE.—Full text of the Ellsworth letter to Solicitor Clarence Davis, injected as a political issue in the present congressional campaign, will appear in the Sunday edition of the Eugene Register-Guard, along with the first of a series of articles on the Al Serena case attempting to get to the facts involved.)

(By Dan Wyant of the Register-Guard)

Congressman Harris Ellsworth (Republican, Oregon) Saturday made public to the Eugene Register-Guard a copy of a letter he wrote June 1, 1953, to Clarence Davis, Solicitor of the Department of the Interior in regard to the Al Serena Mines, Inc., in southern Oregon.

This is the letter which Columnist Drew Pearson referred to in a recent article labeling the award of patent on the mining claims a "giveaway" of valuable timberland.

It's the letter which Ellsworth's opponent for office, Charles Porter, of Eugene, challenged the Congressman to make public in a speech Porter made in Medford Wednesday night.

The lengthy (six pages, single-spaced) letter charged that data important to the case was missing from the files and that the record "as it stands is a sham and deceit to those who were called upon to pass judgment and is prejudicial to any fair decision as to the rights of the applicant."

The missing data were identified as a number of supplemental assay reports submitted by the mining company to Federal Mineral Examiner Elton M. Hattan, of Portland, as further proof of mineralization of the area.

Ellsworth quoted from a letter by Hattan sent to H. P. McDonald, Jr., secretary-treasurer of the mining company, acknowledging receipt of some of the assay reports—which he said had arrived too late to be incorporated into the report. "The assay results submitted by you in August and September were incorporated in the report," he added.

## REPORTS MISSING

These are the reports which Ellsworth said were entirely missing from the Interior Department files when a representative from his office searched the files.

"It is a matter of conjecture whether the decision at any point, regardless of collateral testimony of witnesses and experts, would have been accepted as sufficient in the absence of the applicant's evidence of mineralization, as against the Government's assay reports, all of which are in the file. If not in substance, at least in effect, the result accomplished was essentially in the nature of accepting the evidence of the contestant and suppressing the evidence of the contestee."

Ellsworth added that "such action, wilfully done, would constitute fraud and vitiate every action and decision predicated upon the incomplete file. At the very least, however, the lack of this evidence of mineralization in the file deprived the applicant of a substantial legal right to have his evidence considered; and any action taken in the absence of such data cannot result in any semblance of justice."

## ASKED DELAY

Ellsworth said expenditure in development of the property aggregates more than a quarter of a million dollars, including a mill and machinery, more than a mile of tunnel work and roads.

He then requested the Interior Department to "defer further action and decision on this case until the applicant's evidence of mineralization—whether it be the original or reports filed or whether it be certified copies or next best evidence—is secured."

He concluded: "As to the proposal, for carrying out this recommendation, I have no specific proposal, but trust that some plan may be developed which will not compound the injustice and the cost to the applicant in again producing for the record what he has already produced, and at the same time will enable the Government to fulfill its duty under the mineral law of the United States."

At that time both the Portland Bureau of Land Management and the BLM in Washington had ruled that 15 of the 23 claims did not have sufficient minerals

on them to justify granting a patent. The mining company had followed the usual legal proceedings in appealing the decision to the Department of Interior.

Subsequently, Solicitor Davis agreed to a new mineral examination of the area and a patent was finally issued for all the claims in February of this year.

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[Eugene (Oreg.) Register-Guard, October 10, 1954]

### DREW PEARSON TOUCHED IT OFF; AL SERENA CLAIM "BLOOMS" AS ISSUE

**EDITOR'S NOTE.**—This is the first of a series of articles attempting to get at the facts of the controversial Al Serena Mining Co. case, currently a hot political issue. The first article deals with the basic charges made by both sides.)

(By Dan Wyant of the Register-Guard)

One of the hottest issues of the current Oregon political campaign was focused last week on a remote group of mining claims in the mountains of southern Oregon, about 45 miles north of Medford. This is the property of Al Serena Mining, Inc., an Oregon corporation with head offices in Mobile, Ala.

The issue was touched off by Columnist Drew Pearson, who charged in his nationally circulated report of September 29 that "one of the finest stands of Douglas-fir in the Northwest" was given away to the Al Serena Co. for \$5 an acre by Secretary of the Interior Douglas McKay.

Pearson further charged that Congressman Harris Ellsworth of Oregon exerted pressure upon Clarence Davis, Solicitor for the Department of the Interior, in a series of "long, pleading letters" on behalf of the mining company.

### MADE ADDITIONAL CHARGES

Pearson cited one letter in particular, written on June 1, 1953, which has been released by Ellsworth and which appears in its entirety in this edition of the Eugene Register-Guard. (See column 8.)

Pearson made further charges in support of the above basic counts. These will be discussed in later articles of this series.

Ellsworth's opponents quickly picked up these charges in their political campaign here in Oregon.

Senator Wayne Morse in a speech in Coos Bay on the night the column appeared said he would ask for a full scale Senate investigation of the charges.

### SUGGESTS LEGISLATION

"If half the facts printed in the column are true, then remedial legislation should be passed against those persons responsible," he said.

Ellsworth's opponent for office, Charles Porter, of Eugene, visited the mining claims Wednesday of last week and told a Medford audience that the Al Serena Mining Co. is "mining timber, not minerals." Porter declared that patenting of the Al Serena claims can only be called a scandal.

He added that the case was a perfect one in point for charges of giveaway against the present administration. This statement was carried in a report of Porter's speech in the Medford Mail-Tribune the following day.

### VIEWED THE MINE

Recognizing that the charges against McKay and Ellsworth were fast becoming a major issue in the campaign, the Register-Guard last Tuesday sent this reporter to the Medford area with instructions to get as complete a set of facts as possible on the Al Serena case, in an attempt to "sift fact from fiction."

This reporter viewed the mine installations and the logging operation now going on. He interviewed Jack Wood, supervisor of the Rogue River National Forest, in which the claims were patented, talked at length to Charles and H. P. McDonald Jr., sons of the president of the Al Serena Co., and went over many of the records in the case which were in their possession.

H. P. McDonald, Jr. is secretary-treasurer of Al Serena. His brother Charles, a professional engineer, is not a stockholder in the company, but he has devoted most of his time since his discharge from the United States Navy and after World War II to the company's long and bitter battle to secure patent on the claims.

## WELCOME A PROBE

The two brothers declared they would welcome an investigation such as Senator Morse suggested.

They declared that such an inquiry would show that granting of the patents was not a give away. Rather, they said, the record would show the case involved a "take away" attempt on the part of the Federal Government before the Republicans came into power.

They charged that the Government refused to grant the patent after the applicants had complied with all the necessary steps set forth by law and even after the Bureau of Land Management had transferred the property into the company's name on the Jackson County tax rolls.

## CLAIM RECORDS TAKEN

The McDonalds charged that when the Forest Service contested 15 of the 23 applications for a patent, certain records of the case favorable to the mining company were removed or withheld from the files (as mentioned by Ellsworth in his letter to Davis), so that subsequent decisions were bound to be unfavorable to the company.

Many of the mining company's charges were set forth in a 58-page complaint in conjunction with a suit filed against the United States and the then Secretary of Interior, Oscar Chapman, in Federal Court in Alabama. This was on July 28, 1951.

As to Porter's charge of "timber mining," the two brothers freely told this reporter that they were logging on the claims. They conducted the writer to the logging operation.

## LIKE A HOMESTEADER

They pointed out that when a patent is granted they have the same right to the timber as does a homesteader who gets title to public land.

They maintained themselves to be morally justified in selling off part of the timber to regain the extensive legal expenses involved in their fight to get a patent to the claims. The patent, they assert, should have been granted back in 1949, after their application was processed.

At the same time they assert that their primary purpose in seeking the patent to the claims was not to get the timber. They said the record shows that investments in the mining development are beyond the figure at which the forest service has estimated the timber to be worth.

## THE MAIN ISSUE

The McDonalds pointed out that when the company acquired the claims during the middle and late thirties far better timberland was available in a number of Oregon counties to anyone willing to take it off the tax rolls at \$2 an acre. The fee for mining claims is \$5 per acre.

This then is the chief political issue:

A charge on one side that valuable timberland was practically given to a private mining company with the help of Ellsworth and McKay.

A charge on the other side that the applicants' clear rights to the patents were delayed and denied until the new administration took over and proceeded to see that justice was done.

The first step in discussing those charges will be a look at the history of the claims and the Al Serena interest in them—a look that includes both the minerals and timber involved. This will be the subject of the next article in this series.

## LETTER SHOWN BY ELLSWORTH

(EDITOR'S NOTE.—Following is the full text of the letter dated June 1, 1953, which Congressman Harris Ellsworth wrote to Solicitor Clarence Davis on behalf of the Al Serena Mining Co. It is the letter which Ellsworth's opponent for office, Charles Porter, of Eugene, challenged him to make public.)



JUNE 1, 1953.

HON. CLARENCE DAVIS,  
*Solicitor, Department of Interior,*  
*Washington 25, D. C.*

DEAR MR. DAVIS: This letter is in further reference to the Al Serena Mines, Inc. case, Oregon No. 0665, now pending in your office on appeal and concerning which I have sent previous communications.

The issue at this point, and actually the basic issue from the beginning in this case, is the question of a valid mineral discovery such as would warrant reasonable prudent mining in developing and extracting the minerals from the deposit. The act of making application, under oath, for patent, creates the presumption that the applicant has made such discovery and stands ready to support such presumption. The Government with its obligation to protect the public domain, has the privilege of investigating and determining the validity of the application, the supporting evidence of mineralization, and compliance with the mineral laws of the United States. Obviously, a file for a patent application which is deemed to lack the usually legal sufficient evidence of mineralization creates a duty upon the officials of the Federal Government to take such steps as are necessary to verify the sworn documents of the applicant.

#### NOT USUAL

It is pertinent in the instant case, in connection with the proceedings heretofore had, that the application involved is not the usual common application for patent covering the area within which is located only a vein or pocket of enriched mineral. In contrast this application covers what is legally recognized in the courts and the Mineral Division of the Bureau of Land Management as a broad zone claim.

At the request of the regional cadastral engineer, the applicant made an extended survey showing the interior lines of claims which would follow within the exterior boundaries of the broad zone claims. This involved expense beyond that required for survey of a broad zone of contiguous locations and beyond the cost of the lands involved and necessitated nearly a year's delay in time. The record shows that the examiner then used these additional lines, obtained at additional expense to the applicant, to treat the application not as a broad zone claim application as filed, but as an application for 23 separate claims.

#### SPECIFIC ISSUE

In a broad zone claim the mineralization is widely dispersed rather than concentrated within a pocket or vein. The limited mass of mineralized rock has the required essentially genetic oneness, and has well defined boundaries closely separating it from the surrounding rock. Some areas within these well-defined boundaries will be substantially richer in mineralization than others, but the general mineral characteristics will persist throughout the broad zone mineralized area. Such a deposit is generally practical of development only as a large volume, low-grade mining operation.

This concept becomes important in this case in understanding the nature of the decisions and contest action, bringing it on to its present status. Turning to the specific issue of proof of mineralization in this case, the applicants, looking toward the development of the deposit for a mass production low-grade mining operation and toward patenting on the basis of a broad zone claim, prepared their initial papers toward this end.

Despite the fact that more than 2,000 assays were on record and pulps available to the Department for verification and comparison with assay records, the examiner in the regional office requested that the applicant perform additional sampling and submit assay reports for this report and record, made by impartial laboratories, and in his own specified form.

The file in this case is now devoid of this data showing a precise location of each sample taken and the assay reports showing mineralization, and which evidence is essential to any bona fide adjudication of the application on its merits. These reports are entirely missing.

A search of the file by the Bureau of Land Management personnel and a further search by a representative from my office failed to reveal any of the correspondence between the regional office and the applicant concerning the receipt of any such assay reports on the assay reports themselves which were submitted in further proof of mineralization.

## ASSAY RESULTS

To illustrate, I quote from a letter dated January 4, 1950, addressed to Mr. H. P. McDonald Jr. secretary-treasurer, Al Sarena Mines, Inc., 408 First National Bank Building, Mobile, Ala., and signed by Mr. Elton M. Hattan, mineral examiner for the Bureau of Land Management, Region I, Swan Island Station, Portland, 18, Ore. In the second paragraph of the letter, Mr. Hattan states: "My report was completed and submitted last month. The December 27 letter did not reach here in time to include any of the information which was enclosed with it. The assay results submitted by you in August and September were incorporated in the report."

The file does not disclose a single one of the assay reports, receipt of which is acknowledged by Mr. Hattan, and which he stated were incorporated in the report.

In the third paragraph of the same letter, Mr. Hattan stated: "The information supplied as to the exact place of taking the samples last reported by you is not clear. If you will supply more definite information, I shall be glad to incorporate such information in a supplementary report." This is followed by requests for very precise survey descriptive data which would enable a person to locate the precise point from which an assay sample had been cut. The information which was transmitted pursuant to this request is not in the file and contrary to Mr. Hattan's statement, there is no supplementary report in the file carrying such data.

None of the assay reports transmitted on 20 samples, receipt of such reports being acknowledged by Mr. Hattan under date of January 4, 1950, are in the file.

## DENIED DISCOVERY

Under date of December 19, 1949, Mr. Hattan transmitted his report to the regional forester, Mr. H. J. Andrews, and to the Interior Department in which he denied mineral discovery on 15 claims. This is apparently the report referred to in his letter mentioned above, and accompanying which none of the evidence furnished by the applicant as to mineralization was transmitted with the record, nor is there at present any supplemental report referred to in Mr. Hattan's letter.

Following this report, the docket sheet shows an entry "Adverse proceedings vacated." Thereafter the lands were placed upon the tax rolls of Jackson County, Ore., by the Bureau of Land Management regional office. Notice of Forest Service contest was thereafter received by the applicant and such action was protested by the applicant who gave notice that all evidence of bona-fides, samples, and assays were again refiled and resubmitted under oath for the record. The case went on to hearing on a basis of the incomplete file, lacking the applicant's evidence of mineralization. Counsel for the applicant demurred and when the demurrers were overruled, made a formal appeal to the Secretary of Interior, which appeal was granted. Within the time limits prescribed by regulation, counsel for the applicant gave notice of refiled all evidence of mineralization for the record for the third time. The record came on to the central office still devoid of this evidence and the decision of Regional Manager Rice, dated December 14, 1950, was transmitted to the Bureau of Land Management denying the validity of 15 claims within the board zone claim essentially repeating the substance of the previous decision by Mineral Examiner Hattan.

## SUBSTANTIAL COST

From this history it is abundantly clear that the applicant was willing and cooperative, and at a very substantial cost to itself endeavored to place in the record evidence of mineralization in support of his application. Although this evidence was acknowledged and received and the applicant was led to rely upon the statements of the agency that such evidence had been or would be placed in the file, these papers either never were placed in the file or were removed thereafter. In consequence, this case went to adjudication and went to hearing without the supporting data as to mineralization, submitted by the applicant.

It is a matter of conjecture whether the decision at any point, regardless of collateral testimony of witnesses and experts, would have been accepted as sufficient in the absence of the applicant's evidence of mineralization, as against the Government's assay reports, all of which are in the file. If not in substance, at

least in effect, the result accomplished was essentially in the nature of accepting the evidence of the contestant and suppressing the evidence of the contestee.

Such action, willfully done, would constitute fraud and vitiate every action and decision predicated upon the incomplete file. At the very least, however, the lack of this evidence of mineralization in the file deprived the applicant of a substantial legal right to have his evidence considered; and any action taken in the absence of such data cannot result in any semblance of justice. The action taken in denying patent on the 15 claims is claimed to be justified on the record as it stands; but the record as it stands is a sham and deceit to those who were called upon to pass judgment, and is prejudicial to any fair decision as to the rights of the applicant.

#### ASSURE EQUITY

A basic function and obligation of government is to administer justice. Wherein the Government or one of its agencies, in the course of such action, finds itself in the combined capacity of a party at interest, prosecutor, judge, and jury, the sovereign is called upon to exercise the highest degree of impartiality and for this reason the burden of proof is placed on the Government to assure fairness and equity to its citizens.

The Government should as quickly assert its powers to remedy any defect prejudicing its citizens as it would insist upon such remedy prejudicing the Government. Accordingly, it would appear to be only fair and reasonable in the instant case that this record at this time be made whole by the uncovering of the missing mineralization reports in particular, and other correspondence and papers pertinent to the action in this case which are likewise not present in the file, securing the originals if possible or certified copies where originals are not available, and the record reviewed and considered as it should have been at the time the mineralization showing of the applicant was complete. Had all proofs of mineralization been in the record, it is reasonable to assume the case would never have gone to contest. It is pertinent to note that the report of the mineral examiner who transmitted the Government assay reports but did not transmit report could reasonably reach any other conclusions than that expressed by those of the applicant, was of such a nature that no other individual studying the him. It is little wonder that the decision of the regional director of almost a year later, in December 1950, essentially reiterates the statements of the examining engineer in his earlier report.

#### UNITED STATES SURVEY

It is in point, I believe, to refer to the United States Geological Survey Bulletin No. 893, entitled "Metalliferous Mineral Deposits of the Cascade Range in Oregon." This report carries information on an examination made in the early 1930's and published in 1938, carrying exhibits (plates 3, 6, and 22) and reporting on part of the instant property then known as Buzzard's mine, on pages 131 and 132. Since that date, the development work on the broad zone claims involved in the application and including the Buzzard's mine operation has been more than doubled.

There are more than a mile of tunnel workings, numerous surface pits, shafts, cuts and winzes. Roads have been built involving substantial expenditures; geophysical examination has been made as further proof of the existence of the broad zone mineralization and which information the mineral examiner refused to permit in the record. At this time there is in place at this mine a 125-ton capacity mill and machinery for flotation, jigging, tabling and cyanidation. The expenditure in development of this property aggregates more than a quarter of a million dollars.

#### PROOF ABSENT

The foregoing facts are easily discernible. Certification of the United States mineral surveyor certifying as to the nature, extent, and value of the work performed on and character of the property, and the further certification by the United States cadastral engineer are present. The applicant's full proof of mineralization is absent. In view of this, it is my desire that this record be made complete. Accordingly, it is my request that the department defer further action and decision on this case until the applicant's evidence of mineralization—whether it be the original of reports filed or whether it be certified copies or next best evidence—is secured.

As to the procedure for carrying out this recommendation, I have no specific proposal, but trust that some plan may be developed which will not compound

the injustice and the cost to the applicant in again producing for the record what he has already produced, and at the same time will enable the Government to fulfill its duty under the mineral law of the United States.

Sincerely yours,

HARRIS ELLSWORTH.

[Eugene (Oreg.) Register-Guard, October 11, 1954]

# THE AL SERENA MINE CASE: DISPUTED CLAIMS OPENED FIRST BY APPLGATE CLAN

(EDITOR'S NOTE.—This is the second in a series of articles investigating the serious charge raised in the current political campaign that valuable national forest timberland was improperly turned over to the Al Serena Mining Co. by Secretary of the Interior Douglas McKay and Congressman Harris Ellsworth. This article deals with the history of the claims—and the minerals and timber that is upon them.)

(By Dan Wyant of the Register-Guard)

The history of the present Al Serena mining claims started back in the spring of 1897.

That's when Jackson County's surveyor, a member of the famous Applegate family, stopped to do a little prospecting while surveying in the forest. The stream in which he scooped up some gravel for his gold pan was either Elk Creek or one of its tiny tributaries, northeast of Trail. When he washed away the gravel and said he found there was gold in the pan.

Applegate worked up the stream to what appeared to be the mother lode—the deposit from which the gold had washed downstream. The first claim on the deposit was recorded at the Jackson County courthouse on May 11, 1897, by Mark Applegate. Peter Applegate and J. L. Grabbe filed two additional claims the next day. Within a month these men and their associates filed six more claims. A 10th claim was filed before the end of the year.

All these original claims later passed into the hands of the Pearl Mining Co. and were purchased by the Al Serena Mining Co. after it was incorporated in 1935.

H. P. MacDonald, of Mobile, Ala., the president and founder of the Al Serena Mining Co., first became interested in the possibilities of the area in the 1920's, according to his two sons.

The mining company was incorporated as an Oregon corporation with head offices in Mobile. In addition to the 10 original claims, the company also bought up 11 other claims from their individual owners during a period up to 1939. In 1939 the company staked out the last two claims—the Oro Rico and Oro Alto.

The details of how the claims were acquired by Al Serena are shown in the company's patent application of 1948. The date of each original claim is on file at the courthouse in Medford.

## IMPORTANT POINT

This is perhaps an important point in the politically contested issue of the Al Serena mines since the Portland Oregonian, in an editorial earlier this year, declared that the mining company filed the claims in 1948 (at a time when the timber had much more value because of higher market prices than in the middle and late 1930's when the claims actually were filed). The editorial called for the "closest possible scrutiny" of how the company acquired several hundred acres of "rich Oregon timberland."

The Al Serena claims are located chiefly in sec. 29, T. 31S, R. 2E, Willamette meridian. Small portions of the claims are in the adjoining secs. 19, 20, 21 and 28. This is about 18 miles northeast of the point where Highway 62 crosses Elk Creek, 3 miles beyond Trail. The claims are approximately 45 miles north of Medford.

## LOW-GRADE ORE

Officers of the company, in addition to the president, are C. C. Huxford, vice president, of Mobile; and H. P. MacDonald Jr., secretary-treasurer, who has lived on the mining property and at Trail for a number of years. His brother, Charles, has also taken an active part in the mining company although he says he is not a stockholder.

The two brothers said the company is primarily a family corporation with some close friends also holding an interest in it.

What about the mineral deposits?

Very briefly, the mining company contends the claims contain a vast quantity of chiefly low-grade ore—possibly some 190 million tons—which can be successfully developed for large-scale mining operations. The ores contain gold, silver and other minerals. Assay reports filed by the company in support of its patent application ranged from 70 cents to \$2.56 per ton. The two brothers said the Alaska-Juneau Mining Co. carried out a profitable operation under conditions more difficult than those present on the Al Serena claim handling ore which averaged some 86 cents a ton.

#### HOLDINGS DESCRIBED

A detailed description of the company's estimate of its holdings and its plans for developing them was included in the patent application. The mineral character of the ground was described in its technical terms as "one of a large, hydrothermally altered rhyolite intrusion containing essentially uniformly disseminated values throughout, showing enriched areas along the numerous faults, fissures, veins, and slips."

The company said "it is our intention to develop this entire low-grade ore body through a systematic program of geophysical and exploratory work with core drills and such additional tunnels, drifts, shafts, winzes and other openings as may be deemed appropriate and in accordance with further recommendations by eminent mining authorities."

The report explained some of the exploratory work which had been carried out prior to 1935 toward the development of the low-grade ore body and of conferences with various mining engineers including Milnor Roberts, dean of the College of Mines, University of Washington, which brought the company to the conclusion that the claims held at that time and the adjoining claims offered promise of "large scale gold mining operations, on a profitable basis."

The company then purchased the 10 claims held by the Pearl Mining Co. and "immediately thereafter we built a pilot mill and began carrying on exploratory operations aimed to give us some idea of the probable size and content of the ore body, and to learn the most profitable methods of extraction and treatment. By the summer of 1937 we had advanced to the point where we felt justified in calling in outside authorities to check our findings and to advise what further steps to take. Besides the laboratory tests made by Dean Roberts, we had similar tests made by two other specialists. While each expressed different views concerning the treatment phase of the ore, all three agreed that it was easy to treat and lent itself to several methods of recovery."

#### ENGINEER'S REPORT

One of the engineers called in by the company was D. Ford McCormick, of Medford, who for a number of years was in charge of the Sterling mine, near Jacksonville. He was identified in the patent application as "a member of the American Institute of Mining and Metallurgical Engineers, graduate of the University of Texas with C. E. degree, of the Colorado School of Mines with E. M. degree, and having long experience in important mining activities, including full charge and responsibility of the development of the Mata Hambre mine in Cuba."

McCormick's conclusion, in part: "Indications are excellent that a large tonnage of low-grade ore may exist within a mass which could be milled at a profit."

In the Drew Pearson column which touched off the controversy over the grant of patents to the company, McCormick was identified by Pearson as a man "who had worked for Al Serena and the MacDonald family ever since 1937."

#### "NOT ON PAYROLL"

The two brothers at Medford said the statement and its implication was unfair. "McCormick worked in the same capacity that a doctor works for you; he is a consulting engineer, available to anyone who hires him," said Charles MacDonald. "At no time was he on the Al Serena payroll."

The company during World War II put the experimental pilot plant into commercial operation to meet Government quotas for war-scarce lead and zinc. The two brothers said the work was purely experimental and that various processes of reducing the ore were tried out in the test plant. The mill has not been in operation since 1945, according to H. P. MacDonald, Jr. Since then, he said the

company's efforts and finances have been devoted to further exploration of mineral deposits and to the lengthy attempt to secure a patent to the land.

#### BOUGHT PATENT

The company applied for patent to its lode claims in 1948, under procedures set forth in the basic mining law of 1872. Essential requirements include a proper survey of the land, proof of possessory rights, proof of annual assessment work benefitting the claim to the amount of \$500, proof of mineral deposits "in a quantity sufficient to justify a reasonably prudent man in expending further time and effort" in developing a paying mine; and finally, payment of \$5 an acre to the Government for the claim. This, of course, is only a sketch of the basic procedure defined by law.

At the time the patent application was filed, the company listed improvements to the claims totaling \$79,915, which represented more than 1 mile of tunnels, other mine works, and roads.

#### OTHER COSTS

That figure did not include the cost of the pilot plant or other buildings on the claims. The two brothers last week declined to say what the pilot plant cost to build and equip. They said the company spent between \$50,000 and \$100,000 in purchasing the claims from previous owners. Legal and engineering expenses brought about by the contested patent were listed in excess of \$50,000, paid or accrued, in a suit filed by the company against the Government. Actual cost of the land from the Government, under the mining law, as \$5 an acre—a total of \$2,375.

Altogether, the brothers said the company's investment in the property is between \$150,000 and \$250,000.

Now what about the timber?

The Forest Service contested 15 of the company's 23 claims, asserting that the minerals were not as valuable as the timber upon the land.

#### TIMBER ESTIMATED

Jack Wood, supervisor of the Rogue River National Forest, said the "usual procedure" was followed when a Federal mineral examiner recommended that eight of the claims "go patent" and ruled against the others. He said a timber management assistant from his office made an "ocular" estimate of the value of timber on the other 15 claims, comparing it to forest areas in which the timber value had been established. No formal cruise of the timber was made.

Wood said the forester's estimate of the timber value on the contested claims was "roughly, \$100,000." (The figure fixed by the Forest Service, leaving a growing stock still standing, was \$77,000 according to a statement by Interior Department Solicitor Clarence Davis.)

If timber on the 8 uncontested claims is equal to that on those included in the above estimate (all the claims are approximately 20 acres each), the total estimated value would be about \$150,000, less growing stock.

At a reporter's questioning, Wood said the timber on the Al Serena claims probably ranged from 10,000 to 40,000 board-feet per acre and probably averaged 20,000 to 25,000 board-feet. Asked if he considers that "choice timberland," he replied that some blocks of the Rogue River National Forest go as high as 100,000 board-feet per acre.

Wood said he would not wish to make any other estimate on the value of the timber than that of the original report. He said he had no idea where Columnist Drew Pearson got his information to say that the timber should have brought \$170,000.

Wood said emphatically: "I want to make it clear that not a single iota of the information in Drew Pearson's column came from the Rogue River National Forest."

#### VISIT TO CLAIMS

The two McDonald brothers said they did not feel qualified to make any other estimate of the timber value than the \$77,000 set by the Forest Service in 1948.

To get as many facts as possible in the case, it seemed necessary for a reporter to actually visit the mining claims to view the logging work being carried out by the McDonalds and to see the mining developments there. That visit will be on the subject of the next article in this series.

[Eugene (Oreg.) Register-Guard, October 13, 1954]

## AL SERENA MINES TOUR BRINGS OUT NEW FACTS

(EDITOR'S NOTE.—This article, the third in a series, describes a reporter's visit to the controversial Al Serena Mining Co. claims in southern Oregon. The articles are attempting to get to the facts raised by the political charge that valuable timberland was given away at \$5 an acre by Interior Secretary Douglas McKay and Congressman Harris Ellsworth.)

By Dan Wyant of the Register-Guard

An on-the-spot tour of the Al Serena mining claims discloses several facts important to this investigation:

Logging is going on and the mine is idle. The company maintains that money received from sale of the logs will be used to pay off debts, incurred in its long legal battle to get patent to the claims, and to provide capital to resume development work.

The extensive mining developments to date substantiate the company's claim that it has a sincere interest in mining. The firm is certainly in a different category from persons who in other instances have staked out mining claims in Federal forests and made only token efforts toward mineral development and whose obvious interest is the timber on the land.

## LOGGING INVESTMENT

The brothers have invested money in equipment to do the logging rather than selling the stumpage to a logging contractor. For that reason they should realize a higher price for the timber than the \$77,000 cited by the Forest Service on the contested claims (based on stumpage price). It is impossible to tell from the records available if this price will approach or exceed the \$170,000 figure used by Drew Pearson.

It is ridiculous to describe the timber involved as "one of the finest stands of Douglas-fir in the Northwest"—as Drew Pearson did in the column which touched off the Al Serena issue. I saw finer stands of timber on Forest Service lands near the claims. Most of the timber which I have seen in the Willamette National Forest here in the Eugene area is better than the overall stand on the Al Serena claim.

## PATENT "BASIC STEP"

Due to rising markets, the timber was worth considerably more when the company applied for patent to the lands in 1948 than it was when the company acquired the claims in the middle and late 1930's.

To Drew Pearson's charge that the company didn't need a patent to continue mining—and only wanted surface rights for the timber involved—the brothers reply that obtaining patent is the first "basic step" in any large-scale mining operation.

## REMOTE FROM HIGHWAY

"We're talking about an operation to handle low-grade ore on a mass-production basis," declared H. P. McDonald, Jr. "It's an operation that will require millions of dollars of capital. How can you interest that kind of capital when your claims are unpatented and the Government is charging that the minerals are worth less than the timber?"

To get to the Al Serena mining claims, you turn off Highway 62 (the road from Medford to Crater Lake) about 3 miles above Trail and follow a road up Elk Creek. For the first few miles the road is oil-surfaced and winds up a small but lush valley with a number of farms. The next road is a one-lane dirt and gravel Forest Service road, with frequent turnouts for meeting other vehicles. The final road is one built by miners with picks and shovels, years ago. The claims are about 18 miles in from the highway.

I accompanied Charles McDonald and H. P. (he's called "Smokey" by his friends) McDonald, Jr., both members of the family that is the principal owner of the mining claims.

On the trip into the claims we met several loaded logging trucks—some of them rather abruptly—on the one-lane twisting mountain road. Some of the trucks were from the McDonalds' logging operation on the claims; others were hauling for firms which are cutting timber they have bought from the Rogue River National Forest.

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## LOGGING OPERATION

During the trip in, the two men said that neither of them had any logging experience before this summer.

We made our first stop at the No. 1 portal of the mine—the end of a tunnel which runs through a mountain to the pilot plant on the other side. The timber here—as on the rest of the claims—was mostly Douglas fir, white fir, and pine. There was little commercial timber here. Most of the trees were too small to log even for poles and piling. The brothers pointed out that most of the bigger trees were overripe—as evidenced by dead tree tops and lots of conk (tree fungus).

From there, we went to the landing for the logging operation. We arrived as a three-man crew finished loading a log truck, using a “cat” and boom to hoist the logs. These logs and another turn of logs brought in by a “cat” while this reporter was present appeared to be good, sound—and large—pine.

The area around the landing had already been logged, with much smaller timber left standing (as seen in the photo in Sunday's Register-Guard).

## SUMMARY

The men described their logging operation as “selective cutting on a modest basis.” It's what loggers call a “cat show”—that is, the logs are yarded to the landing by a cat, rather than by a high-lead cable or other method, using a stationary “donkey.”

While it's less than half a mile from the landing to the main mining structures, the road leads around a mountain for about  $3\frac{1}{2}$  miles, partly on the Al Serena claims and partly on National Forest lands. At one stop the two men pointed out a slope with a dense stand of small Douglas-fir—about 20 acres in size—where considerable cuttings have been made for mine timbers. All the trees were about the size of fence posts.

To sum up: The claims contain some areas of good commercial timber, others in which much of the timber is small or overripe, and at least one slope of no value to a lumber mill.

## MAIN PLANT

Now to the mining: The structures on the property include a big log cabin and shed with shake roof, and a more recent dwelling occupied by Fred Altoud, who has worked for the company on the claims since 1941. When the mine was in operation he was the mine foreman. At present he serves as caretaker and is doing limited development work.

The older cabin had just been refinished inside with fragrant cedar plank floors and cedar board walls. The brothers have lived there off and on and said they may do so this winter. They recalled times when the snow has been so deep it was necessary to burrow down from above the eaves to get to the cabin door.

The biggest structure is the pilot plant which the company constructed to test methods of treating ore in the mine. It is situated about 200 yards up the hill from the dwellings, close to the mouth of the mine entrance.

The frame building has weathered from the severe winters but the equipment inside appeared through. The mill has been idle since the war years.

## ORE PROCESSING

H. P. McDonald, Jr., and Altoud explained what the equipment was for. Briefly, ore is brought from the mine by rail, dumped by size in bins, run through a crusher, then put through a ball mill where big metal balls in a revolving container grind the ore to powder. Reagents necessary to treat the ore are added at this point and other points in the process.

The ground-up ore passes over a “jigger” which shakes out any free gold. The ore is mechanically divided by its degree of fineness (bits too coarse are automatically returned to the ball mill) and separated for the type of treatment required. Part of the material goes to a cyanide treatment plant, outside the main plant. Part of the ore goes to three long tables where lighter materials are agitated away (tabling process), leaving the minerals. Part of the material goes through a flotation process in which the minerals are floated off in a froth created by the addition of reagents. The final product of all the processes is various mineral “concentrates” which are sent to a smelter for final processing. Gold, silver, lead, and zinc are among the metals present in the ore.



## OTHER INSTALLATIONS

The plant also contains two diesel engines to power the air hammers and other mine equipment and to provide electric power for the mine, mill and camp.

A building at the mine entrance—now used for storage—contains shower and dressing rooms for the miners and space for a blacksmith and machine shop.

The mine works are extensive, including about a mile of tunnel on several levels.

Much more could be said in describing the remaining developments on the claims but other points in the involved Al Serena case also need attention. The Government ruled that minerals on 15 of the claims were not sufficient to justify patent. What it based the ruling on, the company's countercharge that evidence favorable to Al Serena was withheld, and other major points in the complicated patent proceedings will be the subject of the next article in this series.

[Eugene (Oreg.) Register-Guard, October 14, 1954]

## MINE PATENT CASE STUDIED STEP-BY-STEP

## BLM FILES REVEAL AL SERENA HISTORY

(EDITOR'S NOTE.—This is the fourth in a series of articles investigating the charges that the award of patent on 23 mining claims in southern Oregon was a "giveaway" of valuable timberland.)

By Dan Wyant of the Register-Guard

Why did the Bureau of Land Management turn down a request for patent on 15 of the 23 lode claims held by Al Serena Mines, Inc.? And why did the company appeal that decision to the Department of Interior, which eventually overruled the BLM?

Answers to these two questions are best found in a step-by-step study of the patent application proceedings. Records, chiefly on file at the Bureau of Land Management office in Portland, show as follows:

On October 4, 1948, Al Serena Mines, Inc., applied for mineral patents to the 23 lode claims which the company had held for a number of years in southern Oregon.

Final proofs in the proceedings were filed with the Oregon District Land Office on January 13, 1949, following official publication in the Medford Mail Tribune for the period prescribed by law. No adverse claims to lands involved were noted in the record during the period of publication. Payment of the purchase price was requested by Carl F. Spaulding, assistant manager of the land office, on February 8, and receipt of a check for \$2,375 from the company, covering the purchase price at \$5 an acre, was entered in the BLM files on February 17.

On April 6, a final certificate of mineral entry was issued to the mining company. The certificate contained the added typed statement that "Patent will be withheld by the Bureau of Land Management pending a report by the regional administrator, region I, upon the bona fides of the claims."

During the summer months of 1949 a BLM mineral examiner, Elton M. Hattan made three separate trips to the claims to take assay samples. Part of the time he was accompanied by a mining engineer for the United States Forestry Department, William C. Sanborn.

The samples were taken in the presence of either Fred Altond, caretaker at the mining properties, or in the presence of Charles and H. P. McDonald, of the mining company.

Hattan later testified that he took the samples at the point on each claim which the mining company representatives indicated was their "point of discovery." He said it was not up to him to make the discovery but rather, to get a "representative sample" of what they felt to be their mineral discovery.

It was at this time, the McDonalds say, that they protested that the samples taken in this way were not adequate and requested permission to take supplementary samples for assay at their own expense. They said Hattan agreed to this, provided they indicated by detailed legal description the exact spot they cut these samples so Hattan could later duplicate them, if necessary.

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## ASSAY RESULTS

On January 4, 1950, Hattan sent a letter to the mining company's head offices in Mobile, Ala., acknowledging receipt of a letter of December 27, 1949, and a list of assay results from samples taken by the company.

Hattan's letter, still in the possession of the McDonalds, went on to say that "my report was completed and submitted last month. The December 27 letter did not reach here in time to include any of the information which was enclosed with it. The assay results submitted by you in August and September were incorporated in the report."

Hattan then listed some additional information he needed to identify the exact places in which the company had cut the samples referred to above. The company replied immediately that it would supply this information.

On February 10, 1950, Roscoe Bell, associate director of the BLM in Washington, D. C., sent a notice to the manager of the district land office in Portland that "adverse proceedings" were ordered on 15 of the 23 claims on the grounds the claims were nonmineral in character, that minerals were not present in sufficient quantities to constitute a valid discovery; and that expenditures of \$500 had not been made as required by law to benefit five of the claims. The decision was apparently based on Hattan's report.

## WRONG PROCEDURE

On March 14, 1950, Bell, ordered the adverse proceedings dropped, noting this was the wrong procedure "as the land is within a national forest reserve, and adverse proceedings, if any, against the claims will be brought by the Forest Service."

On April 13, 1950, the Portland BLM received notice from H. J. Andrews, regional forester, that patent application was protested by the Forest Service on the 15 claims. Andrews listed the same grounds for contesting the application as Bell noted above.

On May 22, 1950, the mining company filed an answer to the Forest Service protest, embodying several demurrers to the charges and a motion that the protest be dismissed and the patent issued.

On September 1, 1950, Pierce M. Rice, manager of the district land office, received a telegram from Senator D. Milliken (R., Colo.), requesting "expeditious handling and reply Government collect present status" of the Al Serena case. The McDonalds said last week that one of their stockholders who lives in Colorado requested Milliken to do what he could to help. Likewise, the record shows that Congressman Frank Boykin, of Alabama, where the company's head offices are located, also inquired as to the status of the case.

## HEARING ON CLAIMS

The hearing on the Forest Service contest of the 15 claims took place September 13, 1950.

The first six pages of the transcript of the hearing, now on file at the Portland BLM office, are written as a summary of what happened rather than as a direct word-by-word account of what was said.

The proceedings started on a stormy note with the mining company's attorney, W. O. MacHanon, demanding that the demurrers filed previously be ruled upon before the hearing got underway. The demurrers were on several technical grounds.

Rice, who was conducting the hearing, treated the demurrers as motions and denied them. The company's lawyer protested, then noted an appeal to the solicitor of the Department of Interior. Further legal sparring took place and the Al Serena representatives walked out.

"At this point," the transcript notes, "counsel for the contestant requested a temporary recess to avoid noises and interference occasioned by the departure of the contestee in order that the hearing might proceed by the examination of the Forest Service witness. The manager allowed a temporary recess and the contestee departed, after which the hearing was resumed."

The McDonalds were later to say it was their understanding that the hearing was closed at this point.

## FIRST WITNESS

G. Robert Leavengood, of the Forest Service, was the first witness when the hearing resumed. (From this point in the transcript, the record is a word by word account of what was said by the witnesses, attorney for the Forest Service, and the examiner.)

Leavengood described the timber on the contested claims. He said the older timber is "very old and mature and roughly averages around 25,000 merchantable board-feet per acre." He said a newer understand of young timber was very good. "I don't think we have anywhere else that I can think of as nice a stand as this is," he declared, referring to the younger trees. He said the value of the timber which could now be cut on the 15 contested claims was about \$77,000, allowing for growing stock left standing.

Mineral Examiner Hattan was the next witness. The crux of his testimony was that the 15 contested claims shown no valid mineral discovery. He said assays had been made from samples on all the claims on two occasions and on part of the claims a third time. Assay work was done by Annes Engineering Co. of Grants Pass, Abbot A. Hanks, Inc., in San Francisco, and by the Bureau of Mines at Albany.

Hattan discussed the assay results on samples from each of the contested claims. In all but one case the assays showed only a trace of gold and in all but one case either only a trace or no silver present. The two exceptions were one assay worth 35 cents per ton and on another claim showing silver at 12 cents a ton of ore.

## CHECKED POINTS

On several occasions Hattan referred to the fact that he had checked points where the company had said it had taken samples which showed much higher assays—\$1.75 for the gold, for example, where Hattan's assay showed only a trace.

Hattan explained how he had gone back to the claims for a third time to cut more samples at the indicated spot after the company sent him supplementary assays showing significant amounts of gold.

He said seven samples taken in this manner were sent to the Bureau of Mines at Albany for assay. The results of the assay was only a trace of gold, he said.

Hattan mentioned some of the company's supplementary assay values in his discussion above but at no time did he enter the complete list of the supplementary assays into the record.

Hattan concluded his testimony with his observation that the 15 contested claims failed to show sufficient evidence of mineralization to warrant granting a patent. The eight uncontested claims, he said at one point, did appear to have evidence of mineral deposits and for that reason he had recommended that the patents be granted on them.

## SAME TESTIMONY

The Forest Service's mining engineer, Sanborn, testified along the same lines as Hattan.

Next in the files at Portland is a teletype message dated October 13, 1950, from J. A. DeLang, Acting Chief, Branch of Minerals, Division of Adjudication, Department of Interior. It was sent to the land office manager, at Portland. It read: "Subject: Call for missing papers. Request that be transmitted copies of answer, demurrer and motions filed in defendants' behalf in this case and other papers in your files that may be of assistance in rendering a decision in this matter."

On October 16, 1950, DeLang received a letter from the mining firm's attorney, MacHanon, charging that the "record" (the quotes are MacHanon's) of the hearing held in Portland was "incorrect, incomplete, and irregular." He said his firm would be bound only by a tape recording which it had made of the hearing (up to the point the Al Serena representatives left).

On November 24, 1950, the director of the Bureau of Land Management in Washington, D. C., returned the records of the Al Serena case to Rice, in Portland, instructing him to give a decision on the case rather than a recommendation.

## ADVERSE RULING

On December 14, 1950, Rice entered his decision. He ruled that patents should not be granted on the 15 contested claims. Rice said testimony and Hattan's assay reports showing only traces of gold and silver upheld the Forest Service

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contention that timber upon the land was more valuable than the minerals, and that no valid mineral discovery had been made.

On April 27, 1951, the adverse decision against Al Serena was upheld by William Zimmerman Jr., assistant director, Bureau of Land Management, in Washington, D. C.

In his decision, Zimmerman said that the Al Serena attempt to appeal the case from the hearing on its demurrers, if successful, would have done away with further considering of the basic issue in the contest hearing: that of whether each of the claims had a valid mineral discovery and the proper \$500 assessment work.

#### CASE APPEALED

Al Serena Mines, Inc., took its next legal steps by appealing the case to the Department of Interior. The company charged a number of irregularities in the way the patent application was processed and in the hearing, itself. It charged that evidence favorable to its case (the supplementary assay reports) was not in the record upon which both adverse decisions were based.

The handling of the case from this point on is where Columnist Drew Pearson leveled most of his charges of "giveaway" which touched off the current political controversy over the Al Serena case. What the record shows on this phase of the proceedings, leading up to the eventual grant of patent on all 23 claims, will be the subject of the next of this series of articles.

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[Eugene (Oreg.) Register-Guard, October 15, 1954]

#### ELLSWORTH'S PART IN PATENT CASE DESCRIBED

##### AL SERENA FIRM SOUGHT HIS ADVICE

(Fifth in a series)

(By Dan Wyant of the Register-Guard)

Congressman Harris Ellsworth was first approached about June 1, 1951, by two members of the McDonald family—Charles and H. P. McDonald Jr., who sought his advice in connection with the family's Al Serena Mines, Inc., disputed patent application.

That was about 1 month after the Bureau of Land Management in Washington, D. C., made an adverse ruling against 15 of the company's 23 lode claims. The company had appealed that ruling to the Interior Department—the agency which has the final ruling on such matters.

"We went to Congressman Ellsworth in the same way that any other constituent goes to his congressman," the two brothers said last week.

Although the firm's head office is in Mobile, Ala., it is an Oregon corporation. H. P. McDonald, Jr. had then spent about 16 years working at the mining property, near Trail. Charles had spent most of his time since 1936 at the mine, except while in college, in defense work, and in military service during World War II.

Said Ellsworth: "My connection with the Al Serena Mines case has been in full accord with my conception of the responsibility and duty of a member of Congress serving the people of his district. Ours is a government of laws and not of men. When the rights of citizens are prejudiced by officials who set themselves above the law or who, by intent or gross carelessness, place the rights of citizens in jeopardy, there is no remedy open to the injured citizen except through the courts or through the legislative branch of the Government."

Ellsworth said he went over the facts of the case with the brothers, found that "substantial expenditures" had been made on the mines by the company and "compliance with the mining laws demonstrated." He said the record showed that the company had made their payment for the lands, following completion of the final patent proceedings.

"I was informed that thereafter officials of both the Bureau of Land Management and the Forest Service had taken action for the purpose of contesting and invalidating the transfer of the property, payment for which had been received by the Government from the applicants.

"Because of numerous bureaucratic acts, the applicants had brought an appeal to the Department of Interior. The appeal, requesting the grant of the patents, was then pending before the office of the solicitor.

## FINAL DECISION

"The McDonald brothers asked what suggestion I might have, if any, to bring about a final decision on the facts of record in the case."

Ellsworth said he found some "interesting parallels" between the Al Serena case and some mining claims which were the subject of investigation before a Senate committee in 1949.

"I expressed the opinion that the most expeditious means of bringing the case to a conclusion would be through filing suit in the United States district court."

The company took his advice. The suit was filed July 28, 1951, against "The United States of America and/or Oscar Chapman, Secretary of the Interior," in United States district court, in the southern district of Alabama.

The suit asked that the Government turn over the patents on the mining claims to the Al Serena Mines, Inc.

In a 58-page complaint the company listed numerous allegations and cited a number of previous court cases to support its basic charge that the government's conduct of the case had been illegal and that the company had the legal right to the patents.

## CRITICAL OF HEARING

The complaint was especially critical of the conduct of the contest hearing in Portland. It alleged that the record of the hearing contained "so much severe and material falsification" that the hearings stenographer had refused to certify the portions of the record which described the events leading up to when the company left the hearing. (This is the portion of the transcript which was written summary style rather than in the usual word-by-word account of what was said by each party.)

This suit was followed up with a "motion for summary judgment" in which the company included a letter from Mastin G. White, the Interior Department's Solicitor, dated August 3, 1954, in which he acknowledged that "it appears \* \* \* that the reporter failed to obtain a complete transcript of the earlier portions of the proceedings. \* \* \* If you desire a further opportunity to submit evidence bearing on the question of whether valuable mineral deposits have been discovered on the claims involved in your appeal, it would be appropriate to remand the case for a supplemental hearing with respect to that issue."

The company said in its motion that the letter was proof of their charge that the record of the case was at fault. The firm declined to have the case remanded for the supplemental hearing and sought, instead, to continue its legal action.

## SUIT DELAYED

That was the status of the case when the Republican administration took over in 1952-53. The suit in Federal court was delayed by various government legal moves and no decision was made on the appeal to the Interior Department.

The McDonald brothers came to Ellsworth again "on or about March 29, 1953," according to Ellsworth, after Clarence Davis had been named the solicitor of the Department of Interior by the new administration.

Ellsworth said he arranged a conference with Davis and accompanied the brothers for a discussion of the case. It was then that Davis said he would make a "careful review of the case to determine its merits," Ellsworth said.

On June 1, 1953, Ellsworth wrote his lengthy letter to Davis which was reprinted in last Sunday's issue of the Register-Guard, pointing out that papers important to the mining company's interest were not in the record and asking that they be restored.

On June 4, in agreement with Davis, Ellsworth wrote to several mining engineers who had some knowledge of the claims involved for their opinion of the claims' value. He forwarded to Davis the replies he receives, arguing they showed "that there is no reasonable question as to the bona fide nature of the mineral discovery and compliance with the mining law by the applicant for patent."

The engineers included J. E. Morrison, Oregon mining engineer identified as resident engineer at Al Serena Mine at the time of application for patent (and at the time the letter was written a colonel in the U. S. Air Force); J. Cleveland Taylor, Sacramento mining engineer who surveyed the claims for Al Serena; D. Ford McCormick, Oregon engineer now living at Eagle Point, who was a consultant at various times for Al Serena; Alan Kissock, of New York, who said he visited the property in October 1945, to see if he might be interested in it; and

Fay Libbey, head of the Oregon Department of Geology and Mineral Industries, who reported he could give no opinion of the mineral value of the particular claims.

None of the engineers' opinions made any distinction between the 15 contested claims and the 8 claims which the Government had not challenged, according to A. Robert Smith, the Register-Guard's Washington correspondent who spent several days investigating records in the Nation's Capital.

On September 3, 1953, Davis sent a memo to the Bureau of Mines, requesting that new samples and assays be obtained "upon which no doubts will be harbored by anybody."

#### NEW ASSAYS

He added: "The decision on the application for patent should be considerably easier after we have the new assays \* \* \*. My principal concern is to have a qualified Government representative present to see that the assay samples are fairly taken from each claim and then delivered to a competent assayer."

On the same day, he wrote to McCormick, whom the company had suggested as its representative, that "in an effort to determine the matter fairly, I have agreed with Congressman Ellsworth, who has interceded on behalf of the company, to ask you and Mr. Valin, of the Bureau of Mines, Spokane, or his substitute to procure personally sufficient samples of the deposits on each claim to afford adequate assays on which the Secretary can base his decision on the validity of the discoveries."

Selection of R. N. Appling of the Bureau of Mines office in Grants Pass, as the one to take the samples for the Bureau of Mines was later made in the field. He had a team of three men with him to help prepare the samples for assay—that is, crush the ore.

McCormick accompanied Appling and his team to the claims and watched Appling cut the various samples. All the samples were taken from "ore, in place," McCormick said, some from exposed rock outcroppings, some from the bottom of cuts where bulldozers had scooped the earth away down to bedrock.

#### SAMPLES NUMBERED

Each of the samples was numbered and one-fourth of each sample was turned over to the Oregon Department of Geology office in Grants Pass to hold as an "umple."

McCormick said this was done in case the samples shipped to the assayer became lost, or if any question arose in regard to any of the individual samples. The purpose, he said, was to avoid the necessity of going back to the claims for more samples, if any were lost or questioned during the assay process.

On November 17, 1953, the samples were shipped by Railway Express to the A. W. Williams Inspection Co., in Mobile, Ala., to be assayed at the expense of the Al Serena Co.

The Mobile testing firm was chosen by the company. It is located in the same city as Al Serena's head office and had done assay work for Al Serena before. It was one which the Government agreed was an "acceptable laboratory for analysis." (In Washington, A. Robert Smith said it is on the Government's list of accredited testing labs).

On December 17, 1953, the Williams firm sent its assay certificates on the samples to Al Serena's Mobile office. These were forwarded to the Bureau of Mines' man, Appling, who matched up the numbers of the samples with the assay results and prepared his report.

#### ENCLOSED FINDINGS

In his report he described how the samples were taken and enclosed the assay findings of the Williams Co.—but not, according to the file in Washington, D. C., the assay certificates.

For each sample, the new assay reports showed much greater mineral value than BLM Mineral Examiner Elton Hattan reported from his three assay tests of the 15 contested claims (almost all of which showed only traces of gold or silver). It was Hattan's assay reports upon which the two previous adverse decisions to the company had been decided.

The lowest of the new assays for gold was 70 cents (per ton of ore): 7 assays ranged from \$1.05 to \$1.40; 9 were reported at \$1.75; 7 ranged between \$2 and \$3; 1 was for \$3.50 and the high was \$4.20. Assays for silver were also significantly higher than Hattan's samples assayed in almost every case. The new figures included at least two samples on each contested claim.

Appling submitted his report to Washington on January 2, 1954. Four days later, on January 6, Solicitor Davis announced his decision. It overruled the two adverse decisions of the Bureau of Land Management and awarded the patents to the company on all 23 claims. Davis based his decision on the new assay findings.

(A further look at Solicitor Davis' decision—and some more light on the re-examination of the claims which led to his decision—will be the subject of the next article in this series).

[Eugene (Oreg.) Register-Guard, October 16, 1954]

#### PATENT DECISION ARRIVED AT AFTER LENGTHY REVIEW

(EDITOR'S NOTE.—This article, the sixth in a series, discusses the decision of Solicitor Clarence Davis which granted 23 controversial lode claim patents in southern Oregon to Al Serena Mines, Inc.)

(By Dan Wyant of the Register-Guard)

The first 13 pages of Solicitor Clarence Davis' decision on the Al Serena case are devoted to a review of the facts which brought the case up to appeal in the Department of Interior.

He notes that in its appeal the company made 18 assignments of error, contending it was entitled to a patent prior to the filing of a protest against 15 of the claims by the Forest Service, and contending that there were certain irregularities in the protest and in the manner in which the hearing upon the protest was held.

Davis cited a number of court decisions to support his finding that most of the company's contentions were untenable.

"The fact that the appellant had paid the purchase price, submitted its proofs, and received a final certificate does not detract from this department's authority to inquire into the merits of the claims," he wrote. "Unless there has been a discovery of valuable minerals within the limits of the claims, there have been no valid locations and the claims cannot go to patent."

#### CHARGES UNJUSTIFIED

Davis added that most of the charges of irregularities in the handling of the case were unjustified. However, he noted that the company's reports of assays on the various claims were not included in the file when it reached his office. He said that although copies of these reports were later supplied, it appeared best to require new assays to be submitted to review the case.

Davis said these new samples were taken by a Bureau of Mines team and a registered mining engineer (D. Ford McCormick), representing the appellant. Davis said the samples were sent to an acceptable laboratory for analysis. (The A. W. Williams Inspecting Co., in Mobile, Ala.).

"The resulting assay reports submitted and now on file show that the samples contained silver and gold of sufficient value to justify a person of ordinary prudence in further expending his time and money in an effort to develop a paying mine."

Davis then quoted a portion of the testimony which BLM Mineral Examiner Elton Hattan gave at the Portland hearing describing the "central mass" of the deposit and saying that possibilities are good that the whole mass could be developed, mined, and milled at a profit.

#### HOPE OF SUCCESS

Davis said this "would seem to confirm that by careful and prudent operation the appellants may continue to develop the property with reasonable hope of success."

(A check of Hattan's testimony, however, indicated that when he was discussing the "central mass" and its possibilities of further operations he was referring primarily to the portion of the deposit which lies on the eight claims which were not contested by the Government. On the other hand, the mining firm had insisted all through the proceedings that it was interested in a large-scale operation which would include all the mineralized deposits—not just the richest ones.)

Davis continued: "The assays, therefore, showing mineralization in paying quantities on all of the claims, and the cadastral engineer (whose job it is to check patent qualifications) on September 27, 1948, having certified that more than \$500 has been expended in developing and improvements on each claim, the requirements of the statute seem to be met."

(The cadastral engineer's certification that \$500 assessment work had been carried out on each claim had been challenged by the BLM and Forest Service on five of the contested claims. There is nothing in the decision written by Davis or in the Washington files to indicate that any further efforts to determine the value of assessment work on the five claims had been made after the case came to Davis' attention.)

#### TIMBER NOT A FACTOR

Davis concluded with the observation that the mining company had spent amounts estimated from \$150,000 to \$200,000 on developing the claims—an amount which he said was two to three times the estimated value of the timber on the claims. This, he said, "would seem to negative the suggestion \* \* \* that the appellants are more interested in the timber than in the mine."

(Davis here was using the figure given on the estimated value of timber on the 15 claims which were contested. The estimated figure for marketable timber on all 23 claims is probably closer to \$150,000, less allowance for growing stock, according to the Rogue River National Forest.)

The Solicitor then concluded his decision by ordering the case "remanded to the Bureau of Land Management with instructions to process the application for patent."

That, then, brings this series of articles through the major steps of the Al Serena case, as shown in the record. Several points remain:

Columnist Drew Pearson, who touched off the current political charges against the handling of the Al Serena case, was critical of the fact that Solicitor Davis let "disinterested, independent" (the quotes are Pearson's) Ford McCormick become one of the engineers who helped take the new samples on the claims.

#### FIRM REPRESENTATIVE

The record shows that McCormick was chosen, not as a disinterested engineer, but rather as a representative of the Al Serena Co. to accompany the Bureau of Mines team.

McCormick was independent in the sense that he is a consulting engineer. He had been hired by the company on previous occasions for specific jobs in the capacity of a consulting engineer. McCormick says that the charge that he helped "build" the mine plant, made by Ellsworth's opponent, Charles Porter, is false. He said that on one occasion he had worked for several months at the mining property when it was under lease to another party.

McCormick was described this week by Faye Libbey, director of the Oregon Department of Geology and Mineral Industries at Portland as a man of "absolute integrity."

Pearson termed it "amazing" that the ore samples were shipped "all the way across the United States to Mobile, Ala., home town of the McDonald family." He added: "There the ore was assayed by the A. W. Williams Inspection Co., located in an area which has little experience in assaying gold and silver ore."

Records show that the Williams Co. is accredited by the Government for testing work, and was agreed upon as "acceptable" by the Government to make the tests. The McDonalds argue that since they were paying for the assays, they directed them sent to a firm with which they had done business before.

#### STANDARD METHODS

A Williams company letterhead which the Register-Guard's Washington correspondent, A. Robert Smith, observed, indicated the firm tests primarily various construction materials. However geologists such as Libbey say that methods of conducting gold and silver assay tests are so standard that there's no question but that any organized laboratory could conduct them accurately.

The most puzzling question, of course, is why were Williams' assay results from the samples taken by the Bureau of Mines so drastically superior to those taken on three different occasions by the BLM mineral examiner, Hattan?

The Geologist Libbey declined to speculate.

McCormick, himself, said only that the Bureau of Mines man, R. N. Appling, was "very conscientious" in cutting the samples. McCormick added that samples



cut within a range of 10 ft. on the various claims might range from values which were negligible to values of several dollars per ton of ore.

The record shows that Hattan took the samples at spots indicated by Al Serena representatives and took them on several occasions. His qualifications to do such work were read into the record and showed years of experience in the field. It might be fair to add at the time Hattan took the samples, the mining company protested the samples might not be fair to the company and requested permission to submit supplementary samples—the one is which later turned up missing in the files.

#### STATE AN "UMPIRE"

At the time the final samples were taken, a portion of ore from each sample was turned over to the Oregon Department of Geology office at Grants Pass as an "umpire."

McCormick explained that this was done to guard against the need of taking further samples in case some of those sent to the assay lab became lost en route or were questioned in any way.

Davis' whole decision turned on the results of the Mobile assay. For that reason it would be reasonable to assume that any further investigation into the Al Serena case, such as Senator Wayne Morse had declared he will call for, should start with those umpire samples.

And here is the most disappointing part of this reporter's investigation of the Al Serena case:

Once the assay certificates were returned from Mobile, the samples matched up with the assay numbers, and the report sent in by Appling to Washington, D. C., there appeared to be no further need to save the "umpire samples," according to McCormick.

#### SAMPLES DUMPED

Where are those umpire samples now?

Somewhere in the bottom of the Rogue River near Grants Pass where they were dumped by Appling and McCormick after the report was sent in.

(A final article in this series will discuss what Secretary of Interior Douglas McKay has described as a "basic conflict" between timber and mining, and what legislation has been considered to supplement the basic mining law of 1872.)

[Eugene (Oreg.) Register-Guard, October 17, 1954]

#### THOSE DAYS TIMBER WASN'T WORTH MUCH—NOW IT IS: AL SERENA MINING CONFLICT STEMS FROM OLD LAW DATING TO 1872

(EDITOR'S NOTE.—This article, the last in a series, turns from the Al Serena mining case to an outline of what Secretary of Interior Douglas McKay has called "a long-time conflict of interests between mining and forestry." Problems of questionable mining claims, designed to obtain timberland, are also discussed.)

(By Dan Wyant of the Register-Guard)

When the Nation's basic mining law was written back in 1872, there was, of course, little thought given to timber which might be present upon mining claims staked out under the law's provisions.

In earlier days the West had looked largely to mineral deposits for its development. The original law was designed to encourage that development. Timber resources seemed unlimited.

#### NO CHANGES

Through the years there has been no change in the basic provisions of the law. Any person may still stake out a mining claim upon public land. If he does assessment work benefiting the claim to the amount of \$500, and if he proves minerals are present under the broad terms of the law, he is entitled to have the claim patented. With the patent, under present law, gives all surface rights to the claim. That includes the timber which is upon it.

And this points up the basic conflict between forestry and mining interests. This conflict involving the application and/or misuse of the mining law has contributed much to the controversy around the Al Serena mines of southern Oregon, described in earlier articles.

## TIMBER MINES

Timber is worth a lot more now than it was in 1872. It's worth enough that many mining claims have been staked out, forestry officials say, obviously for the timber that is on them.

More than 7 billion board-feet of the public's timber is tied up on mining claims of the 12 Western States, a staff writer for the Denver Post concluded in a 1951 series of articles on this problem.

In Oregon and Washington somewhere around 200,000 acres of forest land has been tied up by mining claims. Some of these claims are no doubt legitimate—but forestry officials question many of them.

## DISPUTED CLAIMS

Claims which have attracted the most attention are some 300 mining claims embracing about 50,000 acres of forest land in the Union Creek basin of the Rogue River National Forest.

So many inquiries have been directed to the forestry headquarters that Supervisor Jack Wood has prepared a mimeographed "fact sheet" on the claims.

The claims he said, "support an estimated stand of mature and high quality timber totaling 1,800,000 feet. Another 1,700,000 feet of timber lying behind he claims is effectively blocked off by claimants who deny access across their claims. Total volume of timber involved is 3½ billion board-feet. A conservative estimate of timber value on the stump is \$35 million."

## MINERALS LACKING

Wood said most of the claims are are filed in the name of one man and his associates. He said repeated mineral examinations have shown there are no valuable minerals in commercial quantity on the claims.

Closer to home, in the Willamette and Umpqua National Forests near Eugene, a number of mining claims exist on forest lands. It would be unfair to question all of the claims, but some of them bear investigation.

The fact that the claims have been filed doesn't mean that the timber is lost to the public. Until the claims are patented, the claimants have no rights to timber other than that needed for mine supports, or possibly, dwellings on the claim.

## SALE PREVENTED

But the timber is effectively tied up from public sale by the Forest Service. The claims in many cases also bar access to other valuable stands of timber that would otherwise be put up for sale.

The actual number of patents granted on mining claims during the postwar years in Oregon and Washington totals less than 40 on less than 800 acres of Forest Service land.

Because of the value of the timber involved in many cases, the Forest Service has been vigorous in contesting many patent applications. This is where the conflict between forestry and mining is most apparent.

## DELAY CHARGED

Mining spokesmen say that the procedures involved in contesting the claims go beyond the basic mining law to make it equally hard for a legitimate miner to get patent to his claim. They charge that delay has been one of the Government's chief tactics.

Certainly it would seem that some method should be found to effectively prevent the filing of mining claims for valuable timberland and at the same time not penalize legitimate miners who find worthwhile deposits of minerals which will be subject to contest just because they are on timberland.

## REVISION OVERDUE

Secretary of Interior Douglas McKay has said: "Revision of the mining laws which would define the surface rights vested in the locator of a mining claim is long overdue."

Legislation has been introduced in Congress to bring the basic mining law up to date.

Principal attention was directed to a bill introduced by Representative Cliff Hope, of Kansas, which would have retained the Government's possessory rights on the timber involved in a claim.

The Government would sell the timber off the claims, under sustained yield management plans. The miner who acquired patent on the claim would be given a 3-year period in which to purchase all the timber at fair market price, if he wished. The miner would be permitted to use what timber was necessary in his mine work—and if all the timber was sold off his claim, be given a chance to get timber off other Government holdings for his mine.

#### BILL WAS DEFEATED

The bill had a further provision which drew objections from mining interests: That surface uses of the claim would be under national forest rules and regulations. That provision, mining spokesmen complained, would make a miner's operation subject to the authority of forestry people who had no particular knowledge or interest in mining practices.

The Hope bill did not pass.

Representative Harris Ellsworth was at one time prepared to introduce a bill which he felt would solve the problem and then found that Representative D'Ewart, of Montana, had prepared a measure similar to his.

This bill, which also never was passed, would, in Ellsworth's words "allow a person who files a mining claim practically no benefits whatever unless, and until, he actually develops a mine."

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[Eugene (Oreg.) Register-Guard, October 20, 1954]

#### DREW PEARSON'S AL SERENA ALLEGATIONS FOUND LOADED WITH FACTUAL ERROR

On September 29, when Drew Pearson, nationally famous columnist, launched his Al Serena mine charge against Congressman Harris Ellsworth and Interior Secretary Douglas McKay, we recognized them as so serious that we said to our staff:

"If these charges are true, both Ellsworth and McKay ought to be run out of public life. If they are not true, McKay and Ellsworth are entitled to protection against a vicious slander. In any case, the people of the fourth district, especially those who read the Register-Guard are entitled to every bit of factual information we can get so that they may judge."

Accordingly Reporter Dan Wyant was dispatched to Jackson County to go over the ground, take pictures of the timber and of the mining properties involved, inspect every available record, interview every available person known to have had any connection with this dispute. Our Washington correspondent, A. Robert Smith, had similar assignments at his end.

Mr. Wyant's reports have been published in a series of six articles, all starting on page 1, concluding last Saturday. Each reader will, of course, make his own conclusions. Quite apart from any recommendations which we may make in the current congressional race, we believe we should offer our findings in this Al Serena matter.

#### NOT A TRACE OF ACTUAL CORRUPTION IN EVIDENCE

At the risk of oversimplifying, this we believe to be a fair summary of the allegations of Columnist Pearson:

1. That a certain McDonald family, of Mobile, Ala., had acquired mining claims (gold and silver) in the Rogue River National Forest, and that under pretext of mining they sought to "patent" their claims (a patent gives clear title).
2. That for 6 years, the McDonalds had been unsuccessful because of alert opposition in the then Democrat administration at Washington.
3. That when McKay came to power things changed; Ellsworth became a special pleader for the Alabamans.
4. That under these pressures, the McDonald matter was reopened by Solicitor Clarence Davis, that he went through the motions of considering "disinterested" reports from engineers who turned out to have been employes of the McDonalds.
5. That finally new ore samples were taken but they were sent to an assayer in Mobile, Ala., not to professionals on the Pacific Coast, and on the new assays, the patents were granted.

6. That shortly after all this, Solicitor Davis was made Under Secretary of Interior, next to McKay himself.

In our opinion, such charges cannot be "laughed off." The only answer is in facts. There were 23 paragraphs in Pearson's story. Our Mr. Wyant's factual studies reveal misstatements in 13 paragraphs plus 1 paragraph which he classifies as true as far as it goes, plus 4 paragraphs which contain unsupported assertions, plus 1 paragraph on which he has not been able to throw any light. Only 4 paragraphs are accepted as substantially correct.

These substantially correct paragraphs are the statement that the McDonalds could have mined without patenting their land; that the McDonalds wanted the aboveground timber rights as well as mining rights (although the McDonalds say they needed the timber sales to raise mining capital); that when the case was reopened, the McDonalds insisted on ore samples being sent to the assayer in Mobile; that the Mobile reports were much more favorable than the preceding reports.

#### HOW WOULD A JURY LOOK AT A MESS LIKE THIS?

Many important facts were brought out in the Wyant reports which were not in Pearson's blast:

The timber on the McDonald claims is not one of the finest stands of Douglas-fir in the Northwest, but relatively poor stuff.

At least two of the McDonalds are long-time residents of Oregon, and their company is an Oregon corporation although its main office is in Alabama.

The McDonalds acquired their mining claims in the mid-thirties, long before the timber boom began, when they could have had all the choice timber they wanted for a few dollars an acre, if that had been their object.

That the McDonalds are in fact primarily in the mining business, not in lumber, and that they have extensive tunnels and equipment for mining on their properties.

That a substantial portion of their mining claims were accepted as sufficient for patenting even under the Democrats, and that Oregon State geological reports are favorable on the area.

That since 1948 the McDonalds had been subjected to costly delays and they even allege bureaucratic suppression of some of their important evidence.

That Congressman Ellsworth, in interceding for the McDonalds did not actually plead their case but argued only that they be given fair and prompt rehearing.

That there was nothing secret about the rehearing and the McDonald engineer was not palmed off as an "impartial" expert but stood as the accredited representative of his clients.

In our opinion, no grand jury in the world would indict nor would any trial jury convict on the kind of faulty evidence (inferential hog wash) presented by Columnist Pearson. We have such a distaste for reporters who slant news or distort facts that we do not want to impugn Mr. Pearson's motives.

#### INJUSTICE IS INJUSTICE HOWEVER INTENDED

We will say that whatever Columnist Pearson's reasons for this assault on Ellsworth and McKay he has done a thoroughly bad job of reporting and one which works a grave injustice on the people accused.

The real trouble is rooted in mining laws which go back 80 years. They were intended to help prospectors then. They offer an opportunity for cheaters now. As far back as 1947, the Register-Guard was running articles on this problem as it is shown in the Bohemia district near Cottage Grove. It is reasonable to ask:

"Why did not these virtuous Democrats who kept the McDonalds from patenting their claims get a decent law passed?"

In the last session there have been two such measures—the Hope bill (which Pearson mentions) H. R. 5358 which would relate only to mining lands within national forests and the D'Ewart bill, H. R. 4983, which would apply to mining claims on all public lands. There is also S. 3347 by Dworshak of Idaho and Anderson of New Mexico on which hearings were held May 22. This seeks to redefine and limit all surface rights.

(The Hope bill is supported by the Department of Agriculture; the D'Ewart bill by the Department of Interior. The Dworshak-Anderson measure seems to have considerable support from mining people.)

At least the Republican Congress seems to be making a try to cure the troubles. We do not accept as sufficient the Ellsworth and McKay statements

that so long as the obsolete laws are on the book they have no other choice than to comply with them.

The only thing of importance that has come out of all this hubbub is the necessity for mining laws which will conform to present day conditions. Our foresters here tell us they are being deviled by three classes of people under the present statutes:

1. Genuine mining men who seek timber rights only to finance themselves.
2. Timber hogs who buy up or stake out mining claims for timber rights only.
3. Out and out highbinders who are staking out phony claims in the way of roads, rock pits—all kinds of business operations just to see if they can extract a few dollars. (We have heard of two State highway cases where the State had to pay rather than endure the long process of proving the mining claims phony.)

#### IS ELLSWORTH AT ALL BLAMEABLE IN AL SERENA CASE?

It is for each person to decide to what degree Congressman Ellsworth is blameable for his conduct in the Al Serena case. You might state it this way:

"Did he do any more for the McDonalds than you would expect him to do for you? Or was he just too easy with his obligin'?"

Having known Harris Ellsworth for nearly 30 years we would bank on his personal integrity! Sometimes, in our opinion, he can be downright "dumb," especially in the direction of "helping folks." We don't think he asks enough questions about some of the weisenheimers who ask for his help.

In this Al Serena case, we think he's been just a bit lucky. He might have found himself lending his good name and his influence to some of the gen-u-ine, triple plated stinkeroos who abound in the mines and in our woods.

Representative ELLSWORTH. Frankly, I have not read all the articles, but I am told they are a fine series of articles and someone has told me within the week that they were offered for the Heywood Broun award for the writer. I believe his name is Wyant. I do not know whether he received the award or not, but somebody thought enough of the articles to send them higher up.

Representative CHUDOFF. Somebody thought enough of the articles to get them out of the Interior file and photostat them for Mr. Hoffman. I am saying it depends on whose ox is gored on whether it is a good paper.

Representative ELLSWORTH. I think that is the essence of my complaint voiced in my statement.

Representative CHUDOFF. Mr. Stewart objected to the paper because he said somebody's brother-in-law gave somebody an article.

Representative HOFFMAN. That was just a reporter, not the editor. The articles offered and received did not come from the Interior Department, nor from anyone connected with it.

Senator NEUBERGER. Are there any questions of Congressman Ellsworth? Mr. Redwine?

Mr. REDWINE. I have no questions.

Senator NEUBERGER. Mr. Coburn?

Mr. COBURN. Did you ever request the Secretary of Interior to order another hearing before the Bureau of Land Management, Congressman?

Representative ELLSWORTH. No, indeed, I made no such request.

Mr. REDWINE. Just a moment, Senator.

Congressman, let me ask you this: You did have several conferences, you and your administrative assistant, with Mr. Davis and others, and work out the procedure whereby the Bureau of Mines made a subsequent investigation? You did, did you not, Congressman?

Representative ELLSWORTH. I had one conference myself with Solicitor Davis. My executive assistant was there at that time. So

was Mr. Reuel Armstrong, who is now Solicitor, I believe. I renewed my request that some action be taken. There was some discussion at that time as to what might be done. It was obvious just from the file that the mining claimants had never had a chance to present their case, had never had a chance to put in their own proof.

I think from hearing the testimony of Mr. Rice, that it was not their fault but the fault of their attorney that they did not have such opportunity, but, nevertheless, the file is very clear on the point that their proof of claim was not in it and you can find that out for yourself by looking at the files. It was clear to the people in the Department, I am sure, or they would not have done what they did that in simple justice these people should have a chance to have their claim and their proof established or disestablished. They should have their day in court, in other words.

I finished the conference with Mr. Davis at that point and said I would make no particular suggestion as to what to be done, but I felt certain that there was a fair and reasonable way of getting a proper evaluation of the property, and Congress recessed shortly thereafter, and I learned later that he had worked out such a procedure that was used.

I think, in fact I know, that my executive assistant had other conferences with the Department, but I was not there and I do not know very much about them.

Mr. REDWINE. Congressman, subsequent to that conference with Mr. Davis, however, there was an exchange of letters between you and Mr. Davis, was there not, as to you going to procure or recommend to him the names of some very reputable engineers who were going to make a survey? That plan fell through, did it?

Representative ELLSWORTH. We discussed how to get at the problem, yes, I recall that it was, I think I volunteered, the idea that maybe I could write letters to some reputable engineers who might know something about the property and I remember very well doing that. One of them was in fact in service at that time.

I do have the replies that I received from those engineers in my envelope down there. I dug them out of the file because I thought they might be of some service here.

I would like to offer them for the record if you would like to have them in it.

Mr. REDWINE. One of them was Mr. Ford McCormick, was it not?

Representative ELLSWORTH. That is correct.

Mr. REDWINE. He, however, at that time was still appearing as representing the Al Serena Mining Co., was he not?

Representative ELLSWORTH. I do not know. I know that Ford McCormick is a highly respected mining engineer. He has the highest credentials, certificated, licensed and everything else.

Mr. REDWINE. I would like to make it plain that I am not questioning his ability. I am questioning what his representative capacity was at that time, however, as to whether he would be a suitable umpire.

Representative ELLSWORTH. I was merely asking these engineers not to give me a decision as to what action should be taken; I merely wanted to know what was this, a legitimate enterprise; was it a reasonable deal? Mr. McCormick, incidentally, is in the room now. I think that in all fairness something on the side of the defendant in this case ought to be heard, but, as I said in my statement, how can that be with

the thing set out in this manner? It is just impossible, as you can plainly see, to give a full and decent and fair hearing on this case.

Mr. REDWINE. Mr. Congressman, I would like to make one request of you.

I do not recall your exact language in the statement you read there, but it was something to the effect of this tremendous contribution that was made by this mine to the war effort.

Representative ELLSWORTH. No, I did not say tremendous contribution. I said that they did fulfill a quota for the Metals Reserve Corporation and at that time did employ, so I am told, at least 50 men on the job.

Mr. REDWINE. Well, Congressman, here is what I am getting at: Are you familiar with what the quota requirements were?

Representative ELLSWORTH. No, I have no knowledge.

Mr. REDWINE. The staff has checked the Government records very carefully to see what that quota performance was, and we have been unable to find any record beyond \$24.60 worth of lead and zinc. I wonder if you could fill in that missing link for us?

Representative ELLSWORTH. Mr. Redwine, I am very grateful to you. You are making the case for me that I attempted to make before the committee. Obviously, I have not such information, but the people who have are here. They can come up here under oath. I do not feel that they are going to get a chance to clear themselves. That information was given to me by them, I think, but at least it is in my memory. My whole point is that this is a political trial of defendants who are absolutely helpless except for the few feeble words of mine here now, absolutely, helpless to clear their own names.

Senator NEUBERGER. Are there any other questions?

Representative CHUDOFF. I have no questions.

Senator NEUBERGER. Mr. Lanigan?

Mr. LANIGAN. No questions.

Senator NEUBERGER. Congressman Ellsworth, may I ask you several questions?

Representative ELLSWORTH. Yes.

Senator NEUBERGER. Have you any definite recommendations as to what recommendations this committee should make as to the continuation of marketing areas?

Representative ELLSWORTH. No, Senator Neuberger, that is an administrative problem. If I were to be either so bold or so foolish as to sound off with an opinion on that subject, I would not be worthy of the trust put in me by the people who have elected me to Congress. That problem, as has been testified before this committee, has many, many ramifications and it certainly is controversial. The Departments concerned have a very difficult decision to make on it. They have indicated that they only want to do it after public hearings, and I recall a question asked of one of the top officials as to his opinion and he, like I, said that he would not attempt to prejudge a case. In his case, he wanted to hear all the evidence.

In my case, I am not qualified in any way to hear evidence. Therefore, I have no answer on that.

Senator NEUBERGER. I would like to just ask you whether you believe that if this committee prepares a report that ultimately we have to recommend either the elimination of marketing areas or their continuation, one or the other?

Representative ELLSWORTH. I would sincerely hope that this committee not attempt, even from the record that you have, to write a report recommending on that subject. It is much too technical for a congressional committee, including its competent staff, to pass judgment on without the full and complete technical field work on it, and the executive recommendation itself. I feel that way about it.

We have given the agencies the authority to do that. The 1944 Act, which was Senator McNary's bill in the Senate, and mine in the House, authorized the creation of Federal-sustained yield units by the Forest Service. The Bureau of Land Management did not have such specific authorization, but it assumed it, and it has never been challenged. That, in my judgment, is the extent to which Congress should act without clear and conclusive proof developed by technical people as the result of complete public hearings.

Senator NEUBERGER. In other words, then, you think the existing regulations should be left in effect?

Representative ELLSWORTH. No, I certainly did not say that. You know, this is really quite amazing. I have heard the talk about putting words in the witness' mouth, and I never went through it before. I said nothing even nearly like that.

Senator NEUBERGER. I merely have asked you. This is a very difficult question. You are the Congressman from the district that is most involved. I have merely asked you what your suggestion is to the committee. You said that we should not do anything on this until we have the best advice of technical people involved.

Representative ELLSWORTH. Again, I did not say that you should not do anything on this. I think you will want to write a report which contains, of course, your record of the testimony. I think any one of the Members of the Senate or House can offer his own opinion. I think the committee could take any action it sees fit. Heaven knows, congressional committees do that. I have not said what I think you should do; nor do I have an opinion on it.

Senator NEUBERGER. You do not have an opinion on it, then?

Representative ELLSWORTH. Certainly not. It is not in my province to have an opinion on this subject. It is an executive determination under authority given by Congress. I help to make the authority. If it turns out that the authority we have granted is not adequate, heavens, it is our province then to review that authority, to review the situation, and then try again if we have not been right as of now.

Senator NEUBERGER. Who is going to decide whether the authority is adequate or not? That is what I am trying to get from you if it is possible.

Representative ELLSWORTH. Congress will have to decide it, of course.

Senator NEUBERGER. Again I get back to what I have asked you, which is that I assume that the Congress will look to some extent for guidance to this committee, which has spent more time on this than has any other committee. I am asking what guidance we should give to the Congress as to what authority we think is adequate.

Representative ELLSWORTH. I am not a member of this committee. I sat as an observer. Had I been allowed to question witnesses, I think I could have developed considerable information. That is no point except that to ask me that, I have no place in answering it. I am going to repeat what I said a while ago. This committee is certainly very



responsible to Congress on this subject because this committee is the one and only committee that I know of that has gone into this matter of marketing area restrictions.

It is certainly your obligation to report completely on it but, again, I say I would hesitate if I were you members of this committee to come up with a solemn and firm answer on it until you have heard further from the technical people in the field and had the benefit of the agency decisions.

I am merely reciting these things a second time to be perfectly sure that they are understood. My feeling and my understanding and my obligation as a member, I think, is pretty sharp and clear.

Senator NEUBERGER. The only thing I say is that I feel the same conscientious interest in this as you do. As a Senator from Oregon, I help to represent the fourth district, as you represent it exclusively in the House. I still do not know what you think about marketing areas in any degree whatsoever. If you feel that you would rather not answer, that is quite all right.

Representative ELLSWORTH. If I have to say it again, I will. I have said not once but twice and this is the third time that I not only will not give an opinion on this subject at this time, but I do not think I am competent to give such an opinion, and that if and when it comes before Congress, I will have, I hope, adequate enough information before me so that I can cast my vote. That really ought to be clear, don't you think?

Representative HOFFMAN. May I ask him a question?

Senator NEUBERGER. Certainly.

Representative HOFFMAN. Is that not the same position that the Senator took all through when asked about marketing areas, and he said he was not expressing an opinion as to whether they should or should not have marketing areas.

Senator NEUBERGER. I have said that and I have said that when we make a report which our committee will do, if it is the majority consensus of the committee that we should take a position on marketing areas, I will take a position on marketing areas. The question was asked of Senator Morse. Senator Morse did not take a position and did not beat around the bush about it, and the Oregonian had an editorial about it.

Representative ELLSWORTH. Senator, I assume that that reference is to me. If I beat around the bush three times I will do it the fourth. I cannot take a position on this subject until I have had a chance to know the opinions of the executive agencies and their reasons for making them.

Representative CHUDOFF. I can say this because I do not run for office in Oregon. From what I have heard and the little I know about timber, I think one of the main points if not the main point in the entire problem is the question of marketing areas and somebody is going to have to take the position as far as marketing areas. I do not know what should be done, but I think as long as the members of congressional committees or members of Senate committees won't take a stand on marketing areas, you are going to have these problems as long as there are trees growing in Oregon and you could send one hundred committees here and not get to the bottom of this. I think something should be done on an experimental basis possibly as far as marketing

areas are concerned. If it does not work out, maybe they can be changed. Certainly if you leave the Secretary an elastic right to change marketing area boundaries, if he wants to, and he won't do it, nothing is going to happen. The have nots are going to yell about the haves and nothing will be changed.

Representative ELLSWORTH. I think you will have that. True enough.

Representative CHUDOFF. I certainly will say that the law is very clear and if the Secretary wanted to do an honest job——

Representative HOFFMAN. What? Wanted to do what?

Representative CHUDOFF. Wanted to do an honest job, he would sit with his staff and work out this marketing area problem. He is ignoring it. Everybody in Oregon is afraid to make a statement on it. I do not know much about timber, but I know that is the crux of the problem and unless somebody takes the bull by the horns you are going to have this problem for a long time.

Representative ELLSWORTH. You are also going to have this problem when you write detailed legislation on a matter of this kind. My present prediction is that you will find that you cannot spell out in a law the terms and conditions under which there will or will not be a marketing area restriction.

Representative CHUDOFF. Maybe if we had a Secretary that came from somewhere else, we would be able to work it out more easily.

Representative ELLSWORTH. I could have brought a lot of this out on questioning if I had been a member of this committee. Let me explain that present marketing area restrictions were placed in effect by the previous Secretary, the previous administration in the executive department; this present administration since President Eisenhower became President, fell heir to that situation so far as the Bureau of Land Management restrictions are concerned.

Representative CHUDOFF. I agree with you on that.

Representative ELLSWORTH. I think to expect them to solve something that was created without their knowledge and consent and do it instantly is a little tough.

Representative CHUDOFF. I am not arguing that Mr. McKay did not inherit the marketing area law from a prior administration. I am not arguing that point. I do not care whether the Secretary is a Republican or Democrat; you have to have somebody who has enough guts to get into this and straighten it out and whoever does it is going to lose some friends.

Representative ELLSWORTH. I am not pretending to say that because the other administration was the other party it has any bearing on this point. Unquestionably the reasons for setting up those restrictions were sound and good or they would not have been done. Now, however, with these changed conditions coming on, what to do about the restrictions as set up under present conditions is something that is not going to be worked out with anything except a crystal ball right this minute.

Representative CHUDOFF. One of the greatest examples in this situation is Abraham Lincoln before he signed the Emancipation Proclamation. I read a book about it and he had a lot to think about before he signed that proclamation and he made a lot of enemies and it probably resulted in his death. If he did not have the guts to issue the

proclamation at the time he did, we might have had slave States and free States in this Nation now.

Representative ELLSWORTH. You want to be sure. When you issue a proclamation on this subject you want to be sure that you have done it right. As you have discovered in your hearings there are many differences in the several communities and areas. I want to make one more point on this.

I explained the nature and genesis of the Bureau of Labor Management marketing area restrictions. The Forest Service operates under a law on the subject which, as I said earlier, was enacted in 1944, and that authorizes the Forest Service to set up what are called federally sustained yield units. It is fairly well spelled out. The Forest Service has set up, as you have heard, a procedure for doing that. That, too, is not satisfactory to all concerned but it does give a place and a means and a method for adjudication determination or an executive determination of the problem.

Representative HOFFMAN. May I have one more question?

Senator NEUBERGER. Yes, sir.

Representative HOFFMAN. I have been looking at Senator Morse's statement here and I have looked in vain for any statement on marketing policy.

Senator NEUBERGER. If you would just listen, I said he was questioned about it and Senator Morse said he was not prepared to take a position on marketing areas at this time.

Representative HOFFMAN. That is the same as he said.

Senator NEUBERGER. When I asked him if he was not prepared, he did not give a flat answer.

Representative HOFFMAN. The Congressman said he did not know enough to express a hard and fast opinion—at least that is what I understood.

Senator NEUBERGER. He did not.

Representative HOFFMAN. Was that not the substance of what you said?

Representative ELLSWORTH. How could I or any other member of Congress make a flat out determination of it as a result of what we have heard here? It would be ridiculous.

Representative HOFFMAN. Do you know how many areas this marketing regulation covers?

Representative ELLSWORTH. No, I do not.

Representative HOFFMAN. Does not each individual area have a problem of its own. Over, for example, in the Smith River they have one thing and in Redding they have another and each problem is different.

Representative ELLSWORTH. Yes, and it is complicated by the need for salvage in several of the areas, too.

Representative HOFFMAN. About all you can do is make a general regulation or law authorizing the Secretary to provide for each case.

Senator NEUBERGER. I asked the Congressman if he thought the existing law should be left. He would not state a position.

It may be that he should not have an opinion on it. I am just trying to find out if the Congressman from the district most involved has an opinion on marketing areas or not. He has not answered that except in an involved manner that I can not understand.

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Representative HOFFMAN. You know that he could not express an opinion covering the whole area. You decline to express an opinion. Why expect someone else to do so?

Representative CHUDOFF. I want to ask one question.

Congressman, I listened to your statement very carefully and you did state frankly the way you felt about the Al Sarena case.

Representative ELLSWORTH. That is right.

Representative CHUDOFF. I do not want to get into that because we are in the middle of a hearing on it.

Do you think, outside of the Al Sarena case, that this committee is doing a good constructive job?

Representative ELLSWORTH. Yes, I do, Mr. Chudoff. I stated that in the early part of my statement. I feel that this has been a good job. I think that you have written a very valuable record. It is long overdue. I think you have sat as chairman almost the entire time, and I think you have conducted the hearings very fairly. I believe most all sides of the controversial question, as far as I know, have at least been brought before the committee. As I said in my opening paragraphs I have a feeling of personal gratitude to you gentlemen who I know have given a part of your recess time to come out here and do this. It certainly is commendable and I think the people of Oregon are grateful to you for doing it. Other than for these last few hours, I think it has been a marvelous thing.

Representative CHUDOFF. Do you not think it is fair to say that this committee may do some good and it cannot do any harm?

Representative ELLSWORTH. You are correct except for the last 3 hours.

Representative CHUDOFF. I am taking the Al Serena case out of it.

Representative ELLSWORTH. I reiterate that I feel a personal gratitude for the job.

Representative CHUDOFF. I would not want to venture an opinion on the Al Sarena until I heard it all.

Representative ELLSWORTH. That is my point.

Senator NEUBERGER. Do you have further questions?

Representative HOFFMAN. I want to put in the decision on the Al Serena mine case.

Mr. REDWINE. It is in with the first witness.

Senator NEUBERGER. I want to ask several questions. I want to get one thing straightened out.

Representative ELLSWORTH. Not that same question.

Senator NEUBERGER. We will go over the record, but that has not been ascertained. On the question of mining patents at the present time under existing law, as it now stands, when a firm or corporation or an individual acquires patent to a mining claim on the National Forest; does not that person get the timber at the present time?

Representative ELLSWORTH. Yes, if he brings that claim to patent even under the new law and has carried out all of the requirements.

Under the old law, when he brings that claim to patent, he has exactly what the claim called for when he filed it. In other words, as you undoubtedly know, even though I have long objected to the fact, a mining claim which can be filed so easily under the old laws without anything more than just sticking up a piece of paper on a stick, has acquired property rights. It is property. Being property and so ad-

judicated, many times it is not possible for the Congress to take away the right of that claimant to whatever is on that land at the time he takes it to patent.

Senator NEUBERGER. In other words, then, at the present time, it does exist. I was not sure, from your previous comments on this, whether you said that will, when a firm gets patent to a mining claim, that timber growing on the claim then belongs to that firm or individual.

Representative ELLSWORTH. That is correct. More than that, under the new law the timber on the claim as it comes to patent, if it has not been sold or marketed by the Forest Service, I believe that that timber also would go to the mining claim.

Senator NEUBERGER. I wanted to ask you a further question, because you were discussing the Al Sarena case.

Do you think that mineral employees or mining employees or mineral experts of the Federal Government or mining experts who are in the employ of the company involved should be the final determining agents of the mineral worth of land when patent is at issue?

Representative ELLSWORTH. Well, obviously, the Federal Government, under no circumstances should take the word of the mining claim man alone. That, I think, is self-evident. There has to be a floor that can be established completely as being absolutely without influence on the part of the claimant.

Senator NEUBERGER. In this particular case, do you think, as I say, the mining experts in the employ of the Federal Government should have the final authority or the assayers or the mining experts in the employ of the company that was involved?

Representative ELLSWORTH. As I understood it, there again I only regret that this matter has been brought up and left hanging in the air; I only regret that the procedure under which the decision was made is not brought into this hearing because, of course, the Government supervised and actually arranged for the taking of the necessary samples. That has long been stated.

Senator NEUBERGER. Did Government people go over the final samples?

Representative ELLSWORTH. What do you mean "go over the final samples"?

Senator NEUBERGER. What I mean is this: I am just again trying to get back to the final question, the question of who you think should be the final authority, the mineral experts of the Government agencies or mining experts employed by the company involved?

Representative ELLSWORTH. The Secretary of the Interior must determine to his entire satisfaction as the result of the testimony and work of his own people that the proof of mineralization submitted by the applicant is in fact true and bona fide and shows mineralization or that it does not; but under the laws, the mining claimant certainly has the right to attempt to establish the fact. Since he claims there are minerals there, under those laws he certainly has a right to come before the Department and prove that he has the minerals if he can and many times he cannot.

In this case he had no such opportunity—the record is very clear on that—until the opportunity was given to him by the Department on appeal.

Senator NEUBERGER. I want to thank you very much, Congressman Ellsworth. I just want to tell you one thing. It is my understanding that Senator Murray, the chairman of the full Interior Committee, wants to have a very full and thorough study of this case, that everybody will be given a chance to testify, including the officials of the Interior Department, including the owners of the Al Sarena partnership or corporation or whatever it might be, and that no one having a bona fide interest in it will be excluded from the opportunity to testify.

Representative ELLSWORTH. I am sure that is right. I would not bore the committee by reading my last two pages of my statement again. I hope this is the end of the time I will take up but my point in appearing here and saying what I did is emphasized, that this hearing has been staged at this late hour, in my opinion, for the sole purpose of warming over the baseless charges made last year by a newspaperman and then picked up and used in the campaign. If it were otherwise, why bring this case in at this late hour, bring in a few witnesses which would seem to corroborate a little bit, at least, the false statements made or statements that I think are false, why bring the case in at that point, get the story in the papers again, have it all warmed over if possible, and then drop it and go back to Washington and perhaps at some later date set up a hearing and really get the file out, because, in the long run, it is my belief that your committee will decide that this whole proceeding was quite right and regular and there is no Al Sarena case; but my charge against the committee is that, as you leave it, you have done nothing under the sun but warm over a political gimmick of last year.

Senator NEUBERGER. It is a perfectly proper thing for the committee to find out what happened in the field. The place to find out what happened in the field is when they are out in the State where it occurred.

Let me say this: I will refuse to sign any report here, regardless of its contents, until everybody has had an opportunity to testify, whether in the field or in Washington, and by everybody, I mean the owners of this firm; that means the Secretary, if he chooses to, or if he does not choose to testify, his representative in the Interior Department. I can assure you definitely about that so far as I myself am concerned.

Representative ELLSWORTH. I appreciate that very much, but I am sure you realize that the principals of the mine and their people are also in the field and this committee has been in the field itself for a week and there have been several days when there would have been time; in fact it could have been done in Medford where these gentlemen lived if the committee really intended to do so; and I renew my statement that it did not intend to give a full and fair hearing about this thing at the present time.

Representative CHUDOFF. I did not want to talk about it further but all I can remember is working and riding and I do not know when we had time.

Senator NEUBERGER. I concur. It was our feeling that, because of the controversial nature of the Al Serena case, it should not be discussed while we were discussing timber; that the people in the plants or field should be heard before the Al Serena case ever was taken up.

I am not very experienced in Congress, but I can see no difference in the net effect of testimony, whether it is taken in the morning or after-

noon or evening. The printed record will not show at what minute it was taken.

Representative ELLSWORTH. I am sorry you could not see it, because it is pretty evident. If you could take all of the incriminating evidence against a man who is being tried for murder, or for any other crime, and then delay 6 or 8 months before you heard his evidence, I do not think you would have a fair trial.

You say that this is controversial. So far as any of the rest of us are concerned, the controversy is one-sided. Some allegations and statements have been made and so far as I know made only from one source, by a newspaper columnist, and that is the extent of the controversy. The facts can easily be determined. They could have been determined last year when the mine owners went to your office. You could have asked for a hearing and gone into it.

Senator NEUBERGER. You brought that up twice. Let me tell the situation. The mine owners came to my office and discussed the matter with me. I arranged on the following day for them to have an appointment at either 2 or 3 in the afternoon. I do not remember the day. I think it was 3 in the afternoon with Mr. Coburn and Mr. Redwine, so they could present these facts to them. I said either to call back my office or call them. I believe they were staying at the Carroll Arms Hotel. We never heard from them again.

We arranged the appointment. Mr. Coburn and Mr. Redwine phoned my office and wanted to know where the McDonalds were. We never heard from them again. I listened to them for an hour.

Mr. COBURN. We even had a reporter there to take the thing down.

Senator NEUBERGER. We arranged an appointment and they never showed up. Is that correct?

Mr. COBURN. That is absolutely correct.

Representative ELLSWORTH. What they want and what we want, what anybody wants on this or any other case where a question has been raised, I think it may be said that the integrity of the Government officials has been questioned by this smear attack. What that requires is a complete airing, not in pieces, not to try the plaintiff's case here and now in the newspapers and then hope that folks will not get a good look at the final proof, but to do it all at one time so that we know what it is all about; but that can not be done.

Senator NEUBERGER. I just wondered if you do not know of many congressional studies where there has been evidence taken in the field and then by the people at Washington. For example, I just sat with the Agriculture Committee. The Agriculture Committee sat at Pendleton from 9 in the morning until 7 at night. They heard all kinds of charges against the Secretary of Agriculture from all kinds of organizations, farmers, and ranchers. Senator Ellender said that after the committee returned to Washington they would hear Secretary Benson and his staff. I heard no objections. I am very new to Congress, but it has always been my understanding that this is standard order of procedure.

Despite all the criticism of Secretary Benson, he will not be heard until the committee has completed its tour around the country, listening to the farmers.

Representative ELLSWORTH. I think everybody thought this joint subcommittee was out here in the field for specific purposes. Those

purposes have been related several times. A good job has been done.

Now in the very closing hours, the purposes for which the subcommittee came here are brushed aside and something entirely new is taken up without announcement, without any time for even our minority member to have suitable questions to ask the witness, and so on.

So I will have to end and I hope I may end by reiterating what I said in my original statement; that I do not think it has been a fair deal and I hope it is so noted throughout Oregon.

Representative HOFFMAN. They gave me notice that they were going to take it up yesterday and then it came along today.

Senator NEUBERGER. Mr. Redwine, did you want to ask something?

Representative HOFFMAN. I want to put on the record the fact that for the last hour the committee has been operating without Senator Scott, who I understand has left or at least he took his hat and coat and away he went; to make a talk at Salem, I understand, and it is obvious that we do not intend to get through and cannot get through tonight if we are given a chance to examine the witnesses who are here.

I am willing to assume the responsibility of asking for a recess. I think the hearing should be continued in Washington unless you want to hold hearings tomorrow or the next day or the next day.

Senator NEUBERGER. Mr. Redwine.

Mr. REDWINE. Here is a letter, Mr. Chairman, signed by Clarence A. Davis, dated September 3, 1953, address to the Al Serena Mines, Inc., Trail, Oreg., a copy to Director of the Bureau of Mines, Congressman Ellsworth, and Mr. D. Ford McCormick:

Pursuant to my conversation with Mr. Barber, the following modus operandi is acceptable to me in acquiring further evidence of a valid discovery on your contested claims—

Then he sets up the procedure that should be followed and it was followed to some extent as will be developed by further witnesses.

Representative ELLSWORTH. That is correct, Mr. Redwine.

As I said earlier, Congress was in adjournment at that time. The Solicitor did inform my office of the procedure to be worked out. Mr. Garber transmitted that information on to me. It was, I think, a proper thing for the Solicitor to do since he knew that I was interested in the matter.

Mr. REDWINE. Do you have any idea of what the Solicitor might have meant when he said "is acceptable to me"; who he is accepting from?

Representative ELLSWORTH. I think that is an ordinary term. He had worked out a plan which he says was acceptable to him. It was his own determination. I know that. I did not attempt to tell him how to work it out and I am sure Mr. Garber did not.

Senator NEUBERGER. Do you want to submit this for the record?

Mr. REDWINE. Yes.

Senator NEUBERGER. It may be received.

(The letter referred to is as follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., September 3, 1953.

AL SARENA MINES, INC.,  
Trail, Oreg.

GENTLEMEN: Pursuant to my conversation with Mr. Garber, the following modus operandi is acceptable to me in acquiring further evidence of a valid discovery on your contested claims:



1. I should like N. E. Volin, a mineral expert from the Bureau of Mines in Spokane, to accompany Mr. D. Ford McCormick when samples are obtained for assaying purposes. In the event Mr. Volin is unable to take the assignment, he will designate one or more substitutes from the Bureau of Mines who will be available.

2. The two men may arrange the time and place of meeting to suit their convenience. They should meet as promptly as possible, however.

3. Accurate record should be kept of the location from whence each sample is taken.

4. Samples should be taken from each of the following claims:

Henry Applegate, J. W. Merritt, Rainboe, Sulphide, Della McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb, J. D. McKinnon, Manganeese Claim, Staples, Arroyo Verde, Alabama and LaJolla.

You may take as many samples of whatever weight from each claim as you desire.

5. The samples should be retained in the possession of Mr. McCormick and the Government representative until shipped or delivered to a qualified assayer who is acceptable to both men.

6. The assay reports should be labeled so that they are easily identified to the claims from which they are procured and the reports sent to me promptly.

7. Mr. McCormick's salary and expense and the assaying costs will have to be borne by you. The Government will bear only the expense of its representative.

Very truly yours,

CLARENCE A. DAVIS,  
*Solicitor.*

Senator NEUBERGER. Congressman Ellsworth, you mentioned that you thought the committee came here to study one thing and was studying another. I think that what happens to timber growing in the forests is a proper concern of any committee studying the lumber industry in the State of Oregon.

The situation of mining claims on national forest land has been a controversy in this country and in this State for many years. It certainly seems to me a proper thing for the committee to find out the facts about this case. If the facts are found out and the case amounts to nothing nobody has anything to worry about.

Representative ELLSWORTH. I had not intended saying this. My regret is that according to the record that I read with reference to the handling of the 1955 act in the Senate you did not take a very active part in trying to do a job of protecting the timber on mining claims which was accomplished and was passed by the Congress and on which a lot of us have been working for a long time and which is generally acclaimed all over the country.

Senator NEUBERGER. What do you mean, I did not have an active role?

Representative ELLSWORTH. About all I know is I read your minority report and I do not recall any activity on your part toward the passage of that. I am sorry that I even brought that up. It had run through my mind that it would have been helpful had we had a little more assistance from the Senate side in that matter because it was something that some people were interested in.

Senator NEUBERGER. I will gladly submit your views to Senator Clinton Anderson, who was the sponsor in the Senate.

Let me inform you that I urged the passage of the bill and commended the bill, S. 1713, I will make a part of the record when I return to Washington, my individual views but what I objected to was that the bill still left the major shortcoming to which I objected today. I felt the bill should pass. I urged it on the floor of the Senate and voted for it in the committee but I said it still left open the great loop-

hole that once patent had been claimed the mining claimant could then have the timber on the claim. I felt that that loophole should be plugged.

(The material referred to is as follows:)

INDIVIDUAL VIEWS OF SENATOR RICHARD L. NEUBERGER, OF OREGON

I have joined in the committee's report on S. 1713, which I believe makes some long-needed improvements in public-land administration in areas where prospecting is prevalent. I want to make it clear, however, that in my own view the bill fails to go far enough and should not be mistaken for a permanent solution to the problems of the multiple use of the surface and subsurface of the public lands.

This bill fails to correct one glaring defect in the mining laws. It will still be legal, by proving a mining patent to public land, to convert to commercial gain the timber growing on that land—even though the timber has no relation to the mineral deposits, the discovery and development of which are the justification of the patent.

The committee report recognizes that this practice is against the public interest and deters sound conservation practices, and that in a number of national forests the separation of surface rights from mineral rights has by law been extended to mining patents as well as mining claims. I believe this loophole should be closed by general legislation for all federally owned timberlands.

RICHARD L. NEUBERGER.

Representative ELLSWORTH. I apologize for my previous comment, then. I am glad to know that you did help.

With reference to the other point, I feel a little bit that way myself, that the law is not as good as it should be; but there is a constitutional problem regarding the property rights on mining claims, and if you or anyone else has any suggestion for the solution to that that will stand up constitutionally along with it, and I do apologize for the previous reference because I did not know the record. I am very happy indeed to know that you did join in passing the bill. I only read your minority report comments and I assumed from that that you did not have an enthusiasm about the bill.

Senator NEUBERGER. If you read my minority report, you would see that it started off by commending the bill, and merely said it did not go far enough.

Representative ELLSWORTH. I am sorry.

Representative HOFFMAN. That is usual in a minority report, is it not?

Representative ELLSWORTH. Gentlemen, thank you very much. I apologize to the committee for occupying so much time, but I am grateful for having a chance to be heard since these hearings are held in my own State and I feel an obligation to be a part of the record of the hearings.

Thank you.

Senator NEUBERGER. We are grateful to you for coming. I think it is entirely appropriate and fine that a member of Congress from so important a district has honored us with his views.

We will take a short recess.

(Short recess.)

Senator NEUBERGER. The subcommittees will please come to order. We will resume.

Mr. REDWINE. Mr. Ashe, please.

Mr. Ashe was previously duly sworn.

**TESTIMONY OF LOWELL ASHE, ROGUE RIVER NATIONAL FOREST,  
DISTRICT ASSISTANT, UNION CREEK DISTRICT**

(The witness was previously duly sworn.)

Mr. REDWINE. Will you state your name and position.

Mr. ASHE. My name is Lowell Ashe of the Rogue River National Forest, district assistant of the Union Creek district.

Mr. REDWINE. How long have you been stationed there, Mr. Ashe?

Mr. ASHE. I have been there about 13 years now.

Mr. REDWINE. You are familiar with that entire national forest?

Mr. ASHE. Yes, I am.

Mr. REDWINE. Under a cooperative agreement between the State of Oregon and the Forest Service, I believe that the Forest Service rangers prepare what you call slash reports.

Mr. ASHE. That is right.

Mr. REDWINE. As to timber that is cut in the national forest areas even on private land?

Mr. ASHE. On private land, that is right.

Mr. REDWINE. Just how do you go about preparing a slash report, Mr. Ashe?

Mr. ASHE. Well, we are required under law to cooperate with the State in taking care of all slash disposal on private lands within our boundaries. That is part of my job. Ordinarily along in August we make our first report, preliminary report. Then along in any time after the 30th of September, we make our final slash report for the year.

The slash season or slash year runs from September 30 to September 30.

Any slash created after September 30 is classified as current slash or will go in on the next year's report.

These reports are made and—

Mr. REDWINE. Prior to the time you make the report, what do you do in the way of surveying as a basis for your report?

Mr. ASHE. We go and look over the areas and ordinarily with the operator, and plan what is the best or the cheapest way to reduce the slash hazard.

Mr. REDWINE. That report, then, contains what information?

Mr. ASHE. Oh, it contains the status of the land when the final slash report is made, the timber cut.

Mr. REDWINE. When you say "timber cut," you mean the volume of timber that has been cut?

Mr. ASHE. Yes, sir.

Mr. REDWINE. Is there a price figure also given, an estimated price as to what that timber was worth?

Mr. ASHE. No, sir.

Mr. REDWINE. Only volume?

Mr. ASHE. Volume is all.

Mr. REDWINE. I requested through your superior that you bring with you a slash report covering the Al Sarena area for last year, and I believe you have prepared the current one, too, have you not?

Mr. ASHE. Yes, sir.

Mr. REDWINE. May I see it, please? [Handed.]

Mr. ASHE. This is the one for 1954 and this is the one for 1955.

Mr. REDWINE. This figure on the back "volume removed from your current area, 800 M. b. f."; what does this "M. b. f." mean?

Mr. ASHE. That is thousand board feet.

Mr. REDWINE. In other words, there was 800,000 board feet cut last year?

Mr. ASHE. That is right, up until September 30.

Mr. REDWINE. Yes, sir.

Mr. ASHE. 1954.

Mr. REDWINE. And as to the volume cut then, it shows here "Volume removed per acre 26 M. b. f."

Mr. ASHE. 26,000.

Mr. REDWINE. That means that 26,000 board feet per acre is being cut?

Mr. ASHE. That is right.

Mr. REDWINE. Then the one for this year shows volume removed 1420. That is 1,420,000 board feet? Is that what that means?

Mr. ASHE. Yes, sir, that is right.

Mr. REDWINE. And again the cut was at the rate of 26,000 board feet?

Mr. ASHE. That is the estimate.

Mr. REDWINE. I realize that. Was that clean cutting?

Mr. ASHE. No. This was cut to a diameter limit.

Mr. REDWINE. What is the diameter limit?

Mr. ASHE. Sixteen inches.

Mr. REDWINE. In other words, everything from 16 inches down is left standing?

Mr. ASHE. That is right.

Mr. REDWINE. Are there many 11- and 14- and 16-inch diameter logs cut in this part of the country?

Mr. ASHE. Yes, sir, I guess there are quite a few.

Mr. REDWINE. What would you say about the stand between 10 and 16 inches in diameter? What is left there?

Mr. ASHE. I would not even offer an estimate. I am in no position to do that.

Mr. REDWINE. Do you think that they are cutting 75 percent? I believe you have a percentage on cut. Does that show here?

Mr. ASHE. 75 percent.

Mr. REDWINE. What does that 75 percent mean?

Mr. ASHE. That 75 percent, I think you will see on the other form, is 75 percent of the hazard removed after the burning was done.

Mr. REDWINE. I see. Are you in any position to estimate of this total and this is my total, adding the figures together, to 2,200,000 board feet, what percentage of that is Douglas-fir?

Mr. ASHE. I could not make an estimate. When I make my reports all I am interested in is the total volume.

Mr. REDWINE. You are familiar with that forest, however, are you?

Mr. ASHE. Oh, yes.

Mr. REDWINE. Well, what percentage do the larger trees run of Douglas-fir?

Mr. ASHE. Sir, I am not a timber sale officer. I am primarily a fire-control officer on the district.

Mr. REDWINE. I am talking about the species of trees. You do not have to be a sales officer for that. You are a forester.

Mr. ASHE. I would rather have one of our timber salesmen tell you that.

Mr. REDWINE. You not being a timber sales officer, you do not know anything about the value of that lumber, do you, those logs?

Mr. ASHE. No, sir.

Mr. REDWINE. You have been there how many years did you say?

Mr. ASHE. I have been there at that location 13 years. I have been 30 years with the Forest Service.

Mr. REDWINE. That is a long time. Thirteen years would make it since about 1942, would it not?

Mr. ASHE. I believe that is right.

Mr. REDWINE. And you have been on and off that property at fairly regular intervals during that period of time?

Mr. ASHE. Quite regular.

Mr. REDWINE. When you made your recent survey, was there any mining operations going on?

Mr. ASHE. Not to my knowledge.

Mr. REDWINE. When was the last time you saw any mining on there, roughly speaking?

Mr. ASHE. I could not say, sir. To my knowledge, not in the last 13 years.

Mr. REDWINE. No mining in the last 13 years, to your knowledge?

Mr. ASHE. Not to my knowledge.

Mr. REDWINE. That is all I have, Mr. Chairman, from this witness.

Senator NEUBERGER. Mr. Coburn?

Mr. COBURN. I do not have any questions of this witness.

Senator NEUBERGER. Mr. Lanigan?

Mr. LANIGAN. No questions.

Senator NEUBERGER. Congressman Chudoff?

Representative CHUDOFF. No questions.

Senator NEUBERGER. Congressman Hoffman?

Representative HOFFMAN. Did they cut any trees in 1955?

Mr. ASHE. Not to my knowledge.

Representative HOFFMAN. Not a single tree has been cut in 1955?

Mr. ASHE. Not to my knowledge.

Representative HOFFMAN. You made this survey in May?

Mr. ASHE. No, sir, I made my final survey in the latter part of October of this year.

Representative HOFFMAN. Final one. Did you make one in May of 1955?

Mr. ASHE. I was over there in May; yes, sir.

Representative HOFFMAN. Who was with you?

Mr. ASHE. At that time I was alone.

Representative HOFFMAN. Did Mr. Porter ever go over there with you?

Mr. ASHE. Mr. Porter?

Representative HOFFMAN. Yes.

Mr. ASHE. I do not know the gentleman.

Representative HOFFMAN. Did you make an estimate as of that time?

Mr. ASHE. No, sir.

Representative HOFFMAN. Did you see Drew Pearson's television account of what was happening over there?

Mr. ASHE. No, sir.

Representative HOFFMAN. That is all.

Senator NEUBERGER. Mr. Ashe, I want to thank you. I know it is sometimes difficult for a man who is working in the field and in the outdoors and with these resources to come in and submit to testimony and questions like this, but some of the facts brought out may bear on the custodianship of those resources and, as acting chairman of the committee, which is all I am, I am very grateful to you for your cooperation in coming here. Thank you, sir, very much.

Mr. ASHE. Thank you.

Senator NEUBERGER. We will submit for the record these slash reports by Mr. Ashe of the Forest Service.

(The reports referred to is filed with the committee.)

Representative HOFFMAN. Is your assistant named Klansky?

Mr. ASHE. That is right, sir.

Mr. REDWINE. Mr. Wood, please.

### TESTIMONY OF JACK H. WOOD, FOREST SUPERVISOR, ROGUE RIVER NATIONAL FOREST

(The witness was previously duly sworn.)

Mr. REDWINE. State your name.

Mr. WOOD. My name is J. H. Wood.

Mr. REDWINE. Your official position?

Mr. WOOD. I am the forest supervisor of Rogue River National Forest.

Mr. REDWINE. How long have you been at that particular position, Mr. Wood?

Mr. WOOD. Four years.

Mr. REDWINE. You have been with the Forest Service how long?

Mr. WOOD. Since 1934.

Mr. REDWINE. You have been at the present post for about 4 years?

Mr. WOOD. That is right.

Mr. REDWINE. Mr. Wood, you have been on this Al Serena property how many times in the last 4 years, would you say?

Mr. WOOD. Maybe three.

Mr. REDWINE. Have you seen any mining operations going on there?

Mr. WOOD. No, sir.

Mr. REDWINE. You have seen timber cutting though?

Mr. WOOD. I have seen it after it was cut.

Mr. REDWINE. But there is timber cutting going on there?

Mr. WOOD. There has been.

Mr. REDWINE. What about the sales contracts in that area, Mr. Wood. What is Douglas-fir selling for?

Mr. WOOD. Well, currently, we have sales on the forest in Douglas-fir that run, or, roughly between \$20 and \$30. There is a few under that, and a few over that, but the majority of them the Douglas-fir has sold in the last year or 18 months for anywhere from \$20 to \$30, depending upon the quality and accessibility and development cost.

Mr. REDWINE. So \$25 maybe would be a fair average, do you think?

Mr. WOOD. Well, fairly close; yes, sir.

Mr. REDWINE. What about sugar pine?

Mr. WOOD. Well, sugar pine is the premium species. It usually sells for not less than \$40. We have one sale that we sold last summer

which went for an alltime high of \$80; that is, an alltime high for our forest.

Mr. REDWINE. Mr. Wood, can you tell the committee what the comparable prices for Douglas-fir were in 1939?

Representative HOFFMAN. Mr. Chairman, what do you mean by comparable price, fir in the same location?

Mr. REDWINE. Yes, sir.

Representative HOFFMAN. Same road, same everything?

Mr. REDWINE. Same situation.

Let me ask one more question and we will go back to that.

Representative HOFFMAN. Surely.

Mr. REDWINE. This property is served with access roads, is it not?

Mr. WOOD. Yes, sir.

Mr. REDWINE. There are two roads on it, are there?

Mr. WOOD. Yes, sir.

Mr. REDWINE. How long have those roads been there?

Mr. WOOD. A long time, probably 30 years.

Mr. REDWINE. They are Forest Service roads, are they not?

Mr. WOOD. Yes, sir.

Mr. REDWINE. Does that take care of the question you had, Congressman Hoffman? The witness says that the roads have been there probably 30 years. The access situation was the same.

Representative HOFFMAN. He does not tell anything about the elevations or what the cost of hauling to market is. That is my point. If you are going to get a market price, conditions should be comparable, of course. Timber might be worth 1 price 1 place and something else another, and that \$80 fellow is out of business. He went bankrupt, did he not?

Mr. WOOD. No, sir.

Representative HOFFMAN. You are sure he did not?

Mr. WOOD. Positive.

Representative HOFFMAN. He is not in business, is he?

Mr. WOOD. Yes, sir.

Representative HOFFMAN. Where?

Mr. WOOD. In the Medford area.

Representative HOFFMAN. What is his name?

Mr. WOOD. Wilson.

Representative HOFFMAN. How much profit did he make on that, do you know?

Mr. WOOD. No, sir, I do not know.

Representative HOFFMAN. Of course, what somebody paid for something somewhere is something else again. It does not establish market prices.

Mr. REDWINE. What was Douglas fir worth in 1939, would you say?

Mr. WOOD. Mr. Redwine, I don't believe I can answer that question for this reason: In 1939 I was stationed on a forest in the northeastern part of the State of Washington, which is just about as far away from the Medford area in region 6 as you can get, and I do not have any personal knowledge of, you know, what lumber prices were. I can say that they were substantially less, not how much less.

Mr. REDWINE. They were not half as much as they are now, were they, Mr. Wood?

Mr. WOOD. No, sir, I would say they were less than half as much.

**Mr. REDWINE.** In other words, they have more than doubled in that period of time?

**Mr. WOOD.** Yes, sir; that is a safe statement.

**Mr. REDWINE.** Mr. Chairman, I would like to explain why I am going back to 1939 under this subject. This same corporation earlier than 1939 in applying for an RFC loan, which was turned down because the ground was not sufficiently mineralized to give the Government sufficient security for a \$20,000 loan, set up as part of its assets, which will be shown later by documents from the RFC, as the timber being worth \$80,000 at that time.

**Senator NEUBERGER.** This is of record at the RFC?

**Mr. REDWINE.** That is of record at the RFC and will be submitted for the record.

**Representative CHUDOFF.** It is probably a loan application.

**Mr. REDWINE.** It is a loan application to the RFC. That is the reason I am going back to 1939.

**Senator NEUBERGER.** You may proceed.

**Mr. REDWINE.** What about sugar pine? Has the price on that more than doubled also?

**Mr. WOOD.** Yes, sir, it has.

**Mr. REDWINE.** That is all I have from this witness, Mr. Chairman.

**Senator NEUBERGER.** Mr. Coburn, do you have any questions of Mr. Wood?

**Mr. COBURN.** I just wondered.

You have testified that \$25 is about the average price that you are getting for Douglas-fir?

**Mr. WOOD.** Currently, yes, sir.

**Mr. COBURN.** Have you every made any estimate publicly of the value of the timber involved in these 15 contested claims?

**Mr. WOOD.** No, sir.

**Mr. COBURN.** Would you care to make some estimate of the value of that timber?

**Mr. WOOD.** No, sir. I am in no position to, Mr. Coburn. I do not have enough personal knowledge. I have not even been on most of the claims.

**Mr. COBURN.** Does the figure, \$77,000, mean anything to you?

**Mr. WOOD.** Well, that was Mr. Leavengood's estimate, as I understand it, of his estimated value on the 15 contested claims. I believe that is right.

**Mr. COBURN.** On the 15 contested claims?

**Mr. WOOD.** Yes, sir.

**Mr. COBURN.** Do you agree with that figure, Mr. Wood?

**Representative HOFFMAN.** He just said he did not have any knowledge.

**Mr. COBURN.** He has answered that he is quoting someone else. He may have an opinion as to whether that is an accurate figure.

**Representative HOFFMAN.** He testified before that he had not been on that and did not know.

**Mr. COBURN.** I am asking if he agrees with that figure as a figure.

**Representative HOFFMAN.** That is the same thing.

**Mr. COBURN.** No, it is not.

**Representative HOFFMAN.** The other fellow gave a figure and you ask him to verify it.



Mr. COBURN. I have not asked him to make an estimate. I want to know if he agrees with the other opinion.

Senator NEUBERGER. The question can be put and Mr. Wood does not have to answer if he does not care to.

Representative HOFFMAN. I am calling attention to the fact that he says he was not on the land and does not know and cannot express an opinion that is worth a nickel.

Mr. REDWINE. Mr. Chairman, I want to point out that Mr. Wood testified that he has been on the property three times.

Is that correct, Mr. Wood?

Mr. WOOD. I have not been on all the claims.

Mr. COBURN. Mr. Wood, I have no intention of embarrassing you or to clutter up the record with a lot of irrelevant facts. If you do not answer the question it is all right with me.

Mr. WOOD. Mr. Leavengood estimated timber to be approximately 25,000 feet to the acre. The slash report which Mr. Ashe submitted a few moments ago which I have seen, of course, for that amount of timber which was cut substantiates that figure of 25,000 feet to the acre. Well, on that basis, how many acres would there be on 15 claims?

Mr. COBURN. Three hundred.

Mr. WOOD. Three hundred times twenty-five would be 7,500,000, so his figure gives it a value of somewhere in the neighborhood of \$10 per thousand, which I would say is not excessive, if that answers your question.

Mr. COBURN. That is fine.

Mr. REDWINE. What is the appraised value of that timber in that area per thousand?

Mr. WOOD. You mean on the claim?

Mr. REDWINE. Not on the claim; in the forest. If you are getting ready to have a sale, what is the appraised value?

Mr. WOOD. I will go back to my former answer, Mr. Redwine, that our sales we have made in the last year have been appraised, most of them, between \$20 and \$30 per acre. We have had some for less than that. We have also had some for more.

Mr. COBURN. That does not reflect the bid prices you have been getting?

Mr. WOOD. No, sir.

Mr. COBURN. Are the bid prices substantially higher or substantially lower?

Mr. WOOD. Well, there has been a wide variation, Mr. Coburn.

Mr. COBURN. Have they ever gone below the appraised price?

Mr. WOOD. No.

Mr. COBURN. Have they been higher than the appraised price?

Mr. WOOD. Yes, sir.

Mr. COBURN. Substantially higher?

Mr. WOOD. Well, it depends on what you call substantial, I guess. We have had some that I think in the last year the highest price we have had on Douglas fir is approximately \$32.

Mr. COBURN. The highest bid price?

Mr. WOOD. Yes, sir, maybe \$33, in that neighborhood.

Mr. COBURN. That is all.

Senator NEUBERGER. Mr. Lanigan?

Mr. LANIGAN. I have no questions.

Senator NEUBERGER. Congressman Chudoff?

Congressman CHUDOFF. No questions.

Senator NEUBERGER. Congressman Hoffman?

Representative HOFFMAN. If \$32 is the highest bid you have had, you would not say it was worth \$80 a thousand, would you?

Mr. WOOD. No, sir.

Representative HOFFMAN. So that that figure does not amount to much, that \$80.

Mr. WOOD. You are talking about two different species, Mr. Hoffman.

Representative HOFFMAN. Sure. You have no timber to sell on these claims anyway, have you?

Mr. WOOD. No, sir. That is private land.

Representative HOFFMAN. Then what we are talking about and what it is worth does not affect the Government's profit or loss on any timber sales in connection with these claims, does it?

Mr. WOOD. Would you repeat that question?

Representative HOFFMAN. Well, it is a long one. If you did not get it, maybe I could not explain it any better.

Mr. WOOD. I am sorry.

Representative HOFFMAN. I give up.

That is all.

Senator NEUBERGER. The gentleman from Michigan mentioned that it is private land. It became private land when patent was granted, is that correct?

Mr. WOOD. Yes, sir.

Senator NEUBERGER. Until then prior to the time that patent was granted, these claims were part of the Rogue River National Forest?

Mr. WOOD. Yes, sir.

Senator NEUBERGER. They belonged to the Federal Government?

Mr. WOOD. Yes, sir.

Representative CHUDOFF. Can I ask a question?

Representative HOFFMAN. So far as you know, the Government has not taken any court action to get them back, has it?

Mr. WOOD. No, sir.

Representative CHUDOFF. May I ask a question, Mr. Hoffman? I am trying to understand what is going on here.

Representative HOFFMAN. Yes.

Representative CHUDOFF. I have not made up my mind whether this is a good or bad case, but it could be a very bad case. When you get a mining patent under Federal law, do you pay anything for that? Did the Al Serena Mining Co. buy the patent from the Government or did somebody give it to them?

Mr. WOOD. Well, they pay a fee.

Representative CHUDOFF. How much is that fee?

Mr. WOOD. I do not know.

Representative CHUDOFF. Is it substantial?

Mr. WOOD. No, it is a small amount per acre.

Representative CHUDOFF. And you get all this timber free when you pay it and also everything that is underneath the ground free, too?

Mr. WOOD. Let me put it this way, Mr. Chudoff. When the patent is issued, all the resources both below and above the surface become the property—

Representative CHUDOFF. I understand that, but I want to know what you give for it or whether you get it for nothing.

Mr. WOOD. There is a small fee that they pay at the time.

Representative CHUDOFF. What is it, \$5 an acre?

Mr. WOOD. I think it is \$4 or \$5 an acre.

Representative CHUDOFF. I should get out of Congress and get all these patents. That would be a good business if I could get into it.

Mr. WOOD. You do not want me to answer that question.

Representative CHUDOFF. All you have to do is convince somebody that there are minerals on that land, that you staked a good and valid claim, and for \$4 an acre they will give you a thousand acres of this land and you are entitled to all the minerals and all the timber on this property and the public get nothing for it.

Mr. WOOD. Outside of the fee.

Representative CHUDOFF. And you have to spend about \$500 a year.

Mr. WOOD. I believe it is \$100 a year to the limit of \$500.

Representative CHUDOFF. In the language that we use back East, how you describe that is that you would say that is a great racket.

Mr. REDWINE. Congressman, let us ask Mr. Rice that question and get that on the record right now in answer to your question.

Mr. Rice, would you step forward just a moment and answer Congressman Chudoff's question?

#### TESTIMONY OF PIERCE M. RICE, MANAGER, OREGON LAND OFFICE—Resumed

(The witness was previously duly sworn.)

Representative CHUDOFF. I just wanted to find out how this thing worked. I understand that when you got a patent you got everything under the ground and everything above the ground, so that you were entitled to the timber on that.

Mr. WOOD. That is correct.

Mr. RICE. That is correct.

Representative CHUDOFF. You pay a \$5 filing fee for the application whether it is 1 claim or 100, and then you pay at the rate of \$5 an acre or a fraction thereof for the area.

Mr. RICE. On lode mining claims and placer claims \$2.50.

Representative CHUDOFF. This law was probably passed for the purpose of encouraging mining on these lands.

Mr. RICE. That is right.

Representative CHUDOFF. In other words, you threw in a bonus of the timber growing on the land.

Mr. RICE. All the resources contained, land and resources passed upon the issuance of patent.

Representative CHUDOFF. \$5 an acre and a \$100 a year development.

Mr. RICE. No, \$100 is the annual assessment requirement on each claim.

Representative CHUDOFF. Do you have to show a guaranteed expenditure for developing?

Mr. RICE. Five hundred dollars on each claim.

Representative CHUDOFF. That is a pretty good business if you get into it. I mean you can answer that question. That is not incriminating.

Senator NEUBERGER. That is a matter of opinion rather than fact.

**Mr. Rice.** That is true as a rule. Of course, on the O. and C. area we have a different situation.

**Senator NEUBERGER.** Thank you very much.

Did you have any further questions of Mr. Wood?

**Representative HOFFMAN.** Assuming that the applicants for this mining claim had expended around \$200,000 in attempting to develop it, would you not think that they believed they had a mine there before they put that amount of money into it?

**Mr. Wood.** Mr. Hoffman, I am not a mining engineer. I am a forester and it is pretty hard for me to offer an opinion on what they might have.

**Representative CHUDOFF.** I understand they sold a lot of stock to a lot of trusting individuals so they had to spend some of the money to look as if they had a mine.

**Representative HOFFMAN.** The average individual is not a sucker. And why do you usually interrupt before the witness answers?

**Representative CHUDOFF.** As I said before, spending money would not put gold in the ore. That has nothing to do in the case because certainly you do not get credit for what you spend in developing the land.

**Representative HOFFMAN.** It shows good faith.

**Representative CHUDOFF.** I guess the corporation had quite a few officers that got substantial salaries. I have not looked into it.

**Representative HOFFMAN.** You are just throwing that in.

**Representative CHUDOFF.** I am convinced that even though the property had only lumber the Al Sarena people got a good thing.

**Senator NEUBERGER.** Mr. Wood, I want to ask you one question. Do not answer if you do not want to.

Assuming that \$200,000 or \$2 million are spent on a series of mining claims in the anticipation of minerals and no minerals developed: Do you think that the public is under any obligation to reimburse the miners in the form of national forest timber?

#### TESTIMONY OF JACK H. WOOD, FOREST SUPERVISOR, ROGUE RIVER NATIONAL FOREST—Resumed

**Mr. Wood.** I think we would have to progress along whatever the law dictates, Senator.

**Senator NEUBERGER.** Do you have any further answer to the question?

**Mr. Wood.** No, sir.

**Senator NEUBERGER.** Mr. Redwine has another question.

**Mr. REDWINE.** Mr. Wood, although you say you have not been on each and every one of these disputed claims, you are familiar with the overall picture there. Is the timber growth fairly constant?

**Mr. Wood.** You mean, for example, in that drainage?

**Mr. REDWINE.** Yes, sir.

**Mr. Wood.** Yes, sir, I think within reasonable limits it is.

**Mr. REDWINE.** And in that particular area of the drainage it is constant, is it not?

**Mr. Wood.** Yes, sir. I think so.

**Mr. REDWINE.** That is all.

**Representative HOFFMAN.** And regardless of what may have been spent or may not have been spent on a mining claim when the Govern-

ment issues a patent the timber as well as what is under the ground belongs to the patentee, does it not?

Mr. Wood. Yes, sir.

Representative HOFFMAN. So the company owned the timber, did it not?

Mr. Wood. Yes, sir.

Representative HOFFMAN. And is it anybody's business if they owned it and they had a good sound, equitable title to it, what they got out of it? That is not a question for you anyway.

Mr. Wood. We have been treating it like any other private land, Mr. Hoffman, since patent was issued, if that answers your question.

Senator NEUBERGER. You have been treating it as any other private land since patent was granted?

Mr. Wood. Yes, sir; we have.

Senator NEUBERGER. You are doing right and carrying out your obligations as a forest officer.

Thank you for your cooperative attitude. We appreciate your coming in today. I just wanted to excuse Mr. Wood, if you are through.

Representative HOFFMAN. I am through.

[Mr. Hoffman continued:]

The other day you put in some figures about the loss of income in Oregon. Now, I want to put in some from the Survey of Current Business, United States Department of Commerce.

The Oregon personal income 1951, 1952, 1953, 1954, and then, the Oregon per capita income and the manufacturers, the payrolls for the same years together with the lumber industry payroll and then in connection with that, call attention once more to the 3 or 3½—whatever it was—months' strike in the lumber industry. I will not take the trouble to read them in.

Senator NEUBERGER. I will be happy to have you put them in. I want to make it clear inasmuch as you question my figures.

Representative HOFFMAN. No.

Senator NEUBERGER. Do you want to let me finish?

Representative HOFFMAN. When you do not state it accurately, I will interrupt.

Senator NEUBERGER. The situation I stated was that we had failed to hold our own. The State of Washington was similarly affected by the lumber strike of which you make a point, but the State of Washington in no way suffered the income decline with the comparison to other States that Oregon did from 1952 to 1954. I do not have the table with me. I will be glad to incorporate it in the hearings.

The State of Washington which had the similar strike did not suffer the similar decline.

I did not mention it in connection with this case at all but merely to point up the necessity for the committee to arrive at the best set of procedures that we can to keep this vital lumber industry in complete operation and maintain our business pace in the State of Oregon.

Representative HOFFMAN. No one is finding fault with that. I am trying to point out that there was a strike and there was loss of payroll payments. There was a drop. There is no question about it.

Senator NEUBERGER. That was the only reason I mentioned it because of the importance of keeping every lumber payroll that we can in operation that is consistent with sound principles. That was the

context in which I made the statement and again I repeat it. These will be accepted for the record, of course.

(The information referred to is as follows:)

[From Survey of Current Business, United States Department of Commerce]

*Oregon personal income*

	<i>Billion</i>		<i>Billion</i>
1950-----	\$2, 456	1953-----	2, 906
1951-----	2, 742	1954-----	2, 881
1952-----	2, 900		

*Oregon per capita income*

1950-----	\$ 1, 607	1953-----	1, 794
1951-----	1, 749	1954-----	1, 757
1952-----	1, 814		

<sup>1</sup> Decrease, 2 percent.

NOTE.—United States decrease, 1953-54=1 percent.

[From Oregon Unemployment Commission]

*Oregon payrolls*

ALL MANUFACTURING		LUMBER INDUSTRY PAYROLLS	
1950-----	\$1, 049, 540, 700	1950-----	\$293, 726, 444
1951-----	1, 210, 551, 565	1951-----	343, 888, 058
1952-----	1, 270, 837, 444	1952-----	360, 106, 195
1953-----	1, 298, 380, 028	1953-----	351, 311, 233
1954-----	1, 278, 237, 284	1954-----	337, 985, 356

Senator NEUBERGER. Mr. Sanborn.

**TESTIMONY OF WILLIAM C. SANBORN, MINING ENGINEER, FOREST SERVICE, SAN FRANCISCO, CALIF.**

(The witness was previously duly sworn.)

Mr. REDWINE. What is your name and official position, Mr. Sanborn?

Mr. SANBORN. William C. Sanborn. I am a mining engineer for the Forest Service.

Mr. REDWINE. How long have you been so employed?

Mr. SANBORN. Since September 1945.

Mr. REDWINE. Will you briefly give your background experience and qualifications?

Before you start answering that; Mr. Chairman, a little bit later I am going to suggest to the Chairman that we include in the record the transcript of the hearing on this matter. Mr. Sanborn testified at that time.

Senator NEUBERGER. Of what date was that, Mr. Redwine?

Mr. REDWINE. This was September 13, 1950. Mr. Sanborn was a witness at the hearing conducted by Mr. Rice. At that time, Mr. Sanborn put all of his qualifications in and I would like just briefly for him to mention his background at this time because it will show in the record later on.

Senator NEUBERGER. Will you do so briefly, please?

Mr. SANBORN. Well, I have a degree of bachelor of science in mining engineering from the Michigan College of Mining and Technology, 1933.

Representative HOFFMAN. Mr. Chairman, in the interests of brevity, I have no objection to your putting them in later instead of repeating them here.

Mr. REDWINE. That is satisfactory.

Senator NEUBERGER. That is all right with me.

Representative HOFFMAN. I assume he is qualified.

Senator NEUBERGER. We ought to let him finish that sentence. Why do you not finish the part about your education.

Mr. SANBORN. That completes my education so far as college goes.

Senator NEUBERGER. How long have you been employed by the United States Forest Service?

Mr. SANBORN. Since September 1945.

Senator NEUBERGER. Where are you stationed?

Mr. SANBORN. San Francisco, Calif.

Senator NEUBERGER. Thank you very much.

Mr. REDWINE. You have had experience as an assayer and underground sampler, have you not?

Mr. SANBORN. Yes, sir.

Mr. REDWINE. You accompanied Mr. Hattan on an examination of the Al Sarena claims, did you not?

Mr. SANBORN. Yes, sir.

Mr. REDWINE. What was that date?

Mr. SANBORN. I believe it was July 12, 13, 14, and 15, 1949.

Mr. REDWINE. That was what has been testified to by Mr. Hattan as his second sampling trip, was it not?

Mr. SANBORN. I believe that is correct.

Mr. REDWINE. Besides you and Mr. Hattan, who were present?

Mr. SANBORN. Mr. Charles McDonald, Mr. H. P. McDonald, Jr., and also present at the camp was a Mr. Aultland.

Mr. REDWINE. Did you visit the 15 claims?

Mr. SANBORN. Yes, sir; I did.

Mr. REDWINE. What procedure was followed in determining where samples would be taken?

Mr. SANBORN. Well, in effect, samples were secured at points suggested, or, if you will, directed by the McDonald boys. In addition, there were a few samples taken at places that appeared to be favorable. In other words, it is the usual practice to not rely wholly on 1 or 2 samples.

Mr. REDWINE. But in the main, most of the samples were taken at a spot designated by the McDonald boys, I believe you said?

Mr. SANBORN. Yes, sir.

Mr. REDWINE. And that was supposed to be the discovery point, or not?

Mr. SANBORN. Well, the discovery points are set forth on the mineral survey plots, and in practice many times when you go into the field you find no exposures to sample at the discovery point as shown on the mineral survey plot, so you rely on the applicant then to point out the areas that most favorable results might be expected.

Mr. REDWINE. After the samples were taken, what happened?

Mr. SANBORN. They were sacked and properly marked. Mr. Hattan kept a record of all the identification of the samples. Tags were placed inside of each sack and they were retained in our possession.

Mr. REDWINE. Until you delivered them to the railroad, I believe.

Mr. SANBORN. No, I did not myself deliver them to the railroad.

Mr. REDWINE. Who did?

Mr. SANBORN. That I could not say. I directed the packaging of them and the submission to San Francisco to the regional forester.

Mr. REDWINE. And when they reached San Francisco, what happened?

Mr. SANBORN. I personally took them to Abbot A. Hanks, Inc., with the instructions as to what assaying we wished to have conducted.

Mr. REDWINE. What do you mean by that, as to their gold and silver content?

Mr. SANBORN. That is correct.

Mr. REDWINE. You did not dictate the method by which they should assay them, did you?

Mr. SANBORN. No, sir.

Mr. REDWINE. Only that you wanted the gold and silver content determined?

Mr. SANBORN. That is correct.

Mr. REDWINE. With instructions then to direct the report to whom?

Mr. SANBORN. To Mr. Hattan.

Mr. REDWINE. Do you recall what the date was that you delivered those samples to Abbot A. Hanks?

Mr. SANBORN. I do not; no.

Mr. REDWINE. On the basis of your experience, what you observed on the claims, and your study of the assay report as delivered by the Abbot Hanks concern, do you consider that a valid discovery had been made on those 15 claims?

Mr. SANBORN. No, sir.

Mr. REDWINE. That is all, Mr. Chairman.

Senator NEUBERGER. Have you any questions of Mr. Sanborn, Mr. Coburn?

Mr. COBURN. No.

Representative CHUDOFF. I would like ask one question on a matter of general knowledge for the record. When you take these ores or whatever you call them, and put them in these canvas bags, do you seal the sack?

Mr. SANBORN. Not as a general practice.

Representative CHUDOFF. Is there not a rule of the Department that it has to be sealed with a wire stamp and the seal of the Department placed on it?

Mr. SANBORN. Not to my knowledge.

Representative CHUDOFF. Everybody trusts everyone?

Mr. SANBORN. Not if you keep possession of them.

Representative CHUDOFF. But you did not keep possession of them. I am not saying it happened, but if somebody wanted to they could dump something out and put in something else. It would not be considered good business, in my opinion, not to do something that would keep it from being substituted. You have a like sample and you send the sample on to the assayer?

Mr. SANBORN. Normally, I keep the samples in my possession at all times, but in this instance I rode from San Francisco to Redding. I secured a car from Redding and I drove to Medford, so it was impossible for me to, and I did not at the time, proceed in any different way than I normally do.



Representative CHUDOFF. But this was the second sample that had been taken and that showed not to have enough gold or silver content to warrant having a valid claim; is that right?

Mr. SANBORN. It was the second sampling that Mr. Hattan had.

Representative CHUDOFF. There was a third sampling that got from Oregon to Alabama somehow. Who took it from Oregon to Alabama? Do you know, or would somebody have to tell us that?

Mr. SANBORN. I do not know.

Representative CHUDOFF. I understand that that was the fourth. There was some sample that got from Oregon to Alabama that showed a lot of gold and silver sampling. I was wondering how that got from Oregon to Alabama, but somebody else would tell us that later, I guess.

Mr. REDWINE. In your opinion, the assaying was done in a proper manner?

Mr. SANBORN. Yes, sir.

Mr. REDWINE. What is the reputation of the company that did the assaying?

Mr. SANBORN. Very, very good.

Senator NEUBERGER. Mr. Lanigan?

Mr. LANIGAN. I have no questions.

Senator NEUBERGER. Mr. Hoffman?

Representative HOFFMAN. Do you know anything about the standing of Abbot A. Hanks, San Francisco?

Mr. SANBORN. Yes, sir.

Representative HOFFMAN. What is it, good or bad?

Mr. SANBORN. Very good.

Representative HOFFMAN. Included in that, it has the reputation for integrity?

Mr. SANBORN. That is right.

Representative HOFFMAN. What about Smith of Los Angeles?

Mr. SANBORN. As far as I know, very good.

Representative HOFFMAN. What about Williams of Alabama?

Mr. SANBORN. I do not know about them.

Representative HOFFMAN. Do you remember what date it was that you got those samples with Mr. Hattan?

Mr. SANBORN. Yes. July 12, 13, 14, and 15, 1949.

Representative HOFFMAN. Did you have them from that time on until they were delivered to someone to ship to San Francisco?

Mr. SANBORN. Yes, sir.

Representative HOFFMAN. You had them in the back of your car?

Mr. SANBORN. In Mr. Hattan's car until we arrived in Medford on July 15. We transferred them to a vehicle I was using. I do not recall especially whether I spent an additional week on the Klamath Forest or not. I could determine that, however, by going to my diary.

Representative HOFFMAN. When were they shipped?

Mr. SANBORN. That I could not say exactly, when I left the samples for boxing and shipping.

Representative HOFFMAN. With whom did you leave them for boxing and shipping?

Mr. SANBORN. I do not have a recollection of who I left them with.

Representative HOFFMAN. You do not know who did get them from you?

Mr. SANBORN. Well, I could look it up. I could determine that.

Representative HOFFMAN. But you do not recall at the present time?

Mr. SANBORN. No, sir.

Representative HOFFMAN. You mean you had a record of it.

Mr. SANBORN. Perhaps in my diary. I could ascertain who I left them with for crating and shipment to San Francisco.

Representative HOFFMAN. If that information is available, would you send that to us by mail to the committee in Washington?

Mr. SANBORN. Yes, sir.

Senator NEUBERGER. Thank you very much.

Representative HOFFMAN. The Senator means, I assume, that if you had it in a book made at the time, if that information is available from some record you made at the time.

Representative CHUDOFF. That is what he means.

What we want is a true and correct copy of your book of original entry, I believe they call it in law.

Mr. SANBORN. It may be very little. It is not normal that I record every step that I do.

Representative CHUDOFF. If you have it, send it to us, and if you do not have it, you can not give it to us.

Representative HOFFMAN. What is the ordinary, normal, practice with reference to samples? How do you handle them? You handle these in a different way, I understand.

Mr. SANBORN. Simply because I did not have a vehicle out of San Francisco; not abnormal at all. In other words, when I go to southern California, many times I ride the train to Los Angeles, pick up a car there. If I take samples on the San Bernardino Forest, I leave them with the warehouseman and tell him to ship them to the regional forester.

Representative HOFFMAN. Ordinarily when you take a sample, do you split it and keep some part of it?

Mr. SANBORN. No, sir.

Representative HOFFMAN. You do not do that?

Mr. SANBORN. No, sir.

Representative HOFFMAN. Did you in this case?

Mr. SANBORN. I believe we split some.

Representative HOFFMAN. You believe you did. Do you remember whether you did or did not?

Mr. SANBORN. I know we split some but as to which ones we split. I do not know.

Representative HOFFMAN. You are talking about the ones you took on those days you mentioned?

Mr. SANBORN. That is correct.

Representative HOFFMAN. You had several samples. Some you split and some you did not?

Mr. SANBORN. That is right.

Representative HOFFMAN. What would be the purpose of splitting some and not others?

Mr. SANBORN. It is because of their bulk.

Representative HOFFMAN. You just split the big ones?

Mr. SANBORN. That is correct.

Representative HOFFMAN. What did you split them for, so as to have some on hand because they were too big?

Mr. SANBORN. That is right.

Representative HOFFMAN. If they were too big, why did you not split them at the mine?

Mr. SANBORN. That is where we split them, right where we were taking the sample.

Representative HOFFMAN. If you took a sample and then split it, I thought what you took at the time at the hole or wherever it was, did not become a sample until you got through splitting it.

Senator NEUBERGER. I have heard a lot about these split samples.

Mr. SANBORN. It was at the point of sampling that the splitting was done.

Representative HOFFMAN. But you did not at any time afterward split any and keep a part of it?

Mr. SANBORN. No, sir.

Representative HOFFMAN. That is all.

Senator NEUBERGER. Are there any other questions of Mr. Sanborn?

Representative CHUDOFF. I have no questions.

Senator NEUBERGER. Thank you very much, Mr. Sanborn, for being with us and answering so helpfully.

Mr. REDWINE. Mr. Kansky, please.

(The witness was previously duly sworn.)

### TESTIMONY OF GEORGE W. KANSKY, DISTRICT RANGER, UNION CREEK, ROGUE RIVER NATIONAL FOREST

Mr. REDWINE. State your name and official position, Mr. Kansky.

Mr. KANSKY. I am George W. Kansky, district ranger at Union Creek on the Rogue River National Forest.

Mr. REDWINE. Mr. Kansky, Mr. Ashe works under your supervision, does he not?

Mr. KANSKY. Yes, sir, he does.

Mr. REDWINE. Are you familiar with his work in making the surveys and preparing the reports on slash?

Mr. KANSKY. Yes, sir, I am.

Mr. REDWINE. Is he a competent man?

Mr. KANSKY. He is very competent.

Mr. REDWINE. That is all I have, sir.

Senator NEUBERGER. Are there any other questions of Mr. Kansky?

Mr. Coburn?

Mr. COBURN. No, Mr. Chairman.

Senator NEUBERGER. Mr. Lanigan?

Mr. LANIGAN. No.

Senator NEUBERGER. Congressman Chudoff?

Representative CHUDOFF. No.

Senator NEUBERGER. Mr. Hoffman?

Representative HOFFMAN. No.

Senator NEUBERGER. Thank you very much, Mr. Kansky. That was not much to take you away from Jackson County for 2 days.

Mr. REDWINE. Mr. Appling.

(The witness was previously duly sworn.)

**TESTIMONY OF RICHARD N. APPLING, JR., MINING ENGINEER,  
UNITED STATES BUREAU OF MINES**

**Mr. REDWINE.** Will you state your name and official position?

**Mr. APPLING.** Richard N. Appling, Jr., employed as a mining engineer with the United States Bureau of Mines. At the time that this affair took place, I was stationed in Grants Pass and I am now in Spokane.

**Mr. REDWINE.** Will you identify that, please?

**Mr. APPLING.** Yes, sir. This looks like a copy of my report on the sampling that we did at the Al Sarena.

**Mr. REDWINE.** This is your report including the maps as to where the sampling was done?

**Mr. APPLING.** Well, those are just part of the maps, I believe. I have a more complete copy.

**Mr. REDWINE.** Do you have them with you?

**Mr. APPLING.** Yes, I do. Those were sort of supplemental maps where I thought more detail might be needed.

**Mr. REDWINE.** Will you leave with the committee all these maps that you have brought with you for inclusion in the record, please?

**Mr. APPLING.** All right. These others are copies of what you have.

**Mr. REDWINE.** Then separate from the formal report and the maps that we have there, what is that document there?

**Mr. APPLING.** That is a copy of the assays and samples that we took on the claims at the time.

**Mr. REDWINE.** Made by the A. W. Williams Co. of Mobile, Ala.?

**Mr. APPLING.** That is right.

**Mr. REDWINE.** Mr. Appling, will you tell the committee how you first heard of this case and from whom, and what happened, what you were instructed to do?

**Mr. APPLING.** Approximately the first of November 1953, I received a phone call from our superior, Mr. M. E. Volin in Spokane. He informed me that I had been designated as his alternate to sample 15 contested mining claims of the Al Sarena Mining Co. in Jackson County. He informed me that they were sending instructions by mail but that in the meantime I should try to contact Mr. D. Ford McCormick and arrange an appointment with him.

**Mr. REDWINE.** Just who is Mr. D. Ford McCormick?

**Mr. APPLING.** Mr. McCormick is a registered professional engineer, a mining engineer.

**Mr. REDWINE.** I realize that, but what was his connection with this case?

**Mr. APPLING.** At that time I did not know. Later I found out that he had been designated as the company's representative during this sampling of the fifteen claims.

**Mr. REDWINE.** To get this in the record so that the committee will know what you are talking about, will you read the first paragraph of the introduction of your report?

**Mr. APPLING.** This is the introduction and my report on the sampling at the Al Sarena property.

At the request of Mr. Clarence A. Davis, Solicitor to the Department of the Interior, a representative of the Bureau of Mines was present in November 1953 during the sampling of 15 located mining claims held by Al Sarena Mines, Inc. R. N. Appling, Jr., was designated as the representative on October 7—

I think I stated that was about November 1. My memory slipped on that—

October 7, 1953, by Mr. M. E. Volin, and was instructed to contact Mr. D. Ford McCormick, the engineer retained by Al Sarena Mines, Inc., and to arrange with him a suitable time for the sampling.

Mr. REDWINE. You did contact Mr. McCormick?

Mr. APPLING. Yes, sir, I did.

Mr. REDWINE. Then what happened?

Mr. APPLING. We arranged to visit the property, I think it was on the 9th of September, for the purpose of looking the job over, determining how to go about it, and accordingly we met on the 9th, and I think I picked up Mr. McCormick and we drove to the property and we looked over a few of the claims, not all of them, and laid general plans for the sampling, and I returned to Grants Pass.

I called Mr. Volin when I got back to Grants Pass and discussed with him the arrangements that we had made and told him at the time that Mr. McDonald, Charles McDonald, and H. P. McDonald, had expressed a preference to the A. W. Williams Inspection Co. in Mobile, Ala., as the assayer.

I had not heard of the firm and neither had Mr. Volin.

Mr. REDWINE. Do you have the correspondence, telegrams, that passed between you and Mr. Volin in respect to no one in the Bureau having heard of A. W. Williams Inspection Co.?

Mr. APPLING. No, I have no telegram to that effect.

Mr. REDWINE. Do you have the telegrams that were exchanged between you trying to find out who they were?

Mr. APPLING. Yes, I think I have that.

Well, here is Mr. Volin's telegram to Mr. John Thoenen, acting regional director of region 7, Norris, Tenn. That would be the region in which Mobile, Ala., is located.

Mr. REDWINE. Would you read it, please?

Representative CHUDOFF. Give us the date of that, too.

Mr. APPLING. Pardon me. That was in a letter. That was a follow-up telegram. Evidently they did not act on the letter soon enough. Going to the letter—

Representative CHUDOFF. I think it would be better to read the letter.

Mr. APPLING. The letter is dated November 9, 1953, to John R. Thoenen, acting regional director, region VII. Subject: Information on assaying firm in Mobile, Ala.:

This office of the Bureau of Mines has been directed to represent the Government in connection with the sampling of mining claims held by Al Sarena Mines, Inc., Jackson County, Oreg., on which a denial of patent has been appealed to the Secretary of the Interior.

The instructions received through channels from the Solicitor direct that the samples shall be shipped or delivered to a qualified assayer who is acceptable to the representatives of the applicant and the Government. The applicant wants to ship the samples to A. W. Williams Inspection Co., Post Office Box 314, Mobile, Ala. We have suggested reputable assayers at nearer locations, but the applicants' representative seems to prefer the above firm. We would like to have a report on the reputation of this firm for assaying mineral samples. The analyses involved in this case will be for gold, silver, lead, zinc, and possibly copper. A few assays for gangue minerals may be required, but I cannot state what these will be until we go into the job further.

Your earliest action in looking into the reputation of the above firm will be appreciated because the sampling of the Al Sarena properties is to take place in the near future.

Mr. REDWINE. Now, if you will read the reply that Mr. Volin received from Mr. Thoenen.

Senator NEUBERGER. Speak a little louder, please, sir.

Representative HOFFMAN. And not quite so fast.

Mr. APPLING (reading):

Re your tel today. Williams Inspection Co. of Mobile is listed in Department Commerce directory and has O. K. of State geologist of Alabama by telephone to me today. No other information available. Letter not received.

J. R. THOENEN,  
*United States Bureau of Mines.*

Mr. REDWINE. When and by whom was final decision made that Mr. McCormick's insistence upon A. W. Williams Inspection Co. would be accepted?

Mr. APPLING. The decision was made by Mr. Volin. I received a wire from him repeating in effect what he heard from Mr. Thoenen.

Mr. REDWINE. Which you have just read into the record?

Mr. APPLING. Yes.

Mr. REDWINE. Then you proceeded?

Mr. APPLING. We proceeded with the sampling.

Mr. REDWINE. On that basis. I believe the record shows that you had Mr. Pattee, minerals technologist, and Gerald L. Briggs, core drill helper, associated with you, representing the Government.

Mr. APPLING. Yes, sir.

Mr. REDWINE. Now, in the actual sampling, when that was done, outside of the Government people headed by yourself, who was present?

Mr. APPLING. Mr. Charles McDonald, Mr. H. P. McDonald, Mr. Aultland, and I think that is all.

Mr. REDWINE. And Mr. McCormick?

Mr. APPLING. Yes, Mr. McCormick. Mr. Aultland was not there all the time, just part of the time.

Mr. REDWINE. Under your report, under "location," will you read page 2, will you read the first paragraph, please?

Mr. APPLING (reading):

Samples were taken from outcrops, pits, or trenches designated by the McDonalds. According to them, locations were selected that had been sampled with satisfactory results. Location of the sample on the outcrop or in the pit was at the direction of McCormick and the writer.

Mr. REDWINE. At spots designated by the McDonalds?

Mr. APPLING. Well, in the general locations designated by them; yes, sir.

Mr. REDWINE. Was that supposed to be discovery points?

Mr. APPLING. I do not think necessarily so. I think in some cases they were discovery points, trenches, or just general outcrops, but not always.

Mr. REDWINE. After the samples were collected, what was done?

Mr. APPLING. We prepared the samples on the spot. That is, we crushed them and ground them and split them, using a mechanical splitting device to assure an equal split. Each sample was split in 4 ways and half of the quarters or 2 of the 4 quarters, half of each sample was panned at the time by 1 of the McDonalds or Mr. Aultland.

Mr. REDWINE. What was the purpose of that?

Mr. APPLING. I think to show me the fact that there was mineralization in it. Each panful showed a tail of dark minerals. Some were

magnetic and some were pyrite; but in every case there was mineralization in the sample.

Mr. REDWINE. Proceed.

Mr. APPLING. One quarter of each sample was shipped to the assayer. One quarter was retained as an alternate sample. The reason for this procedure—I have never done it before—was that we retained an alternate sample because the weather was bad and I spent 5 days swinging a 4-pound hammer cutting these samples in the rain.

Mr. REDWINE. You spent how many days?

Mr. APPLING. I think it was 5 days altogether—4, perhaps. But at any rate, I wanted to retain one split just in the event they might be lost in transit and we would have something to replace them with and would not have to do the work over again.

Mr. REDWINE. What did you do, keep that alternate sample, as you call it, in the back of your car; or where?

Mr. APPLING. No, sir, we deposited that with the State department of geology office in Grants Pass for safekeeping. Mr. McCormick and I took it in and asked them to keep it there until we came after it.

Mr. REDWINE. Then what happened?

Mr. APPLING. Well, we got the assay returns and I wrote the report. Some time afterward, Mr. McCormick came to Grants Pass and we picked up the samples from the State department of geology office and destroyed them.

Mr. REDWINE. At what date?

Mr. APPLING. I could not say, sir.

Mr. REDWINE. I want to go back for a minute. Who received the A. W. Williams assay report?

Mr. APPLING. I do not know.

Mr. REDWINE. Did you receive it?

Mr. APPLING. I have a copy, but it was not mailed to me.

Mr. REDWINE. Who told you that it had been received?

Mr. APPLING. Nobody told me. They gave me a copy of the certificate.

Representative CHUDOFF. Whom do you mean by "they"?

Mr. APPLING. I think Mr. McCormick gave it to me.

Mr. REDWINE. You mean this assay report did not come back to the Bureau of Mines? It went to Mr. McCormick?

Mr. APPLING. The letter accompanying the assay report is addressed to the Al Sarena Mines, Inc.

Mr. REDWINE. Is that the original assay report?

Mr. APPLING. It is one of them. I think there were four copies.

Mr. REDWINE. It says here that they went to the First National Bank Building, Mobile, Ala.

Representative CHUDOFF. Do the Al Sarena Mines, Inc., have an office in Mobile?

Mr. APPLING. I could not say, sir.

Mr. REDWINE. You mean that the report did not come directly from the assayer to the Bureau of Mines?

Mr. APPLING. No.

Mr. REDWINE. What was the date that you went and picked up those samples that had been turned over to the Oregon Department of Geology and Mineral Industry?

**Mr. APPLING.** I cannot say exactly. It was at some time after the date of my report which was January 2. I honestly couldn't say how long after.

**Mr. REDWINE.** You came back down to Jackson County?

**Mr. APPLING.** No, I was stationed there at that time. I was living there.

**Mr. REDWINE.** I see. You went, then, and got these samples and destroyed these retained samples?

**Mr. APPLING.** Yes, sir.

**Mr. REDWINE.** How were they destroyed?

**Mr. APPLING.** They were shaken from the envelopes and dumped in the river, destroyed irrevocably.

**Mr. REDWINE.** You mean individually?

**Mr. APPLING.** Yes, sir.

**Mr. REDWINE.** And you do not remember the date that that was done?

**Mr. APPLING.** No, sir, for the reason that I attached no particular importance to it at that time. I had no reason to keep them. The more they would be around the more they would be open to question.

I would say it was around the 15th of January, but I couldn't say exactly.

**Mr. REDWINE.** Had you received a copy of this assay report at that time?

**Mr. APPLING.** Yes, sir. I received a copy of the assay report, I believe, just before the 1st of January.

**Mr. REDWINE.** You were representing the Federal Government in a dispute such as this and you permitted those samples to go to an assay house that you yourself in the beginning apparently had questioned, or because you did not know anything about it, you permitted those samples to go. Is that what you want to tell the committee?

**Mr. APPLING.** I did not permit anything. That decision was Mr. Volin's to make.

**Mr. REDWINE.** Did Mr. Volin make the decision that the report should come back to the Al Sarena Corp. rather than the Bureau of Mines?

**Mr. APPLING.** I do not think that that entered into it. I think the conclusion we arrived at was that they were paying for it.

**Representative CHUDOFF.** Who is Mr. Volin?

**Mr. APPLING.** He was formerly the chief.

**Representative CHUDOFF.** He was your superior and called you and told you to destroy the samples?

**Mr. APPLING.** No, sir. As a matter of fact, it was my idea to retain the samples. There was no mention made of retaining these alternates.

**Representative CHUDOFF.** You threw them in the river. Was that your idea of getting rid of them?

**Mr. APPLING.** There was no point in keeping them around.

**Representative CHUDOFF.** But having had prior assays showing no value of the ore and then this assay, all of a sudden, appears from A. W. Williams Co., whom you did not know, being picked by the fellow who filed the claim, showing a very substantial value of the ores, don't you think that as a reasonable man, you might have made a recheck of your samples because of the well-known assayers in the neighborhood?



Mr. APPLING. No, sir, I had no background information on this at all. I knew there was a contest and dispute.

Representative CHUDOFF. Did you have to go very far to dump these things in the river?

Mr. APPLING. About two blocks.

Representative CHUDOFF. Could you not have thrown them in the wastebasket?

Mr. APPLING. I suppose we could.

Representative CHUDOFF. Do you always throw them in the river?

Mr. APPLING. I never kept any before.

Representative CHUDOFF. Did you know of any of your co-workers to throw them in the river? It was very unusual to throw things like that in the river, was it?

Mr. APPLING. That is right.

Representative CHUDOFF. That is all.

Mr. REDWINE. You said that you wanted to get rid of them because the longer you kept them the more they would be open to question. What did you mean by that?

Mr. APPLING. They were not in an absolutely safe place. Somebody could have tampered with them.

Mr. REDWINE. Why put them in there if it was not a safe place?

Mr. APPLING. That was the only place we could think of to put them. We tried to put them in a bank vault and the bank would not accept them.

Representative CHUDOFF. They could not get them in the bank so they threw them in the river.

Representative HOFFMAN. He tried to put them in the bank one time and threw them in the river another time after he got the report. If there are any other insinuations that you think will hurt the young man, go ahead.

Representative CHUDOFF. I am not insinuating.

Representative HOFFMAN. Yes, you have been.

Mr. REDWINE. You refer to these retained samples as alternate samples because you were afraid the first shipment would get lost. You have had considerable experience in sampling?

Mr. APPLING. A fair amount.

Mr. REDWINE. You know what an umpire sample is?

Mr. APPLING. I certainly do.

Mr. REDWINE. You did not regard this as an umpire sample?

Mr. APPLING. I did not. Those are not umpire samples, definitely not.

Mr. REDWINE. They certainly were not used for one.

Representative HOFFMAN. What was that remark?

(Record read.)

Mr. COBURN. Could I ask him a question?

Mr. REDWINE. Please go ahead.

Mr. COBURN. I am not clear and I say this in all good faith. What was the purpose of retaining these samples, Mr. Appling?

Mr. APPLING. Just on the vague chance that the original samples might have been lost in transit.

Mr. COBURN. Might have been lost?

Mr. APPLING. In transit.

Mr. COBURN. In other words, you felt under no obligation to check the samples you kept against anything that you sent in, is that correct?

Mr. APPLING. Well, sir, I would not say that. The original instructions to Mr. Volin from the Director of the Bureau of Mines specifically stated that our activities were to be limited to the actions described in a memo from Mr. Davis' office and no mention was made of umpire samples or any check samples in there.

Mr. COBURN. Have you read those instructions into the record?

Mr. APPLING. No, sir, I have not.

Mr. COBURN. How long are they?

Mr. APPLING. I think they have been previously mentioned. I think Mr. Redwine mentioned them.

Mr. REDWINE. Here are the instructions.

Mr. COBURN. Are they detailed instructions as to how you should proceed?

Mr. REDWINE. Here are the instructions.

Representative ELLISWORTH. It was the letter that you asked me about.

Mr. COBURN. This letter is from Mr. Davis to Mr. Volin, is that correct?

Mr. APPLING. No, sir, I think it was directed to the Director of the Bureau of Mines.

Mr. REDWINE. The letter in question was from Mr. Davis to Al Sarena mines with copies to the Director of the Bureau of Mines and to Congressman Ellsworth. That was the direction.

Mr. COBURN. Let me ask the witness this: Under what specific instructions did you feel you were operating in this case?

Mr. APPLING. Well, those instructions are not in that letter.

Mr. COBURN. Can you give us a general idea of what you thought you were supposed to do?

Mr. APPLING. Well, merely sample each claim, one or more samples from each contested claim, and adequately locate the samples so that we could show where they were taken, and, as a normal safeguard, I took it on myself to be sure that the samples were not salted or tampered with in any fashion while they were in my possession.

Mr. COBURN. I did not want to catch you up, but did you not testify previously that they were in an unsafe place?

Mr. APPLING. Those were the alternates. I would not say they were unsafe, no. I think they could have been in a safer place, and I frankly doubt if we would have used them if the original samples would have been lost.

Mr. COBURN. You frankly doubt that you would have used them?

Mr. APPLING. Yes, sir. We did try to get them in a bank vault. If we could have put them there, it would have been a different matter.

Mr. COBURN. The other samples that you sent in, how long did you keep them in your possession?

Mr. APPLING. They went in the day after we finished sampling.

Mr. COBURN. Up to that time, have you testified they were in your possession?

Mr. APPLING. Yes, sir, they were in my possession.

Mr. COBURN. Did the detailed instructions tell you what to do about the retained samples?

Mr. APPLING. They mentioned no retained samples.

Mr. COBURN. You took that on your own responsibility?

Mr. APPLING. I took that on myself.

Mr. COBURN. Did Mr. McCormick agree?

Mr. APPLING. Yes, sir.

Mr. COBURN. Did the other members of your team agree?

Mr. APPLING. I do not think it was even put up to them.

Mr. COBURN. Just you and Mr. McCormick?

Mr. APPLING. Yes, sir.

Mr. COBURN. Were you under any directive from the Department, either from Mr. Volin or from the Bureau of Mines, to speed up action on this matter?

Mr. APPLING. No, sir, except as concerned the weather. That hurried our actions because winter was imminent.

Mr. COBURN. You did not get the impression anywhere that speed was of the essence here?

Mr. APPLING. I recall in the instructions—well, if I may read this sentence.

Mr. COBURN. Certainly.

Mr. APPLING (reading):

The two men—

referring in this case to McCormick and Mr. Volin—

the two men may arrange the time and place of meeting to suit their convenience. They should meet as promptly as possible, however.

That is the only reference I know of.

Mr. COBURN. That is your only recollection as to the element of speeding up action?

Mr. APPLING. That is right.

Mr. COBURN. That is all.

Mr. REDWINE. How long have you been with the Bureau of Mines?

Mr. APPLING. Since 1949.

Mr. REDWINE. Have you been in the Pacific Northwest all that time?

Mr. APPLING. Yes, sir.

Mr. REDWINE. Before you went with the Bureau of Mines, what was your experience?

Mr. APPLING. Except for some prospecting experience that was the first job I had when I got out of school.

Mr. REDWINE. How much mineral sampling have you done?

Mr. APPLING. Well, quite a bit of it during these 6 years.

Mr. REDWINE. How much? How many samples do you suppose you have taken?

Mr. APPLING. I imagine at least six or seven hundred samples.

Mr. REDWINE. You have never been a party to sending any to Alabama for assay, have you?

Mr. APPLING. No, sir.

Mr. REDWINE. Except this one instance?

Mr. APPLING. We have always sent them to our own laboratory in Albany.

Mr. REDWINE. When you and Mr. McCormick discussed where these samples were going to be sent, to whom did you suggest they be sent?

Mr. APPLING. I believe I mentioned Abbot A. Hanks, the firm whose reputation I know and, I believe, Smith Emory.

Mr. REDWINE. But you knew nothing about the reputation of the Williams Co.?

Mr. APPLING. No, sir.

Mr. REDWINE. What is the reputation of the Bureau of Mines Laboratory at Albany?

Mr. APPLING. Am I under oath?

Mr. REDWINE. Yes, sir.

Mr. APPLING. The assay laboratory?

Mr. REDWINE. Yes, sir.

Mr. APPLING. Very poor. I would please like the record to read that that is under oath.

Mr. REDWINE. What is wrong with this assay laboratory?

Mr. APPLING. I have a number of cases in the file where the assays were entirely incorrect by comparison with check samples.

Representative CHUDOFF. Did you ever complain to your superiors about that?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. How many assayers do you have there or chemists or whatever these fellows are called?

Mr. APPLING. I do not really know. I suppose about 6 or 8.

Representative CHUDOFF. In your opinion, they do not know what they are doing?

Mr. APPLING. Some of them evidently do not.

Representative CHUDOFF. If no good comes of these hearings, at least we will get up there and get some decent assayers.

Mr. APPLING. I would like to see it.

Representative HOFFMAN. Maybe, for the record, we ought to have a record of his complaints and specific instances if you want to go into that.

Representative CHUDOFF. Whoever has jurisdiction over that laboratory ought to be informed that the engineers who work for the Bureau of Mines have no confidence in their assayers.

Representative HOFFMAN. Do we know whether Mr. McKay appointed them?

Representative CHUDOFF. You are the only one worried about that. If they were appointed by the previous administration, and are no good, they ought to be fired, too. You are the only one worried about that.

Representative HOFFMAN. I have worried about a lot of things since I came out here. It is the first time I ever knew Federal funds to be used for political propaganda.

Mr. REDWINE. You have no confidence in the Federal Bureau of Mines assay office at Albany?

Mr. APPLING. I have only limited confidence.

Mr. REDWINE. When you were assigned to this particular job, you knew it involved a dispute as to mineral values, did you not?

Mr. APPLING. Yes, sir.

Mr. REDWINE. Did Mr. McCormick and Mr. McDonald tell you when they wanted the Williams Co. that they were dissatisfied with the assay report that had resulted from the Bureau of Land Management assay?

Mr. APPLING. No.

Mr. REDWINE. You did not know they were dissatisfied?

Mr. APPLING. I knew they were under contest, and I did not know why.

Mr. REDWINE. In all that walking around in 5 days down there, there was no discussion as to what had happened in the past?

Mr. APPLING. Not that I can recall of, no.

Representative HOFFMAN. Mr. Chairman, I was just advised that the Bureau of Mines at Albany did not have anything to do with this case. Why did we drag them in there?

Representative CHUDOFF. The witness did.

Representative HOFFMAN. No, counsel asked him.

Mr. REDWINE. The previous witness testified that the Bureau of Mines laboratory at Albany has made an assay of these same mines.

Representative HOFFMAN. I can see that it is pertinent, then. I had forgotten that.

Mr. REDWINE. Knowing or thinking that you knew that the Bureau office had limited capacity, or whatever you want to call it, and knowing this was a dispute and having become a party to using an assay office way back in Alabama, it seems to me that you would have wanted to check on them. You check on your own organization. You say your files show that you have. Why did you not want to check on them?

Mr. APPLING. We had specific reasons to check on them. I have offered samples for assay there that I knew contained a given mineral and they would not find the mineral in it. I had no reason to believe the Williams Co. needed checking and, well, I did not consider it necessary. In the first place, it was not my decision to make. It was Mr. Volin's.

My job is purely the mechanical job of carrying out his instructions.

Representative CHUDOFF. How do you spell that?

Mr. APPLING. V-o-l-i-n.

Representative CHUDOFF. Where is he?

Mr. APPLING. I think he is in Michigan now.

Mr. REDWINE. He is not with the Bureau any more?

Mr. APPLING. No, sir, he resigned.

Mr. REDWINE. With all this trouble you have with assay houses, then the minute you get this one back, because you do not want these alternate samples to be more open to question, you throw them in the river.

Mr. APPLING. That was by agreement. We agreed to retain them until the assays were returned to us when we would destroy them.

Mr. REDWINE. "Returned to us"?

Mr. APPLING. They were merely a precaution against possible loss.

Representative CHUDOFF. With whom did you have this agreement?

Mr. APPLING. Mr. McCormick.

Representative CHUDOFF. Were you keeping them to worry Mr. McCormick?

Mr. APPLING. No, I was worrying about my own right arm. I did not want to cut the samples again.

Representative CHUDOFF. When you got a favorable assay, you thought the best thing to do was throw the samples in the river.

Mr. APPLING. That had no bearing on it at all. I would have thrown them away whether the assay showed anything at all.

Representative CHUDOFF. Is that the usual procedure, to throw them away when you got the assay?

Mr. APPLING. I have never retained alternate samples before.

Senator NEUBERGER. Any questions, Mr. Coburn?

Mr. COBURN. No.

Senator NEUBERGER. Mr. Chudoff?

Representative CHUDOFF. As I understand the usual practice of your Bureau is to send samples for assaying to local individuals; is that right?

Mr. APPLING. No, sir, we send them to our own lab.

Representative CHUDOFF. You send them to your own?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. How did these get down to Alabama instead of to your own organization?

Mr. APPLING. I think that is explained in these telegrams, sir.

Representative CHUDOFF. Mr. McCormick got together with somebody and made a set of rules, is that it?

Mr. APPLING. No, sir; when we visited the property and set up the job we discussed assayers, and they expressed a preference for the Williams Inspection Co.

Representative CHUDOFF. Now, assaying is a very important part of filing these claims, is it?

Mr. APPLING. I presume it is.

Representative CHUDOFF. Is it the policy of the Government to allow the man filing the claim to pick the assayer?

Mr. APPLING. I do not know about that.

Representative CHUDOFF. Has that happened before?

Mr. APPLING. I don't know. This is my first experience with a contested or a patented mining claim.

Representative CHUDOFF. You say you have been with this Bureau since 1949.

Mr. APPLING. That is right.

Representative CHUDOFF. This was in 1953?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. And before or since you have never had it?

Mr. APPLING. Before or since I have never done any. I suppose it is in the province of some other Bureau.

Representative CHUDOFF. It would seem odd if the fellow having the dispute could pick his own judge. He was able to do it in this case, was he not?

Mr. APPLING. Here are the telegrams, sir.

Representative CHUDOFF. I understand that you were acting under orders. I do not think any of this was your fault. You had a job and somebody told you to do it and you did it. I want to find out whether it was very unusual to have that kind of situation arise.

Mr. APPLING. Well, the whole business was unusual. As I say, I have never had it.

Representative CHUDOFF. One thing we all agree is that the Al Sarena case was a very unusual case.

Mr. LANIGAN. Could I ask a question?

Senator NEUBERGER. As far as you know, is this the only time the Bureau of Mines has been brought into a contested mining claim?

Mr. APPLING. I believe so far as I can recall.

Senator NEUBERGER. And in this case, so far as I understand it, the Forest Service was saying the claim was no good and the claimant, of course, was saying it was good, so that you had a controversy. Your

instructions were to go and see the representative of the mining claim and arrange with him to sample. Those were the instructions you got from Washington or from Spokane?

Mr. APPLING. Yes, sir.

Senator NEUBERGER. Was anything ever said to you about having a representative of the Forest Service, the other party, present?

Mr. APPLING. No, sir.

Senator NEUBERGER. To your knowledge, was the Forest Service ever notified as to what was going on?

Mr. APPLING. Not so far as I know.

Senator NEUBERGER. To your knowledge, did the Forest Service ever see a copy of the assay report?

Mr. APPLING. So far as I know, I just do not know. I would have no idea.

Senator NEUBERGER. You do not know.

Mr. APPLING. No, sir.

Senator NEUBERGER. That is all.

Representative CHUDOFF. Did you ever discuss this with any representative of the Forest Service?

Mr. APPLING. No, sir.

Mr. LANIGAN. Would the same be true of the Bureau of Land Management?

Mr. APPLING. Yes, sir.

Mr. LANIGAN. So far as you know, they never knew anything about your activities?

Mr. APPLING. I have no knowledge of it at all.

Representative CHUDOFF. So that this was an unusual proceeding that the Bureau of Mines was called in. Do I understand that the Secretary has the authority to call in any agency of Government that he wants to help him decide the case; is that right?

Mr. APPLING. I would presume so.

Representative CHUDOFF. He just called you in because the Bureau of Land Management was pretty specific in their decisions, first at the regional level, and then at the higher level?

Mr. APPLING. Well, he did not actually call me in. He called Mr. Volin in, and I do not know why he did.

Representative CHUDOFF. Is it not true that the whole crux of this case, the whole point of the triangle in this case, is whether or not the organization assayers knew what they were talking about when they assayed the samples or whether or not the Alabama assayers knew what they were talking about?

Mr. APPLING. That is right.

Representative CHUDOFF. Do you not think, as a matter of good judgment and business, if you have 2 assays as far apart as these 2 were, that you ought to have an umpire sample?

Mr. APPLING. In retrospect, yes.

Representative CHUDOFF. Operating on your own responsibility, you would have?

Mr. APPLING. I possibly would, but would depend on a lot of circumstances. I have never taken umpire samples or had check samples taken.

Representative CHUDOFF. Because you have never been in this situation?

**Mr. APPLING.** Well, in any sort of operation, I doubt if it would have occurred to me.

**Representative CHUDOFF.** You were acting under Mr. Volin's instructions first of all, as to how to get the samples, and second, what happened when you got the assays, to dump the other samples in the river.

**Mr. APPLING.** No, sir, he did not say a thing about retaining alternate samples. That was my own doing.

**Representative CHUDOFF.** Let us get the record straight. Did you not testify that Mr. Volin told you to dump the samples in the river?

**Mr. APPLING.** No, sir, I don't think I did. If I did, I was in error.

**Representative CHUDOFF.** I just wanted to make sure.

**Senator NEUBERGER.** Any questions, Mr. Hoffman?

**Representative CHUDOFF.** May I ask one more question? Will you yield?

Do you know what date Mr. Volin resigned from the Department?

**Mr. APPLING.** No, sir, I do not.

**Senator NEUBERGER.** Mr. Hoffman?

**Representative HOFFMAN.** Something was said about this being unusual. It was unusual for the Secretary to order another hearing, was it?

**Mr. APPLING.** Well, as far as I know, it is the first time I have encountered it.

**Representative HOFFMAN.** You would not criticize that if somebody was yelling that they had been trimmed, would you?

**Mr. APPLING.** I wouldn't, no, sir.

**Representative HOFFMAN.** You did not have any interest in the matter?

**Mr. APPLING.** None at all, sir.

**Representative HOFFMAN.** You did not volunteer for the job?

**Mr. APPLING.** I certainly didn't.

**Representative HOFFMAN.** And you had never been employed by these people in this mine, had you?

**Mr. APPLING.** I had never met them before.

**Representative HOFFMAN.** You did not know them?

**Mr. APPLING.** No, sir. I knew who they were.

**Representative HOFFMAN.** All you got was an assignment to go and do a job?

**Mr. APPLING.** That is right, sir.

**Representative HOFFMAN.** Who sent that wire down?

**Mr. APPLING.** Mr. Volin.

**Representative HOFFMAN.** Where is he located?

**Mr. APPLING.** I think he is in Michigan.

**Representative HOFFMAN.** Where is the first wire? Who inquired first about it?

**Mr. APPLING.** Mr. Volin inquired about the Williams Co. from Mr. Thoenen. Mr. Volin initiated the inquiry.

**Representative HOFFMAN.** Yes.

**Mr. APPLING.** He asked the regional director of that region.

**Representative HOFFMAN.** Then he got a wire back from—who is this man?

**Mr. APPLING.** That is the man that he addressed the wire to. Mr. Volin wrote him a letter. Here is a copy of the letter. That is the inquiry. This is the answer.



Representative HOFFMAN. That is the answer. Did you read that in the record?

Mr. APPLING. I didn't read it in.

Representative CHUDOFF. That is in the record. He read it once before.

Senator NEUBERGER. I think we ought to have one speak at a time.

Representative CHUDOFF. Mr. Chairman, it is in there.

Representative HOFFMAN. That shows that the State geologist said he was all right, did he not?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. Do you think that geologist was interested in this mine in any way? Have you reason to believe he was?

Mr. APPLING. I have no reason to believe so, sir.

Representative HOFFMAN. Now, they have been talking about the dumping of these samples in the river. Hattan did not even keep any extra ones, did he?

Mr. APPLING. I do not believe he did.

Representative HOFFMAN. According to the testimony here some were carted around for a week or more or maybe 15 days in the back of an automobile. You put yours in some place you thought was secure, the extra ones?

Mr. APPLING. Alternates, yes, sir.

Representative HOFFMAN. And you kept it until the report came back.

Mr. APPLING. And for some time after that. A week or two, anyway.

Representative HOFFMAN. Do you know of any reason why you should clutter up our office or any other place with it any longer after you got the report?

Mr. APPLING. I couldn't think of any.

Representative HOFFMAN. You said that your sole purpose in taking the duplicate or alternate, as I understood it, was if they ever got lost in some way?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. Have you ever had your reputation or actions questioned by anybody other than Drew Pearson?

Mr. APPLING. Not even by him, I am afraid.

Representative HOFFMAN. It is in the papers. Didn't you read the papers here about it?

Mr. APPLING. No, I am afraid I missed on that.

Representative HOFFMAN. I thought he cast a few insinuations your way, but do not be worried about it. I think two presidents have characterized him as being untruthful.

These helpers that you took along, what was their mission in going with you?

Mr. APPLING. One man did the surveying. He located samples on the map and the course and distance from the nearest corner post.

Representative HOFFMAN. Did either one of them have anything to do with the question of where the samples should be sent? Was that any part of their duty?

Mr. APPLING. No, sir.

Representative HOFFMAN. The statement I have says that the first two were deposited with the postmaster for safe-keeping first.

Mr. APPLING. I believe that should have been the first day. I do not recall it too well, but I know that we left the samples with the

postmaster at Trail after the first day's sampling. We thought they would be safe there. We discontinued it after the first 1 or 2 days for the reason that the post office closed early and we had to quit too soon to get down there.

Representative HOFFMAN. Did you take any extra precautions during the pulping of the samples?

Mr. APPLING. Well, when we used the jaw crusher and disk grinder, we brushed them out thoroughly and the same with the splitter, so there would be no contamination. We used clean pulp sacks to put the splits in. After we had them sacked we sealed them in boxes with tape so that they could not be disturbed without our knowledge.

Representative HOFFMAN. The reason for those extra precautions was because there was some dispute about the quality of the samples?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. I believe that is all.

Mr. REDWINE. Mr. Appling, you just sampled 3 days, did you not?

Mr. APPLING. I do not recall. I think that we actually cut samples on 4 days and possibly 5.

Mr. REDWINE. Earlier in your report, you say 3 days.

Mr. APPLING. Then that is correct. I do not recall.

Mr. REDWINE. Maybe 4 days. It started on November 12 and continued through November 15. That would be 4 days. Half of those samples, the ones that were taken on November 12 and 13—and I am referring to page 3 of your report—were deposited with the postmaster at Trail. In other words, half of them were out of your possession, were they not, until you got ready to ship them?

Mr. APPLING. Yes, sir, they were out of my possession in the custody of the United States mail.

Mr. REDWINE. What do you mean, they were packed with a frank or stamp on them?

Mr. APPLING. No, the postmaster kept them with his mail.

Mr. REDWINE. They were not in custody?

Representative HOFFMAN. You ask a question and then butt in.

Mr. APPLING. They were retained by the postmaster in the mail room along with the mail. They were not stamped or addressed.

Mr. REDWINE. They were not in the custody of the United States mail, were they?

Mr. APPLING. They were in custody of the United States postmaster.

Mr. LANIGAN. There was something said about these people getting another hearing. At any time were you ever called to a hearing in which this evidence was presented?

Mr. APPLING. No, sir, this is the first time I have had the pleasure.

Mr. LANIGAN. Have you read the decision of the Department in the Al Sarena case?

Mr. APPLING. Yes, sir, I think I have. I think it was sent to me.

Mr. LANIGAN. Was there any mention in that decision of a second hearing?

Mr. APPLING. I do not recall.

Mr. LANIGAN. But you never went to another hearing? You never presented evidence?

Mr. APPLING. That is right.

Mr. LANIGAN. Do you recall whether the decision states whether or not it is based upon this assay that we have been talking about here?

Mr. APPLING. I do not really know.

Mr. LANIGAN. It will speak for itself.

Senator NEUBERGER. Mr. Appling, I just want to ask you one question. Is this the only time in your experience that any minerals which were subject to examination and assaying from this region were sent to Alabama for examination?

Mr. APPLING. Yes, it is. Actually, almost all of our samples have been sent to our own laboratory. Very few have been sent to outside laboratories.

Senator NEUBERGER. Thank you very much.

I know this has been a rather difficult experience for you, Mr. Appling, and I sympathize with you, and I do appreciate your coming here.

The assay report submitted may be inserted in the record.

(The report referred to is as follows:)

A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

REPORT OF ASSAYS OF GOLD ORES

For: Al Sarena Mines, Inc., 408 First National Bank Building, Mobile, Ala.

Sample identification: Al Sarena 1-28 Incl.

Sample: Submitted. By Mr. D. Ford McCormick.

Lab. No. 53-912.

Report No. 431869.

Date: December 17, 1953.

Our Order No. 38001. Date 11-25-53.

We find the samples submitted by Mr. D. Ford McCormick to contain the following:

Sample	Au, ounce per ton	Ag, ounce per ton	Au, dollars per ton	Ag, dollars per ton	Total value, dollars per ton
1.....	0.05	0.15	1.75	.14	1.89
2.....	.04	.60	1.40	.54	1.94
3.....	.05	.20	1.75	.18	2.03
4.....	.05	.10	1.75	.09	1.84
5.....	.08	.05	2.80	.05	2.85
6.....	.06	.05	2.10	.05	2.15
7.....	.05	.07	1.75	.06	1.81
8.....	.05	.06	1.75	.05	1.80
9.....	.06	.04	2.10	.04	2.14
10.....	.04	.08	1.40	.07	1.47
11.....	.03	.06	1.05	.05	1.10
12.....	.04	.40	1.40	.36	1.76
13.....	.02	.10	.70	.09	.79
14.....	.03	.11	1.05	.10	1.15
15.....	.04	.07	1.40	.06	1.46
16.....	.05	.10	1.75	.09	1.84
17.....	.07	.05	2.45	.05	2.50
18.....	.03	.03	1.05	.03	1.08
19.....	.05	.02	1.75	.02	1.77
20.....	.03	.06	1.05	.05	1.10
21.....	.05	.10	1.75	.09	1.84
22.....	.06	.04	2.10	.04	2.14
23.....	.05	.07	1.75	.06	1.81
24.....	.06	.04	2.10	.04	2.14
25.....	.04	.64	1.40	.58	1.98
26.....	.06	.60	2.10	.54	2.64
27.....	.12	.72	4.20	.65	4.85
28.....	.10	.50	3.50	.45	3.95

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Assays by J. A. McDaniel.

Four reports to: Al Sarena Mines, Inc., 408 First National Bank Building, Mobile, Ala.

A. W. WILLIAMS INSPECTION Co.,  
By MORRIS MILLER.

Senator NEUBERGER. Mr. Rice, would you come forward again, please?

Representative HOFFMAN. May I ask how many more witnesses we have tonight?

Mr. REDWINE. This will be the last one that I have. I do not know what the chairman has in mind.

This will be the last one that I am calling up, Mr. Hoffman.

Senator NEUBERGER. I think we should have one further witness after Mr. Rice.

(The witness was previously duly sworn.)

TESTIMONY OF PIERCE M. RICE, MANAGER, OREGON LAND  
OFFICE—Resumed

Mr. REDWINE. Mr. Rice, the tenor of some of the questions that have been asked today would lead one to think that there may be a feeling that this hearing held by you might have been a bit unfair. I am not saying that but the tenor of some of the questions that have been asked would show that.

I would like to have you tell the committee what your feelings are as to the fairness of the hearing held by you and was it held according to law and regulations under which your office is regulated?

Representative HOFFMAN. Before he answers that, Mr. Chairman, I want to put on the record the statement that insofar as any questions that I may have asked, there was no intimation of any unfairness. This gentleman never had an opportunity to hear the other side of the case. They, that is the attorney, I guess, got mad and walked out. That is right, is it?

Mr. RICE. That is correct. I might answer a question, if I may.

Senator NEUBERGER. Go ahead.

Mr. RICE. That hearing was conducted in strict conformity with the rules of procedure as issued by the Department of the Interior, and as to an opportunity to be heard, why, the counsel for the contestee was requested and, in fact, urged, to submit his evidence. Owing to his attitude as exhibited on that occasion, why, he refused, and declined, and departed without submitting such evidence.

Mr. COBURN. Is it not true, Mr. Rice, that they had three opportunities to be heard, including an appeal?

Mr. RICE. Yes, subsequently, when the decision was rendered after the proceedings, based upon the testimony, a copy of the decision was forwarded to the Al Sarena Mines, Inc., by registered mail, and in that decision they were allowed an additional 30 days within which to apply for a new hearing or to appeal.

Mr. COBURN. Is it not also true that at the first hearing, under the rules of the Department, when Mr. MacMahon, I think you said, departed—

Mr. RICE. That is right.

Mr. COBURN. —that at that moment, you would be authorized under the rules to decide that the contestant's suit was granted, or however you put it in your own hearing procedure.

Mr. RICE. I think the point that probably you are trying to bring out is the fact that if the contestant appears at the hearing and refuses to participate in the proceedings and departs without doing so, such action may be treated as an admission of the truth of the charges and no further testimony is required.

Representative CHUDOFF. It is not a question of truth. It would be treated as not having denied any of the charges.

Mr. RICE. He denied the charges in his answer.

Mr. COBURN. Could you not have made a decision at that point?

Mr. RICE. Without taking further testimony.

Mr. COBURN. You could have decided one way or the other?

Mr. RICE. But in order to decide on the merits rather than on a point of technicality, it is a policy of the Bureau to construe those rules more liberally.

Mr. COBURN. But the point remains that legally you could have made that decision?

Representative HOFFMAN. Without hearing anybody after they walked out.

Mr. RICE. I think it appears on page 11 of the Department's decision. On the bottom of page 10 and the paragraph continued on page 11, it says—

the Federal rules of civil procedure were not applicable to the hearing—  
those were the rules insisted upon by the contestee—

were not applicable to the hearing and the rules of practice of the Department (43 CFR pt. 221) do not provide for any such procedure. The purpose of the hearing under the Department's rules of practice is to give both parties full opportunity to present their evidence and if a claimant chooses to withdraw from the hearing without submitting his evidence or subjecting the Government witnesses to cross-examination, he must bear the consequences.

Senator NEUBERGER. Is there any other question of Mr. Rice?

Mr. LANIGAN. I have just one.

Now, if the parties appear at the hearing and evidence is presented in the hearing, is it not true that each party then has an opportunity to cross-examine the other and test the veracity and adequacy of the evidence?

Mr. RICE. That is correct.

Mr. LANIGAN. And in the normal mining contest that goes to hearing, is that what happens, that all the evidence is put in at the hearing?

Mr. RICE. All the evidence is submitted at the hearing and the Government brings its case on and introduces its evidence, the testimony of the witnesses, any exhibits they may have are marked for identification and offered in evidence, and at the conclusion of the Government's case, the contestee, through counsel, introduces his evidence in like manner, and during these examinations of witnesses and giving of testimony, counsel for the opposing parties have the right of cross-examination.

Mr. LANIGAN. Have you ever heard of another mining case in which evidence was brought in after the hearing without notice to the Forest Service, where it was involved, and the case decided without them ever having a chance to contest it or examine a witness?

Mr. RICE. Not of my knowledge.

Mr. LANIGAN. Did you ever hold any second hearing in this case?

Mr. RICE. No, sir, none was applied for.

Mr. LANIGAN. Does the decision say that any second hearing was held?

Mr. RICE. Not that I know of.

Mr. LANIGAN. That is all I have.

Senator NEUBERGER. Thank you very much.

Representative HOFFMAN. A question.

Do you know whether or not the Forest Service had any notice in this case of what the Secretary was doing or contemplating doing?

Mr. RICE. Not to my knowledge.

Representative HOFFMAN. You do not know?

Mr. RICE. After the case reaches the Department, I have no knowledge of what takes place other than what is reflected in the opinion.

Representative HOFFMAN. After it left your hands?

Mr. RICE. That is right.

Representative HOFFMAN. You know, though, that he did tell the Bureau of Mines to do something about it, did he not?

Mr. RICE. Apparently.

Representative HOFFMAN. That is evident from the hearings here.

Mr. RICE. That is right.

Representative HOFFMAN. That is all.

Senator NEUBERGER. Is there any other question of Mr. Rice?

Thank you, Mr. Rice, very much.

Do you have any more witnesses, Mr. Redwine?

Mr. REDWINE. That completes the witnesses that we have scheduled in Portland.

Senator NEUBERGER. Would Mr. Charles P. McDonald like to make a statement to the committee at this time?

Mr. McDONALD. I think Mr. D. Ford McCormick would like to make a statement to the committee at this time.

Mr. McCormick accompanied Mr. Appling.

Representative CHUDOFF. According to Mr. Hoffman's regulations, would you stand up and raise your hand?

Do you solemnly swear that the testimony you are about to give before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McCORMICK. I do.

Representative HOFFMAN. Let the stenographer record that it is quarter after eight.

Senator NEUBERGER. It is 3 minutes after 8.

Representative HOFFMAN. I stand corrected. Yes, sir. Thank you. There would be no further time for a complete hearing on this. This move is just to give color to the claim that the defendant did have a little time.

Senator NEUBERGER. Mr. McCormick, we are glad to hear you.

#### TESTIMONY OF D. FORD McCORMICK

Mr. McCORMICK. The statement I would like to make is that I did accompany Mr. Appling on this examination and the two of us together performed our duty as we were requested to do. Samples were taken absolutely according to all mining practice and they were turned over to the assaying firm and had been protected during the whole procedure.

Senator NEUBERGER. Are there any questions?

**Mr. COBURN.** Mr. McCormick, from whom did you get a copy of the assay report?

**Mr. McCORMICK.** From whom?

**Mr. COBURN.** Yes.

**Mr. McCORMICK.** I got it from the McDonalds.

**Mr. COBURN.** You got it from the McDonalds in Oregon or the McDonalds in Mobile?

**Mr. McCORMICK.** The same McDonalds. I think they mailed it to me.

**Mr. COBURN.** They mailed it from Oregon?

**Mr. McCORMICK.** I do not remember where they mailed it from. I did not pay too much attention.

**Mr. COBURN.** You do not happen to have a copy of the report you received?

**Mr. McCORMICK.** Yes, I believe I do have.

**Mr. COBURN.** I wonder if you would like to put it in the record.

**Mr. McCORMICK.** I would like to keep it. It is my only record of the assays. You have a copy.

**Mr. COBURN.** It is the true copy of the one we have?

**Mr. McCORMICK.** I do not know. I have not seen it.

**Representative CHUDOFF.** Would you make a copy of the one you have and send it to us?

**Mr. McCORMICK.** Certainly.

**Senator NEUBERGER.** Have you any questions?

**Representative HOFFMAN.** No questions.

**Senator NEUBERGER.** Mr. Lanigan?

**Mr. LANIGAN.** No questions.

**Senator NEUBERGER.** Mr. Chudoff?

**Representative CHUDOFF.** I have no questions.

**Mr. McCORMICK.** I might add one thing.

As a result of all of this, I have certainly been grossly maligned in the press and by certain members or parties who were running for offices at the time that this particular thing came to the public, and I had some statements to make, but I am not going to divulge them at this time.

**Senator NEUBERGER.** I wanted you to know that any statement you desire to make, this committee would be glad to receive and put in the official record.

**Mr. McCORMICK.** I will probably be examined again so I will just keep them.

**Senator NEUBERGER.** Congressman Hoffman, would you like to ask a question?

**Representative HOFFMAN.** Thank you, Senator.

Are you a registered consulting engineer?

**Mr. McCORMICK.** Yes.

**Representative HOFFMAN.** Will you tell us about your qualifications?

**Mr. McCORMICK.** In order not to miss anything, I think I had better read some of them.

**Representative HOFFMAN.** We have plenty of time now.

**Mr. McCORMICK.** Well, I am a graduate of the University of Texas in civil engineering; graduate of the Colorado School of Mines.

**Representative HOFFMAN.** The University of Texas?

Mr. McCORMICK. Yes. I am also a graduate of the Colorado School of Mines.

Representative HOFFMAN. That is another recognized institution of learning.

Mr. McCORMICK. I think it is, and I have a mining degree there as of 1910.

Representative HOFFMAN. Go ahead.

Mr. McCORMICK. I have practiced the mining profession for about 45 years, during which time—

Representative HOFFMAN. Have you ever been accused by inference or any other way of any misconduct?

Representative CHUDOFF. You are objecting to the witness being interrupted.

Representative HOFFMAN. He is not objecting. You started this show. Never mind. I will ask the questions the way I wish.

Senator NEUBERGER. The witness will proceed.

Mr. McCORMICK. My first employment was at the Socorro mines, New Mexico, a gold and silver property where I held every job—in the concentrator, cyaniting, amalgamating, and smelting, to bullion—every job in the mine as well as underground contracting; then the engineering position, and finally designing and supervising the construction of the powerplant for this 150-ton capacity plant.

Later I was employed by Orcotti mines in Costa Rica, Central America, a gold and silver producer, as engineer and worked up to be assistant manager; another 150-ton capacity plant, the Minez de Mata Hambre, a copper and silver property, employed me as chief engineer and general manager, where I had the pleasure of developing this mine from grassroots to 1,000 tons per day production. I designed and supervised the construction of the concentrator, the powerplant, 17-kilometer transmission line, shipping facilities at our own seaport, and a town to house \$5,000 inhabitants at a cost of well over \$30 million; this, during World War I, when copper was so scarce that the United States gave us the protection of gunboats and submarines to safeguard shipments to the smelter in New Jersey. Uncle Sam was desperate for copper. The Cold Spring Mining Co. in Virginia, U. S. A., employed me to reorganize and manage the mine and plant to prepare kaolin for paper, rubber, and paint filter and for pottery manufacture. This expanded to the Georgia Kaolin Co. of Georgia, where I took out process patents and designed and supervised the construction of a million dollar beneficiating plant now shipping 30 to 40 railroad cars a day of prepared kaolin. I am director of this property at this date.

In 1933, I examined a gold mine in Jackson County, Oreg., liked the Pacific Northwest so well that I moved here to spend my days, I hope. This gold property is still hydraulicizing each year during the period that the Fish and Game Commission allows the muddying of the Rogue River during the winter runoff season. I am looking after this mine's interest.

The Codero Mining Co., a mercury producer, employed me to organize and operate their mine and plant from its beginning, which was started in 1941, and it developed into the second largest producer of mercury during World War II when mercury imports were cut off from Spain and Italy and Uncle Sam was again so desperate for mer-



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cury to manufacture explosives. It is still the second largest producer of mercury today.

During the years I have made mine examinations in the United States, Mexico, Canada, Central America, the Philippines, and Cuba, and reported on gold, silver, platinum, iron ore, copper, lead, zinc, aluminum, chrome, manganese, antimony tungsten, rare earth minerals, asbestos, clay, gypsum, fluorite, mica, gem, stones, nickel, sulfur, uranium, pumice, marble, limestone, et cetera.

I am a registered professional mining engineer in Oregon and a member of the American Institute of Mining Engineers; member of the Professional Engineers of Oregon, and past president of the Southern Oregon Section; a member and a director of the Oregon Mining Association; a member of Oregon State Board of Engineering Examiners, and represent mining and metallurgy in that department.

I think that will about cover it. I think that is enough.

Representative HOFFMAN. Were you chairman of the board of the State board of engineering examiners?

Mr. McCORMICK. I am not chairman. I am just a member and represent mining and metallurgy.

Representative HOFFMAN. Have you finished?

Mr. McCORMICK. Yes, that is enough.

Representative HOFFMAN. You said something about feeling hurt, I think it was, about the statements that have been made.

Mr. McCORMICK. Yes, I did; here and elsewhere.

Representative HOFFMAN. To what were you referring?

Mr. McCORMICK. Well, I was quite concerned about the articles that appeared in the local press, all over the State, and then a syndicated column, all of which smeared my name and reputation by insinuating that I had acted dishonsetly in performance of my duty in this case and had been a party to cheating my Government out of timber.

Representative HOFFMAN. That did not make you feel good.

Mr. McCORMICK. It certainly did not.

Representative HOFFMAN. Not after 45 years in the business.

Mr. McCORMICK. No.

Representative HOFFMAN. Did anybody come up with any proof?

Mr. McCORMICK. No, and I will admit that I was quite upset at first and furious because my honesty and my reputation had been attacked and an attempt at a sort of character assassination, but when I realized that I could not command a first page nor make the first page on any newsprint nor headlines by denying these charges, I finally just considered the source and the littleness of the authors and how low they had stooped to try and win votes. I simply had a talk with the editor of our home paper and presented him with a letter of denial which was published in the back pages under the heading "Communications."

Representative HOFFMAN. You are evidently reading something. Go ahead until you finish it.

Mr. McCORMICK. It was my thought at the time how little some of our citizens and the Government employees realize the importance of our mineral industry; the very great and grave importance to the national defense and the necessity of preparedness for any surprise or emergency. Twice we have been caught woefully short. If you

citizens realize that everything we eat, we wear, we use, in this day and age is dependent in one way or another on mineral of this earth. These minerals are often hidden in our forests and on Government lands. They are far more important than the timber of our forests. Every encouragement should be given to those men who are willing to sacrifice their time, their money, and oftentimes their whole lives in search for and development of our mineral resources, and Al Sarena is no exception.

As to my honesty, I might add that I have been a Rotarian for 31 years in Virginia, in Georgia, and in Medford; and I am a past president of the Medford Club; and an Elk for nearly 50 years; was chairman of the fund drive to build the Medford YMCA and president of the Y for two terms. I was chairman of the county for the Community Chest drive in Jackson County and, sir, I do not like to have my name dragged in the mud.

Senator NEUBERGER. When did you first become acquainted with the Al Sarena mines?

Mr. McCORMICK. I think that it was about in 1937. I was up in that neighborhood. I had been deer hunting prior to that and I knew about the old Buzzard mine and the McDonald boys asked me to take a look at the property.

Senator NEUBERGER. And did you?

Mr. McCORMICK. Yes, I did. I looked it over.

Senator NEUBERGER. And were paid by them?

Mr. McCORMICK. No, this was just a visit. My second contract was in 1939 when Mr. Hayden had a lease on this property and employed me to rehabilitate the concentrator and run tests on the high grade, the medium grade, and low-grade ores.

Senator NEUBERGER. Do you mean that you worked there on the mine or your services were used on the mine before the McDonalds got it?

Mr. McCORMICK. I do not know whether they had it or not. I was employed by Mr. Hayden, who had a lease on the property at that time. The concentrates of gold, silver, lead, zinc, and copper were sent to the smelter. The tests were completed early in 1940 and my job was over.

However, I know that the McDonalds did continue to make tests and to explore the surrounding country in search of low-grade minerals.

Senator NEUBERGER. When was your first employment for money?

Mr. McCORMICK. I was paid for this by Mr. Hayden. Then in 1950, the McDonalds asked me to attend a hearing in Portland pertaining to their application for a patent, which I did, and I had no voice in that. I just listened.

In November 1953, I was employed by the Al Serena Mines, Inc., to represent them as an independent engineer to take samples in company with a representative of the Department of the Bureau of Mines, which I did, and the third contact is now.

Representative HOFFMAN. You have a statement. I wish you would go ahead without me asking you questions.

Senator NEUBERGER. He may. There has been no objection.

Representative HOFFMAN. If you have anything prepared, read it.

**Mr. McCORMICK.** These are just notes that I jotted down. I think that covers everything that I have in this. I do not know of anything else that I have.

**Representative HOFFMAN.** Then go ahead and describe in detail the procedures that were used by you and Appling in the taking of and transmitting of the samples, and also why you selected the Alabama folks.

**Mr. McCORMICK.** We received instructions, apparently at about the same time, and Mr. Appling wrote me a letter telling me that he would meet me at a certain time, and we went up to the mine early in November and looked the proposition over to arrange the time which we could use and which would suit my convenience to go up and take these samples. I think it was on November 12 that he picked me up and he had with him two others, and we proceeded to the mine and started taking samples.

We asked the McDonalds where the claims were and to show us where there was probable signs of ore, mineralization.

We proceeded to take the samples and the first day, as I recall it, we left the samples at the post office in Trial in custody of the postmaster and we picked them up the following day, and the following 3 days Mr. Appling kept the samples in his own possession.

**Representative HOFFMAN.** Were they taken in the usual customary way?

**Mr. McCORMICK.** Absolutely, positively in the usual and customary way, and Mr. Appling had the pleasure of taking them. I assisted him once or twice when his arms got so tired that he could not continue. The samples were then prepared by Mr. Appling and his two assistants.

**Representative HOFFMAN.** What do you mean "prepared"? What did they do with them?

**Mr. McCORMICK.** We crushed the samples, pulverized them, and split them ready for shipment to the assay office.

**Representative HOFFMAN.** What precautions did you take, if any, when preparing them?

**Mr. McCORMICK.** Took every precaution that is ordinarily used to be certain the samples were not salting each other or any other sample would be salting them. We took half the split and had it panned.

I think the McDonalds panned some and an oldtimer panner panned the rest of them to see if we can see any visual evidence of mineralization. There was in every sample, Mr. Appling's attention was called to that, and we both remarked on that. Then we took the other half of the splits, which was in two quarters, and packaged them ready for shipment. It was snowing all of that last day and had started to snow the day before. We agreed that it would be very wise to keep an alternate sample in case those original samples shipped to the assay office were destroyed or lost in transit or in any way did not reach the assayer. This we agreed among ourselves. There was no instruction to do that.

When the samples were shipped at the express office, we went to the First National Bank and, by the way, Mr. Appling picked out 1 of the 2 boxes that were identical to be shipped, and the First National Bank said that they had no place to take care of such an assignment, so we took them over to the department of geology and mineral industry and either he or I phoned the director in Portland, asking him if it

would be all right to leave them there in their custody and that they would not be disturbed, and he said "certainly."

This we did, and as soon as the assay certificates were received, 2 or 3 days afterward, I went over and talked to Mr. Appling and we decided to destroy the samples. There was nothing more to do with them, no use for them, so we went over and got them and laughingly said, "What shall we do with them?" And I said, or he did—I do not know which—"Let's take them down to the river and chuck them"; and we took them down and unsealed the package and threw them in the river.

Representative HOFFMAN. How did you happen to send them to Alabama?

Mr. McCORMICK. We discussed where the samples would be assayed and we mentioned Abbot Hanks and we mentioned Smith Emory and Williams. We asked the McDonalds where they had had samples tested, and they said at all three places.

We said, "Do you have any preference as to where these samples should be sent?" And they said, "We have a charge account and have been getting some very prompt, and, we think, accurate assays from Williams, and we would like to have them sent to Williams." I suggested to Mr. Appling that we send them there, and he said he would like to communicate with his superior, which he did.

Representative HOFFMAN. He took the precaution of trying to learn whether Williams was all right?

Mr. McCORMICK. Yes, I think he said he had not heard of them and didn't know who they were. Mr. Volin evidently secured the necessary information and we shipped the samples to Williams. That is all there was.

I wrote my report independently and he wrote his report independently and that is the last that I know of this particular thing.

Representative HOFFMAN. Do you know anything about the reputation of Williams, the company, whichever it is?

Mr. McCORMICK. I know that they do considerable work all over the United States in testing and investigations, and I had understood that they had an officer in Eugene but I do not know about that because I never sent them any samples.

Representative HOFFMAN. Did you ever hear that they were charged with any crookedness of fraud?

Mr. McCORMICK. Certainly not. They are an accredited assayer.

Representative HOFFMAN. They are accredited?

Mr. McCORMICK. Yes.

Representative HOFFMAN. Why do you call them "Williams"? Is that the name of the company?

Mr. McCORMICK. That is a shortcut.

Representative HOFFMAN. What is the real name, or do you not know?

Mr. McCORMICK. I do not know the full name.

Representative HOFFMAN. Do you have it there somewhere?

Mr. McCORMICK. I think I could find it.

Representative CHUDOFF. It is in the record.

Mr. COBURN. It is the Williams Inspection Co.

Representative HOFFMAN. The Williams Inspection Co. Do you think of anything else you want to say?

Mr. McCORMICK. I have nothing else to say.

Representative HOFFMAN. I think that is all I have at this time.  
Senator NEUBERGER. Do you have any questions, Mr. Coburn?

Mr. COBURN. How long have you been employed by the Al Sarena people?

Mr. McCORMICK. I told you the first contact was in 1950 for appearance at the hearing in Portland and in 1953 to do this particular job, and that is all.

Mr. COBURN. The employment has not been continuous since 1950?

Mr. McCORMICK. No, I had nothing to do with it.

Mr. COBURN. You are not now an employee?

Mr. McCORMICK. No, I was paid for this job and that is it.

Mr. COBURN. You are not now retained by them?

Mr. McCORMICK. No.

Mr. COBURN. Do you have any stock interest in the company?

Mr. McCORMICK. Absolutely not 1 cent's interest in the company.

Mr. COBURN. That is all.

Senator NEUBERGER. Are there any other questions?

Mr. Lanigan?

Mr. Chudoff?

Representative CHUDOFF. Are they operating the Al Sarena Mine?

Mr. McCORMICK. I believe not.

Representative CHUDOFF. Was it operated in 1950 when you were there?

Mr. McCORMICK. I did not go out to the mine but I do not think it was.

Representative CHUDOFF. How about in 1953, when you were taking samples? Was it being operated then?

Mr. McCORMICK. No.

Representative CHUDOFF. I have no further questions.

Mr. LANIGAN. Did you keep any other records in the course of the two times that you were employed by them, any diaries or other records, memoranda?

Mr. McCORMICK. Well, I made a report in this instance here, and in 1950, no, I just listened in.

Senator NEUBERGER. Mr. Redwine mentions to me that we would like to have for the committee record a copy of your report. You said that you and Mr. Appling made independent reports. Could we get a copy for the committee record of your report?

Mr. McCORMICK. I could have one made for you, yes.

Senator NEUBERGER. Could you do that, please, Mr. McCormick. Would you please send it to the Senate Committee on Interior, Senate Office Building, Washington, D. C., attention Mr. Redwine?

Mr. McCORMICK. Senate Interior Committee, Senate Office Building.

Senator NEUBERGER. Mark it for the attention of Mr. Redwine.

Mr. McCORMICK. Do you wish a photostat of the assay sheet?

Senator NEUBERGER. Yes.

Mr. McCORMICK. You want that attached along with that?

Senator NEUBERGER. If you could conveniently, please.

Mr. McCORMICK. Certainly. It is a photostat of my copy of the assay sheet.

Senator NEUBERGER. Yes.

(The document referred to follows:)

[Photostat copy of McCormick report]

PROCEDURE AND METHOD OF SAMPLING THE 15 CLAIMS OF THE AL SARENA MINES, INC., JACKSON CO., OREG., NOVEMBER 1953

Instructions were received to take samples for the Al Sarena Mines, Inc., on the following 15 claims:

Henry Applegate, J. W. Merritt, Rainboe, Sulphide, Della McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb, J. D. McKinnon, Manganese Claim, Staples, Arroyo Verde, Alabama, and La Jolla.

Mr. N. F. Volin of the Department of the Interior, Bureau of Mines Office, Spokane, Wash., or designated substitutes from his department, were to be present when samples were obtained for assaying purposes, and accurate records kept of the location from whence each sample was taken.

Mr. R. N. Appling (mining engineer in charge), 119 SW M Street, Grants Pass, Oreg., Office of the Department of Interior, Bureau of Mines, was designated; and, with Messrs. Jerry Briggs, Elton Pattee, and Ben Lettekon, all from his department, assisted in surveying locations by Brunton Compass and chained measurements from claim corner posts or survey stations established and set by the mineral surveyor. This was of great help, speeded up the work, and was very satisfactory to all concerned. Messrs. Herbert and Charles McDonald designated the places to be sampled. All samples were cut by Messrs. Appling and McCormick, and kept in their possession at all times, though part of the prepared samples were placed in the custody of Mr. Irwin Howe, postmaster, in the post office at Trail, Oreg., until all sampling was completed and boxed for expressing to be assayed. The samples were taken more or less of a uniform size from freshly cleaned surfaces of rock in place. A small laboratory 5" x 7" jaw crusher and a UA model Braum pulverizer powered by a 5 hp. gasoline engine were used to reduce the dried samples to proper size for the laboratory by splitting through a 16 section splitter. Of the last split, one half of the reduced sample was used for assay purposes and the other half kept as an umpire (just as a safety measure in case the original lot of 28 samples were lost in transit). The umpires are stored with the Oregon State Department of Geology and Mineral Industries in Grants Pass, Mr. Fay Libby, director in Portland, Oreg., having been requested to safe-keep them. The original lot of 28 samples were numbered and tagged, and expressed to A. W. Williams Inspection Co., Mobile, Ala., on November 17, 1953, to be assayed.

The samples were about 3-foot cuts, or more, chipped across the cleaned surface of the outcrops or bulldozed exposures. In some instances as many as 3 samples were taken from 1 outcrop, or from several different outcrops on the same claim. Most of the country is covered by overburden, heavily brushed and timbered. Note: Mr. Appling took photographs of every sample cut, although the weather was rather bad for picture taking. The notes and information gathered by Mr. Appling will be forwarded to Mr. Volin, along with maps showing the claims and location of samples on each; also, a copy of the assay certificate from the A. W. Williams laboratory.

The rejects from all samples were handed to Messrs. McDonald, who had Mr. Fred Allward (an old experienced prospector and miner at present living on and acting as caretaker of the Al Sarena property) pan each sample in our presence and showed the results to both Mr. Appling and myself. In every instance sulfides were plainly visible in the pan. The sulfides present seemed to consist of magnetite, pyrite, galena, and possibly some sphalerite when tested by a magnet and viewed through a high-powered magnifying lens.

The formation has generally been classified as a rhyolite, which appears to fit the case.

Numerous old diggings, pits, channels, tunnels, shafts, trails, and roadways were observed as we walked over the claims sampled.

The differences in elevations of the places sampled, compared with the base elevation taken (by altimeter) at the mine headquarters on the A. W. Dahlberg claim, ranged from 3,400 at the base and 3,460 feet on the Sulphide to 4,000-foot elevation on the Cougar and J. W. Merritt claims, 3,900-foot elevation on the J. D. McKinnon down to 3,360 feet on the Managanese.

The samples were cut from the surface outcrops and as deep as 15 feet below the normal surface in the discovery pits and bulldozed clearings starting November 12 and ending November 16, 1953.



The attached map shows approximate locations of the samples taken and numbered from No. 1 through No. 28.

The attached tabulation sheet gives information regarding the samples taken from the 15 claims. In general, the samples were taken from surface outcrops, pits, or clearings that were fairly easy to locate from fixed survey corners or points. The easiest places to get to, and survey, were chosen; many other locations were available but not so convenient to fixed survey markings. Even so, considerable climbing up steep grades and over running streams, fallen timbers, and thick brush was necessary. The weather was threatening all the while, and snow fell all day the 16th while we were preparing part of the samples for shipment.

Respectfully submitted.

[SEAL]

D. FORD MCCORMICK.

Senator NEUBERGER. I would like to ask you one question, if I may. Your experience is certainly impressive. Have you ever before in your experience in Oregon and the Northwest had minerals sent to Alabama for assaying and examination?

Mr. MCCORMICK. I have never sent any before, no.

Senator NEUBERGER. That is the only question I have. I want to thank you very much for coming here today and making this statement to us, Mr. McCormick.

I would like to submit for the record, because I think that these are pertinent parts of the record: one, the report of the sampling at the Al Sarena Mines by R. N. Appling, Jr., regional engineer.

Mr. REDWINE. May we ask the reporter to let the maps that Mr. Appling left with us follow Mr. Appling's report?

(The documents referred to follow:)

#### REPORT ON SAMPLING OF AL SARENA MINES, INC.

By R. N. Appling, Jr., Mining Engineer,

Region II, January 2, 1954

#### INTRODUCTION

At the request of Mr. Clarence A. Davis, Solicitor to the Department of the Interior, a representative of the Bureau of Mines was present in November 1953, during the sampling of 15 located mining claims held by Al Sarena Mines, Inc. R. N. Appling, Jr. was designated as the representative on October 7, 1953, by Mr. M. E. Volin,<sup>1</sup> and was instructed to contact Mr. D. Ford McCormick, the engineer retained by Al Sarena Mines, Inc., and to arrange with him a suitable time for the sampling.

Shortly after these instructions were received, the owners, Mr. Herbert McDonald and Mr. Charles McDonald met the writer in Grants Pass, Oreg., and informed him that the sampling should be postponed several weeks because of a delay in rebuilding roads and cleaning sloughed pits and trenches preparatory to sampling.

An exchange of correspondence with Mr. McCormick led to a meeting on November 5 in Grants Pass, at which time it was decided to visit the property on November 9 in order to plan the sampling procedures. The property was visited as planned and November 12 was established as the date on which to begin sampling. The sampling operations took 5 days, along with mapping of the sampled areas, and preparing the samples for shipment.

#### GEOLOGY

The rocks underlying the claim area are principally rhyolite flows, with minor amounts of andesite in the north and northwest claim area. Volcanic agglomerate is common on many of the claims. Alteration is extensive in places in the eastern claim area. No outstanding fault or flexure was noted.

<sup>1</sup> Chief, Mining Division, region II.

Pyrite is visible in minor quantities in most of the rhyolite exposures and galena was observed in some places. Panned concentrates made from discarded sample splits showed pyrite and a larger amount of magnetite. Apparently the gold is associated with the pyrite. No free gold was noted megascopically.

#### DEVELOPMENT

A number of old pits and trenches of small size are scattered throughout the claims. Recently completed work includes a bulldozer trench 100 feet long and 8 to 10 feet deep, and approximately a mile of access road. The underground workings were either inaccessible or unsafe and were not examined; however, a sizeable dump at the portal of the main adit indicates that a considerable amount of underground development has been completed.

Buildings on the property include a mill building, timber shed, assay office and several bunkhouses. Mill equipment was not examined, but is reported to be sufficient to treat approximately 100 tons of ore in 24 hours. The tailings pile was quite small, indicating that little milling has been done. The company owns an International TD-18 tractor used in trenching and road building.

#### SAMPLING

Sampling was started on the morning of November 12, and continued through November 15; sample preparation was completed on November 16. Members of the sampling party included Mr. McCormick, the owners, Herbert McDonald and Charles McDonald, and 3 Bureau of Mines employees, R. N. Appling, Jr., mining engineer, Eldon C. Pattee, minerals technologist, Gerald L. Briggs, core drill helper, and Mr. Fred Aultland, a caretaker who lives on the property was present occasionally during the sampling.

#### *Location*

Samples were taken from outcrops, pits, or trenches designated by the McDonalds. According to them, locations were selected that had been sampled with satisfactory results. Location of the sample on the outcrop or in the pit was at the discretion of McCormick and the writer.

A copy of Oregon Mineral Survey 879 was used as a base map for plotting sample locations, which were determined by compass and tape traverse from claim corner posts. Traverses were made by Pattee assisted by Briggs.

As a further check, sample locations determined by the above means were compared to claim lines established during the mineral survey.

A copy of the base map on which the sample locations are plotted is appended to this report. Additional maps on a larger scale are included for those samples that are not sufficiently clear on the base map.

#### *Sample cutting*

Sample 1 was taken by Mr. McCormick; at his request the remaining samples were taken by Appling with McCormick's assistance. Before sampling, the surfaces were examined for signs of "salting," then cleaned by chipping away one-half to 2 inches of rock, depending upon the hardness. All samples were taken from solid rock as nearly as could be determined. Two grab samples Nos. 18 and 20 were taken; the remainder were chip samples taken with hammer and maul, in lengths varying from 28 to 82 inches.

After collecting each sample, it was placed in a canvas sack together with a metal tag bearing a stamped number, the sack tied securely and given to Briggs who retained possession until the end of the day.

The Government representative took possession of the samples after the day's sampling, and thereafter retained them in locked boxes until they were ground and shipped to the assayer. It was originally planned to deliver them for safe-keeping to the postmaster at Trail, Oreg., at the end of each day. This was done on November 12 and 13, but the practice was then discontinued because of the lost time involved.

A photograph was taken of each sample surface. The photos are identified by the sample number in the upper right hand corner and the claim name in the upper left. White dashed lines indicate the position and length of each sample.

**Sample preparation**

During the first 2 days of sampling it was the practice to cut samples in the morning, prepare them in the afternoon and deliver them to the postmaster at Trail late in the afternoon. Because of approaching storms which threatened to make access to the claims difficult, preparation was postponed until November 16 after all samples had been taken. The samples were kept in sealed boxes until that time.

Equipment used for preparation consisted of a 3- by 6-inch jaw crusher, and an 8-inch Braun disk grinder, both belonging to Al Serena Mines, Inc., and a 16-inch Jones type sample splitter belonging to the Bureau of Mines. Samples were crushed, dried, ground to approximately 50 mesh, and split into quarters. One quarter was immediately put in new paper sacks, sealed, and retained in the possession of the Government representative until shipped to the assayer. Another quarter was similarly treated and delivered to the Oregon Department of Geology and Mineral Industries for safekeeping in the event the assay samples should be lost in transit. The remaining quarters were turned over to Mr. McDonald for panning.

The crusher, grinder, splitter, and drying pans were thoroughly brushed out before and after each use. The various stages of preparation were handled solely by McCormick, Pattee, Briggs, and the Government representative. Sample preparation was completed November 16. Samples were retained in sealed containers by the Government representative until the morning of the following day when they were packaged and shipped by Railway Express to the assayer.

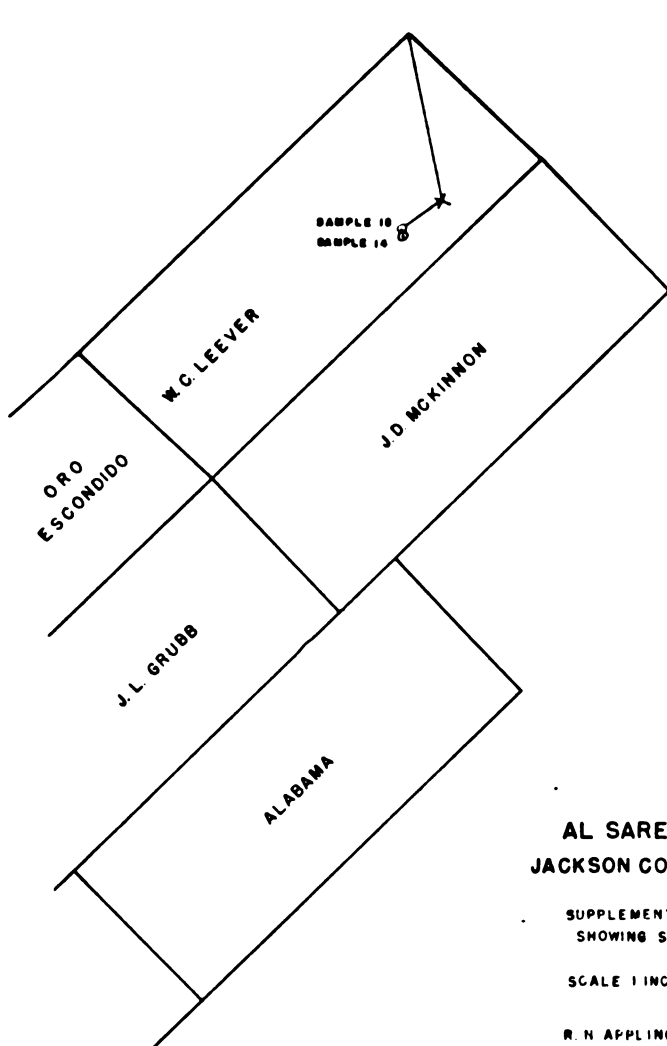
**ASSAYS**

Assays were performed by the A. W. Williams Inspection Co., Mobile, Ala. Query of Mr. John R. Thoenan<sup>2</sup> established that the firm is listed in the Department of Commerce directory and has the verbal approval of the Alabama State geologist. The assays and other pertinent data are shown in table I.

**TABLE I.—Assays**

Sample	Claim	Type	Located	Length	Au, ounce per ton	Ag, ounce per ton	Au, dollars per ton	Ag, dollars per ton	Total, dollars per ton
				<i>In feet</i>					
1	Rainbow	Chip	Outerop	40	0.65	0.15	1.75	0.14	1.89
2	do	do	do	36	.04	.60	1.40	.54	1.94
3	Henry Applegate	do	do	57	.65	.20	1.75	.18	2.03
4	do	do	do	42	.05	.10	1.75	.09	1.84
5	Delia McKinnon	do	Pit	35	.68	.05	2.80	.05	2.85
6	Oro Escondido	do	do	48	.06	.05	2.10	.05	2.15
7	J. L. Grubb	do	Outerop	36	.65	.07	1.75	.08	1.81
8	Alabama	do	do	28	.65	.06	1.75	.05	1.80
9	do	do	do	41	.06	.04	2.10	.04	2.14
10	Cougar	do	do	36	.04	.08	1.40	.07	1.47
11	do	do	do	82	.03	.06	1.05	.05	1.10
12	J. W. Merritt	do	Road cut	39	.04	.40	1.40	.36	1.76
13	do	do	Pit	45	.02	.10	.70	.09	.79
14	W. C. Leever	do	Outerop	46	.03	.11	1.05	.10	1.15
15	do	do	do	42	.04	.07	1.40	.06	1.46
16	J. D. McKinnon	do	do	30	.05	.10	1.75	.04	1.84
17	do	do	do	36	.07	.05	2.45	.05	2.50
18	do	Grab	do		.03	.03	1.05	.03	1.08
19	Mangnese	Chip	Stream bank	36	.05	.02	1.75	.02	1.77
20	do	Grab	do		.03	.06	1.05	.05	1.10
21	Arroyo Verde	Chip	Pit	33	.05	.10	1.75	.09	1.84
22	do	do	Stream bank	36	.06	.04	2.10	.04	2.14
23	La Jolla	do	do	38	.05	.07	1.75	.06	1.81
24	do	do	do	40	.06	.04	2.10	.04	2.14
25	Staples	do	do	49	.04	.64	1.40	.54	1.94
26	Sulfide	do	Doez trench	37	.06	.60	2.10	.51	2.61
27	do	do	do	47	.12	.72	4.20	.65	4.85
28	do	do	do	35	.10	.50	3.50	.45	3.95

<sup>2</sup> Acting regional director, region VII, Bureau of Mines.

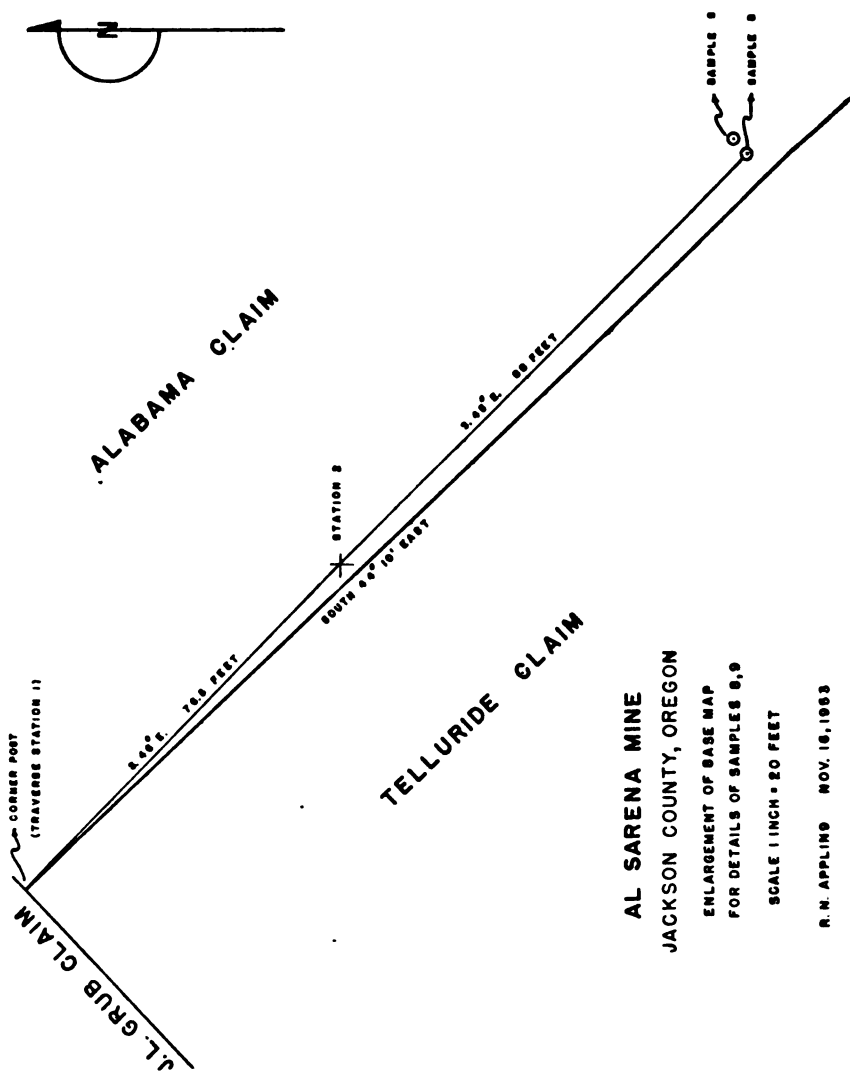


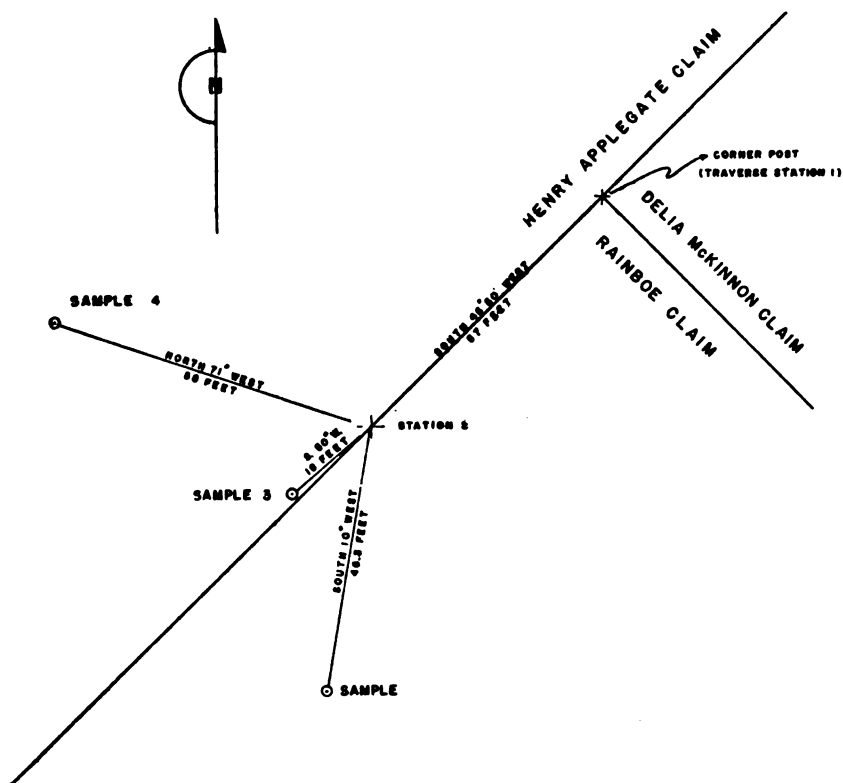
**AL SARENA MINE  
JACKSON COUNTY, OREG.**

SUPPLEMENT TO BASE MAP  
SHOWING SAMPLES 14, 18

SCALE 1 INCH = 400 FEET

R. H. APPLING NOV 16, 1953



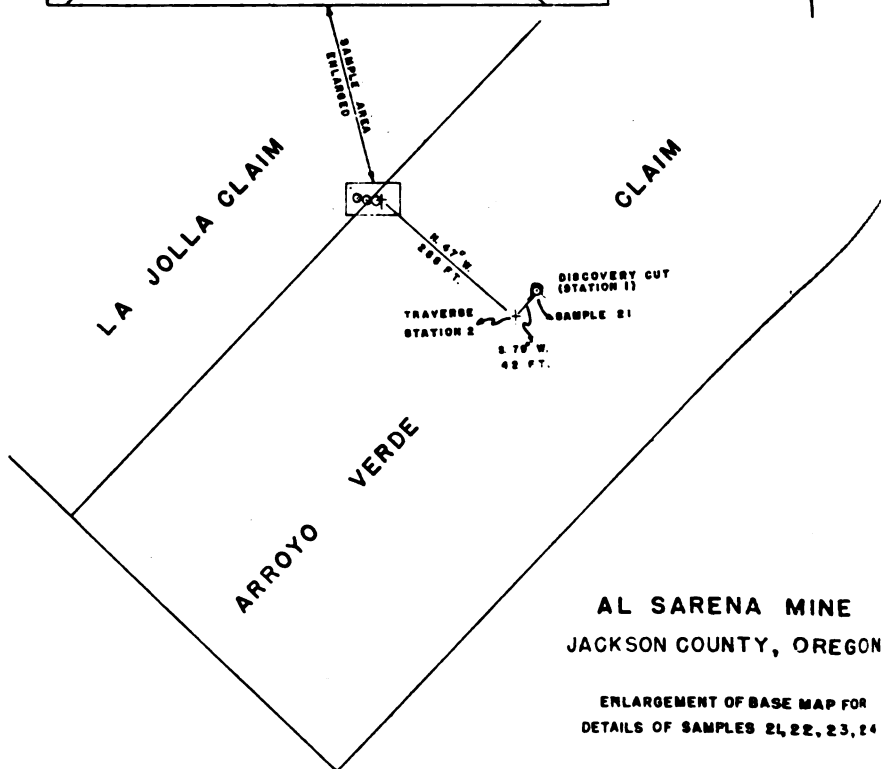
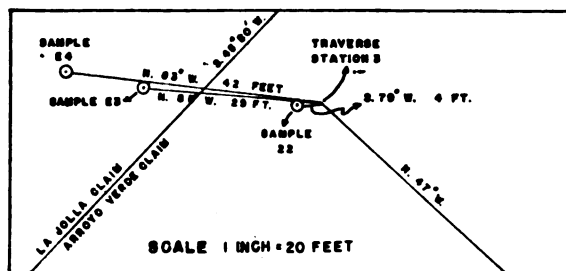
**AL SARENA MINE**

JACKSON COUNTY, OREGON

ENLARGEMENT OF BASE MAP FOR  
DETAILS OF SAMPLES 1, 3, 4

SCALE 1 INCH = 20 FEET

R. N. APPLING NOV. 16, 1963



AL SARENA MINE  
JACKSON COUNTY, OREGON

ENLARGEMENT OF BASE MAP FOR  
DETAILS OF SAMPLES 21, 22, 23, 24

SCALE 1 INCH = 200 FEET

R. N. APPLING NOV. 16, 1953

Senator NEUBERGER. Then I think a very pertinent part of the hearing should be a transcript of the protest of hearing that was held before Mineral Examiner Pierce M. Rice.

(The document referred to follows:)

## MINERAL ENTRY OREGON 0665

Contest No. 38

AL SARENA MINES, INC.

4—084 a

## STENOGRAPHER'S AFFIDAVIT

I, Gertrude C. Cannada, do solemnly swear that I am the stenographer who took down in shorthand the testimony and proceedings at a hearing before the manager, land office, Portland 18, Oreg., on September 13, 1950, in the case of *United States of America, contestant v. Al Sarena Mines, Inc.*, and that the foregoing transcription, being pages 7 to 55, inclusive, is a full, true, and correct record of the testimony and proceedings taken and had at said hearing.

GERTRUDE C. CANNADA.

Subscribed and sworn to before me this 29th day of September 1950.

PIERCE M. RICE.  
*Manager, Land Office.*

## INDEX

Mineral Entry 0665.

Contest No. 38.

Contestant's witnesses:

G. Robert Leavengood.

Elton M. Huttan.

William C. Sanborn.

Exhibits:

(For identification only):

No. 1. Mineral survey map 879 (2 sheets).

No. 2. Assay certificate, Annes Engineering Co.

No. 3. Assay certificate, Abbot A. Hanks, Inc.

No. 4. Assay report, United States Bureau of Mines.

(Received in evidence):

No. 1. Mineral survey map 89 (2 sheets).

No. 2. Assay certificate, Annes Engineering Co.

No. 3. Assay certificate, Abbot A. Hanks, Inc.

No. 4. Assay report, United States Bureau of Mines.

LAND OFFICE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PORTLAND, OREG.

SEPTEMBER 22, 1950.

Contest No. 38

UNITED STATES FOREST SERVICE, CONTESTANT, v. AL SARENA MINES, INC., CONTESTEE

On April 6, 1949, mineral certificate was issued on mineral application Oregon 0665 filed October 4, 1948, by the Al Sarena Mines, Inc., for a patent to the Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lode mining claims situated on lands in secs. 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., Willamette meridian, within the Rogue River National Forest, Oreg. The certificate was issued bearing a notation that the issuance of a patent should be withheld pending a field examination as to the bona fides of the claims.

On April 13, 1950, the United States Forest Service filed notice of protest against the following claims: Henry Applegate, J. W. Merritt, Rainboe, Sulphide, Delia McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb, J. D. McKinnon, Manganese claims, Staples, Arroyo Verde, Alabama, and La Jolla.



The protest was based on the charges that the lands are nonmineral in character and that minerals have not been found in sufficient quantities to constitute a valid discovery. It was further charged that patent expenditures in the sum of \$500 have not been made on or for the benefit of the Manganese claim, Staples claim, Arroyo Verde claim, Alabama claim, and La Jolla claim.

On April 25, 1950, the manager of the land office addressed notice of the charges preferred to the Al Sarena Mines, Inc., by registered mail. On May 22, 1950, the contestee filed an answer in which it was requested that the protest be dismissed and that patent be issued for the claims described. Thereafter, pursuant to the request of the Al Sarena Mines, Inc., and instructions of the Director, Bureau of Land Management, the manager of the land office arranged with the parties in interest and set a date for a hearing to be had to determine the validity of the claims protested. The hearing was set for 10 a. m., September 13, 1950, before the manager of the land office in Portland, Oreg., and the United States Forest Service and the Al Sarena Mines, Inc., were duly notified. The contestant and the contestee appeared at the hearing, and each was represented by counsel.

Before the proceedings were opened, Mr. W. O. MacMahon introduced himself as a representative of the Al Sarena Mines, Inc., and presented demurrers and motions and insisted that they be ruled upon before proceeding with the hearing upon the merits of the case. The manager stated that the proceedings would be opened and that the demurrer and motions would be ruled upon before proceeding to a hearing.

The manager recited the proceedings leading up to the hearing and defined the issues raised, and stated that the purpose of the hearing was to determine the validity or invalidity of the claims protested. The demurrer was based on the ground, (1) that the claims were located and filed prior to the inclusion of the lands in the national forest, and that the act of Congress withdrawing the lands was *ex post facto* as to these claims and that such an act was *ultra vires*, and that the United States Forest Service was without jurisdiction; (2a) that the notice by the United States Forest Service was not properly dated by the Forest Service, and (2b) that the notice entitled "*United States of America, contestant, v. Al Sarena Mining Company, contestee*" is no notice as there is no such company, and that the protest was made against a nonexistent company, and not against the Al Sarena Mines, Inc., and (3) that the contest recites requirements that all answers of contestee shall be under oath, but neither the contest citation nor the protest was under oath.

The demurrer as a form of pleading was set forth in the answer, but having been discontinued in Federal proceedings, it was considered and ruled upon as a motion. The motions were overruled on the following grounds: (1) That the President of the United States has statutory authority to withdraw and reserve public lands for a public purpose; that the lands in question were public lands on September 28, 1893, when they were included in the national forest by Executive order issued pursuant to the act of March 3, 1891 (26 Stat. 1103), and *ex post facto* laws are penal statutes relating to criminal procedure and do not apply in this case; (2a) on the ground that the United States may through any governmental agency file such a notice at any time before the issuance of patent, which appears to have been done in this case, and that, therefore, failure to date the notice is immaterial; (2b) that the fact that the protest was addressed to the Al Sarena Mines, Inc., as the Al Sarena Mining Co. is without merit for the reason that the charges preferred are against the validity of the mining claims and not against the applicant as such, and that the proceedings are in the nature of a proceeding in rem rather than personam, and for the further reason that the contestee responded and entered general appearance; (3) on the ground that the laws and regulations governing proceedings instigated by the United States are not required to be sworn to as contended. The various motions appearing to be without merit, were dismissed for the reasons stated, and the hearing was ordered to proceed for the purpose of determining the validity of the claims protested.

Counsel for the contestee noted an appeal to the Solicitor of the Department of the Interior, and demanded a ruling on the appeal before the taking of any testimony. He was advised that all decisions of the manager were subject to review by the Director of the Bureau of Land Management and the Secretary of the Interior, and that he had a right of appeal to the Director. Counsel for the contestee objected to the taking of any testimony until a decision had been rendered on the appeal and stated that he would not attend the hearing or be

charged or bound by the proceedings. Counsel for contestant cited the regulations and rules of practice and stated that the decision of the manager on the motions did in no wise affect the legality of the proceedings, and that the Government wished to proceed with the hearing to establish its case, and that he wished to serve notice on the contestee that the proceedings will go forward without additional expense and that it shall be continued in the regular manner as far as the representatives of the Forest Service are concerned. Counsel for contestee then stated that he went to Washington and talked to Mr. Mastin G. White, the Solicitor and Acting Secretary of the Interior; that he pointed out to the Solicitor what he considered some of the inadequacies of the rules of practice, and asked if the regular rules of practice as obtained in Federal and other courts would obtain at this hearing, to which the Solicitor replied in the affirmative, and that he stated to the Solicitor that if whoever held the hearing decided against the contestee on the demurrers and motions, contestee should then and there have a right of appeal direct to Washington, and that no further testimony should be taken by the contestee or anyone else until that was adjudicated. He stated that that was the agreement that he had with the head of the Department, and that it was the only agreement that he was going to be bound by, and that if any testimony was taken at the hearing, he would reserve the right to attack it and that he reserved the right as to what was the agreement between himself and the head of the Department. He then stated, "As far as I am concerned, gentlemen, I am ready to go." Counsel for contestant stated that since witnesses had been brought to the hearing to testify, he saw no reason why the proceedings should be postponed.

At this point the manager referred to a statement in the record from the Solicitor of the Department of the Interior, and from the Director of the Bureau of Land Management to the effect that an early date, time, and place be set for conducting a hearing; that the hearing was ordered pursuant to such instructions for the purpose of the taking of testimony to determine the validity of the claims as a basis for a decision upon the merits of the case. The manager pointed out that he had no knowledge officially of any purported agreement made between the Solicitor and representatives of the contestee and that the proceedings initiated here and any rulings made by the manager of the land office would be subject to review and decision by the Director of the Bureau of Land Management and the Secretary of the Interior, and that the hearing should proceed by the taking of testimony tending to establish the validity or invalidity of the mining claims pursuant to the charges brought, and asked counsel for contestant if he cared to make any statement or proceed with the Forest Service case. Counsel for the Forest Service stated that he was prepared to proceed and called attention to the provision of title 43, of the Code of Federal Regulations, relating to the payment of the costs of proceedings to be borne by the parties to the contest. The manager announced that each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses, the cost of noting motions, objections, and exceptions to be paid by the party on whose behalf the same are made. Counsel for contestant so consented. However, counsel for contestee stated that the contestee would not be responsible for any cost in that regard as he considered the proceedings irregular and highhanded and without regard to the rules of procedure. The manager announced that since the motions had been ruled on, the hearing would proceed. At this point counsel for contestant called attention to a prayer contained in the notice of the Forest Service for the cancellation of the claims and stated that the intention was only that the application for patent be denied and that the Forest Service was not asking for a declaration declaring the claims null and void. The manager stated that the effect of the amendment was to deny the issuance of patent at this time, and asked counsel for contestee if there was any objection to that amendment. Counsel for contestee stated that he had no objection to that amendment and insofar as contestee was concerned, "You may proceed in your own pleasure, but at your own risk." At this point the manager asked the counsel for the contestee if he wished a temporary postponement pending a ruling by the Solicitor. Counsel for contestee answered, "No, sir. We will let it go as it is and fight it out in Washington. I think that my word is good and that he will tell you that it is good, and that you will ascertain from him that I have told you nothing but the truth."

At this point counsel for contestant requested a temporary recess to avoid noises and interference occasioned by the departure of the contestee in order that the hearing might proceed by the examination of the Forest Service witnesses. The manager called a temporary recess, and the contestee departed, after which the hearing was resumed.

The hearing proceeded at 11 a. m., with only the United States Forest Service, contestant, represented by Mr. Jesse R. Farr and Robert G. Rue, witnesses for contestant, the examiner, and reported present.

Mr. FARR. Mr. Examiner, as I construe the Rules of Practice, I must now present evidence affecting the validity of the claims under contest, and I request a ruling directing me to proceed with the case and to call my witnesses as I intended to do prior to this position taken by the contestee.

The EXAMINER. The request of Mr. Farr on behalf of the United States Forest Service is granted and you may now proceed by calling your first witness.

Mr. FARR. Mr. Examiner, I think one more motion is in order, and that is that since objection has been made that the name of the contestee has not been properly designated in the contest, pleadings be amended to conform to the proof which is that the proper name of the contestee is Al Sarena Mines, Inc.

The EXAMINER. The record will be so corrected.

Mr. G. Robert Leavengood was then called to the stand as witness for contestant. He was sworn and testified as follows:

#### DIRECT EXAMINATION

Question. State your name, please.

Answer. G. Robert Leavengood.

Question. And your address, where you live.

Answer. Union Creek Ranger Station, Prospect, Oreg.

Question. By whom are you employed?

Answer. United States Forest Service.

Question. In what capacity are you employed?

Answer. Timber management assistant.

Question. How long have you been employed in that capacity?

Answer. At Union Creek?

Question. Yes.

Answer. Since November 1947.

Question. And what are your duties?

Answer. My present duties are preparation of timber sales in this district. Appraisal of the timber and getting sales ready.

Question. Now in this connection, are you required to estimate values of timber on national-forest lands?

Answer. Yes.

Question. Are you familiar with the claims which are the subject matter of this contest known as the Al Sarena Mines, Inc., contest?

Answer. Yes, sir.

Question. Are they within your district?

Answer. They are within the Elk Creek district.

Question. Have you been on these claims?

Answer. Yes.

Question. For what purpose?

Answer. General reconnaissance of the timber and location, specifically of the contested claims. Land values which exist there.

Mr. FARR. Mr. Examiner, I would like to offer for identification only at this time 2 maps which are entitled "Mineral Survey 879, Oregon." These maps purport to be maps of the claims here involved. I shall later have them properly identified by the mining engineer for factual evidence, and have them marked for contestant's exhibit No. 1.

The EXAMINER. They will be received for identification only.

Mr. Farr then continued with his direct examination:

Question. Now, Mr. Leavengood, referring to this map, have you been on all the claims which are the subject matter of this contest, and which I for purposes of my own identification have numbered 1 to 15 on this map?

Answer. Yes, sir. I have been on all the contested claims, portions of all the contested claims. It is tied—the general area is tied into the northeast section corner of section 29 of the proper township and range, and the section corner exists on the 879 survey. There are 2 witness trees still standing.

Question. And working from that identification you are able to establish the general location of these contested claims?

Answer. Yes; in fact fairly specifically.

Question. Now, are you familiar with the general area surrounding these claims?

Answer. Yes, sir. Topography and so on.

Question. Well, with respect to topography, do you know whether there are any active mining operations going on in this vicinity?

Answer. In the Elk Creek drainage, at Union Creek, there are none other than the Al Sarena holdings.

Question. Now, have you examined the claims for timber values?

Answer. I have made a general reconnaissance of each claim.

Question. I wonder if you could give me the results of this examination and the type of examination you made?

Answer. I spent parts of 3 days on the area specifically for this purpose.

Question. What dates were those, please?

Answer. Last Wednesday, Thursday, and Friday. I would have to look at a calendar for that.

Question. That would be the 6th, 7th, and 8th of September 1950?

Answer. Yes, sir. And the results of the examination indicate that about a mile and a half to 2 miles to be low in topography. Logging has existed down at Elk Creek. Logging is in progress further down within about a mile and a half of these claims. Two roads go through the area and can be utilized with little improvement for logging purposes. The general nature of the stand is two-storied. The older timber is very old and mature and somewhat scattered in places, running to reasonably heavy stand, and roughly averages around 25,000 net merchantable board-feet per acre which is principally Douglas fir, and runs 10 to 15 percent sugar pine.

EXAMINER. May I interrupt the witness at this time. Do you have by virtue of your employment and observations, knowledge of mineral character of these claims in question?

Answer. In what respect?

EXAMINER. As to the mineral character of the lands covered by these claims?

Answer. Well, I observed, in my course of travels over the area, pits that they used in taking of samples, and so on.

EXAMINER. Have you examined any of these claims personally? Or did you examine any of these claims personally for the purpose of determining their mineral character?

Answer. No, sir; not the ore.

MR. FARR. Mr. Examiner, I am trying to show here the value of this land for national forest purposes in line with the decisions of this Department, *United States v. Dawson* which was decided April 12, 1944, by the Assistant Secretary, Mr. Chapman. It is cited as 58 ID, page 670, also in line with the criterion set by Mr. Ricketts in the American Mining Laws, volume 1, section 508, in which he discusses the criterion of a discovery and I should like to quote as follows: "It has been held that the finding of the mineral in location in place as distinguished from fluted rock, constitutes discovery, and warrants the prospector in making a location of a lode and mining claim. This broad rule, however, has in later cases been somewhat modified, and now the criterion for a valid location is determined by the fact as to whether, at the vital time, the land is known to contain minerals in quality and quantity reasonably inspiring the average man to believe that expenditure in developing is justified, and that it is reasonably probable that such minerals will be found to return reasonable profits on the investment and more valuable therefore than for other uses; the latest is that it is not more valuable for mineral if to secure the mineral, uses of a greater value must be destroyed." I was simply trying to establish the value of the land for national forest purposes.

EXAMINER. His testimony will be received with the exception noted.

Mr. Farr then continued his direct examination of Mr. Leavengood:

Question. You have testified that you have decided that there are about 25,000 board-feet per claim?

Answer. That is an average of the contestee's claims. That is overstory of mature timber.

Question. What did the understory consist of?

Answer. The understory resulted—there was a fire somewhat over 50 years ago, and the age of this understory is just about 50 years, or a little less, and it is a very thrifty and fast-growing stand of raised Douglas and sugar pine. It averages in size between 8 and 14 inches and it is growing about as good as we have in that district. It is a pretty nice stand for an understory.

Question. Is that 25,000 board feet per acre or per claim?

Answer. Per acre on the average of the claim.

Question. Did you test the rate of growth of this understory?

Answer. Yes. I have several with me here.

Question. And what do they show generally in the rate of growth?

Answer. The rate of growth for that country is a dense medium growth. I don't think we have anywhere else that I can think of as nice a stand as this is, and the density is very good.

In order that the person reading this transcript will understand what we are talking about, are there any measurements and figures which you can give with respect to the growth?

Answer. Your average inch-for-inch growth on your dominant and codominant trees is average about nine rings to the inch in the last growth, on the outer growth. It almost would take an expert to figure out the actual board-feet increment per acre, but a very safe figure would be 250 board-feet per acre per year. We have the two values, the overstory and merchantable timber which could be harvested, incidentally—the appraisal on that, using the roads and cutting the timber which the Forest Service would normally cut, leaving perhaps 25 percent standing as growing stock, the value of the timber which we would cut now runs about \$77,000 on the contested claims.

Question. Then it would be this present value of \$77,000?

Answer. Yes. It could be harvested within a short time if the sale were made and then save the second crop in the 8- and 14-inch trees.

EXAMINER. At this time I wish to interrupt the witness. These proceedings are based upon charges that the land is nonmineral in character, that minerals have not been found in sufficient quantities to constitute a valid discovery; the land is nonmineral in character, and the witness has not qualified as a mineral examiner and the testimony as given is irrelevant and does not tend to support the charges brought.

Mr. FARR. I would like to note an exception on this ruling based on the citation of law that has an effect on the actual discovery, whether or not there has been a sufficient discovery on the claims.

EXAMINER. The exception will be noted and the witness will proceed.

WITNESS. We have established these two values in timber, the overstory and the thrifty dense understory, and of course you have your land value, and for prospects of growing timber in the future on this land.

Mr. FARR. I believe that is all.

There were no further questions, and the witness left the stand.

Mr. Elton M. Hattan was called to the stand as a witness for the contestant. He was sworn and testified as follows:

DIRECT EXAMINATION.

Question. State your name, please?

Answer. Elton M. Hattan.

Question. And your address, please?

Answer. Swan Island Station, Portland 18, Oreg.

Question. By whom are you employed, Mr. Hattan?

Answer. By the Bureau of Land Management.

Question. In what capacity?

Answer. Field examiner, mineral.

Question. How long have you been employed in that capacity?

Answer. Since September 1939.

Question. And what do you do in this capacity?

Answer. I examine public lands, including some national forest land at the request of the national forest, as well as the vacant public domain for mineral character of the land or discoveries in the case of mineral applications for patent.

Question. Would you state your qualifications as a mineral examiner, please?

Answer. I graduated from Oregon State College with a bachelor of science degree in mining in 1919, and thereafter I have been employed by various companies of which I will enumerate those that have a relative bearing on this kind of an examination. In the early 1920's I was employed by the Calumet & Arizona Mining Co. as a mining engineer at Bisbee, Ariz., doing mine stope engineering, general surveying and sampling. Thereafter I went to Lordsburg, N. Mex., as chief engineer for the same company, it was known as the 85 Mining Co., and was there for about a year. And after that I was employed by the Ahumada Lead Co. in the State of Chihuahua, Mexico, as chief engineer and ore boss for a matter of 2 years. This was a lead, zinc, gold and silver property, and in this capacity it was necessary to take a great many samples and also

oversee the taking of samples by others, and as well do the mine surveying and development work. I later was employed by the Sullivan Mining Co. at Kellogg, Idaho, where I was field engineer in the construction of a zinc plant, and being in the locality I became acquainted with the mining methods and milling methods that were taking place in the area. I was also employed by an engineer to go to British Columbia where I made an examination of a property at which I stayed for about 6 months. I sampled and surveyed the mine and assayed the samples which I took for gold, silver, lead, zinc and copper. I later was employed by the Phelps Dodge Corp. at Morenci, Ariz., where I was in charge of diamond drilling and also had the job of compiling all of the assays that had accumulated over a period of 30 or 40 years. In fact, there was some 45 miles of openings that had been sampled by channel sampling, diamond drilling and churn drilling. I put all of these samples together so that they could be used in determining the ore value of certain blocks if mined by block caving. I also oversaw the construction of a mine model. My first job was to put the assays together for a block caving scheme of mining. Later I put the samples together in a different manner to develop the ore body, which is roughly 302 acres in surface trace, into an open pit operation. Thereafter, after 1932, when this mine shut down, I was employed by the United States Engineers on Bonneville Dam and also up the Willamette Valley as an inspector in charge of diamond drilling. In this capacity I was in charge of the group that secured some field data that was used in the construction of 4 or 5 of the dams, most of which have now been constructed. I believe this is about all that has to do with this type of investigation.

Mr. FARR. Before proceeding further, I would like to make one observation which possibly should have come prior to Mr. Leavengood's and Mr. Hattan's testimony, and that is that the record be clear that the contestee made various motions at the outset of the hearing and demanded a ruling thereon by the manager who is serving as hearing officer, before proceeding.

EXAMINER. That is correct.

Mr. Farr then proceeded with the direct examination of the witness, as follows:

Question. Mr. Hattan, are you familiar with these two maps which I have marked for identification as contestant's exhibit No. 1?

Answer. Yes.

Question. Would you tell us what they are?

Answer. Those are \* \* \* the one at the left is a print from the mineral survey tracing which I secured over in the Public Survey Office upstairs, and the one at the right that has the writing on it, mineral survey 879, page 1 I believe it is \* \* \* or is that page 3?

Question. It says sheet 3.

EXAMINER. By left and right you mean exhibits 1 and 2?

Mr. FARR. That is all one exhibit. They have 2 sheets, but are all 1 exhibit.

The witness then resumed his direct testimony, as follows:

Answer. Sheet 3 is one that was furnished by the Public Survey Office. The sheet 2 is the one on which I have made markings. That particular sheet 2 has not been marked, however, or designated.

Question. Now, Mr. Hattan, do these two sheets, exhibit 1, faithfully represent the claims which are the subject-matter of this contest, not only contest, but which have been clear listed?

Answer. Yes, they are the mineral survey plats which have been surveyed and platted from the mineral surveyor's notes.

Mr. FARR. Since there will be no cross-examination, I would like to have these two sheets admitted as exhibit No. 1.

EXAMINER. They will be admitted into evidence as exhibit No. 1.

Question. Have you been on the claims as depicted by the exhibit?

Answer. Yes, I have been on all of them.

Question. When have you been on the claims?

Answer. I have been on all of them on two separate times, and on part of them a third time.

Question. Was anyone with you while you were on the claims?

Answer. Yes, the first time Fred Altman who is watchman at the Al Sarena Mines, Inc., went with me, and that was on May 19 through May 23, inclusive, 1949.

Question. And the next time?

Answer. That was July 12 through 15, 1949, and accompanied by Mr. Sanborn of the United States Forest Service, mineral examiner, and also by the MacDonald Bros., Charles and H. P. MacDonald, Jr., I believe it is, who are representatives of the Al Sarena Mines, Inc.

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Question. And the next time?

Answer. That was July 12 through 15, 1949, and accompanied by Mr. Sanborn of the United States Forest Service, mineral examiner, and also by the MacDonald Bros., Charles and H. P. MacDonald, Jr., I believe it is, who are representatives of the Al Sarena Mines, Inc.



Question. Mr. Altman you say is the watchman at the mines? He is in the employ of the Al Sarena Mines, Inc.?

Answer. Yes, he has been for the past 9 years according to his statement to me.

Question. And when was the third time?

Answer. September 5 and 6, the afternoon of the 5th and the morning of the 6th, 1950.

Question. Who was with you then?

Answer. I went with Mr. Altman.

Question. Now, Mr. Hattan, would you explain what happened and what you did on the claims during your three visits you made?

Answer. Well, on the first visit in May I went with Mr. Altman and went to all of the places that had been designated as discovery places or any other places where \* \* \* which he considered to be mineral, and there I took samples.

Question. Before proceeding with the general discussion claim by claim, I wonder if you wouldn't tell us what the general topography is?

Answer. The general topography is that of a ridge \* \* \* the claims are situated over and upon a ridge that has a general trend northeasterly and southwesterly. The higher portion of the ridge near the north end of the property is roughly at elevation 4,200 feet above sea level, and at the lower end of the ridge it is around 3,900 feet. Now on the west side of the ridge, Swanson Creek, is approximately 300 feet in elevation below the top of the ridge, and on the east side of the property a tributary to Elk Creek \* \* \* in fact it is designated on sheet 2 as Elk Creek, cuts across the property and its elevation is roughly 700 feet below the top of the ridge. The claims are situated roughly 46 miles from Medford, 48 miles from Gold Hill, 20 miles from Crater Lake Highway at the mouth of Elk Creek. The first 15 miles from the mouth of Elk Creek is a semi-improved gravel road, and a very good road, but the last 5 miles is a Forest Service road that leads up to the property. Although it is steep and meanders, it is in good traveling condition. The claims are covered with timber and brush or small trees.

Question. I wonder, Mr. Hattan, before starting with the individual claims, if you could give a general description of the mineral characteristics, would you be more or less general. I realize that is included in your report, and normally I would ask you to read your report, but I feel that there would be objection to anything that would appear to be hearsay, and I feel that you should relate that. You may read from your report if you desire.

EXAMINER. You speak now about his area report of that general community?

Mr. FARR. Yes, the report prepared for the Forest Service. I want to get a general description. General area and general characteristics.

Answer. I made no intensive study of the aerial geology of the lands within the claims, but made only such observation as time would permit. Surface geology does not always tell whether a mineral vein or lode is valid or invalid, but it does have something to do with the general characteristics. However, in this case I did make enough of a determination and had the benefit of the reports that were shown to me, that were written up by company representatives, and maps that were supplied by the company so that I was able to outline roughly an area which would be a central mass in the lands in which there were evidences of mineralization. This central mass consists of flows and dikes of effusive and volcanic material. Some of the structures may even be small stocks or may be sills where an intrusion has been pushed between two former flows. This was pretty hard to determine because of there being no bedding. The rock consists of rhyolite and on down to andesite, and the related rock in between, some of which are dacite, phonolite-andesite and the related igneous rocks are made by flows over the surface.

EXAMINER. You speak about the presence or evidence of mineralization in the central area. Is this the area in which these claims are involved?

WITNESS. Some of the claims take in portions of this area. Most of the claims which were clear listed. The company supplied sufficient evidence in the form of assay maps on which more than a hundred assays were plotted. The samples were taken from a vein structure which cuts across the central part of this mass which would be the Mark Applegate, Peter Applegate, and Oro Real, and at the end of the Oro Rico and H. McKenzie and on down to the A. W. Dahlberg \* \* \* those assays show that that ground is mineralized sufficiently to warrant a person of ordinary prudence in expenditure of his time and money, and those claims have been clear listed.

EXAMINER. Those are the eight claims in this application against which proceedings have not been brought?

WITNESS. There were 8 claims. There is 1 claim that is almost entirely in the area which I have outlined on the map in blue dashes and designated in the right-hand corner as approximate limits of the central mass and it is the Cougar on which no valid discovery as determined by samples and assay results had been made. A discussion of the general geology of the ground involved in these contested and clear listed claims may be found in bulletin 893, page 131 of the USGS, and also in the Oregon Metal Mines Handbook, Bulletin No. 14 C, volume 2, section 2, page 195.

Mr. FARR. Mr. Hattan, these markings on this exhibit are yours; are they not?

Answer. They are mine, and were made with colored pencils.

Question. Alright, Mr. Hattan, I wonder if you would proceed claim by claim and outline what you have done and what you found?

Mr. FARR. Perhaps it would be well to recess. I notice it is 2 minutes to 12:00.

EXAMINER. Very well, we will recess for lunch, and meet again in room 121 at 1 p. m.

The hearing was resumed at 1 p. m., in room 121, with the United States Forest Service contestant, represented by Mr. Jesse R. Farr and Robert G. Rue, the examiner, witnesses for contestant, and reporter present.

EXAMINER. We will proceed with this hearing, Mr. Hattan resuming the position of a witness for the Forest Service.

Mr. Hattan then took the stand and was reminded that he was still under oath, and testified as follows:

Mr. FARR. Mr. Hattan, did you make an official report to the Forest Service of your findings in connection with these claims?

Answer. Yes, I made a report addressed to Mr. H. J. Andrews, Regional Forester, United States Forest Service, Portland, Oreg., which report was approved on December 19, 1949, by the Acting Regional Administrator.

Question. Now, in that report on page 2, beginning at the heading "General Geology," I would like to have you read into the record from there to page 5, or to the middle of page 6, the heading "Mineral Discovery Claims." This is a general characterization of the area, and it is believed it would be of assistance to the reviewing officer.

Answer. General geology: A short description of the geology of the area may be found in the above cited bulletin No. 893, and also in a publication by the Oregon Department of Geology and Mineral Industries, Oregon Metal Mines Handbook Bulletin No. 14-C, volume II, section 2, page 195.

No intensive study of the geology was made except to note the general trend of known veins and determine in general the rock types exposed on or over the surface of the individual claims. From an examination of the present underground development, and the various surface openings and rock outcrops, there appears to be a dome-shaped central mass, roughly 4,000 feet in diameter, which consists of volcanic breccias and rhyolite. Much of this mass of rocks is altered and bleached, and pyritized. Some of it, especially in the vicinity of the main vein, contains lead and zinc sulfide mineralization. These sulfides seem to be the carrier minerals for the gold and silver which are the principal values.

Outside of the central mass rhyolite, volcanic breccias, andesite and other rocks—possibly phonolite andesite and/or dacite—are found outcropping. The geology of the outcrops indicates they consist of flows, dikes, and possibly sills and stocks. There is no known mineralization of value contained in the dacite or andesite rocks found on the surface, but some pyritization was noted in the volcanic breccias and some of the rhyolite.

There was no evidence of any great movement, folding or tilting, however, no bedding occurs in the rocks and this may not be entirely true.

Mineral deposits: The mine development indicates there is 1 main mineralized vein structure and a possibility of there being 1 or possibly 2 more parallel mineralized veins. The main vein structure is in the central mass. It has a strike N. 41° W., and its dip is verticle to 85° northeast. The country rock in the vicinity of the vein, consisting of volcanic breccias and rhyolite, is generally altered, bleached, and pyritized. Some of the rock appears to be breesh, but generally, it is altered and intersected by many small seams, all of which contains disseminated pyrite.

The main vein has been explored and developed by 2 main levels, tunnel No. 1 at about elevation 3,675 and tunnel No. 2 at about elevation 3,400. Tunnel No. 1 is driven into the ridge from the Swanson Creek side and tunnel No. 2 from the Elk Creek East Fork side. They have been connected by step raises and stopes in the vein which averages, according to reports, about 2½ feet wide. The appli-

cation for patent indicates that ores to the value of \$30,000 to \$40,000 have been mined, milled, and sold, prior to April 1943; when development work in the mine was discontinued.

The main vein has also been explored in tunnel No. 5 on the Elk Creek East Fork side of the ridge and tunnel No. 6 on the Swanson Creek side, both at elevation 3,800, more or less. There are various cuts and trenches on the surface which indicate the surface trace of the vein.

Tunnel No. 4 in the southwest corner of the Telluride claim and tunnel No. 3 on the lode line of the H. McKenzie claim appear to be mineralized zones more or less parallel to the main vein. Little work has been done along these zones and they may be nothing more than local mineralizations. It was reported that a pocket of dendritic gold was found in tunnel No. 3. The main vein appears to be a zone of enrichment which is from 3 feet to possibly 100 feet wide. Mining by stoping between the two levels, tunnels Nos. 1 and 2, from 1939 to April 1943, was confined to a narrow width. Above tunnel No. 1, where mining was carried on many years ago, the apparent higher grade portion of the vein is defined by definite walls which are caused by narrow parallel gouge seams. The distance between the walls of this old stoped area was estimated to be  $2\frac{1}{2}$  feet. Although the ground in either direction from the higher grade zone is mineralized to an unknown distance, samples indicate its grade is low. Apparently the mining in years past, as well as pilot milling tests carried on from 1939 to March 1945, was confined to the narrow width, because the grade was not sufficiently high to warrant mining and milling the material in small-scale operations.

The main vein is intersected by a north-south fault vein, which cuts the vein and offsets it. The offset was reported to be about 30 feet. This fault vein, discussed as the north drift in the application for patent, and reported in Oregon Metal Mines Handbook, Bulletin No. 14-C, "is composed of rhyolite breccia, from 3 to  $3\frac{1}{2}$  feet wide, together with a persistent narrow gouge seam. Walls of the vein are not as clearly defined as those of the main vein and the accompanying gouge does not contain such a large amount of sulfides. This vein is apparently a fault fissure and contains circulating water." Samples were taken by the applicant company and assayed and the vein was found to carry appreciable amounts of gold and silver.

The drift on this fault vein is plotted incorrectly on the mineral survey plat. It is shown on the plat as having a direction approximately N.  $45^{\circ}$  E. Its direction is about N.  $4^{\circ}$  W., as determined from a map supplied by the applicant. The fault vein is also intersected by a southwest crosscut driven in the Mark Applegate claim. This crosscut was driven from tunnel No. 2 for a distance of 160 feet. It intersects the Mark Applegate northeast end line about 135 feet from its corner No. 3. It intersected the fault vein at a distance of 110 feet from its initial point.

Mr. D. Ford McCormick, mention of whom was made in the application for patent, stated in a report to the applicant company, that, "Practically the entire mass of so-called rhyolite is mineralized. Pyrite and pyrrhotite with some galena and sphalerite can be detected with a lense occurring as crystals or small grains, sometimes thickly grouped, then again scattered. Where the stringers occur the values rise. Shattered zones and banded structure also show higher values." McCormick, in quoting Otto Ellerman's findings, says that where fine-grained galena is present the values are highest. McCormick also reported in a report dated July 15, 1937, to the company, that samples from outcrops, from numerous places, over the claims showed mineralization without exception. Small crystals of pyrite, pyrrhotite, galena, and sphalerite are present, scattered more or less through the rock. At some locations narrow stringers occur with kaolin gouge containing a higher proportion of small grains of galena, and where this occurs high grade gold and silver samples are found. Where the stringers and fissures are numerous, the enrichment makes milling ore.

He went on to say that insufficient developments have been done to prove a large body of milling ore; several blocks of \$4 to \$5 ore are indicated, and some higher values are present; but aside from 1 possible zone (roughly 400 feet long by 400 feet high, with varying widths from 3 feet to 50 feet or more) only partially developed, practically no other work has been done to more than expose small areas with promising assays.

McCormick went on to say that the property has additional advantages of promising a large volume of low-grade ore, if sufficient enriched zones, similar to the one the present work has been done in, can be established. And says, if the samples assayed and listed as handed to me and shown on the attached sheets and blueprints are correct, there are several excellent showings that should

be investigated without delay. He suggested investigating the region around tunnel No. 3; the cliff and banded structure south of tunnel No. 5, both at the crest and below where excellent samples are shown; the region near the portal of No. 1 tunnel; and shafts, channels, and tunnels on the west side and north of tunnel No. 1. He stated that if these locations show good assays, there would be little doubt but that important mining operators would show a decided interest in the development of the Al Sarena mine. Then goes on to say that there is not sufficient exposure of milling ore at present to warrant the consideration of a mill other than a pilot mill, and from a study of the assay map, it does not appear as though there is any hope of operating profitably a 50- to 75-ton mill continuously from ore to be mined from the available stopes at the present time.

As far as could be determined the suggestions about investigating the certain areas named above were never carried out, and no other highly mineralized areas or veins were investigated other than those already known, when McCormick's report was written. The ore which was put through the pilot mill came from stopes on the main vein, some material taken from the southwest crosscut in the Mark Applegate claim driven from No. 2 tunnel, and from the north drift which was advanced about 230 feet from the No. 2 tunnel, on the strike of the above-mentioned fault vein.

**Concentrates made by the pilot mill** which was operated from 1939 to March 1943 were shipped to the American Smelting & Refining Co.'s Selby smelter. From one of these shipments which were concentrated 20:1, the metallurgist calculated the average value of the mill heads for that particular shipment. The per ton mineral content of the mill heads, which would be the mine run, was calculated to be: lead, 0.58 percent; zinc, 1.23 percent; gold, 0.032 ounce; and silver 0.79 ounce. The value of this material in dollars and cents, based on present prices: gold, \$35; silver, \$0.71; lead, 15 cents; and zinc, 10 cents, is \$5.88 per ton.

**Pilot mill tests:** A pilot mill was constructed by the company and tests for a metallurgical flow sheet were conducted from construction until about April 1943, when the mill was closed down because of inability to secure needed materials and labor. It was reported that the tests showed the feasibility of concentrating the ore on a 20-to-1 ratio with good recovery and separation of the minerals into four products, i. e., lead, zinc and iron sulfide concentrates, and tails. The lead and the zinc concentrates contain the greater portion of the gold and silver, but a small amount of these precious metals comes down with the iron sulfide concentrate. The iron sulfide when separated from the lead and zinc sulfides by gravity contraction, can be cyanided and any values in gold which it does contain can be recovered. It was found, however, that this is a fairly expensive process because of a tendency of the concentrate to slime.

The pilot mill was constructed to determine if the ores could be concentrated, but no information was available which would show the minimum grade of material which could be mined, concentrated, and sold at a profit. Whether an operation is large or small there is obviously a low point in grade of material which can be handled through any mill at a profit.

The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined, and milled at a profit by low-cost large-scale mining methods. The topography is such that any one of three methods might be employed, i. e., glory holing, shrinkage system, and open pit mining.

Mr. FARR. Now, Mr. Hattan, would you proceed claim by claim, telling us what you did and what you found in your examination of these claims?

Answer. Cougar claim: In May I went with Mr. Altman onto the Cougar claim as well as all of the other claims in the group, and the Cougar claim—I am reading what I am saying from my notes that I took while on the ground at these various places at that date.

Mr. FARR. And those are the official notes that you are using in making your report?

Answer. Yes; at the discovery on the Cougar which is about—right by the "R" in the letter Cougar on the map, I found a small shaft, 4 feet by 8 feet by 5 feet deep, which contains oxidized rhyolite and broken material. A sample was taken in the shaft. This sample as well as all the other samples were collected in bags and each sample taken was identified by placing a ticket inside the bag which was marked "S79" followed by the number of the sample taken. The ticket also named the mineral or minerals the assayer was expected to report upon.

EXAMINER. What do you mean?

Answer. Samples numbered 879 followed by the numbers 1 to 24 were taken to the Annes Engineering Co., Grants Pass, Oreg., for assay, and an assay certificate was returned to me with the determinations.

Mr. FARR. Now, Mr. Hattan, I hand you the assay certificate and ask you to identify the assays taken from that claim on that certificate.

Answer. This certificate consisting of two pages contains the assays of the samples which were taken during May of 1949, and on this certificate sample No. 5 is the one I have just discussed.

EXAMINER. As having been taken from the Cougar claim?

Answer. From the discovery shaft on the Cougar claim. The results are recorded as trace in gold and—

EXAMINER. Just a moment. You wish to offer in evidence the original certificate as an exhibit?

Mr. FARR. Yes; I intend to offer that. I will offer that as evidence for identification as contestant's exhibit No. 2.

EXAMINER. You wish his interpretation of that certificate?

Mr. FARR. I am going to try to make an interpretation for each claim, and we also have other certificates which we will ask to be admitted at the proper time.

WITNESS. On this certificate the gold values are recorded as trace, and the silver as trace. The assayer has specified that when he records trace of gold he means 21 cents or under in value. When he records trace in silver he means 7 cents or under, with gold at \$35 per ounce and silver at 90 cents per ounce.

Mr. FARR. That is the assay report from this particular assayer. He considers the value to be 21 cents or under in gold and 7 cents or under in silver for this particular one?

WITNESS. Yes; for this particular one.

At a distance of about 150 feet north from the discovery shaft on the Cougar claim an outcrop was found \* \* \* an outcrop of rhyolite. The rock was considerably oxidized but it was quite hard. Some pieces of it contained minute specks of pyrite. A sample was taken from this outcrop and it was numbered 879-5A and was also taken to the assay office. The results of the assay determination was a trace of gold and a trace of silver. On the occasion of the visit to the property in July along with Mr. Sanborn and the 2 McDonald brothers, 2 other samples were taken from this claim. These samples were taken to the Abbot A. Hanks Assay Office at San Francisco by Mr. Sanborn.

Mr. FARR. Now I hand you a report of assay by Abbot A. Hanks, Inc., and ask you if the sample you were just speaking of was assayed to establish the number by this report.

Answer. This sample, as assayed by Abbot Hanks, was recorded on the assay certificate as No. 1. The certificate is signed by John L. Martel, of Abbot Hanks, Inc., and was sent to me by mail. On this assay certificate—

Mr. FARR. Mr. Examiner, I should like to have this marked for identification as contestant's exhibit No. 3. And by this I mean the report of assay by Abbot A. Hanks, Inc., dated August 10, 1949, signed by John L. Martel for Abbot Hanks, Inc. This consists of three sheets all signed by the same person.

EXAMINER. It will be so marked.

WITNESS. On these certificates the assay company has reported some of the assays as trace. A distinction is made at the bottom of the second and third sheet where it says that the term "trace" denotes that the element indicated is present but in such small amounts as to be unweighable. A trace of gold is less than 17 cents a ton. A trace of silver is a fraction of 1 cent per ton. This sample No. 5 shown on the assay certificate, under mark 5, when assayed showed about 0.005 of an ounce of gold and no silver. This sample was taken, now referring to the map, exhibit No. 1, 75 feet up the road from the south side line intersection with the road. It was a picked sample taken of rock that was picked up out of the bank and center of the road by the applicants.

EXAMINER. On the Cougar claim?

Answer. On the Cougar claim, and a sample was made of this. The material was—

Mr. FARR. Would you identify that as to number?

Answer. The sample is No. 5. Laboratory number is 10086, and the mark is 5. The material was, I believe, rhyolite, partly oxidized and iron stained and was more or less banded thus showing flow structure.

EXAMINER. Would that assay show the presence or the extent of the value of the mineral?

Answer. Yes; it was 0.005 of an ounce of gold and is worth 17 cents per ton. That is from the material on the road. A second sample was taken from the Cougar on this day. It was taken inside a small tunnel which is shown on the plat and is situated on the south boundary of the claim about 100 feet west of the West Fork of Swanson Creek as marked on the plat. The sample was taken 15 feet from the portal of the tunnel which was a storage place for powder that had been there quite a number of years. The sample was taken by Mr. Sanborn and one of the McDonald brothers. The material sampled was oxidized rhyolite that showed a banded structure. The result of the assay listed as No. 7 on the Abbot Hanks certificate, shows a trace of gold and none found of silver. On my visit to the property on July 5 and 6 in company with Mr. Altman, I made my third visit to the property.

EXAMINER. To the Cougar claim?

Answer. To the Cougar claim. The reason for my visit was that after I had made my report to the Forest Service, the Al Sarena Mines, Inc., submitted a copy of an assay certificate alleged to be determinations of samples taken from various places on various claims after my visit and Mr. Sanborn's visit to the property in July. I wanted to verify the samples, either give credit or discredit as to the validity of the samples taken. I took a sample in the place indicated on the Cougar claim which was shown on their assay certificate as being on the north line of the Cougar claim, on the west bank of Swanson Creek. Mr. Altman and I went to this point and I found rhyolite rock in place, and I took a sample where they had taken their sample.

Mr. FARR. Did Mr. Altman tell you that is where they had taken their sample?

Answer. Yes, he did. I saw chipped places in the rock. This sample, along with six others, was taken to the United States Bureau of Mines, Albany, Oreg. They were kind enough to rush them through and this morning I telephoned for the results. They told me they would send the results of these assays on a certificate within the next day or two. I have only the results as given to me by telephone.

Mr. FARR. Mr. Examiner, I should like to request that there be admitted in evidence as contestant's exhibit No. 4 the assay report prepared by the United States Bureau of Mines at Albany, Oreg.; that official document will be submitted by me to you as soon as it is received by Mr. Hattan.

EXAMINER. The report will be received and so marked.

Mr. FARR. And I shall ask also for permission to relate the results of the assay as will be verified by the certificate.

EXAMINER. Very well, subject to verification.

WITNESS. The sample taken at this point that I have discussed, on the bank of the creek was marked "879, No. 5A." The assay result as I received it over the telephone this morning was gold less than 0.005 of an ounce; silver less than 0.05 of an ounce; lead less than 0.05 percent; zinc less than 0.05 percent.

Mr. FARR. Mr. Hattan, I believe there is a confusion as to the date that you took these last samples. You said July. Did you take them in July?

Answer. No; I took them on September 5 and 6, 1950. I took another sample at a place along the trail about halfway between where the road, called West Portal Road, crosses the creek and the south line of the claim, and the point where the trail crosses the northeast end line of the claim. This is a cut that is roughly 20 feet long, 12 feet wide, and 5 feet deep at the face. This sample was marked "879-4A" and was assayed for gold and silver only. The results, as telephoned by the United States Bureau of Mines were less than 0.005 of an ounce of gold and less than 0.05 of an ounce of silver per ton.

Mr. FARR. What number does that carry?

Answer. 4A. This sample was taken at the same place that the exhibit I in the application for patent indicates opposite the Cougar claim, "a large cut on the claim between No. 1 and No. 8 tunnels" and which showed the value of \$1.75. These are all of the samples that were taken on the Cougar claim.

Mr. FARR. Now, Mr. Hattan, did you feel that you had sampled all of the places on the claim which could be expected to show values?

Answer. I sampled all of the places that were indicated to me showing values, that is, the places where the claimant stated that he had found values.

EXAMINER. Including the designated place of alleged discovery?

Answer. Yes.

On the J. W. Merritt claim, the discovery cut was visited in May 1949 and a sample was taken from the face of the discovery cut. It is oxidized rhyolite showing heavy iron stain, and the cut is 5 feet by 10 feet to an 8-foot face. The results from this sample, which is shown as No. 1 on exhibit No. 2, gave trace of

gold and trace of silver. During the July visit the discovery place was cleaned out again and a vertical channel  $2\frac{1}{2}$  inches wide was cut for a length of 24 inches right in the face of the cut. This sample is shown on exhibit No. 3 as No. 2, and the result was 0.01 ounce of gold and no silver, a total value of 35 cents per ton. This second sample was taken in the road while the McDonald brothers were along. It was taken between 80 feet and 85 feet south of the northeast end line of the claim. The material exposed in the road cut was banded rhyolite. A sample of this material was taken. The results are listed on exhibit No. 3 opposite mark 6 and shows a trace of gold and no silver. On my visit to the property on September 5 I took a sample in the road. A return to this place was made primarily to check a sample which was made previously, and which I discussed as having been sent to me by the claimants, in which they claimed mineral had been found 20 feet south of the discovery. When we went there, I found that the rock they had sampled was a large piece of float rock, and Mr. Altman, who was along with me, stated it was float rock. We went up the hill to the road and found some rock in place. I sampled this rock and marked it "879-6A" and took it to the United States Bureau of Mines for assay. The results, which were telephoned, showed gold less than 0.005 of an ounce and silver less than 0.05 of an ounce per ton.

Mr. FARR. Just before we go to that, referring to exhibit I of the application for patent, I note there that the contestee has alleged a finding of values of \$1.75. Now, did you take a cut from the bank that is described in exhibit I on the J. W. Merritt claim?

Answer. Yes.

Mr. FARR. Now, which would that be?

Answer. That would be the sample shown on exhibit 3 under mark 6. It shows a trace of gold and no silver.

Oro Escondido claim: During the May visit, I took a sample at a cut which in a north  $35^\circ$  east direction, about 40 feet from corner No. 4 of the claim. The material in the cut could not be identified as to whether it was rhyolite, andesite, or some intermediate rock. For field identification it is a volcanic or effusive rock. The cut was 12 feet wide by 6 feet deep to a 6-foot face. I took a sample there on my May visit, and it is shown on exhibit No. 2 as No. 17. The results were a trace of gold and a trace of silver. On the July visit, along with Mr. Sauborn and the McDonald brothers, I took a second sample, which is identified as No. 16 on exhibit 3. The assay results were: Gold, trace, and silver, none found. This is in the same cut previously sampled, but we dug it out, freshened up the face, and took the sample from the freshly exposed material in the cut. The discovery cut on this claim is about 190 feet from its northeast end line and shows nonmineral fine-grained andesite. A sample was not taken here.

Mr. FARR. Mr. Hattan, referring to exhibit I, the application for patent, it is noted that certain values are shown as having been secured from the cut near the southwest corner. Did you take any samples from this cut?

Answer. Both of our samples were from this cut.

Mr. FARR. And so designated to you by the McDonalds?

Answer. Yes.

The W. C. Leever claim: This claim is about 2,000 feet outside of the outlined central mass as shown on exhibit No. 1. The claim has outcropping of rhyolite interbedded with andesite which is nonmineral, and other volcanic rocks. There is considerable brush and timber on the claim, and it is hard to find any continuity of any outcrop. In fact, very little work was found on the claim from which to make any kind of determination as to geology. I do know there are tongues, dikes, or sills of rhyolite interbedded with andesite. A sample was taken at the discovery cut which is a small cut 3 feet wide by 8 feet long to 6 feet face, and at this point there is oxidized rhyolite. It was noted that the discovery cut of the Oro Escondido exposed fine grained andesite, but the discovery cut of the W. C. Leever exposed rhyolite. Immediately northeast a very short distance andesite is again exposed in the rock outcrops. I bring up this point because it was understood that the mining operation would be by glory hole or perhaps by underground caving methods or by open pit methods. Now if there were any mineralization in rhyolite flows, the thickness would be such so that they would have to be treated as if they were individual veins which, of course, would run mining costs up very high. Of course, there might be a small volume of mineral bearing ground which could be mined by open-pit method or by glory holing but if it were in such thickness that you would have to mine it like a flat vein, you would have to use a different method of mining which in one case might be worth the time and money to take it out and in another case would not be. The sample

taken on this claim in May is identified on exhibit No. 2 as No. 20, and the assay results show trace of gold and trace of silver per ton. A second sample was taken of float rock that was found up on the ridge above an andesite ledge that outcropped over the creek. I could not get down into the rock in place to get fresh rock, so I took what I considered a representative sample from a small area of broken rock. This place was about 675 feet upstream from the bridge and on the southwest slope above the creek. The results of this sample are shown on exhibit No. 2, No. 20. It shows a trace of gold and a trace of silver.

Mr. FARR. Mr. Hattan, did you attempt to find the spot which is designated on exhibit I of the application for patent on this claim?

Answer. Yes. We attempted to find it. It says here on the exhibit I, "Outcrop on Elk Creek, approximately 500 feet south of the northeast center end." Well, with Mr. Altman, we could not find that place. As nearly as we could tell, the next sample which I shall discuss came from material found in a very close vicinity to that described on exhibit I. I don't know if it is the same rock or not. It is on the same claim and within the same local area. On exhibit 3, sample No. 13 was taken on an outcrop of brecciated rhyolite found on the southwest side of the canyon of Elk Creek about 200 feet up from the creek and about 450 feet upstream from the bridge and also 20 to 30 feet above an andesite outcrop. It therefore is a rhyolite flow which lies on top of andesite. This sample is shown on exhibit No. 3, as No. 13, and gave a trace of gold and no silver.

The J. D. McKinnon: The discovery shaft of the J. D. McKinnon was visited in May and a sample was taken from the bottom of the shaft on the northeast side, that would be the northeast corner at the bottom of the shaft. There was only a small area of rhyolite around this shaft. The rest of the material found outcropping on the claim and north of it was andesite. This sample is shown on exhibit No. 2, as No. 22, and the results of the assay were gold trace and silver trace. In July the claim was again visited along with the applicants and we cleaned out the bottom of the discovery shaft. Mr. Sanborn took a sample of fine grain rhyolite which shows flow structure and was comparatively highly oxidized. He cut a channel sample 54 inches long across the full length of the bottom of the shaft on the northwest side and  $7\frac{1}{2}$  feet from the ground surface. The results of this sample, No. 14, shown on exhibit No. 3, is gold trace and silver none.

Mr. FARR. Just before leaving the J. D. McKinnon claim, referring to exhibit No. I in the application for patent, did you take a sample designated on that exhibit at the spot from which a sample had been taken by the applicants? It is described as "Creek bank, approximately 500 feet north of the bridge."

Answer. No. I did not take any sample there. I have no record of having taken one there. We went to that place and found nothing \* \* \* that is we found no outcrop of rhyolite or any mineralized rock. In May I went to that place and again in July we went past there and did not find anything.

J. L. Grubb claim: In May along with Mr. Altman I found a cut which is designated on the mineral survey map as being almost due north from corner No. 2; this was a very old cut and all covered with forest litter, but I dug down into the bottom and took a sample anyway. It is shown as No. 18 on exhibit No. 2, and the results were a trace of gold and a trace of silver.

Mr. FARR. Now was that the discovery point listed here?

Answer. No. At the discovery point which is a cut 5 feet by 5 feet to a 3-foot face and has rock in the bottom, and is probably oxidized rhyolite. There is only a small area around this discovery cut where rhyolite is exposed. The rhyolite area is roughly 300 feet more or less in diameter. Outside of that the exposed rock is fine-grained andesite. Some of the sample taken was bleached rhyolite, but the rest was andesite. The assays of this sample, No. 19 on exhibit No. 2, show gold—trace; and silver—trace. In July the discovery cut was again visited and a sample was cut from the lower part of the face. It was taken over 24 inches in length and was fine-grained rhyolite, like feldsite, and was very hard and tough. The assay results of this sample shown as No. 15 on exhibit No. 3 gives gold—trace, silver—none.

Henry Applegate claim: On the May visit along with Mr. Altman, I went to the discovery shaft which is a cut—it is called the discovery shaft on the map—and it is about 5 feet from the northeast end line of the claim. It is more or less a cut 3 feet wide by 8 feet long to a 3-foot face. It is all highly leached or oxidized material. And this sample marked "10a" on exhibit No. 2 assayed gold—trace, silver—trace. An outcrop was found about 75 feet west from the discovery cut which shows some rhyolite that contained some visible iron sulfide and possibly some lead sulfide specks. This sample shown on exhibit



No. 2, No. 10, reported gold—trace, silver—trace. In July with the McDonald brothers, we first went up on the hill and tried to find the place that was shown on exhibit 1 accompanying the application. The description states "banded rhyolite capping 150 feet southwest of northeast end line and 75 feet southeast of northwest side line [No. 21]" and the result was \$1.44. I tried to find this place, and we did find some banded rhyolite along the trail, but there was nothing like it in place within the limits of the claim. The banded rhyolite had apparently come from the Mark Applegate claim where it was noted in place. We then went farther southwest and found some outcrops of rock that projected 20 or 30 feet above the surface of the ground, like pinnacles of rock. There was some debate at the time as to whether we should or should not sample them as the claim corner had not yet been found. We later found the corner and determined that these outcroppings were probably outside the claim. Mr. Sanborn and one of the McDonald brothers went back on the claim during the afternoon to look for an outcrop that was within the limits of the claim. They reported that they did find such an outcropping and took a sample which I marked "No. 24," and the assay results are shown on exhibit No. 3, opposite the number 24. The results were gold—trace, and silver—trace. This point, from corner No. 2 of the claim, is south 16° east 45 feet, thence south 40° west 175 feet. In the meantime, after my report was submitted, I received the list of assays, before described, which indicated that a discovery had been made within the limits of the claim and not far from the common corner of the Rainboe and Delia McKinnon claims. On September the 5th I went with Mr. Altman to this place, and a sample was taken from an outcrop which is about 80 feet southwest of the corner common to the named claims, and within the limits of the Henry Applegate claim. It was rhyolite rock which is exposed on the side of a ridge that has a north-south strike. This ridge extends northeasterly into the Henry Applegate claim and also southerly into the Rainboe and across the northwest corner of the Delia McKinnon claim. This sample was taken to the United States Bureau of Mines at Albany last Monday, and the results were gold less than 0.005 of an ounce per ton; silver less than 0.05 per ton, lead less than 0.05 percent, and zinc less than 0.05 percent per ton.

Mr. FARR. What number would that carry on the Bureau of Mines certificate?

Answer. I haven't seen the Bureau of Mines certificate, but on my certificate I had 879-1A.

Mr. FARR. Mr. Hattan, before going further, I would like to return you to the J. L. Grub claim and ask you if you took this sample near the spot which is described in exhibit 1 in the application as a "cut 380 feet southwest of northeast center end."

Answer. Yes, my sample shown on exhibit 2, No. 19 I believe it is, yes; sample No. 19.

Mr. FARR. Proceed with the rest.

Answer. Yes, my sample shown on exhibit 2, No. 19 I believe it is, yes; sample No. 19. The exhibit 1 in the application for patent indicated that a sample had been taken at a point at a "pit 280 feet above station F on centerline." I found station F along the southwest end line of the claim and went up the slope 280 feet and there were some small cuts, old cuts in rock that appeared to be andesite. Anyway, we took a sample at this point in May which is No. 14 on exhibit No. 2, and the assay results were a trace of gold and a trace of silver. In July I again went back to the place because Mr. Altman was not sure where the rock had been taken for the sample, and he did not know any other place to go to, so we went back there to about the same vicinity. We went 200 feet northwest of station F. Station F, by the way, is on the M line 175 feet east of the southwest corner. That would be corner No. 2. We dug a hole in one of the old cuts and took a sample which was more or less oxidized rock, it may have been rhyolite or may have been andesite. It was one of the volcanics, and it was taken to Abbot A. Hanks, and is sample No. 8 on exhibit 3. It showed gold—trace, and silver—none. We also went at that time to the discovery cut on the claim and found that it is breccias material, probably andesite. We cleaned out the cut and took a large sample in its face. This is shown as No. 9 on exhibit No. 3. The results were trace of gold and no silver. As a result of the report that mineralized rock and a probable discovery had been found, judging from the assay certificate which I received from the claimants, I went back to this claim with Mr. Altman on September 5. I went on this claim and at a point 175 feet south from corner No. 4 and from which the applicant had taken a sample—alleged to have taken a sample, that was assayed by Abbot Hanks, Inc., of which I have a copy of the assay certificate. This sample was marked for identification "Laboratory

No. 9843" and called Rainboe No. 2 outcrop 10 feet above trail. This point was found to be 60 feet south 6 degrees west from the corner No. 4 of the Rainboe claim, thence 175 feet south. The sample was cut from the same rocks and same place that the applicant alleged that he took his sample. Mr. Altman was there with me, and he was the one who took the sample for the applicants. He showed me where he had taken it, and I took my sample from the same rock. This sample was marked "879 No. 2a," and taken to the United States Bureau of Mines laboratory in Albany. That was last Monday, and the telephoned results were gold—less than 0.005 ounce per ton; silver—less than 0.05 ounce per ton; lead—less than 0.05 percent; zinc—less than 0.05 percent.

Mr. FARR. Mr. Hattan, would you identify the samples that you took which were taken from the area noted as pit 280 feet above station F? From the centerline in exhibit 1?

Answer. They are No. 14 shown on exhibit 2 and No. 8 on exhibit 3.

The Delia McKinnon: In May the property was visited with Mr. Altman, and at the discovery cut a sample of rock was taken which is more or less an agglomerate. It has rounded pebbles as well as broken fragments of rock. Some of the rock appears to be andesite, and some of it is clearly not related. It is all cemented together very tightly, probably with rhyolite tuff which is partly oxidized. The rock on the discovery cut is the same as that found down on the road at a small cut shown on the mineral survey plat near the east side line of the claim and on the north side of the road. My sample was composited from material taken from the discovery cut along with an equal amount of material taken from this other cut down on the road. The sample results are shown on exhibit No. 2, No. 13, and the results were gold—trace, and silver—trace. I had this rock identified over at the Oregon State Department of Geology and Mineral Industries and the identification called it volcanic agglomerate.

Mr. FARR. Mr. Hattan, part of that composite sample was taken from the point designated in exhibit 1 to the application as the "Cut on main road 375 feet south of the Dahlbert southeast center end"; is that correct?

Answer. Yes. Part of it was. That is the little cut on the road as described. Now on the occasion of the visit in July, the whole sample was taken from that point down on the road, and it is brecciated hard rock well cemented. We made a 2-foot cut in that rock which is near the east side line and just north of the road. The results are shown on exhibit 3, No. 10, and show a trace of gold and no silver.

The Sulphide claim: Exhibit 1 of the application shows that a sample was taken by the claimant from a "pit on the mill road 190 feet to 200 feet northeast of assay office," and the result is shown as \$4.90. The assay office is shown on the mineral survey plat, and the shaft I am speaking of is the first shaft northeasterly from the assay office. The material found in this shaft that had been dug out was laterite, rotten rock and some stuff that had come down the hill. We dug down into the bottom of the shaft and took a sample from the material found in the bottom. It was in hard porous material. The results of this sample are shown on exhibit 2, No. 23, and are gold—trace, and silver—trace. The Sulphide discovery shaft as shown on the plat was found to be a cut 3 feet by 10 feet to a 3-foot face. There were only three boulders laying at the side of the cut. It was a very shallow cut that was evidently made in soil and loose talus material. Most of the cuts described, or shafts described by the mineral surveyor were found and examined. Most of them, however, did not expose rock in place. There was some rock in place exposed along the road. There is a ditch traversing a part of the claim through which water is conveyed from Elk Creek to a point about 50 feet from the shop and timber shed and above the portal of the tunnel on the A. W. Dahlberg claim. Along this ditch there are several outcroppings of rock in place. On the occasion of our visit in July, we went to a cut above the road, probably not shown on this plat, where there had been considerable ground excavated and we extended the cut until it contacted fairly solid rock. We were quite sure that it was rock in place or laterite. It was very highly oxidized and changed over to hard clay material. From this we took a channel sample  $2\frac{1}{2}$  feet long in the face of the cut and even dug down below the floor of the cut. This sample is shown on exhibit 3, and marked "No. 18." The results were gold—none, silver—trace. The claimants stated that they might have a better showing along the mill ditch which I described, so I went up there and with one of the McDonald brothers took a sample of the rock outcropping along the ditch. The place was probably about 300 feet from the northwest corner No. 3 of the claim and possibly 50 or 60 feet south of the north side line. This sample was a composite of rock that was jutting out on the side

of the ditch over a distance of about 30 feet. The sample is shown on exhibit No. 3 under mark 22, and reports gold—trace, silver—none. The indications from the applicant were that another sample had been taken after our July visit and in order to check this sample I returned with Mr. Altman to the place indicated, on September 6. The applicant stated that he took this sample at a point north 65° east from the most westerly corner of the claim 30 feet distance. In going back to this place I found that it was in a draw and all the rock exposed on the side of the ditch was talus which had slid down the hill. I did find a place in the ditch some 60 to 65 feet southwest from corner No. 3 of the sulfide some rock in place. I took a sample here which was marked 879, No. 3a, and this sample I took to the United States Bureau of Mines in Albany. The reported results were gold—less than 0.005 of an ounce per ton, and silver—less than 0.05 of an ounce per ton.

The Alabama claim: The discovery cut on the Alabama claim which is right on the southwest end line is crumbly andesite. However, about 40 feet out farther southwest from this point and on the telluride claim there appears to be some rhyolite. Along the end line a distance of about 125 feet northwest of the discovery cut there is a small outcropping of rhyolite within the limits of the claim. However, 15 or 20 feet to the northeast of this point the rock is again andesite which shows that this is very close, or probably in the limits of the central mass of the mineralized or partially mineralized area. The sample was taken of this rock outcropping and its results are shown on exhibit No. 2 under No. 15, the results being gold—trace, silver—trace.

Mr. FARR. Mr. Hattan, was that one of the samples that you took from the outcropping which corresponds with the outcropping of exhibit I of the application for patent?

Answer. Yes; it would. I would correspond with that. In July a second visit was made to this claim and to this outcrop and we found that the rock exposed there was 10 feet by 6 feet which is a fair outcrop. We took another sample of the same rock which shows massive structure and some banding and probably is rhyolite. This sample was taken to Abbot Hanks by Mr. Sanborn and is identified by mark 17, on exhibit 3. The results were gold—trace, silver—none. The two samples taken from the same outcrop check. The applicant indicated in a letter to me enclosing an assay certificate from Smith Emery Co., Los Angeles, that he had returned to this place after our visit in July and taken a sample from this same outcrop. The certificate shows the sample assayed gold 0.06 of an ounce, silver nil, total value \$2.10 with gold at \$35 per ounce.

Mr. FARR. Did you recheck this claim during your September visit?

Answer. No; I did not go back; there were two samples taken from this rock previously.

The Staples claims: Exhibit I accompanying the patent application indicates that a sample was taken from the Staples claim on the "East Branch of Elk Creek, 40 feet from southwest corner." I went to this place—I was there both in May and in July. In May I could not find any such place and Mr. Altman could not show me any outcropping or any place to sample. I went upstream about 125 feet from the corner and found a ledge in the side of the creek bank of what appeared to be an agglomerate or mixture of andesite and rhyolite, and which had been exposed by erosion. The lighter colored particles appeared to have a little iron sulfide, but I could not be too sure of that. However, the material was assayed and is shown on exhibit 2 as No. 12a and the assay results were a trace of gold and a trace of silver. When we returned to this place in July along with the McDonald Bros., they had nothing further to offer.

The EXAMINER. Was that on September 5 when you returned?

Answer. No; this was in July. They had nothing further to offer—a place to sample—and, consequently, no other sampling was done on the claim. There is no definite outcropping of rhyolite on any part of the claim. I think I covered the claim rather thoroughly, coming down on the centerline I waded down through the brush, I tried to find the cut that is shown near the center of the claim which is north of the East Fork of Elk Creek. Mr. Altman and I could not find that cut although it may be there. Thence coming on down through the center of the claim to the discovery cut which is in andesite and down to the cut as shown near corner No. 4, also andesite, and the cut on the sulfide claim near its corner No. 4, is fine-grained andesite. They had to blast it out. It is certainly nonmineral.

The La Jolla claim: During the May visit the discovery cut was found on this claim but it was caved in and no rock in place was found. However, in a creekbed

about 20 feet south of the discovery there is some rock in place exposed that may be rhyolite. It did show iron sulfide. A sample was taken of this rock and the assay results are shown on exhibit No. 2, sample 11, and were reported as gold—trace, silver—trace. On the occasion of the visit in July, along with the applicants, they pointed out a place on the east bank of the creek on the center line and near the northeast end line of the claim. The rock appeared to be iron-stained, fresh andesite, and showed considerable pyrite on the jointing. This sample was taken to Abbot Hanks and the assay results appear on exhibit 3, mark 11, and show gold—trace, silver—trace. The sample material as shown on exhibit 2, No. 11, is comparable with the sample material which appears on the exhibit 1 accompanying the application for patent. It was taken in the same local area according to the description given.

The Arroyo Verde claim: In May this claim was visited along with Mr. Altman. I went to the discovery cut which is the only work on the claim. A sample was taken from the cut which is a more or less round pit about 8 feet in diameter and approximately 5 feet deep in places. The rock exposed in the center is a jutting fragment of rhyolite. This sample was taken to the Annes Engineering Co., for assay, and the assay results are shown under No. 12 on exhibit No. 2 as gold—trace, silver—trace. In July the claim was again visited along with the applicants and we enlarged the hole by digging down to the side of the jutting rock in the center and took a sample of the rock as well as some gouge material in the side of the rock. This sample was taken to Abbot Hanks and the results appear on exhibit No. 3, mark 12. The results are gold 0.005 ounce per ton; silver none, total value 17 cents per ton.

Mr. FARR. Mr. Hattan, was that sample taken in the cut that is described in exhibit 1 of the application?

Answer. Yes.

The manganese claim: The discovery cut on this claim is up a very steep slope of the mountain, and at this point I found the original, or found the can containing the location notice of the claim. The rock found here was identified by the Oregon Department of Geology and Mineral Industries as dacite which is an interbedded rock of rhyolite and andesite. I did not notice any particles of pyrite or any other mineralization in the rock, and none were seen under the microscope. Mr. Altman took me to a point on the manganese claim along the north bank of the creek—it would be on the west bank of the creek about 150 feet upstream from the centerline of the claim. There is a bank of rock there about 12 feet high which appears to be rhyolite and contains a few specks of iron sulfide. This sample was taken to the Annes Engineering Co. and the results are shown on exhibit 2, sample 24. The results show a trace of gold and 0.14 ounces of silver per ton, total value 12 cents.

Mr. FARR. Was that sample taken near the creek bluff described in exhibit 1 of the application for patent?

Answer. Yes. At the same place; Mr. Altman said it was at the same place. During our visit to this claim in July we went to the same bank and took another sample across 2 feet of material shown in the creek bank, and which contained iron sulfide. This sample was taken to Abbot Hanks and the assay results are shown on exhibit 3, mark 19, which are gold—trace, silver—none. On September 5, I returned to a point which is about 20 feet downstream from where these samples were taken and where the claimant indicated he had taken a sample which had given good results. I went with Mr. Altman to this place on September 6 and took a sample over a length of 8 feet right along the creekbed. Some of the rock showed specks of iron pyrite. However, I did not see any lead or zinc. The sample was taken last Monday to the United States Bureau of Mines in Albany and the assay results were reported by telephone this morning. Sample 879 No. 7a showed gold less than 0.005 ounce per ton; silver less than 0.05 ounce per ton; lead less than 0.05 percent; zinc less than 0.05 percent.

The EXAMINER. I think it would be well to recess for 5 minutes.

The hearing was resumed at 3:35 p. m., with everyone present, and counsel for the Forest Service continued his direct examination of the witness:

Mr. FARR. Mr. Hattan, at all times when you were on these claims, were you accompanied by a representative of the contestee?

Answer. Yes.

Mr. FARR. Did this representative of the contestee suggest the place where you should take samples.

Answer. Yes.

Question. And you understood that the places where you took samples were where you thought values could be found?

Answer. Yes; I did.

Question. Now, did you feel that where you took samples that the places designated by them were places where values were likely to exist?

Answer. Well, it would be as good as any. I had no choice where the samples were to be taken. The purpose of making the examination was not to make a discovery for the claimants, but rather to check their discoveries.

Question. Mr. Hattan, did you find on any of these contested claims what you regard as a sufficient discovery under the law?

Answer. No.

Question. Now, Mr. Hattan, did you find any evidence of minerality or mineral-bearing rock or the evidence of minerals which would lead a reasonably prudent man, or which rather would justify a reasonably prudent man in expending time and money with the reasonable expectation of developing a paying mine?

Answer. No; I did not.

Mr. FARR. On any one claim which you examined and which had been contested?

Answer. On none of it.

Mr. FARR. Now, Mr. Examiner, at this time I should like to move for the admission in evidence of the contestant's exhibits 2, 3, and 4. I should like also to point out for the record that both of the assay reports furnished contain assays from claims which are not now being contested; is that correct?

Answer. That is right.

Question. Therefore, the only ones on which we are relying are the ones the numbers of which have been specifically referred to in the testimony by Mr. Hattan. Is that correct, Mr. Hattan?

Answer. That is right.

Question. As an illustration I call your attention to page 3 of contestant's exhibit 3 headed "Pulp." The values are rather high there. One shows a value of \$6.65, and one of \$7.70. Was the pulp taken from any of the claims contested?

Answer. No.

EXAMINER. Contestant's exhibits 2, 3, and 4 will be received in evidence.

Mr. FARR. Now, Mr. Hattan, is Abbot Hanks a recognized assayer of minerals?

Answer. Yes. When I was with the region in California, we took our samples there very often, with excellent results and found them very reliable.

Question. Is the Annes Engineering Co. a recognized and reliable assayer of minerals?

Answer. It is, and the assayer, Mr. Anderson, is a qualified assayer and holds a professional engineer's license in the State of Oregon.

Question. In your opinion, is the United States Bureau of Mines qualified to render a satisfactory assay?

Answer. Absolutely.

Question. You made certain check samples; did you not?

Answer. Yes.

Question. I wonder if you could relate what you found?

Answer. In making the examination we found that several hundred samples had been taken by the claimant over a period of years in the development and improvements in long tunnels and some other tunnels and openings on the property. In order to check the assaying and not be involved with these claims, we took some of the pulps that had been retained from these old samples and assays. They were found in the assay office, and we took three pulps from the original assays that had been made at the mine, and these pulps were sent to Abbot Hanks for a check to see whether our sampling, or whether their assaying had been in line and whether we could depend on it. And also there was some question about the Annes Engineering Co. assays since the assays shown on exhibit No. 2 are all trace for gold and trace for silver. We wondered if there might be some question as to whether these assays were in line. Consequently, two of these pulps were sent along with the Abbot Hanks bunch of samples to be assayed for a check of the Annes Engineering Co. assays. The two samples checked were the pulp of sample No. 23, assayed by Annes Engineering Co., being the same as sample 25 assayed by the Abbot Hanks, Inc. The Annes Engineering Co. reported trace of gold and trace of silver. Abbot Hanks reported trace of gold and no silver, which are right along in line. The sample No. 7 assayed by Annes Engineering Co. returned a trace of gold and trace of silver. Sample Mark 26 on Abbot A. Hanks certificate, exhibit 3, was the reject pulp of sample No. 7 assayed by Annes Engineering Co., and gave a trace of gold and no silver, which again checks, showing the samples assayed by the Annes Engineering Co. could be relied upon. The pulp shown on exhibit No. 3 as No. 605, 697 and No. 23 were pulps that were left from the assaying made by the mine employees

through previous years, probably between 1939 and 1942. These checked in general. The reported assay results were shown on assay maps furnished to us by the claimants and we felt, Mr. Sanborn and I felt, that we could rely in general on these samples and accepted them. It was on the checked results of these three samples that we clear listed some of the claims.

Question. You relied on the samples taken on the eight claims by the mining company. You of course made some of your own investigation?

Answer. Yes, I did.

Question. Now, Mr. Hattan, you have stated that you were were accompanied by Mr. Sanborn on certain of these trips and worked together in taking samples. What did you do with the samples when they were taken?

Answer. They were first put in small sample sacks. Then these sacks were put in gunny sacks, transferred from our cars and taken by Mr. Sanborn to the express office where he checked them for delivery by railroad express. What he did with them after that I don't know, but he must have delivered them to Abbot Hanks, Inc., because I received the assay certificates from that company.

Question. Did you receive the certificates directly from Abbot Hanks?

Answer. As I remember, yes.

Question. Now, Mr. Hattan, with respect to the manganese claim, the Staples claim, the Arroyo Verde claim, the Alabama claim, and the La Jolla claim, a contest was filed on the additional ground that the requisite expenditure of \$500 in improvements and development has not been made. Will you kindly explain the improvements which have been claimed as a common development for these five claims, taken individually, and what you regard as improvements, which could be regarded as common developments?

Answer. On the manganese claim the mineral surveyor's report lists four different places which have a total value of \$210. On the Staples claim he lists three different places that have a total value of \$275. On the Arroyo Verde he lists one place which he valued at \$150. On the Alabama claim he listed two places which have a total value of \$175, and on the La Jolla claim he listed three places which have a total value of \$240. In the list of common improvements made after subtracting certain amounts for the 10 original lode claims they arrived at a value of improvements for the group of 23 claims at \$8,500 or one-twenty-third interest which would be \$369; which if added to the amounts shown for the individual claims, would exceed \$500. Exception is taken to this allotment for the reason that common improvement No. 3 is in elevation considerably above most of the ground embraced in these five claims.

EXAMINER. What is the location of that improvement?

WITNESS. No. 3 is known as tunnel No. 6 and its portal is near corner No. 4 of the H. McKenzie claim. That is the portal of that tunnel. The improvement No. 2 is tunnel No. 1 whose portal is within the limits of the Peter Applegate claim. And improvement No. 1 is the long tunnel whose portal is at the timber shed and shop on the A. W. Dahlberg claim. Now improvement No. 1 is driven in a northwesterly direction, and the portal of this tunnel is approximately at an elevation of 3,400 feet. I ran out the contour of the elevation of 3,400 feet and found that it crosses the creek or intersects the Elk Creek about 50 feet downstream from corner No. 4 of the Sulphide claim. The contour thereafter comes down along the bank, goes up the East Fork of Elk Creek for a short distance and then back down the south side of that stream and on down Elk Creek Canyon. Now any of the work which has been done in improvements No. 1, 2, or 3 could not possibly assist or be of benefit in the mining or extraction of any ore which may have been or may be found within the limits of the five claims listed. There is a southwest cross cut which is shown on exhibit No. 1 that returns southwest into the Mark Applegate claim. There is a north drift marked in red that followed a fault structure for about 160 feet or more in a north direction from the main tunnel or drift. By the way, this north drift is platted incorrectly on the mineral survey map. The mineral survey map shows the north drift running northeast parallel to the center line of the H. McKenzie claim. That is not so. The north drift has a north direction, a north strike. Now this north drift, it might be said, would, by stretching your imagination, be of benefit to such claims as the H. McKenzie, J. L. Grubb, Oro Escondido, and possibly the W. C. Leever. But anyone who would drive a drift in that direction and then drive it back down through the Alabama and Staples and these other claims would certainly be throwing his money to the wind since he could start from the same elevation and drive from the surface right on any one of the claims.

Mr. FARR. Now is this north drift you are referring to in improvement No. 2 as he listed it?

Answer. It is part of the main tunnel, part of improvement No. 1.

EXAMINER. As shown in the examiner's report?

Answer. As shown in the mineral survey report. Under expenditure of \$500.

Mr. FARR. Now, could improvement No. 2 be regarded as a common development and to benefit these 5 claims mentioned?

Answer. No, it could not. It is at a higher elevation than No. 1 and comes from the other side of the mountain.

Mr. FARR. Then in your opinion, Mr. Hattan, \$500 has not been expended in improvements on or for the benefit of the La Jolla, Alabama, Staples, Arroya Verde, or the Manganese claims?

Answer. No.

EXAMINER. Did you observe any other expenditures made there? Other than what you just testified to?

Answer. No. There is a road that goes across the corner of the Manganese and Alabama but that is a Forest Service road constructed at the Forest Service expense.

EXAMINER. Are there any other developments that would tend to develop these particular 5 claims?

Answer. Well, there is a boarding house where a crew could be kept and bunkhouses. These improvement, I believe, were not claimed. They would, I believe, be of benefit, but they would be of such small amount it would not make any difference.

EXAMINER. Is that owned by the contestee?

Answer. Yes.

EXAMINER. A boarding house?

Answer. Yes, and a bunkhouse. They would be places for employees to live and consequently be of benefit.

Mr. FARR. Would they be to the benefit for the extraction of minerals?

Answer. I believe it has been so held.

EXAMINER. How far is that removed from the particular 5 claims?

Answer. It is at a central point.

EXAMINER. But these were not claimed as a patent expenditure by the applicant?

Answer. They are merely listed as other improvements and no claim was made for them.

Mr. FARR. Mr. Hattan, what would be the value of this boardinghouse? Do you happen to know?

Answer. Well, it is a 2-room log house. At one end is a kitchen and the other more or less is a bedroom-living room. That is where Mr. Altman stays at the present time and I don't suppose it has a value over \$1,000.

Mr. FARR. What would the bunkhouses be worth?

Answer. Several small bunkhouses were constructed, and were possibly built in 1939 when they brought the crew up there, and I should say there are 5 of them, and probably the cost did not exceed \$400 apiece.

EXAMINER. Are they now in use and occupied?

Answer. They are not occupied and haven't been since 1942.

EXAMINER. They have not been occupied in connection with these five claims?

Answer. They were occupied while they were running the mill.

Mr. FARR. If these values of the bunkhouses and cabin were divided by 23, would there still be enough to make up the \$500 development, or the deficiency in expenditures for improvements?

Answer. I rather doubt it. I did not make an appraisal of the buildings. I would have to guess at it.

EXAMINER. Are they in a state of deterioration now?

Answer. Yes. They have not been occupied since 1942. The roofs are sagging. One building caved down entirely last winter. They are not occupied at all.

Mr. FARR. The best is the cabin?

Answer. The best is the cabin.

Mr. FARR. I have no further questions.

There were no further questions, and the witness was excused.

Mr. William C. Sanborn, a witness for the United States Forest Service, was then called to take the stand. He was sworn and testified as follows:

#### DIRECT EXAMINATION.

Question. State your name, please?

Answer. William C. Sanborn.

Question. And your address?

Answer. 630 Sansome Street, San Francisco, Calif.

Question. By whom are you employeed, and in what capacity?

Answer. I am employed by the United States Forest Service in the capacity of a mining engineer.

Question. How long have you been employed in that capacity?

Answer. Well,, for the United States Forest Service for a period of about 5 years.

Question. What are your duties in connection with your work for the United States Forest Service?

Answer. Well, I examine mining claims on the national forest both occasionally before they come up for patent and other times when patents are applied for.

Question. Will you state your education and experience and qualifications as a mining engineer?

Answer. I have a bachelor of science degree as a mining engineer from the Michigan College of Mining and Technology in 1933. From 1934 to July of 1935 I was employed as assayer and underground surveyor for the Canyon Mines Corp., Placer County, Calif. From July 1936, I was employed by the Forks Hill Gold Mining Co. at Jamestown, Calif., as mil foreman and engineer. From June 1935 to August 1937 I was employed as mill foreman and mining engineer for the Gold Diggers Syndicate of Jamestown, Calif. From August 1937 to February 1942 I was employed as a mining engineer for the Arctic Circle Exploration, Inc., with chief operations at Candle, Alaska. From April 1942 to September 1945 I was employed by the United States Bureau of Mines, in Montana and California. I believe my official title at that time was associate mining engineer with the Bureau of Mines.

Question. Since 1945 you have been with the United States Forest Service?

Answer. Yes.

Question. Have you been on the claims which are the subject matter of this contest?

Answer. Yes.

Question. When was that, and with whom?

Answer. I visited the claims in July 1949, specifically on the 12th, 13th, 14th, and 15th in the company of Mr. Elton Hattan of the Bureau of Land Management. During our observations and reconnaissance on the days mentioned we were accompanied by Mr. H. P. McDonald, Jr., and Charles McDonald.

Question. Did these parties designate where they thought samples should be taken to show values?

Answer. Well, to begin with, I might mention that my first trip over the claims in connection with the examination was as sort of an observer and participant in supplementary examinations that Mr. Hattan was undertaking because of the findings which had been arrived at from a previous examination which I believe he made in May of the same year. As to what transpired in May I have no knowledge. But I do know that in July when we were accompanied by the McDonald brothers that we specifically asked them and expressed a willingness to sample at any particular point they would designate or had reason to believe would show values. We spent 4 days there and we took a great number of samples, all of which Mr. Hattan has specifically mentioned, and as to the location of taking the samples, and as to the sample results. I believe that of the 15 claims which are involved in the contest, 18 samples were taken and these samples were shipped to San Francisco, but I can't recall whether it was by freight or express. They were sacked individually, and put into several gunny sacks, and thereafter they were boxed in substantial boxes and shipped to San Francisco to the regional forester, direct to the regional forester. On their arrival in San Francisco I personally took the samples to Abbot Hanks and deposited them with them and gave them instructions as to the assay work to be done.

Question. Now was each of these small sacks individually marked to designate from where it came?

Answer. They were.

QUESTION. And that marking was delivered to Abbot Hanks?

Answer. They were. That is correct.

Question. And you yourself delivered the samples to Abbot Hanks?

Answer. I did.

Question. And you were present when all of the samples were delivered to Abbot Hanks?



Answer. Yes, I was. It is possible that there was one sample—I am not positive about this. It is possible that there was one sample taken by Mr. Hattan in the presence of Mr. H. P. McDonald when I was not there. On the last day I went up to the Henry Applegate claim in the late afternoon with Charles McDonald to get a sample that we had debated about previously and as long as we were on the property I thought we had better get an additional sample, and I believe that while Mr. Charles McDonald and I were getting this sample, Mr. Hattan and Mr. H. P. McDonald visited a claim along the ditch, I believe it was the Sulphide claim, which Mr. Hattan has already covered.

Question. Now, your identification slips that were with the sacks properly designated the claims from which the samples were taken?

Answer. Yes, they did.

EXAMINER. Are you positive that at least one of these bags came from each of the claims in question?

Answer. Well, I don't believe—I believe that there was one claim on which we took no samples during the period we were on the property. I believe that claim was the Staples claim. We took no samples off that claim. I remember specifically, we were down in the creek bed and discussed taking a sample there. We discussed it with the McDonald brothers and we said, "If there is any place within the limits of this claim that you wish us to take a sample, why we would be glad to take it," and they had nothing to offer as to where the sample should be taken, and inasmuch as Mr. Hattan had previously sampled the claim, no additional samples were obtained.

Mr. FARR. Now, Mr. Sanborn, you have heard Mr. Hattan's testimony regarding these claims. Did your observation lead you to believe that there were mineral values on these claims, each and all of them, which would justify a prudent man in the expenditure of time and money with the expectation of developing the mine?

Answer. Neither my observations nor the results obtained from various samples cut both by Mr. Hattan and myself would lead me to believe that a prudent man would be justified in spending his time and money with the expectation of developing a paying mine.

Question. In your opinion, has a discovery sufficient to meet the mining laws been made on any of these claims?

Answer. No. On the basis of my knowledge of the claims, no discovery has been made upon the claims in contest.

EXAMINER. You mean valid discovery? You mean that in your opinion a valid discovery of minerals has not been made on any of these claims?

Answer. Yes, that is right. I did not run out the contour line which Mr. Hattan did, but for the record I will be able to state that I am willing to concur in Mr. Hattan's conclusions which are in the record as to the character of the land and as to the insufficiency of the expenditures.

Mr. FARR. I wish to recall Mr. Hattan for one more question.

Mr. William C. Sanborn was excused, and Mr. Hattan took the stand. He was reminded he was still under oath, and testified as follows:

#### DIRECT EXAMINATION

Question. Mr. Hattan, referring to contestant's exhibit No. 2, which is a certificate of assay from Annes Engineering Co., did you take all the samples that are listed thereon?

Answer. Yes, I did.

Question. Did you personally deliver them to Annes Engineering Co.?

Answer. I did.

Question. And the Annes Engineering Co. delivered to you the certificate of assay which is contestant's exhibit No. 2?

Answer. Yes.

Mr. FARR. Now, Mr. Examiner, I have some observations that I would like to make for the record before closing, and they have to do with the interpretation of the rules of procedure and rules of practice established by the Bureau of Land Management with respect to answers, and I quote from section 221.13 of title 43, Code of Federal Regulations. "When and how answer must be filed. (a) Within 30 days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within 20 days after the fourth publication, as prescribed by the rules in this part, the party served must file with the manager answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant \* \* \*." Now this sentence goes on, but it is not material to the point I want to make. Now the answer so called submitted by the con-

testee is in my opinion not an answer. It is a motion. It starts out and says that it is an answer and the only possible part of it that could be construed as meeting \* \* \* as "specifically meeting and responding to the allegations of the contest" would be where it says that the mineral surveyor made a statement of the exact value of the improvements and developments. Nowhere in here can I find any meeting or responding to our allegations with respect to discovery and the minerality of the claims. Now I maintain that this is not an answer, and now what is the effect of failure to answer? Section 221.14 of title 43 of the Code of Federal Regulations provides, "Upon failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the manager will forthwith forward the case, with recommendation thereon, to the Bureau of Land Management, and notify the parties by ordinary mail of the action taken." Now what happens if the contestee fails to appear at a hearing? Section 221.49, title 43, Code of Federal Regulations provides, "No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the manager." I submit that the contestee has not either properly answered or properly appeared at this hearing; that he is neither entitled to an appeal or further consideration of the case, and the protest is regarded as confessed. A question might be asked why this motion was not made at the beginning of the proceedings, the reason being that it is now a customary practice in most courts of law that even though a default is entered, that sufficient evidence will be presented to make a prima facie case so that the presiding official will have something on which to base his decision other than the pleadings, and this motion I believe is made at the proper time, and the Government rests.

EXAMINER. The motion made by the contestant will be taken under advisement and considered in connection with the testimony and a decision will be rendered.

Mr. FARR. I stipulate on behalf of the Government that it will be unnecessary to have the witnesses subscribe to their testimony and will so execute the stipulation when it is presented to me. The hearing was closed by the examining officer at 4:45 p. m. on Wednesday, September 13, 1950.

Senator NEUBERGER. This concludes our discussion and our hearing of testimony here in Oregon. As Senator Murray suggested, later testimony will be taken in the National Capital.

We are now in recess.

(Whereupon, at 8:30 p. m., the hearing was recessed, subject to call.)

UNIVERSITY OF MICHIGAN LIBRARIES

## THE AL SARENA CASE

TUESDAY, JANUARY 10, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION OF  
THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS;  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 9:30 a. m., in the caucus room, Old House Office Building, Washington, D. C., Hon. Kerr W. Scott (chairman of the Senate committee), presiding.

Present: Senators Scott (North Carolina); Richard L. Neuberger (Oregon); and George W. Malone (Nevada).

Also Present: Senators Arthur V. Watkins, (Utah); Thomas H. Kuchel (California), and Barry Goldwater (Arizona).

Present: Representatives Earl Chudoff (Pennsylvania), (Chairman of the House Subcommittee); Robert E. Jones, (Alabama); John E. Moss, Jr., (California), Dante B. Fascell (Florida); Clare E. Hoffman (Michigan); Victor A. Knox (Michigan); Charles Raper Jonas (North Carolina), and William E. Minshall (Ohio).

Senator SCOTT. The subcommittees will please come to order.

I sent after my glasses and they haven't gotten here yet, but I borrowed some from a neighbor in the Far West, so if I cannot read it all right, you will find that we have one anyway.

Congressman Chudoff, it is good to have you and your associates on the House subcommittee sitting with us again as we resume hearings on the so-called Al Sarena case.

All of us are justified in feeling disturbed about the disclosures in the Portland hearing that some of the physical evidence in this matter was dumped in the Rogue River and questionable practices for the ordinary procedures the citizen has a right to expect from the Government.

The charge has been made that these hearings have as their motive politics. Such a charge, almost without exception, is a defense of those who have something to hide and who are afraid for the people to know what the real facts are.

The purpose of this inquiry is to ascertain the real facts regardless of where the chips may fall, and I assure everyone within the sound of my voice that I shall follow that course so long as I am a member of the committee without being led down any blind alleys.

As was the case in Portland, the witnesses will be sworn.

As was the case in Portland, in the interest of saving time, and avoiding confusion, I am asking that all members of both subcommittees re-

frain from asking any witness any questions until after the staff has completed its preliminary questioning of each witness.

I am directing Mr. Redwine and Mr. Coburn to initiate the questioning, to be followed by Mr. Lanigan, after which I will call upon each member of the committees in turn to propound such inquiries as each may desire.

Our first witness is Mr. J. A. McDaniel, Mobile, Ala., of the A. W. Williams Co.

Representative HOFFMAN. Mr. Chairman, before you proceed, I wish to give to the press a statement expressing my views on what has been heard and with reference to these charges and with reference to the third paragraph on the statement you just read, especially that part which says, and I quote :

The charge has been made that these hearings have as their motive politics.

I made that charge several times. Then the statement continues:

Such a charge, almost without exception, is a defense of those who have something to hide and who are afraid for the people to know what the real facts are.

I just want to say in my judgment there is absolutely no foundation for any such statement. I want it on the record and I am also giving to the press statements made by Drew Pearson and an answer that was in the Eugene Press, which was offered in the record at either Portland or Seattle.

I am also asking that before we finish, inasmuch as there are three articles in this morning's Post attacking the administration and Secretary McKay, we called the gentlemen who wrote those articles in an effort to ascertain what they actually know and how much of their statements is merely hearsay and political propaganda.

Senator SCOTT. That will all be taken under advisement. In the course of the hearings I think all that will be brought out.

Congressman CHUDOFF, will you swear in the witness here, Mr. McDaniel?

Representative CHUDOFF. Would you hold your right hand up, please?

Do you solemnly swear that the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MCDANIEL. I do.

Representative CHUDOFF. Be seated, please.

Mr. REDWINE. Mr. Chairman, in the examination of this witness certain documents will be submitted to him for examination and explanation. They are from the files of the A. W. Williams Inspection Co.

Representative CHUDOFF. Mr. Chairman, could I make a suggestion?

Will you ask counsel for your subcommittee to bring the mike a little closer to him. It is very difficult to hear down at this end of the table.

Mr. REDWINE. These documents that will be submitted to the witness for identification and explanation are from the files of the A. W. William Inspection Co., for whom he works.

I think it is only fair that the record should show that they are in the possession of the committee through subpoena.

The Williams Co. has not turned anything over to the committee that has not been subpoenaed, in fairness to its client. It is a professional matter with them.

Mr. McDaniel, how long have you been with the A. W. Williams Inspection Co.?

**TESTIMONY OF J. A. McDANIEL, ASSAYER, A. W. WILLIAMS INSPECTION CO.**

Mr. McDANIEL. I have been with the A. W. Williams Inspection Co. in two periods of employment, the first from January 1, 1948 to February 15, 1952, and from the 24th of June 1953 to the present.

Mr. REDWINE. What is the business of the A. W. Williams Inspection Co.?

Mr. McDANIEL. The business of the A. W. Williams Inspection Co. is a commercial testing laboratory.

Mr. REDWINE. What does it test?

Mr. McDANIEL. We handle analyses and tests of samples of many kinds—ores, fuels, radiographic inspection, metallurgical inspections, and many other types of samples.

Mr. REDWINE. What about your forest activities?

Mr. McDANIEL. The Williams Co. as an inspector of timber products is one of the largest in the country.

Mr. REDWINE. You maintain how many offices? Are you familiar with that figure, Mr. McDaniel?

Mr. McDANIEL. At present we have our main office in Mobile, then branch sales offices at St. Louis and New York, and there is a staff of between 50 and 60 field inspectors stationed at various points throughout the United States.

Mr. REDWINE. Field inspectors in what?

Mr. McDANIEL. Timber.

Mr. REDWINE. What percentage would you say of the A. W. Williams Inspection Co.'s business is in the field of timber?

Mr. McDANIEL. I have no figures that I could give out on that.

Mr. REDWINE. What is your position with the company?

Mr. McDANIEL. My position is chief chemist and metallurgist.

Senator SCOTT. Does your organization have an office in Oregon?

Mr. McDANIEL. At one time we did have an office in Eugene, and it was later moved to Longview and then later discontinued.

Senator SCOTT. Discontinued?

Mr. McDANIEL. Yes, sir.

Mr. REDWINE. That office that you had in Eugene was part of your timber operations, was it not, Mr. McDaniel?

Mr. McDANIEL. It was.

Mr. REDWINE. It had nothing to do with minerals, or ores, or metallurgy, did it?

Mr. McDANIEL. The only thing that any of our fieldmen would have with ores and metallurgy or something like that, is that all of them solicit work when possible for our main office.

Mr. REDWINE. Were there ever any samples that came in from the Eugene office as a result of the solicitation of your men there?

Mr. McDANIEL. No.

Mr. REDWINE. What was your training and education for type of work that you are now doing, Mr. McDaniel?

Mr. McDANIEL. Mr. Chairman, I have a statement here which I would like, with your permission, to read into the record.

Senator SCOTT. Yes.

Representative HOFFMAN. Mr. Chairman, as I understand, the witness has a prepared statement. It has been customary heretofore in these hearings to let a witness make his statement and I think in fairness and following the usual procedure this witness should be permitted to follow that course.

Senator SCOTT. It has already been ruled that you may, so go ahead.

Mr. McDANIEL. I am a native United States citizen from the State of Alabama. I have continuously resided in that State, except from the periods June 1927 to February 1928, when I lived at Port Arthur, Tex., and February 1943 to February 1948, while residing at Pascagoula, Miss.

The personnel of the Mobile Chemical Laboratory Division of the A. W. Williams Inspection Co. are called upon to make tests and analyses in many fields of scientific work. They are selected on the basis of broad general knowledge rather than any specialty.

I wish to present my qualifications as follows:

I graduated from the Alabama Polytechnic Institute at Auburn, Ala., in May 1925, and received the degree of bachelor of science in chemical engineering.

I have since received supplementary instruction, not leading to other degrees, from Mississippi State College and Massachusetts Institute of Technology.

I have been employed by the Gulf Refining Co. at Port Arthur, Tex.; the United States War Department, Birmingham, Ala., Ordnance District; the Ingalls Shipbuilding Corp., and the American Rock Wool Corp., and in family owned enterprises, in addition to my present employment from January 1948 to February 1952, and from June 1953 to the present.

While at the Ingalls Shipbuilding Corp., I set up and operated the chemical laboratory section of their metals laboratory and since leaving their employment, frequently exchange technical information and advice with my former supervisor.

In my present employment during the past year and a half, this company has installed, under my supervision, an industrial radiographic department, using radioactive isotopes obtained from the United States Atomic Energy Commission, or from an authorized distributor of radio isotopes.

The purchase authorizations issued by the AEC read:

This isotope is to be only used either by, or under the direct supervision of Mr. J. A. McDaniel.

Under my direction, this department has performed the necessary tests to be approved by the Bureau of Ships, United States Navy, for radiographing naval material.

I hold certified chemist's card No. 407, issued by the American Bureau of Shipping, for the testing of explosive and toxic gas hazards on vessels to be repaired.

I work closely with inspectors employed by the United States Coast Guard, United States Navy, and American Bureau of Shipping in various phases of my work, representing clients in the Mobile area.

My report on the investigation of a television transmission tower failure was the principal basis of claim of our client that resulted in a substantial out-of-court settlement.

I was reared in the Birmingham, Ala., district. My father was an iron ore mine superintendent from the time of my birth until his death in 1930.

There is a large area in the central and eastern part of Alabama that contains numerous low-grade gold and silver deposits. I have personally seen gold nuggets as large as a medium size English pea that were reported to have been found in Alabama and north Georgia.

The geologists and chemists employed by the iron and steel companies of the Birmingham district made prospecting trips in their free time into this gold-bearing area and brought back samples of ores that were prepared with the ore laboratory's crushers and with full approval of high company officials who, if what they considered a commercial grade deposit were found, would have made an investment and rendered technical advice in its development, assayed these ores in laboratory equipment not specifically designed for precious metal ore assays.

During school vacations, I was employed at the Republic Steel Laboratory and assisted in some of these assays, using a forge in the blacksmith shop for the primary fusion and the regular Hoskins lab furnace for cupellation of the lead button.

MR. REDWINE. Is that all of your statement, Mr. McDaniel?

MR. McDANIEL. That is part of my statement that relates to qualifications.

MR. REDWINE. Would you like to complete your statement at this time? You may do so, if you desire.

MR. McDANIEL. I will complete the part of it that—

MR. REDWINE. As we go along?

MR. McDANIEL. Concerns the assaying of the Al Sarena ores at this time.

MR. REDWINE. Whatever you want to do.

MR. McDANIEL. My activities in the A. W. Williams Inspection Co.'s involvement in the Al Sarena Mines, Inc., mining claim matter is as follows:

In the summer of 1949 an inquiry was made to a representative of this company, Mr. Lee Roy Johnston, by Mr. Walter H. Johnston, who operates an automobile repair shop in Mobile, Ala., and who was then servicing this company's vehicles, if gold and silver ore assays could be made in this laboratory. Through normal company channels, the inquiry was referred to me and Mr. Johnston was informed that we could make them.

A few days later, Mr. Charles R. McDonald and Dr. Herbert P. McDonald visited the laboratory and discussed the matter with Mr. Gordon F. Bailey, then in charge of the laboratory section of the A. W. Williams Inspection Co., and myself.

In the course of this discussion, we were informed that the ore samples submitted would be low grade and that two assay-ton portions would be required for accurate assays of their content instead of the normal one-half or one-fourth assay-ton used in assays of high grade ores, as referred to in most standard references on assaying precious metal ores.



The question of proper fluxing material for use in assaying their ores was brought up. After some discussion between Mr. Charles McDonald, Dr. Herbert McDonald, Jr., Mr. G. F. Bailey, and myself, with frequent references to Scott's Standard Methods of Chemical Analyses, and Analytical Chemistry, by Treadwell Hall, the following flux formula was agreed on, to be used in the assays of the McDonalds' ore samples—that formula is soda ash, 31.8 grams; potassium carbonate, 12.3 grams; said, 12.3 grams; borax glass, 19.6 grams; litharge, 1.6; crude tartar, 2.4, making a total of 140.1 grams of flux to be used per one assay-ton, 29.17 grams, portion of ore sample as used for assay.

A few weeks after we had this discussion the Al Sarena Mines, Inc., began to submit samples, the assays of which were submitted in our reports numbered 278035—

Mr. REDWINE. Repeat that.

Mr. McDANIEL. 278035. Do you want to get those as I call them?

Mr. REDWINE. Yes, I would like to. What was that number again?

Mr. McDANIEL. 278035.

Mr. REDWINE. What was the date of that?

Mr. McDANIEL. I don't have the dates of these. Let me see. I may have.

Mr. REDWINE. What year?

Mr. McDANIEL. That is September 27, 1949, September 27.

Mr. REDWINE. Go ahead.

Mr. McDANIEL. 278802, October 4, 1949; 281820, November 4, 1949: 282563, November 15, 1949; 282851—

Mr. REDWINE. What was the date of that?

Mr. McDANIEL. November 18, 1949, November 11.

Mr. REDWINE. Let me interject at this time: Do you have a copy of that last one you just mentioned, with you? A copy of the certificate?

Mr. McDANIEL. No, I do not, but Mr. Miller, who is present in the room, does.

Mr. REDWINE. Mr. Miller, will you please pull from your file the assay report that has just been given by Mr. McDaniel, and have it available for us a little bit later?

Go ahead, Mr. McDaniel, please.

Mr. McDANIEL. 287395 under date of January 13, 1950.

As I recall that is not a report of new assay work, but it is a compilation of assays reported in these previous reports that was prepared by Mr. Bailey from the request of Mr. Charles R. and Dr. Herbert P. McDonald, Jr.

Mr. REDWINE. But the material was assayed?

Mr. REDWINE. And the report of values given reflects the result of that assay?

Mr. McDANIEL. It reflects the values obtained in the assays made in the previous 2 to 3 months, but I might add this:

In the reports of the assays made in the previous 2 or 3 months there were several of them that showed either no or very low mineral value present.

Mr. REDWINE. Mr. McDaniel, I think since you brought that up you better break the continuity of your statement.

Mr. Chairman, if I may go down there where I can handle this.

Mr. McDANIEL. I hand you one of these that you have just mentioned. Will you read the laboratory number and the last column

as to what the total values were? The last column does indicate the total values in gold and silver, does it not?

Mr. McDANIEL. I would like to also include in this the complete identification and the heading on this report.

Mr. REDWINE. Certainly, you may go right ahead and do that.

Mr. McDANIEL. This report was issued for the Al Sarena Mines, Inc., First National Bank Building, Mobile, Ala., and is our report No. 282581, November 18, 1949, under sample identification.

Supplementary report compiled from our reports Nos. 278035, 278802, 281820, 282563, dated September 27, 1949, October 4, 1949, November 4, 1949, and November 15, 1949 respectively.

That was issued on company order No. 26483. Sample No. 2, 90 cents.

Mr. REDWINE. Let me interrupt. That reflects the total values of the gold, both the gold and silver, does it not?

Mr. McDANIEL. It does.

Mr. REDWINE. Please proceed.

Mr. McDANIEL. Sample No. 4, 92 cents.

Sample No. 5, \$1.86.

Sample No. 7, \$1.84.

Sample No. 9, 99 cents.

Sample No. 10, \$2.25.

Sample No. 16, 92 cents.

Senator SCOTT. Right there may I ask a question?

You have already given it, but I did not catch it. Is that on the basis of what, 92 cents? Those figures are on the basis of—

Mr. McDANIEL. We have a note at the bottom here:

Values above are based on gold, \$35 an ounce, and silver, \$90 an ounce.

This is the total value of both gold and silver.

Mr. REDWINE. Ninety cents, you mean?

Mr. McDANIEL. Yes.

Mr. MALONE. And that means per ton?

Mr. McDANIEL. Per ton of ore.

Senator SCOTT. That is all right.

Mr. McDANIEL. I was at sample 16. Sample 17, 90 cents.

Sample 18, 94 cents.

Sample 19, \$1.84.

Sample 22, \$1.84.

Sample 23, 94 cents.

Sample 23E, 90 cents.

Sample 24, 94 cents.

Sample 26, 94 cents.

Senator MALONE. Do you have gold and silver separate in your assays?

Mr. McDANIEL. Yes, sir.

Mr. REDWINE. It is the usual assay certificate?

Senator MALONE. Why do you not make it a part of the record?

Mr. REDWINE. We are going to.

Senator SCOTT. That report will be made a part of the record.

(The report referred to is as follows:)

The question of proper fluxing material for use in assaying their ores was brought up. After some discussion between Mr. Charles McDonald, Dr. Herbert McDonald, Jr., Mr. G. F. Bailey, and myself, with frequent references to Scott's Standard Methods of Chemical Analyses, and Analytical Chemistry, by Treadwell Hall, the following flux formula was agreed on, to be used in the assays of the McDonalds' ore samples—that formula is soda ash, 31.8 grams; potassium carbonate, 12.3 grams; said, 12.3 grams; borax glass, 19.6 grams; litharge, 1.6; crude tartar, 2.4, making a total of 140.1 grams of flux to be used per one assay-ton, 29.17 grams, portion of ore sample as used for assay.

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Mr. REDWINE. Yes, I would like to. What was that number again?

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Mr. REDWINE. What was the date of that?

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Mr. REDWINE. What year?

Mr. McDANIEL. That is September 27, 1949, September 27.

Mr. REDWINE. Go ahead.

Mr. McDANIEL. 278802, October 4, 1949; 281820, November 4, 1949; 282563, November 15, 1949; 282851—

Mr. REDWINE. What was the date of that?

Mr. McDANIEL. November 18, 1949, November 11.

Mr. REDWINE. Let me interject at this time: Do you have a copy of that last one you just mentioned, with you? A copy of the certificate?

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Mr. McDANIEL. I would like to also include in this the complete identification and the heading on this report.

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Supplementary report compiled from our reports Nos. 278035, 278802, 281820, 282563, dated September 27, 1949, October 4, 1949, November 4, 1949, and November 15, 1949 respectively.

That was issued on company order No. 26483. Sample No. 2, 90 cents.

Mr. REDWINE. Let me interrupt. That reflects the total values of the gold, both the gold and silver, does it not?

Mr. McDANIEL. It does.

Mr. REDWINE. Please proceed.

Mr. McDANIEL. Sample No. 4, 92 cents.

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Senator MALONE. Do you have gold and silver separate in your assays?

Mr. McDANIEL. Yes, sir.

Mr. REDWINE. It is the usual assay certificate?

Senator MALONE. Why do you not make it a part of the record?

Mr. REDWINE. We are going to.

Senator SCOTT. That report will be made a part of the record.

(The report referred to is as follows:)

## A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

## REPORT OF ASSAYS OF GOLD AND SILVER ORE

49-563

For: Al Sarena Mines, Inc., First National Bank Building, Mobile, Ala.

Sample identification: Supplementary report compiled from our reports Nos. 278035, 278802, 281820, 282563 dated September 27, 1949, October 4, 1949, November 4, 1949, and November 15, 1949, respectively.

Report No. 282851.

Date: November 18, 1949.

Our Order No. 26483.

Sam- ple No.		Ounce per ton		Value		
		Au	Ag	Au	Ag	Total
2	Manganese II (Dupl. Hattan).....	0.025	0.025	\$0.875	\$0.023	\$0.90
4	J. D. McKinnon, east side outcrop.....	.025	.05	.875	.045	.92
5	J. D. McKinnon, center outcrop.....	.05	.125	1.75	.11	1.86
7	W. C. Leever, largest outcrop.....	.05	.10	1.75	.09	1.84
9	J. L. Grubb.....	.025	.125	.875	.113	.99
10	Arroyo Verde.....	.050	.550	1.75	.498	2.25
16	Cougar, north line outcrop, west bank Swanson Creek).....	.025	.050	.875	.045	.92
17	Cougar, outcrop about 150 feet down ridge from southeast Oro Alto corner.....	.025	.025	.875	.023	.90
18	Henry Applegate, outcrop east line about 15 feet below station 10.....	.025	.175	.875	.068	.94
19	Henry Applegate, about 40 feet west of east line and station 10.....	.050	.100	1.75	.09	1.84
22	LaJolla, at Falls.....	.050	.100	1.75	.09	1.84
23	Manganese, 20 feet downstream from previ- ous sampling.....	.025	.075	.875	.068	.94
23E	Oro Alto (Dupl. Hattan).....	.025	.025	.875	.023	.90
24	Cougar (large cut on trail to tunnel 8).....	.025	.075	.875	.068	.94
26	J. W. Merritt, 20 feet south of Discovery.....	.025	.075	.875	.068	.94

Values above are based on Au at \$35 per ounce and Ag at \$0.905 per ounce.

Compiled and calculated by G. F. Bailey.

Five reports to: Al Sarena Mines, Inc., First National Bank Building, Mobile, Ala. Mailed November 20.

A. W. WILLIAMS INSPECTION CO.,  
By G. F. BAILEY.

Senator MALONE. Do you have any record as to the width of these veins or ledges or in what manner the samples were taken?

Mr. McDANIEL. No, sir; I do not.

Senator MALONE. You do know, do you not, that the width of a ledge or the occurrence of the ore has a lot to do with the cost of mining? You do know that, do you not?

Mr. McDANIEL. Yes, sir; I do know that.

Senator MALONE. But you have no knowledge as to how these samples were taken, or what the width of the ledge was, or how the ore occurs?

Mr. McDANIEL. No, sir.

Mr. REDWINE. Senator, if I may interrupt, the record shows that. We have that in the record. This assayer, of course, would have no knowledge of that. We have that, however, in the record.

Senator MALONE. Not in this record.

Mr. REDWINE. Not this morning, but the prior record shows that.

Representative CHUDOFF. Senator, we had considerable hearings in Portland, Oreg., during November, and a lot of information is in the record concerning the physical setup of the mine, how the samples were taken, how the samples were assayed, how they got down to Alabama, and how somebody took the second set of samples which were, I guess,

kept for the purpose of looking at it, whatever necessary, and dumped them in the Rogue River, walked two blocks and dumped them in the Rogue River.

Senator MALONE. Are these assays in your records?

Representative CHUDOFF. I believe they were.

Mr. REDWINE. These particular assays are not in the record, Senator. This is the first time these particular assays have come before the committee.

Representative CHUDOFF. It was my impression these assays were in the record, but you were trying to get the witness to explain.

Mr. REDWINE. These particular records go back to 1949, prior work that was done for this company by the Williams Co.

Senator MALONE. Is this the Williams Co. from North Carolina?

Mr. REDWINE. No, sir; Mobile, Ala.

Mr. McDANIEL. Mobile.

Senator MALONE. Are the assays, the final assays, that have been questioned here, the accuracy of which has been questioned?

Mr. REDWINE. And the final assays are in the record.

Senator MALONE. Are these the assays, the accuracy of which has been questioned?

Mr. REDWINE. No, sir.

Senator MALONE. Because they were assayed so far away from the claims or something?

Mr. REDWINE. No, sir; these particular ones were from the same property and the object of this inquiry at this point is to show, will later be shown, that these assays that are now under discussion coincide in values to assays made under the direction of the Bureau of Land Management and the Forest Service prior to the time that the final assay was made on which the decision was rendered.

Senator MALONE. Were the final assays made by this same firm?

Mr. REDWINE. Yes, sir.

Senator MALONE. Are you putting those in the record today?

Mr. REDWINE. They are already in the record, sir.

Senator MALONE. Some of us were not fortunate enough to go to the Northwest to hear this argument. It would be very helpful to us if you just completed your story right here and now so we would have the picture.

Some of us will not be able to attend all these hearings.

Mr. REDWINE. Mr. Chairman, if I may say so, it would take several hours to give the complete story of what happened in the past and what we are trying to show step by step happened in this case.

Senator SCOTT. I think it would be well for him to go ahead.

Mr. REDWINE. Mr. McDaniel, in the interest of time, in identifying this document, let's give the date, your order number on it, and read that this particular one, for instance, has seven samples involved, and just read the result.

On this particular one the gold and silver is shown separately. It is not combined. Show the results, please.

Mr. McDANIEL. This report No. 2 is 278035, under date of September 27, 1949, our order No. 26483.

On the seven samples, gold, none; silver, 0.15 per ton.

No. 2, gold, 0.02 ounce per ton. Silver, 0.025.

No. 3, none, none.

No. 4, 0.025; 0.05.

No. 5, 0.05; 0.125.

No. 6, trace; and 0.05 for gold; and 0.10 for silver.

Senator SCOTT. The report will be made a part of the record.  
(The report referred to follows:)

A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

REPORT OF GOLD AND SILVER ORE

49-444.

For: Al Sarena Mines, Inc., care of Mr. H. P. McDonald, Jr., 408 First National Bank Building, Mobile, Ala.

Sample by: Mr. H. P. McDonald, Jr.

Report No. 278035.

Date: September 27, 1949.

Our Order No. 26483. Date: September 12, 1949.

*Assays of gold and silver ore*

[Ounces per ton]

Sample No.		Gold	Silver
1	Cougar—west bank Swanson Creek near north line. Outcrop.....	None	0 15
2	Manganese. Stratified area recut manganese II.....	0.025	.025
3	Manganese. Recut at Elk Creek north of manganese II.....	None	None
4	J. McKinnon—east side large outcrop.....	.025	.05
5	J. McKinnon—center large outcrop.....	.05	.125
6	J. McKinnon—west side large outcrop.....	Trace	.125
7	Leever, largest outcrop.....	.05	.10

Assays by: J. A. McDaniel.

(2) reports to: Mr. H. P. McDonald, Jr., 408 First National Bank Building,  
Mobile, Ala. Mailed September 28.

A. W. WILLIAMS INSPECTION CO.,

By G. F. B.

Senator MALONE. Mr. Chairman, could I ask the investigator just one question. This foundation is being laid to show that this is not a commercial mine and, therefore, the patent should not have been issued. Is that what it is for?

Mr. REDWINE. That was the contention of the Forest Service.

Senator MALONE. And it is your understanding of the mining law that the assays must show at the time of application for a patent to be a commercial mine in order to secure patent? Is that your understanding?

Mr. REDWINE. Senator Malone, I was directed to investigate this matter and present it on this basis. The Forest Service protested the issuance of patents on this. A hearing was held on two grounds:

One ground on all 15 claims, and that was that the ground was not sufficiently mineralized to make it a commercial property.

No. 2, on five of the claims there was the further protest ground that the necessary assessment work had not been done.

Senator MALONE. If the necessary assessment work had not been done, of course, and no location had been filed adversely, and then they proceeded to do the location work on a patent or on a new location, what weight would that have?

Mr. REDWINE. Senator, I have no theory whatsoever on this. I have been directed to bring out all the facts that the record shows as to

whether sufficient assessment work had been done and whether it was sufficiently mineralized to justify issuance of the patent and that is what we are attempting to do.

Senator MALONE. Some of us remember back when the gold mines were shut down by an order and then during that time inflation kept them shut down.

In other words, mines maybe had been shut down during the twenties. All at once they became commercial because of the raise in the price of gold. Then they were not commercial after a certain amount of inflation raised the cost of mining.

There are some people, though, who think they should raise the price of gold again.

So how would you put it on that basis?

Mr. REDWINE. Senator, I am not putting it on any basis. I am just carrying out my assigned duty of bringing out the facts.

Senator MALONE. I do want to make one statement, Mr. Chairman, because I do have to leave. I do intend to get back when we get some of the witnesses from the Department.

I carried the Commission of Mineral surveyor for maybe 30 years in two States on patented property, as many claims as, I expect, any engineer in the West. It is just a side issue of my business, the engineering business. I do not recall that you ever asked to make a showing that it was commercially feasible at the time that you applied for patent. What you had to do was to show you had done \$500 worth of work on a ledge that went to the development of all the claims for which you asked patent, or you had to have \$500 worth of claims.

Those are the showings that would be necessary for somebody to make to justify this patent, and I presume that the Department of Interior will be able to show it.

If not, it will be very easy to decide. I merely wanted to say that. I think the amount of ore, the amount of the assay, that is, the value of the assay, if they were doing it to develop this mine, as to whether or not it was commercial at the time, have very little to do with the matter of whether or not a patent should be issued, and I will try to come back, Mr. Chairman, when you have one of these people who can show that.

Representative HOFFMAN. In view of the fact that we have not followed the rule in what the Senator says, inasmuch as I attended the previous hearings, I would like to say to the Senator that the claim here as advanced by Mr. Pearson that was—

Senator MALONE. Is Pearson on trial here? I do not understand what Pearson has to do with this hearing.

Representative HOFFMAN. He seems to be the chief accuser.

Senator MALONE. I would not bother with him. He is going to have to earn his money like anybody else.

Representative HOFFMAN. Very few of us make our living on the misfortunes of other people. I will withdraw that if it will make you feel any better.

The foundation of the Al Sarena case, if you get into it, rests upon his original charges.

Senator MALONE. His charges are not being tried here. If he is, let's get Pearson here.



Representative HOFFMAN. We will get to that all right, I hope.  
Senator MALONE. I suppose there has been an official objection or charge filed by the Forest Service, has there not, Mr. Chairman?

Senator SCOTT. Yes.

Senator MALONE. Let us get the Forest Service in and let us get the departments that are responsible for it.

Representative HOFFMAN. Will you listen to what I have to say about the charges? There are two charges made upon which the case must rest, the case against the Department of Interior, upon the truth or falsity of those two charges.

The first one is that the samples taken under the direction of the Bureau of Mines were fraudulently taken, and there seems to be nothing in the record to justify that.

Senator MALONE. You are talking about the Forest Service charge?

Representative HOFFMAN. The other one is that the assay made in Alabama was fraudulent. That is all there is to the case, if you will read the record.

Representative CHUDOFF. Nobody has charged anybody with anything.

Senator SCOTT. You are correct in that, Congressman.

Representative HOFFMAN. The Bureau of Mines, not the Forest Service.

Representative CHUDOFF. Mr. Chairman, when I sat as chairman of this joint committee all we tried to do was develop the facts and Mr. Hoffman always when some newspaper man reports a story immediately puts the newspaper man on trial and wants to know where he got his facts and why he wrote the story.

We have not charged anybody with anything. I am trying to learn the facts, in this case.

Senator NEUBERGER. Before the distinguished Senator from Nevada leaves, I would like to ask him a question, if I may.

Senator SCOTT. Senator Malone.

Senator NEUBERGER. May I ask the distinguished Senator from Nevada a question just for the point of information.

That is what I was trying to do, just so I have something straight about the statement he made. You made the statement, I think, Senator, that the only thing that was necessary on gaining patent to land was to show that five hundred dollars worth of assay work had been done on a ledge or claim; is that correct?

Senator MALONE. I did not say that was the only thing, and I will tell you one thing more. I would rather save our conversation and our argument for the executive session.

You talk to the witnesses and I will talk to them.

Senator NEUBERGER. I am just trying to get some information on this.

Senator MALONE. It has to be done to develop a ledge or a discovery and if all the work is done on one claim, or two claims, or a group of claims, it has to be done in such a manner if you are going to gain patent to the other claims; to develop that ledge or showing on all claims.

That is the showing you have to make. There is nothing in the law, nothing that I have ever found, that says it has to be commercial at the time the application for patent is made, because Congress often makes a thing commercial or noncommercial. They made gold commercial

again in many mines when they raised the price to 35 dollars an ounce. They made it noncommercial when they brought on inflation again.

Now, if I may finish answering your question, you have another law on the statute books, the 1934 Trade Agreements Act, that made noncommercial almost every critical material in the United States.

There is no mine running today of any consequence in critical materials that does not have Government money in it in one way or another. Either it has a short amortization period, guaranteed unit price, or a direct loan.

It is noncommercial because they are in direct competition with the cheap labor of the world.

Congress could change that law tomorrow and make a lot of these claims commercial again.

Senator NEUBERGER. May I ask you another question, just for a point of information?

Is it under the law within the authority of either the Forest Service or the Bureau of Land Management, depending upon which agency has jurisdiction of the land in question, to rule the patent should not be granted because a sufficient showing of minerals has not been demonstrated?

Senator MALONE. I think not at all. It goes according to the law passed by Congress and signed by the President of the United States. You modified that law last year and I think you made the initial step, of which this is probably another step, to amend the mining law again and then finally end up with a leasing system for all the Government lands.

I think that is the final objective. So that a prospector is just gone from the face of the earth.

Senator NEUBERGER. The thing I am trying to get is the information on what you said. Is it within the legal authority of those departments?

Senator MALONE. I do not think so. They can object and have their hearing, but the law must be carried out by the Department, the Secretary of the Interior, that is charged with the issuance of the patents.

If the law charged anyone of these Government departments directly with the responsibility, I think they could turn it down on any pretext, and then it would be a court case for somebody to believe it.

Mr. REDWINE. Mr. Chairman, may I interrupt the two Senators for a minute? I would like to read this out of the Department's decision in this very case in awarding the patent. This is an order signed by Assistant Secretary Davis, who was Solicitor of the Department at the time:

Among the requisites to obtain a patent to a lode mining claim is the discovery of "valuable mineral deposits" "within the limits of the claim located" (30 U. S. C., 1946 edition, secs. 22 and 23). In determining whether mineral deposits discovered on public lands are "valuable" the test to be applied is whether they are "such as would justify a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a paying mine" (*Cameron et al., v. United States, supra*, 252 U. S., p. 259).

That was the decision of the Department of the Interior in this very case.

Senator MALONE. That might be all right, but if all the prospectors in the United States has been run off of land on claims located by

them where a prudent man would not dig, 80 percent of your mines would never have been discovered. The prospector is not a prudent man. He is a man who goes out and digs where he thinks his luck will hold and he will get something, a man who has the nerve to go out and spend his money or his time and do that, and the law up until last year at least, was so that he could do that.

We have now started breaking into it from various angles. We were discovering mines and, of course, we would again if we let this law alone, if we get our feet on the ground sometime and protect the prospector, and the receiver, and the working men in that differential between the low-cost European and Asian labor, and United States labor.

If we want to import \$2 labor, I do not think there is anything really feasible in the United States where a prudent man would dig until you get the Government in as a partner, so some of us do hope that we will finally get our feet on the ground and go back to the mining business on the basis of fair and reasonable competition with these low-cost laborers throughout the world, and I think we will.

You know as well as I do that if we raise the price of gold, which might very well be done, it would make mines feasible of operation as it did in 1933 or 1934, when that was raised. That has not been feasible before that time.

Furthermore, the ledge itself and the surrounding condition of mining, whether it is a steam shovel job or whether it is an underground job, all have something to do with it.

I have not yet, in my experience as a mineral surveyor, found that you had to show it was a commercial job at the moment of application in order to get a patent. That has never happened to me in 35 years of engineering.

Senator SCOTT. The witness is still here. We would like to hear from him further.

Mr. REDWINE. Have you read that one yet, Mr. McDaniel?

Mr. McDANIEL. No.

Mr. REDWINE. Will you take that up, please, shortening it as I suggested?

Mr. McDANIEL. This is our Report No. 278802, under date of October 4, 1949. There are reports of seven samples on this report.

Mr. REDWINE. I believe that came from right there, did it not (indicating)?

Mr. McDANIEL. I believe in effect.

Mr. REDWINE. I could suggest, inasmuch as this is a continuation of them, just read the No. 7 and make it continuous that way.

Mr. McDANIEL. No. 7, silver, none; gold, none.

That is No. 8. Correct.

No. 9, 0.125 ounces per ton, silver; 0.025, gold.

No. 10, 0.550, silver; 0.050 gold.

No. 11, None; none.

No. 12, trace; trace.

No. 14, none; none.

No. 15, trace; trace.

(The information referred to is as follows:)

**A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.**

**REPORT OF GOLD AND SILVER ORE**

49.475

For: Al Serena Mines, Inc., 408 First National Bank Building, Mobile, Ala.

Sample submitted by Mr. C. R. McDonald, Jr.

Report No. 278802.

Date: October 4, 1949.

Our Order No. 26483. Date September 30, 1949.

*Assay of gold and silver ore*

[Ounces per ton]

Sample No.	Silver	Gold
8 Oro Escondido.....	None	None
9 J. L. Grubb.....	0.125	0.025
10 Arroyo Verde.....	0.550	0.050
11 La Jolla Disc. at E. Branch.....	None	None
12 La Jolla at E. Branch near North end.....	Trace	Trace
13 J. W. Merritt.....	Trace	Trace
14 Henry Applegate.....	None	None
15 Staples.....	Trace	Trace

Assay by: J. A. McDaniel.

Two reports to: Mr. C. R. McDonald, Jr., 408 First National Bank Building, Mobile, Ala.

**A. W. WILLIAMS INSPECTION CO.,**  
By **G. F. BAILEY.**

Mr. REDWINE. Mr. McDaniel, will you explain to the committee what trace means?

Mr. McDANIEL. Trace means that the quantity of material is too small to establish a value by weight; that there is just a very, very small amount of the mineral present there; that in the case of assay would show up as a very tiny button, but the button was too small to be weighed.

Mr. REDWINE. What is the break point for gold and silver in usual practice by assayers? Fourteen cents for gold, 21 cents for silver, or what is the practice in your plant?

Mr. McDANIEL. Well, in our plant we usually do not report anything under .025 ounces for gold and the same for silver.

Mr. REDWINE. Translate that into values, cent values.

Mr. McDANIEL. That would be about 75 cents a ton for gold and about 7 cents for silver; that is, values under that would be reported as traces.

Mr. REDWINE. Mr. McDaniel, the record shows that Abbot Hanks shows 17 cents for gold and 21 cents for silver. Would you say that is not in line with the usual practice, or are you not in line?

Mr. McDANIEL. Well, I may not report down as close as some of the laboratories in the West that do make a specialty of assaying.

Mr. REDWINE. Will you identify that one in the same manner and read it out in the same manner?

Mr. McDANIEL. This is report No. 281620, November 4, 1949. Sample No. 16—

Representative HOFFMAN. Mr. Chairman, may I ask counsel: Is this another batch of samples? Have you finished the first batch?

them where a prudent man would not dig, 80 percent of your mines would never have been discovered. The prospector is not a prudent man. He is a man who goes out and digs where he thinks his luck will hold and he will get something, a man who has the nerve to go out and spend his money or his time and do that, and the law up until last year at least, was so that he could do that.

We have now started breaking into it from various angles. We were discovering mines and, of course, we would again if we let this law alone, if we get our feet on the ground sometime and protect the prospector, and the receiver, and the working men in that differential between the low-cost European and Asian labor, and United States labor.

If we want to import \$2 labor, I do not think there is anything really feasible in the United States where a prudent man would dig until you get the Government in as a partner, so some of us do hope that we will finally get our feet on the ground and go back to the mining business on the basis of fair and reasonable competition with these low-cost laborers throughout the world, and I think we will.

You know as well as I do that if we raise the price of gold, which might very well be done, it would make mines feasible of operation as it did in 1933 or 1934, when that was raised. That has not been feasible before that time.

Furthermore, the ledge itself and the surrounding condition of mining, whether it is a steam shovel job or whether it is an underground job, all have something to do with it.

I have not yet, in my experience as a mineral surveyor, found that you had to show it was a commercial job at the moment of application in order to get a patent. That has never happened to me in 35 years of engineering.

Senator SCOTT. The witness is still here. We would like to hear from him further.

Mr. REDWINE. Have you read that one yet, Mr. McDaniel?

Mr. McDANIEL. No.

Mr. REDWINE. Will you take that up, please, shortening it as I suggested?

Mr. McDANIEL. This is our Report No. 278802, under date of October 4, 1949. There are reports of seven samples on this report.

Mr. REDWINE. I believe that came from right there, did it not (indicating)?

Mr. McDANIEL. I believe in effect.

Mr. REDWINE. I could suggest, inasmuch as this is a continuation of them, just read the No. 7 and make it continuous that way.

Mr. McDANIEL. No. 7, silver, none; gold, none.

That is No. 8. Correct.

No. 9, 0.125 ounces per ton, silver; 0.025, gold.

No. 10, 0.550, silver; 0.050 gold.

No. 11, None; none.

No. 12, trace; trace.

No. 14, none; none.

No. 15, trace; trace.

(The information referred to is as follows:)

**A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.**

**REPORT OF GOLD AND SILVER ORE**

49.475

For: Al Serena Mines, Inc., 408 First National Bank Building, Mobile, Ala.

Sample submitted by Mr. C. R. McDonald, Jr.

Report No. 278802.

Date: October 4, 1949.

Our Order No. 26483. Date September 30, 1949.

*Assay of gold and silver ore*

[Ounces per ton]

Sample No.		Silver	Gold
8	Oro Escondido.....	None	None
9	J. L. Grubb.....	0.125	0.025
10	Arroyo Verde.....	0.550	0.050
11	La Jolla Disc. at E. Branch.....	None	None
12	La Jolla at E. Branch near North end.....	Trace	Trace
13	J. W. Merritt.....	Trace	Trace
14	Henry Applegate.....	None	None
15	Staples.....	Trace	Trace

Assay by: J. A. McDaniel.

Two reports to: Mr. C. R. McDonald, Jr., 408 First National Bank Building, Mobile, Ala.

**A. W. WILLIAMS INSPECTION CO.,**

**By G. F. BAILEY.**

**Mr. REDWINE.** Mr. McDaniel, will you explain to the committee what trace means?

**Mr. McDANIEL.** Trace means that the quantity of material is too small to establish a value by weight; that there is just a very, very small amount of the mineral present there; that in the case of assay would show up as a very tiny button, but the button was too small to be weighed.

**Mr. REDWINE.** What is the break point for gold and silver in usual practice by assayers? Fourteen cents for gold, 21 cents for silver, or what is the practice in your plant?

**Mr. McDANIEL.** Well, in our plant we usually do not report anything under .025 ounces for gold and the same for silver.

**Mr. REDWINE.** Translate that into values, cent values.

**Mr. McDANIEL.** That would be about 75 cents a ton for gold and about 7 cents for silver; that is, values under that would be reported as traces.

**Mr. REDWINE.** Mr. McDaniel, the record shows that Abbot Hanks shows 17 cents for gold and 21 cents for silver. Would you say that is not in line with the usual practice, or are you not in line?

**Mr. McDANIEL.** Well, I may not report down as close as some of the laboratories in the West that do make a specialty of assaying.

**Mr. REDWINE.** Will you identify that one in the same manner and read it out in the same manner?

**Mr. McDANIEL.** This is report No. 281620, November 4, 1949. Sample No. 16—

**Representative HOFFMAN.** Mr. Chairman, may I ask counsel: Is this another batch of samples? Have you finished the first batch?

Mr. REDWINE. No, sir; we are still on the 1949 group. I will let you know when we go beyond this.

Representative HOFFMAN. Thank you.

Mr. McDANIEL. Sample No. 16, 0.025 gold; 0.050 silver.

No. 17, 0.025 gold; 0.025 silver.

That is in ounces per ton.

No. 18, 0.025 gold; 0.175 silver.

No. 19, 0.050 gold; and 0.100, silver.

No. 20, is traces of both gold and silver.

No. 21 is traces of both gold and silver.

No. 22 is 0.050 gold; 0.100, silver.

No. 23, 0.050, gold; 0.100 silver.

Can you read back No. 22 and 23 to me?

(The record was read by the reporter)

Mr. McDANIEL. The correct reading of sample No. 23 should read 0.025 gold; 0.975 silver.

No. 23A is traces of both gold and silver.

No. 23B is traces of both gold and silver.

No. 23C, no gold; no silver.

No. 23D is traces.

No. 23E is 0.025 ounce of gold; 0.025 ounce of silver.

(The information referred to is as follows:)

**A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.**

**REPORT OF GOLD AND SILVER ORE ASSAYS**

49-521

For: Al Serena Mines, Inc., 408 First National Bank Bldg., Mobile, Ala.

Samples submitted by Mr. C. R. McDonald

Report No. 281820.

Date: November 4, 1949.

Our order No. 26483. Date, November 29, 1949.

*Gold and silver ore assays*

[Ounces per ton]

Sample No.	Description	Gold	Silver
16	Cougar (North Line Outcrop, west bank Swanson Creek) .....	0.025	0.050
17	Cougar (outcrop about 150 feet down ridge from SE Oro Alto corner) .....	.025	.025
18	Henry Applegate (outcrop east line about 15 feet below station 10) .....	.025	.175
19	Henry Applegate (about 40 feet west of east line and station 10) .....	.050	.100
20	Merritt (immediately below sharp turn in BL Road, upper bank) .....	(1)	(1)
21	Oro Escondido (upper workings) .....	(1)	(1)
22	La Jolla (at Falls) .....	.050	.100
23	Manganese (about 20 feet down stream, Elk Creek from previous sampling) .....	.025	.075
23A	Merritt 10115 .....	(1)	(1)
23B	Cougar 10116 .....	(1)	(1)
23C	Merritt 10114 .....	None	None
23D	Cougar 10117 .....	(1)	(1)
23E	Oro Alto 312367 .....	.025	.025

<sup>1</sup> Traces.

Assays by: J. A. McDaniel.

Two reports to: Al Serena Mines, Inc., 408 First National Bank Building, Mobile, Ala. Mailed November 8.

**A. W. WILLIAMS INSPECTION CO.,**  
By G. F. BAILEY.

Mr. REDWINE. Mr. McDaniel, referring back to our conversation and discussion a moment ago as to anything under 75 or 90 cents being traces, let's go back to this report, 282851 of yours, which you read a few minutes ago. Isn't that 9 cents value showing up there?

Mr. McDANIEL. Yes, that is 9 cents.

Mr. REDWINE. As low as 9 cents?

Mr. McDANIEL. Yes, and some of these read as low as between 2 and 3 cents.

Mr. REDWINE. Then if you can make it in those small amounts in actual practice—

Mr. McDANIEL. That's in silver. If you will notice now, the lowest value that we reported here on gold was 87½ cents.

Mr. REDWINE. For gold that is true, but you treat gold and silver different insofar as what a trace is, then?

Mr. McDANIEL. No, we do not. With gold being approximately 35 times the value of silver, a slightly larger relation, we can weigh a smaller value of silver than we can of gold.

Mr. REDWINE. In other words, in your assaying is this true: in your assaying you recover a button that has gold and silver both in it?

Mr. McDANIEL. That is right.

Mr. REDWINE. Then you treat that with nitric acid or hot sulfuric acid and dissolve the gold out? Is that the process you followed?

Mr. McDANIEL. The process followed is treating with nitric acid, dissolving the silver out.

Mr. REDWINE. Then you weigh nitric acid, you weigh your gold, and then the difference between your nitric acid when you get through and the weight of the gold is the silver; is that it?

Mr. McDANIEL. No, sir; the way that is done, the combined button is placed in a flask or a crucible and treated with nitric acid.

The silver is dissolved by the nitric acid, leaving the gold undissolved. With careful manipulation the nitric acid containing the silver is leached from the gold particles in the crucible.

The crucible is dried and reweighed. The difference between the weight of the crucible contained in the gold button and the weight of the crucible with the silver removed is reported as the silver.

Mr. REDWINE. On these assays we have been talking about, what size sample was used? Assay-ton? Two assay tons?

Mr. McDANIEL. Two assay tons were used. The total weight on our one assay ton is 29.17 grams. To translate it into ordinary terms, it is approximately an ounce.

We used two assay tons on these samples.

Mr. REDWINE. Tell the committee how big a piece of silver that you would find out of the sample, two assay ton sample, where there would be 9 cents worth of it in a ton of ore.

How big a piece of silver is that?

Mr. McDANIEL. That would be less than the size of the head of an ordinary pin.

Senator SCOTT. That would require careful manipulation, would it not?

Mr. McDANIEL. Yes, sir.

Mr. REDWINE. Identify and read that, please, Mr. McDaniel.

Mr. McDANIEL. This is report No. 282563, November 15, 1949. No. 24, Cougar, .025 ounce of gold; .075 ounce of silver.

No. 25, gold, trace; silver, 0.05.

No. 26, 0.025; and silver, 0.075.



(The material referred to is as follows:)

**A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.**  
**REPORT OF ASSAYS OF GOLD AND SILVER ORE**

49-539.

For Al Serena Mines, Inc., First National Bank Building,  
 Mobile, Ala.

Sample

by Mr. C. R. McDonald.

Report No. 282563.

Date: November 15, 1949.

Our Order No. 26483. Date 11/11/49.

*Assays of gold and silver ore*

[Ounces per ton]

Sample No.		Gold	Silver
24	Cougar.....	0.025	0.075
25	Do.....	Trace	.05
26	Merritt.....	.025	.075

Assays by: J. A. McDaniel.

Reports to: Al Serena Mines, First National Bank Building, Mobile, Ala.  
 Mailed November 16.

**A. W. WILLIAMS INSPECTION CO.,**  
**By G. F. BAILEY.**

Mr. REDWINE. And another one. This one is dated 1950, but it is still part of this series.

Mr. McDANIEL. January 13, 1950, No. 27, none; none.

(The material referred to is as follows:)

**REPORT OF GOLD AND SILVER ORE**

**A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.**

50-18.

For: Al Serena Mines,  
 First National Bank Building, Mobile, Ala.

Sample identification: No. 27.

Sample submitted by Mr. Chas. McDonald.

Report No. 287395.

Date: January 13, 1950.

Our Order No. 26483. Date: January 7, 1950.

*Assay of gold and silver ore*

	Gold	Silver
No. 27. La Jolla Creek bed ledge at Discovery.....	None	None

Assay by: J. A. McDaniel.

Two reports to: Al Serena Mines, First National Bank Building, Mobile, Ala. Mailed January 16, 1950.

**A. W. WILLIAMS INSPECTION CO.,**  
**By G. F. BAILEY.**

Mr. REDWINE. Mr. Chairman, we are now taking up a new series of assay reports taken in 1953 and Congressman Hoffman wanted to be advised when that was done.

Representative HOFFMAN. Mr. Chairman, I want to make a formal objection to the admission of this evidence. As I understand it, and if I am correct, none of these samples were used as application for the patents, were they, Mr. Redwine?

Mr. REDWINE. No, sir; none of them.

Representative HOFFMAN. The case is just like this: For example assume that the Senator would honor me by going fishing with me. I go 5 places down here in the bay and catch nothing; so I go 5 other places and I get something. Where do I take him?

Undoubtedly these fellows were looking for some places where they could get samples, where they could prove up on claims, but they did not use these at all; that is to say, these samples never came into the possession of any governmental agency, so why drag them in here?

Senator SCOTT. That question is overruled at the present.

Representative HOFFMAN. It is an unexpected ruling, but then, I accept it, of course.

Mr. McDANIEL. Before going into the 1953 series of assays, I would like to read a few other facts into the record, please.

Senator SCOTT. Go right ahead.

Mr. McDANIEL. At the completion of this series of samples, we were informed that the area in which the samples were secured was snowed in, and that they had no further samples for us at that time.

I resigned my employment with the A. W. Williams Inspection Co. in February 1952, and was not connected with this company again until June 1953, except on one occasion when I was called in as a consultant to determine the cause of the failure of a marine propulsion shaft.

Senator SCOTT. What kind?

Mr. McDANIEL. That was part of the shaft between the drive engine and the propeller, I believe it was on a large tugboat.

Shortly after returning to Mobile, I met Mr. Charles McDonald at a meeting of the Mobile Engineers Club and he told me that their Al Serena claims were still in process and that further sampling and assaying would be performed.

As this series of samples were submitted to this laboratory, they were accompanied by letters of instruction addressed to me. One of these letters refers to a Mississippi project that I will explain fully at the end of this statement.

While the first of this series of samples was in process of being assayed, Mr. Phillip Gabriel phoned and requested that a copy of the assay reports be furnished him.

Representative FASCELL. Are you talking about the 1953 assays now?

Mr. McDANIEL. Yes, sir.

Mr. COBURN. Who is Mr. Phillip Gabreil? Would you identify him?

Mr. McDANIEL. I will identify him in just a minute.

As Mr. Charles and Herbert McDonald were in Oregon at the time, another member of the McDonald family in Mobile was contacted for instructions and we were told to furnish Mr. Gabriel copies of the assay reports as he was financially interested in, and was a member of the board of directors of the Al Sarena Mines, Inc.

This series of assays were submitted in our Report Nos. 426042, 426180, 426550, 427875, 428394, and 428930, dated from October 7, to November 11, 1953.

If Mr. Redwine is ready we can go into those reports.

Representative HOFFMAN. May I ask counsel, Mr. Chairman, if these reports were used in the application for a patent.

Mr. REDWINE. They were not.

Representative HOFFMAN. Then it is understood that my objection applies to all reports of which evidence is given and which were not submitted to any governmental agency, so I will not need to keep renewing it.

Senator SCOTT. That is right.

Mr. REDWINE. Mr. McDaniel, would you rather wait until the end of your testimony to make this explanation you said you wanted to make of the Mississippi matter, or would you like to do it now?

Mr. McDANIEL. I will make it at the end of this Al Sarena matter, at the end of this.

Mr. REDWINE. This is a new series now, the 1953 series. Will you treat them just like you have been doing the others, please?

Mr. McDANIEL. This is Report No. 426042 under date of October 7, 1953. I will read the values found.

Sample AX1, \$1.75, and 5 cents, making a total of \$1.80.

Mr. REDWINE. Just read the total.

Mr. McDANIEL. Sample AX2, traces.

Sample AX3, none.

Sample AX4, \$1.80.

Sample AX5, \$1.80.

Then sample AX6, had traces.

Sample AX7 had traces.

Sample AX8 had traces.

Sample AX9, 5 cents.

AX10, no value.

AX11, no value.

AX 12 had traces.

AX13, \$1.80.

AX14, no value.

15, no value.

16, traces.

17, no value.

18, \$1.80.

(The material referred to is as follows:)

**A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.**

**REPORT OF FIRE ASSAYS OF GOLD ORE**

For: Al Sarena Mines, Inc., Box 122, Trail, Oreg.

Sample identification: Samples AX1 to AX18.

Samples submitted by client.

Lab. No. 53-701.

Report No. 426042.

Date: October 7, 1953.

Our order No. 38001. Date: September 29, 1953.

We find the samples that were submitted by the client to contain :

Sample	Ounces per ton		Value per ton		
	Gold	Silver	Gold	Silver	Total
AX1.....	0.05	0.05	\$1.75	\$0.05	\$1.80
AX2.....	Traces				
AX3.....	None	None			
AX4.....	.05	.05	1.75	.05	1.80
AX5.....	.05	.05	1.75	.05	1.80
AX6.....	Traces				
AX7.....	Traces				
AX8.....	Traces				
AX9.....	None	.05			.05
AX10.....	None	None			
AX11.....	None	None			
AX12.....	Traces				
AX13.....	.05	.05	1.75	.05	1.80
AX14.....	None	None			
AX15.....	None	None			
AX16.....	Traces				
AX17.....	None	None			
AX18.....	.05	.05	1.75	.05	1.80

Under 0.05 ounces of gold and silver combined per ton.

Value per ton calculated at \$35 per ounce for gold and \$0.90 per ounce for silver.

Assays by J. A. McDaniel.

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Four reports to : Al Sarena Mines, Inc., P. O. Box 122, Trail, Oreg.

One copy : Mr. Phil Gabriel, 24 North Royal St., Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

Mr. REDWINE. And another one, please.

Mr. McDANIEL. 19, \$1.80

AX20, no value.

AX21, \$1.80.

AX22 had traces.

AX23, \$1.80.

AX24, \$1.80.

AX25, \$1.80.

AX26, \$1.80.

AX27, \$1.80.

AX28, \$1.80.

(The material referred to is as follows :)

A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

#### REPORT OF ASSAYS OF GOLD ORE

For : Al Sarena Mines, Inc., P. O. Box 122, Trail, Oreg.

Sample identification : Samples AX19 to AX28.

Sample submitted by Mr. C. H. McDonald.

Lab. No. 53-711.

Report No. 426180.

Date : October 9, 1953.

Our order No. 38001. Date : October 1-3, 1953.

We find the samples that were submitted by Mr. C. H. McDonald to contain the following:

Sample	Ounces per ton		Value per ton		
	Gold	Silver	Gold	Silver	Total
AX19.....	0.05	0.05	\$1.75	\$0.05	\$1.80
AX20.....	None	None			
AX21.....	.05	.05	1.75	.05	1.80
AX22.....	Traces				
AX23.....	0.05	.05	1.75	.05	1.80
AX24.....	.05	.05	1.75	.05	1.80
AX25.....	.05	.05	1.75	.05	1.80
AX26.....	.05	.05	1.75	.05	1.80
AX27.....	.05	.05	1.75	.05	1.80
AX28.....	.05	.05	1.75	.05	1.80

<sup>1</sup> Less than 0.05 Au and Ag.

NOTE.—Sample AX18 reported on previous report.

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Four reports to: Al Sarena Mines, Inc., P. O. Box 122, Trail, Ore.

One Copy: Mr. Phil Gabriel, Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

Mr. REDWINE. And another one.

Mr. McDANIEL. Report No. 426550, under date of October 14, 1953. AX29, no value. AX30, no value. AX31, \$3.70. AX32, \$3.70.

Senator SCOTT. That report will be made a part of the record.  
(The material referred to is as follows:)

A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

#### REPORT OF ASSAYS OF GOLD ORE

For: Al Sarena Mines, Inc., P. O. Box 122, Trail, Ore.

Sample identification: Samples AX29-AX32.

Samples submitted by client.

Lab. No. 53-719.

Report No. 426550.

Date: October 14, 1953.

Our Order No. 38001. Date October 8, 1953.

We find the samples which were submitted by the client to contain the following.

Sample	Ounces per ton		Value per ton		
	Gold	Silver	Gold	Silver	Total
AX29.....	None	None			
AX30.....	None	None			
AX31.....	0.1	0.2	\$3.50	\$0.20	\$3.70
AX32.....	.1	.2	3.50	.20	3.70

Assays by J. A. McDaniel.

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Four reports to: Al Sarena Mines, Inc., Trail, Ore.

One report to: Mr. Phil Gabriel, 24 North Royal St., Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

Senator GOLDWATER. Mr. Chairman, at this time may I ask a question?

Senator SCOTT. Yes.

Senator GOLDWATER. Are you relating gold samples or silver samples?

Mr. McDANIEL. This is the total value of both gold and silver in the samples.

Report number 428930, under date of November 11, 1953. This is samples AX 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43. No mineral value found in any of these samples.

Senator SCOTT. That report will be made a part of the record.

(The material referred to is as follows:)

A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

REPORT OF ASSAYS OF GOLD ORE

For: Al Sarena Mines, P. O. Box 122, Trail, Ore.  
 Sample identification: AX 34 to AX 43, inclusive.  
 Samples submitted by Mr. C. H. McDonald.  
 Lab. No. 53-778.  
 Report No. 428930.  
 Date: November 11, 1953.  
 Our order No. 38001. Date: 11/10/53.

We find the samples submitted by Mr. C. H. McDonald to contain the following:

AX34	} No mineral value found in any of these samples.
AX35	
AX36	
AX37	
AX38	
AX39	
AX40	
AX41	
AX42	
AX43	

Assays by J. A. McDaniel.

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or press without our written authorization.

Four reports to: Al Sarena Mines, Inc., P. O. Box 122, Trail, Ore.

One report to: Mr. Phil Gabriel, 24 North Royal St., Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

Mr. REDWINE. Mr. Chairman, we have several more. They run along the same way. I do not mean like this last one. There are several more. In the interest of time may we have them inserted in the record without this witness going through them?

Senator SCOTT. They will be inserted in the record.

(The material referred to is as follows:)

A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

REPORT OF ASSAYS OF GOLD AND SILVER

For Al Sarena Mines, Inc., P. O. Box 122, Trail, Ore.  
 Sample identification: See below.  
 Samples submitted by C. H. McDonald.  
 Lab. No. 53-759.  
 Report No. 426394.  
 Date: November 4, 1953.  
 Our order No. 38001. Date 11-3-53.

We find the samples that were submitted by Mr. C. H. McDonald to contain :

Sample	Ounce per ton		Value per ton		
	Gold	Silver	Gold	Silver	Total
AX2.....	0.01	0.02	\$0.35	\$0.18	\$0.53
AX6.....	.02	.04	.70	.36	1.06
AX7.....	.00	.02	.00	.18	.18
AX8.....	.03	.11	1.05	.09	1.14
AX12.....	.00	.02	.00	.18	.18
AX16.....	.00	.03	.00	.27	.27

These assays made on duplicate portions of sample.

Assays by J. A. McDaniel.

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Four reports to: Al Sarena Mines, Inc., P. O. Box 122, Trail, Oreg.

One report to Mr. Phil Gabriel, Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

#### A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

#### REPORT OF ASSAYS OF GOLD ORES

For Al Sarena Mines, Inc., 408 First National Bank Building, Mobile, Ala.

Sample identification: Al Sarena 1-28 incl.

Sample submitted by Mr. D. Ford McCormick.

Lab No. 53-912.

Report No. 431869.

Date: December 17, 1953.

Our order No. 38001. Date November 25, 1953.

We find the samples submitted by Mr. D. Ford McCormick to contain the following:

Sample	Ounces per ton		Value per ton		
	Au	Ag	Au	Ag	Total
1.....	0.05	0.15	\$1.75	\$0.14	\$1.99
2.....	.04	.60	1.40	.54	1.94
3.....	.05	.20	1.75	.18	2.03
4.....	.05	.10	1.75	.09	1.84
5.....	.08	.05	2.80	.05	2.85
6.....	.06	.05	2.10	.05	2.15
7.....	.05	.07	1.75	.06	1.81
8.....	.05	.06	1.75	.05	1.90
9.....	.06	.04	2.10	.04	2.14
10.....	.04	.08	1.40	.07	1.47
11.....	.03	.06	1.05	.05	1.10
12.....	.04	.40	1.40	.36	1.76
13.....	.02	.10	.70	.09	.79
14.....	.03	.11	1.05	.10	1.15
15.....	.04	.07	1.40	.06	1.46
16.....	.05	.10	1.75	.09	1.84
17.....	.07	.05	2.45	.05	2.50
18.....	.03	.03	1.05	.03	1.08
19.....	.05	.02	1.75	.02	1.77
20.....	.03	.06	1.05	.05	1.10
21.....	.05	.10	1.75	.09	1.84
22.....	.06	.04	2.10	.04	2.14
23.....	.05	.07	1.75	.06	1.81
24.....	.06	.04	2.10	.04	2.14
25.....	.04	.64	1.40	.58	1.98
26.....	.06	.60	2.10	.54	2.64
27.....	.12	.72	4.20	.65	4.85
28.....	.10	.50	3.50	.45	3.95

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Assays by J. A. McDaniel.

Four reports to: Al Sarena Mines, Inc., 408 First National Bank Building, Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

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A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.

REPORT OF ASSAY OF GOLD ORE

For: Al Sarena Mines, Inc., P. O. Box 122, Trall, Oreg.

Sample identification: AX33.

Sample submitted by Mr. C. H. McDonald.

Lab. No. 53-747.

Report No. 427875.

Date: October 29, 1953.

Our Order No. 38001. Date: October 26, 1953.

We find the sample submitted by Mr. C. H. McDonald to contain:

Gold: None.

Silver: None.

Value: None.

Assay by J. A. McDaniel.

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Four reports to: Al Sarena Mines, Inc., P. O. Box 122, Trall, Oreg.

One reports to: Mr. Phil Gabriel, 24 North Royal Street, Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

Representative JONAS. It would be helpful if you would give the maximum and the minimum, if you have them right there.

Mr. REDWINE. Mr. Chairman, we have not compiled that, but during the noon hour that will be done.

Mr. McDaniel, we are now ready to take up the sample, your certificate, under date of November 25, 1953, the assay report on which the Solicitor's decision was made.

Do you not think it would be well at this time to discuss the Mississippi matter ahead of that?

Mr. McDANIEL. Yes, sir; I will discuss the Mississippi matter.

Representative HOFFMAN. Before they go into that, Mr. Chairman, may I ask counsel, is the substance of the testimony that we have been listening to this morning to the effect that this gentleman, who is a professional man who was working for the Williams Co. and working on these samples for the McDonald people, found that they did not justify a mining location? Is that the substance of it?

Mr. REDWINE. Mr. Chairman, in answer to that, I would like to say that the purpose is to show exactly how much sampling has been done by the A. W. Williams Co. from this particular property and what the results have been.

Representative HOFFMAN. There is no claim that this sampling to which you have referred was not an accurate sample or that the report was not accurate or justified?

Mr. REDWINE. Mr. Chairman, I would like to say in answer to that that the record as brought out will have to speak for itself.

Representative HOFFMAN. At least it shows that he was not working for anybody in particular, that he reported what he actually found,



and that with reference to these samples there was not enough mineral on the land to justify a mining claim. Is that not it?

Mr. REDWINE. That is what the record so far has shown.

Representative HOFFMAN. That shows that he is honest.

Then you have to drop back to substantiate your charge that the samples taken by Appling and McCormick were fraudulently taken.

Senator SCOTT. No one has made that statement.

Representative CHUDOFF. Mr. Chairman, the way things have developed this morning it appears that somebody is under indictment here, that we are trying someone under indictment. I do not think that is the purpose of these hearings. I think the purpose of the hearings is to develop the facts and after the facts are developed, then the committee will in executive session discuss them and write a report, and anybody who does not agree with the majority report can write his own under the rules.

Representative HOFFMAN. That should be true, Mr. Chairman, but, as you recall, at Denver you distinctly said that your staff was out looking for complaints and that is all they were looking for.

Representative CHUDOFF. We were very anxious to hear anybody who had a complaint. We were willing to listen to facts.

Senator SCOTT. The Forest Service is the only one that has made any complaint, and we are trying to establish the background and the facts as to whether they are justified or whether they are not.

Representative JONAS. Mr. Chairman, may I ask a question?

Senator SCOTT. Yes, sir.

Representative JONAS. Did I understand the Senator to say that the Forest Service had filed a complaint? Where does that appear in the record? I was not in Oregon.

Mr. COBURN. It is in this record.

Representative JONAS. I read the testimony of the witnesses at Portland, but my recollection is that the man who spoke for the Forest Service made the statement that after the Secretary rendered his decision it was acceptable to them and they had nothing further to say about it, and I just wonder if the record does show that the Forest Service has filed a complaint. If so, I would like to ask counsel to cite me that place in the record so I can read it.

Mr. REDWINE. Mr. Chairman, may I answer that? The Forest Service filed a protest against the granting of the patents. If they have done more than that I do not know it.

Representative JONAS. They did not file a complaint with this committee?

Mr. REDWINE. No.

Representative JONAS. Or any protest or any objection to this committee?

Mr. REDWINE. They have not.

Representative JONAS. Thank you.

Mr. REDWINE. Go ahead, please, Mr. McDaniel.

Mr. McDANIEL. I have never been financially interested in, or directly employed, or received any remuneration by the Al Sarena Mines, Inc. I have been associated with the McDonalds in the following related incident that I am including in this statement in order to show that my conduct in this matter was in keeping with accepted business, professional, and ethical relations:

Some months previous to my resignation from the A. W. Williams Inspection Co. in 1952—

Mr. REDWINE. What was the date? Will you please insert at this point what the date of that resignation was, please?

Mr. McDANIEL. That was February 15.

Mr. REDWINE. 1952?

Mr. McDANIEL. 1952.

Professor Austin of Mississippi Southern Co. told me at a meeting of the Mobile-Pensacola American Chemical Society Section that he had analyzed a rock containing an unusually high percentage of nickel. Knowing of the McDonald's interest in minerals, I discussed this with them shortly after leaving Williams and Mr. Charles McDonald and I spent 2 days in the area in which the rock was reported to have been found. We secured several samples that officials of the Mobile Pulley Works in Mobile, Ala., allowed me to test in their laboratory. One of these samples contained a small percentage of nickel that we agreed did not warrant development, although we thought that on further prospecting trips, we could discover the source of the rock analyzed by Professor Austin.

We have not pursued this matter any further at the present time. That is the explanation of it.

Mr. REDWINE. Mr. McDaniel, you and Mr. McDonald hold some options jointly on some land in connection with that?

Mr. McDANIEL. No, sir.

Mr. REDWINE. You do not?

Mr. McDANIEL. We do not. All we did was go up there and spend about 2 days scouting around, and then one of those days was spent with a water well driller up in that area. He went around with us to various locations where he had recently drilled water wells where we could secure samples of subsurface material.

Senator SCOTT. Did you ever hold any options at any time up there?

Mr. McDANIEL. No, sir.

Mr. REDWINE. Mr. McDaniel, as I recall the letter that you referred to where the Mississippi matter was brought up by Mr. McDonald, he suggested he found something interesting in Mississippi that he wanted you to look at. How does that check in with the fact that this professor so-and-so called it to your attention?

Representative HOFFMAN. Mr. Chairman, may I have him read the last part of the question? I did not hear it.

(The record was read by the reporter.)

Representative HOFFMAN. Does counsel claim that has anything to do with the granting of these mining patents?

Mr. REDWINE. Mr. Chairman, counsel is not claiming anything. Counsel is merely attempting to question the witness.

Representative HOFFMAN. That should be all right, but the question should be with reference to something relevant. I understand under the letter of Senator Murray that we are here to investigate timber claims and four particular things. Now we are straying off down into Mississippi in an entirely different matter that has not a thing to do with either mines or timber.

Senator SCOTT. Go ahead.

Mr. McDANIEL. When I made those tests on that ore; that is, on the samples we picked up in Mississippi, Mr. McDonald had told me—this is merely things that Mr. Charles McDonald told me orally—

that he had discussed this percentage with an engineer experienced in the milling of various ores, and that nickel ore of the approximate percentage that I found on that was commercially feasible to work.

Mr. REDWINE. Let us take up the matter of samples, your No. 431869.

Mr. McDANIEL. I would like to read the following into the record before we go into this sample.

Senator SCOTT. Go ahead.

Mr. McDANIEL. In the latter part of November 1953, I received a letter on Al Sarena Mines, Inc., stationery reading as follows:

A. W. WILLIAMS INSPECTION Co.,

*Mobile 3, Ala.*

(Attention: Mr. J. A. McDaniel.)

GENTLEMEN: We are forwarding a further group of 28 samples, numbered Al Sarena 1 through Al Sarena 28, inclusive. The material is to be assayed for both gold and silver. Check to cover these assays will be mailed you upon receipt of bill.

Thanking you, we remain,

Yours very truly,

AL SARENA MINES, INC.

and signed by D. Ford McCormick, consulting engineer, with the following handwritten note:

NOTE.—The split was too large for 1 envelope so the whole sample in each case was put into 2 envelopes and made into 1 package and numbered with the metal tag as placed in each bag. Use all of the pulp in each bag for sample.

It is signed by the initials D. F. McC., and there were a number of penciled corrections to this letter, as you can see on this phosostat and on the original letter which Mr. Redwine has.

Mr. REDWINE. I do not think there is any need to go into the penciled corrections.

As the letter was read they were the directions that were received by the A. W. Williams Co. with the corrections in it.

Have you anything further, Mr. McDaniel, in the way of a statement?

Mr. McDANIEL. Yes. If the committee will refer to this letter now in their possession they will note no additional instructions for reporting the results of the assays on these samples. As we were not informed in any manner that samples referred to in this letter were official Bureau of Mines referee samples, the assays were made and reported according to instructions received for previous Al Sarena Mines, Inc., samples, with omission of the copy to Mr. Gabriel, which will be explained later in this statement.

I interpreted the handwritten note on the bottom of the letter as a necessary instruction for the proper assay of those samples, with the following explanation:

As the assay-ton portions of samples were being used for assay of Al Sarena samples, this note had the meaning to me of mixing the contents of the two envelopes comprising the sample and weighing out the portion used for assay from the mixed sample. In no case, when the weight of the mixed sample was over 2 assay-tons, was the entire sample used in an individual assay. In other words, an exact portion for a 2-assay-ton sample was weighed out for assay in all cases that sufficient sample was submitted for a 2-assay-ton portion to be weighed out. When the total weight of the submitted sample was under 2 assay-tons, the entire contents of both envelopes were used.

About the same time as the receipt of this letter, a parcel was received by railway express and turned over to me. The box contained 28 samples and the assays of these samples were submitted on our Report No. 431869.

I have photostat here.

Mr. REDWINE. We have that, your original. Mr. McDaniel, in how many instances was the sample, by combining the two envelopes, insufficient to make 2 assay-tons?

Mr. McDANIEL. As this happened 2 years ago, I do not remember the exact number of those samples where the entire contents of both envelopes was under 2 assay-tons.

Mr. REDWINE. I believe earlier in your testimony you stated that when you and Mr. McDonald first discussed the matter of assaying samples in the Al Sarena mines it was agreed that to get a fair sample you have to have 2 assay-tons to work with; is that correct?

Mr. McDANIEL. That is to get an accurate assay on their ores.

Mr. REDWINE. However, in this case there was some of it that you did not have 2 assay-tons to work with; is that true?

Mr. McDANIEL. There was some of it they didn't send us 2 assay-tons.

Mr. REDWINE. You could not identify from this record which ones those were, could you? Your notebook would not show that?

Mr. McDANIEL. Well, it is our practice to—unless we are specifically told at the time of receipt of samples that there would be legal proceedings or other reasons later on, our lab worksheets are usually destroyed after about a year to 18 months, and I did not have those to make any deductions.

Mr. REDWINE. Refer to your copy there, if you wish.

Could you tell the committee whether sample No. 13 or sample No. 27 were samples where you had less than 2 assay-tons to work with? Will your memory tell you whether either one of those was in the group of those you did not—

Mr. McDANIEL. No, sir; they do not. As a general rule our procedure down there is this: Whenever a sample is submitted we analyze it. After the analysis is finished we are working on entirely different matters and we promptly forget the exact details of each individual analysis, that is, today we are working on one thing and another thing tomorrow, so we make no attempt to keep in our mind, that is, the exact details that we follow on everything except—

Mr. REDWINE. We understand that. What I am getting at is, can you from memory say that this sample here that showed values of 79 cents is included in that group or whether the sample that showed \$4.85 is included in that group?

Mr. McDANIEL. No, sir, I cannot.

Senator GOLDWATER. Might I ask a question to establish a legal point in my mind? I am sorry I do not know it. Are 2 assay-tons required by law?

Mr. REDWINE. They are not, Senator. However, the textbooks tell us that that is the preferable volume to use to get an accurate report on low-grade ores. I believe that is correct, is it not, Mr. McDaniel?

Mr. McDANIEL. Yes, sir.

Senator GOLDWATER. However, it is not required by any statute. I would like to ask Mr. Broadgate, whose mining knowledge I have

great respect for, a question. In our State of Arizona is it customary to use 2 assay-tons?

Mr. BILL BROADGATE (metals and minerals consultant to Senator Murray). No, Senator; 1 assay-ton is generally used, unless there is preknowledge of the fact that the mineral content may be so low that an accurate assay cannot be made on a 1 assay-ton sample.

Senator GOLDWATER. Thank you.

Representative JONAS. Mr. Chairman, may I ask counsel a question?

Senator SCOTT. Yes.

Representative JONAS. Were the patent assays based on 2 tons?

Mr. REDWINE. I am not sure about that, Congressman. I am told, however, that the assayers who did that work do use 2 tons, 2 assay-tons, in their work.

Representative HOFFMAN. However, you were never told that they used it in connection with the Hattan samples?

Mr. REDWINE. No, sir. I made that plain.

Representative JONAS. Was Mr. Hattan not asked that question, as to the weight of these samples?

Mr. REDWINE. No, sir, he was not.

Mr. McDaniel, have you ever in your experience been instructed by a client to have no pulp left except in this instance?

Mr. McDANIEL. Well, I have never been instructed to have no pulp left, and in this instance where sufficient pulp was submitted to us for us to use, the full 2 assay-ton sample there was pulp left.

Mr. REDWINE. What did you do with it?

Mr. McDANIEL. After several months—I would say a minimum of 6 months—we disposed of it in accordance with our company procedure of disposing of all samples a reasonable time after the analysis is completed, unless specifically requested by the client to retain samples for a longer period on account of impending legal proceedings or other reasons.

Mr. REDWINE. Mr. Chairman, I would like to call the committee's attention to the fact that according to the testimony of Mr. McDaniel and according to the letter of instructions received from Mr. D. Ford McCormick, the note here says, "Use all of the pulp in each bag for sample."

What pulp was left over, in the cases where more than 2 assay-tons were available, was destroyed within 6 months or about 6 months in accordance with the assayer's practice, and that is Mr. McDaniel. According to my information he has correctly stated that, but coupled with that fact is the other samples that were retained, the only other physical evidence in this case, was thrown into the Rogue River. You have to go on documents and testimony of witnesses to bring out what happened in this.

Representative HOFFMAN. As long as you have gone into that, will you have the witness tell how he disposed of their samples? I assume he did not throw them in the Rouge River because that was not handy. What did he do with them?

Mr. McDANIEL. I will tell you what happened to the disposed samples down there. They were thrown on our laboratory trash pile and hauled to the city dump.

Here is something that I would like to introduce as evidence.

Mr. REDWINE. May I see it, please?

Mr. McDANIEL. This is a photostat of a schedule of price quotations on ordinary samples by the Arizona Testing Laboratories. In the second last paragraph from the bottom of the notes of it reads this:

2 pounds or less of each sample held 1 month without charge. Samples held longer on request at a charge depending on size and length of storage. No responsibility assumed for safekeeping of samples.

I want to introduce that as evidence, that unless specifically requested most testing laboratories dispose of the samples after a reasonable period of time, unless the plant has specifically requested that they be held longer than their normal period.

(The material referred to is as follows:)

## ASSAY SCHEDULE

Gold (Au)-----	\$1.50
Silver (Ag)-----	1.50
Gold & Silver (When run at same time)-----	2.00
Copper (Cu)-----	1.50
Lead (Pb)-----	1.50
Zinc (Zn)-----	2.50
Aluminum oxide (Al <sub>2</sub> O <sub>3</sub> )-----	5.00
Antimony (Sb)-----	5.00
Arsenic (As)-----	5.00
Barium (Ba)-----	6.00
Bismuth (Bi)-----	6.00
Beryllium oxide (BeO)-----	10.00
Boron (B)-----	5.00
Calcium oxide (CaO)-----	4.00
Cadmium (Cd)-----	5.00
Chromium (Cr)-----	5.00
Cobalt (Co)-----	6.50
Columbium (Cb)-----	15.00
Flourspar (CaF <sub>2</sub> )-----	5.00
Gypsum (CaSO <sub>4</sub> ·2H <sub>2</sub> O)-----	6.00
Iron (Fe)-----	2.00

## ORDINARY SAMPLES

Lithium oxide (Li <sub>2</sub> O)-----	7.50
Magnesium oxide (MgO)-----	6.00
Manganese (Mn)-----	2.50
Mercury (Hg)-----	3.00
Molybdenum (Mo)-----	5.00
Nickel (Ni)-----	5.00
Phosphorus (P)-----	4.00
Potassium oxide (K <sub>2</sub> O)-----	6.00
Rare earth oxides-----	15.00
Silicon oxides (SiO <sub>2</sub> )-----	4.00
Sodium oxide (Na <sub>2</sub> O)-----	6.00
Strontium (SrO)-----	7.50
Sulphur (S)-----	3.50
Tantalum (Ta)-----	15.00
Thorium (Th)-----	10.00
Tin (Sn)-----	5.00
Titanium (Ti)-----	7.50
Tungsten oxide (WO <sub>3</sub> )-----	5.00
Uranium oxides (U <sub>3</sub> O <sub>8</sub> )-----	5.00
Vanadium (V)-----	5.00
Zirconium (Zr)-----	10.00
Complete spectrographic qualitative analysis of ores-----	7.00

Prices for other analyses ore testing, physical testing, inspection of materials anywhere, sampling and other services on request.

Control and Bullion assays double rates for individual metals. Umpire assay 3½ times.

Size of samples: Ore 2 to 5 lbs. Pulp, 4 ozs. or more. Larger and wet samples handled at extra charge.

Mark samples plainly and give written instructions with sample or by letter. 2 lbs. or less of each sample held one month without charge. Samples held longer on request at a charge depending on size and length of storage. No responsibility assumed for safe keeping of samples.

Payment must accompany samples unless credit is arranged. These prices do not permit bookkeeping and collection costs on small accounts.—Arizona Testing Laboratories, Claude E. McLean, Analytical and Consulting Chemists, Phoenix, Ariz.

Mr. REDWINE. Mr. Chairman, I would like the record to show that there is no question of the fact that the A. W. Williams Co. destroyed the pulp in accordance with the usual practices of assay houses. There is no question raised on that.

Representative HOFFMAN. Will counsel tell us, Mr. Chairman, what happened with his?

Senator GOLDWATER. Mr. Chairman, I hate to keep displaying my ignorance of mining law, but I would like to ask the counsel, is retention of samples by the assayer required by law?

Mr. REDWINE. No, sir. It is a matter of practice.

Senator GOLDWATER. Is retention of samples by the mine required by law?

Mr. REDWINE. No, sir.

Senator GOLDWATER. No, it is not?

Mr. REDWINE. No, sir.

Senator GOLDWATER. I would like to ask again Mr. Broadgate, who I think has a great knowledge of mining, is it customary in our State of Arizona for the mines to hang on to samples over a prolonged period?

Mr. BROADGATE. Not for a long period, Senator. The only reason for keeping samples is if there might be some future need to check them.

Senator GOLDWATER. However, they might dispose of them in a week, or a month, or 6 months?

Mr. BROADGATE. Certainly. It is an individual matter.

Mr. REDWINE. Mr. Chairman, I have no further questions of this witness. Perhaps Mr. Coburn has.

Senator SCOTT. Mr. Coburn, will you identify yourself with the audience and with the committee here?

Mr. COBURN. I am chief counsel of the Senate Subcommittee on Legislative Oversight Function.

Mr. McDaniel, what precisely is the main job of the 50 or 60 men that you referred to who are employed by the A. W. Williams Inspection Co.?

Mr. MCDANIEL. They are timber inspectors who grade telephone and other utility poles—

Mr. COBURN. REA poles, for example?

Mr. MCDANIEL. REA.

Mr. COBURN. They are not directly concerned then with minerals as such except the solicitation of business for your company?

Mr. MCDANIEL. They are not.

Representative JONAS. Mr. Chairman, I apologize for the interruption. Mr. Redwine led this witness right up to the identification of the report number of these latest samples, but he never did have him read into the record the results. Would it not be proper to have that follow before we go into another subject?

Mr. REDWINE. Mr. Chairman, may I suggest that is already in the printed record. We are not contesting this—

Representative JONAS. I think for purposes of comparison with these 1949 and 1953 ones I would like to have them right at this particular point, if it is not objectionable.

Mr. REDWINE. I have no objection.

Senator SCOTT. There is no objection.

Mr. REDWINE. Would you read them in, Mr. McDaniel?

Mr. McDANIEL. Let me have the original copy, because that is somewhat clearer than this photostat.

This is our report No. 431869 under date of December 17, 1953, our order No. 38001. I am reading the sample number and the total value. No. 1, \$1.89. No. 2, \$1.94. No. 3, \$2.03. No. 4, \$1.84. No. 5, \$2.85. No. 6, \$2.15. No. 7, \$1.81. No. 8, \$1.80. No. 9, \$2.14. No. 10, \$1.47. No. 11, \$1.10. No. 12, \$1.76. No. 13, \$0.79. No. 14, \$1.15. No. 15, \$1.46. No. 16, \$1.84. No. 17, \$2.50. No. 18, \$1.08. No. 19, \$1.77. No. 20, \$1.10. No. 21, \$1.84. No. 22, \$2.14. No. 23, \$1.81. No. 24, \$2.14. No. 25, \$1.98. No. 26, \$2.64. No. 27, \$4.65. No. 28, \$3.95.

Senator SCOTT. Suppose we take a 5-minute recess.

(Brief recess.)

Senator SCOTT. The meeting will please come to order.

Mr. COBURN. Mr. McDaniel, you have testified that these 50 or 60 men employed in the field by A. W. Williams Co. are concerned primarily with the inspection of timber, with REA—

Mr. McDANIEL. And for the utilities and foreign governments. Mr. Miller has a partial list of our clients.

Mr. COBURN. Now, Mr. McDaniel, what is the total number of men employed by the A. W. Williams Co.?

Mr. McDANIEL. At the present time the total employees are in the neighborhood of 90.

Mr. COBURN. Of which figure 50 or 60 are out in the field?

Mr. McDANIEL. Fifty or sixty are out in the field. Another between 15 or 20 are typists and clerical help in the main office, and about 15 are various employees in the laboratory section there at Mobile.

Mr. COBURN. How many qualified assayers do you employ?

Mr. McDANIEL. Well, at present we have three on our laboratory staff that we consider capable of handling an assay if one were submitted.

Mr. COBURN. Would that include yourself?

Mr. McDANIEL. That would include myself.

Mr. COBURN. And two others?

Mr. McDANIEL. And two others.

Mr. COBURN. Is one of these Mr. Bailey?

Mr. McDANIEL. No, sir. Mr. Bailey is not employed with our company at the present time.

Mr. COBURN. He was at one time?

Mr. McDANIEL. He was at one time, but at the time of his employment Mr. Bailey was not considered capable of handling an assay. He was just the laboratory manager and handled clerical details.

Mr. COBURN. That was in 1949?

Mr. McDANIEL. Yes, sir.

Mr. COBURN. And those 1949 samples were submitted to your company at that time?

Mr. McDANIEL. Yes, sir.



Mr. COBURN. You had a conference with the McDonalds as to how you should go about assaying these ores, what formula you should use?

Mr. McDANIEL. Yes, sir. We did have a formula. We accepted that as just the exchange of technical information that would save us a number of preliminary assays in determining the proper flux to use with the ores.

Mr. COBURN. But the formula was suggested by the McDonalds to you, is that correct?

Mr. McDANIEL. In the main, yes, but we checked it against the material.

Mr. COBURN. That is all right, Mr. McDANIEL.

Mr. McDANIEL. And Scott and Treadwell Hall, which are standard reference books. There appeared to be no major variations, from what they suggested.

Mr. COBURN. Would you say that the bulk of the business of the A. W. Williams Co. is in inspection of certain nonmineral items, such as poles and timber, or would you say that the bulk of the work is in assaying?

Mr. McDANIEL. The bulk of the timber division. The bulk of the laboratory division is an analysis; assaying of precious metals is a very minor part of our business.

Mr. COBURN. Assaying of precious metals is a very minor part of your business?

Mr. McDANIEL. Yes, sir.

Mr. COBURN. Had you done any assaying of precious metals prior to the time the McDonalds approached you?

Mr. McDANIEL. Not at the company.

Mr. COBURN. I mean the A. W. Williams Co.

Mr. McDANIEL. To my personal knowledge, they haven't. I was not employed by them until 1948. They may have done that because at that time, when we started looking around through our lab stores, I found several crucibles similar to those used in assaying, which may have been used by a previous chemist.

Mr. COBURN. Let me preface this by saying that in 1949, to identify it in your mind, when you entered into these conferences with the McDonalds concerning the formula you would use, did the A. W. Williams Inspection Co. at that time have a complete gold and silver assaying setup as to equipment?

Mr. McDANIEL. Well, no. They did not have equipment similar to the large assayers in the West, but we had equipment that we felt was suitable for that purpose.

Mr. COBURN. Did you have to purchase any additional equipment?

Mr. McDANIEL. No, sir. We did not purchase any additional equipment.

Mr. COBURN. Did you have any cupels?

Mr. McDANIEL. We purchased cupels.

Mr. COBURN. You purchased cupels. Could you assay gold and silver without cupels?

Senator SCOTT. Senator Goldwater.

Senator GOLDWATER. I think it might be helpful, in view of counsel's questioning, to put in the record at this point a bulletin from the American Council of Independent Laboratories which rates the various laboratories.

By the way, it shows Williams as being one of the most complete in the country.

I am not a member of the subcommittee. I am a member of the whole committee but, if permitted to, I would like to submit this for the record.

Mr. COBURN. What is the date?

Senator GOLDWATER. August 1955.

Senator SCOTT. We are planning to put such a document into the record but not at this time, Senator.

Senator GOLDWATER. You do intend to put one in?

Senator SCOTT. Yes.

Senator GOLDWATER. I will send this to the chairman for inclusion in case the other does not get in.

Mr. COBURN. I am referring to 1949, at the time of the conference between A. W. Williams Co. and the McDonalds. At that time have you not testified that it was necessary to purchase at least some equipment; i. e., cupels?

Mr. McDANIEL. Well, in the laboratory, a matter of laboratory equipment, we have two types, like most of the equipment. There is one thing which we class as equipment which is material, like furnaces, and so forth.

Mr. COBURN. If I may interrupt, I am convinced that you have adequate equipment. I am sure of that, because it has been demonstrated by the evidence attempted to be put in by Senator Goldwater. I am talking about 1949.

Mr. McDANIEL. A matter of crucibles, and cupels, and so forth, we considered as expendable laboratory supplies. If we get a job requiring that expendable material and reagent chemicals, we purchase what we need to do the job.

Mr. COBURN. Apparently you had not purchased any up to this time in 1949?

Mr. McDANIEL. I will say that there were no cupels in our lab stock at that time.

Senator SCOTT. In other words, at that point they were not in the business in a noticeable amount, not in that type of business?

Mr. McDANIEL. I might state this in regard to the complete company policy on samples of any kind: That a prospective client brings in his sample. We discuss the type of analysis. We check into that. We determine various phases. We find out our estimated cost. We submit a price to the client. Then, if he wants to give us the sample, we will take it and analyze it.

Senator SCOTT. You have not quite answered my question there. I do not know whether I made it clear to you or not.

Mr. McDANIEL. In the case of these samples here, when our fixed equipment at the laboratory there was thought to be suitable to do that, we went ahead and purchased crucibles and cupels and various other reagents to do this work.

Senator SCOTT. That answers it.

Mr. COBURN. Mr. McDANIEL.

Senator GOLDWATER. Before the counsel proceeds, I would like to clear up a point on a question that is in my mind. I will ask the witness: Is the assaying of gold and silver such a difficult task that it would require a specialist in gold and silver to assay it?

Mr. McDANIEL. No, sir.

Senator GOLDWATER. Any competent assayer has to know how to assay gold and silver?

Mr. McDANIEL. Any competent chemist should be able to assay gold and silver after making a few tests to determine the type of flux to use in the primary fusion of those ores.

Mr. COBURN. Provided, of course, he had the necessary equipment.

Mr. McDANIEL. With equipment suitable. You can make that first fusion in a blacksmith's forge, just so you have something that will develop enough heat to melt the sample.

Mr. COBURN. Getting to this Mississippi case, Mr. McDaniel, as referred to, and correct me if I am wrong, it seems to me that you testified that you and Mr. McDonald entered into some kind of a joint venture seeking nickel; is that correct?

Mr. McDANIEL. That is correct.

Mr. COBURN. You went to some well and took some underground samples, is that correct?

Mr. McDANIEL. We took material that this well driller reported to us as—

Mr. COBURN. Containing mineral?

Mr. McDANIEL. No, as obtained at various depths at that well.

Mr. COBURN. Now, to whom did you take the samples for assaying?

Mr. McDANIEL. Well, we did not take the samples to anyone else for assaying.

Mr. COBURN. Who did the assaying?

Mr. McDANIEL. I did the testing on that. I was not working for Williams Inspection Co. at that time, the officials of the Mobile Pulley Works allowed me to use their laboratory in making my test.

Mr. COBURN. But you did not take the samples to the A. W. Williams Co.?

Mr. McDANIEL. No, this was something that was strictly between myself and Charles McDonald. I was not working for them and I was thinking that the two of us had the right for me to test them or anything else since this was just merely a prospecting trip and we wanted to see if we had anything.

Mr. COBURN. Yet the McDonalds had been in the habit of doing business with Williams Inspection Co. for a period of years, had they not?

Mr. McDANIEL. Well, at least we ran that sample, that series of samples in 1949 at Williams Inspection Co. for the McDonalds.

Mr. COBURN. Had they, the McDonalds, done any business with the A. W. Williams Co. prior to 1949?

Mr. McDANIEL. I do not think so. I have never made a complete check.

Mr. COBURN. Is your answer that you do not know?

Mr. McDANIEL. I don't know.

Mr. COBURN. All right.

Now getting to the samples, these assay reports that were read into the record, including the 1949 and 1953 reports, do you have any way of telling the committee now from which claims, that is either the 8 uncontested claims or the 15 contested claims, these samples came, beginning in 1949?

Mr. McDANIEL. No, sir; I do not.

**Mr. COBURN.** You cannot tell then, either as to the 1953 or 1949 samples. How about the 1953 samples?

**Mr. McDANIEL.** On my record on these reports in 1949, there is some identification as to the claims that they would come from. That was identification furnished by the McDonalds to us.

And on the 1953 series, I do not think there was any specific identification.

**Mr. COBURN.** So that you do not know as to the 1953 samples exactly what claims they came from?

**Mr. McDANIEL.** I do not.

**Mr. COBURN.** That is all.

**Senator SCOTT.** Senator Neuberger?

**Senator NEUBERGER.** I have nothing at the moment, **Mr. Chairman.**

**Senator SCOTT.** Is there anything further?

**Senator GOLDWATER.** I had one question that I think would be interesting to develop at this point.

In averaging up the assays on the 28 samples that you reported—and my arithmetic certainly is open to question because I have never been too good—it comes to about \$2.068 or \$2.069. Do you know enough about the economics of mining to tell us whether or not that would cause a prudent man to get into a mine that averages that per ton?

**Mr. McDANIEL.** It has been a number of years since I have studied economic geology but, to the best of my recollection, the ores mined at the famous Homestake mine at Lead, S. Dak., only averaged around \$1.90 a ton.

**Senator GOLDWATER.** I would like to take advantage of **Mr. Broadgate** being here. He has, I think, a knowledge of this.

**Mr. Broadgate,** from your knowledge of gold mining in the West, would you say that an assay of \$2 or \$2 plus a ton would cause a prudent man or investor to go into the gold mine operation?

**Mr. REDWINE.** Let me interrupt, **Senator Goldwater.**

May we have **Mr. Broadgate** identified for the record, please?

#### **STATEMENT OF BILL BROADGATE, METALS AND MINERALS CONSULTANT TO SENATOR MURRAY, OF MONTANA**

**Mr. BROADGATE.** My name is Bill Broadgate. I am metals and minerals consultant to Senator Murray, of Montana.

That question is a little bit like asking how old is Ann. Whether a given value of ore is commercial or not depends entirely on the size and the location of the mine and the economics surrounding the operation. What you could mine in Alaska, Juneau, or at Homestake on a vast tonnage scale and what you could mine at some small general vein property are two different things.

I doubt very much, and this is an opinion for what it is worth, that in that particular area any ore could be mined commercially with as low values as you have indicated.

**Senator GOLDWATER.** That is only a doubt in your mind.

I understand perfectly that you do not know the properties, and I will not ask you to go further in this, but I do think it is a question that has to be answered, **Mr. Chairman,** as to whether or not a value of \$2 a ton gold and silver would cause a man to go into a mining operation.

I do not mind telling the committee that I have been in mining operations that assay lower than \$2 a ton. Some have been profitable and some unprofitable, but in my limited knowledge of the economics of mining in my own State, \$2 a ton is a figure that will cause many men to put their time and money into a mine, and I think that it would certainly give the Secretary of the Interior and the Bureau of Land Management cause to consider the claim valid.

Mr. Chairman, in that regard, I think this is a very good time to introduce a compilation entitled "The Rule as to What Constitutes a Valid Discovery of Minerals Sufficient To Support a Mining Location."

I would like to suggest that that would be interesting at this point. It is a compilation of the law and citations used in determining the question that we are on today.

Senator SCOTT. By whom is this prepared?

Senator GOLDWATER. I believe it is prepared by the Solicitor's department of the Department of the Interior.

Senator SCOTT. I suggest, Senator, that that come along with the Solicitor's testimony.

Senator GOLDWATER. I see no reason not to admit it here.

Senator SCOTT. I do.

Senator GOLDWATER. Certainly there are points of law and counsel can check these.

Senator SCOTT. Just hold it back.

Representative HOFFMAN. I will offer it in evidence.

Senator SCOTT. You are out of order.

Representative HOFFMAN. Offering it in evidence is out of order?

Senator SCOTT. Yes, sir.

Representative HOFFMAN. That is a strange situation when you make an offer of testimony. I have never heard of a thing such as that.

Senator SCOTT. It has already been ruled on.

Representative HOFFMAN. Just a minute. I take an appeal on that ruling and call for a record vote.

Let us see how far you want to go on that.

Senator SCOTT. It will be put into the record at the time the Solicitor testifies.

Representative HOFFMAN. I am offering it now. This committee has established the rule of accepting newspaper articles and editorials. It did it in the power hearings and has done it in these hearings. I see no reason why, when the Senator offers it, it should not be admitted.

Under the rules of the Senate committee, as I understand it, he is entitled to participate in the hearings of any subcommittee.

I offer it. There it is.

Representative CHUDOFF. Mr. Chairman, I would like to know what is being offered. It is quite long. Would the Senator tell us what you are trying to get into the record?

Senator GOLDWATER. It is the compilation of citations and of law and rulings pertaining to the subject we are talking about, what constitutes the valid law for the issuance of claim.

Representative CHUDOFF. May I ask the Senator who prepared it and who determines whether this rule is a valid discovery?

Senator GOLDWATER. It was prepared by the Department of the Interior. They are the ones that have to determine these things. I imagine that they use that in the determination.

Representative CHUDOFF. Do you know when it was prepared, Senator?

Senator GOLDWATER. No, I have no idea when it was prepared.

Representative CHUDOFF. I want to say to you that I certainly think that the proper time to offer this, if this is the rule of the present administration, is when the Solicitor or the Secretary or Under Secretary testifies.

Senator GOLDWATER. That is not the rule of the present administration. That goes back to 1879. Read it.

Representative CHUDOFF. I will be happy to read it at my leisure when I can study it. I do not want to read it now.

Do you want to wait while I read it?

Senator GOLDWATER. It is obvious that the majority of this committee does not want to treat this fairly.

Representative CHUDOFF. I think the fair way to do it is to wait until the witness who is qualified to identify it is testifying. It is a carbon copy of something that somebody made.

Senator GOLDWATER. Some corporation made.

Representative CHUDOFF. That somebody made.

Senator GOLDWATER. I told you that the Department of the Interior made it.

Representative CHUDOFF. Why can we not have somebody set forth the law from the Department of Interior?

Senator GOLDWATER. It was offered by myself as a Senator who is a member of the Senate Interior Committee. It was offered by Congressman Hoffman.

Representative CHUDOFF. I have no right to rule. Senator Scott is chairman. If we have a vote on this, I want to know how to vote.

Senator GOLDWATER. This will be helpful to you.

There are cases there that go to the beginning of the mining law.

Representative CHUDOFF. It appears to be a brief. I will be happy to study it at a later time.

Senator GOLDWATER. It would be an excellent thing to study it now and put it in the record.

Representative CHUDOFF. I think that as a matter of law it can only be offered by the man who prepared it.

Senator GOLDWATER. Now, what kind of a decision is that? You know better than that.

Representative CHUDOFF. There is nothing here that certifies that this is the rule set forth by the Interior Department. It is just a carbon copy of a brief that somebody prepared.

Representative HOFFMAN. Senator, in view of promoting harmony, I have been kicked around by this committee for something like 60 days, and I do not mind.

Senator GOLDWATER. I do not mind either. I have been kicked around ever since the majority party has started these rather obvious political investigations. The Republicans have been kicked around.

I want to see the truth brought out. I am willing to wait.

Representative HOFFMAN. We will suffer in silence.

Senator GOLDWATER. Not in silence.

Senator SCOTT. Let us have order.

Representative HOFFMAN. Do I not have the floor?

Senator SCOTT. No, sir.

Representative HOFFMAN. I wanted to put in this charge that you made of all this skullduggery and the one you made to the press.

Senator SCOTT. I would like to say that one of the troubles heretofore has been that we put in some of these things piecemeal, and we are trying to bring some coherence, if we are allowed to do so, into this. The time for this to come is when you have the witness who is to testify on this thing and who prepared this.

If it is dated in 1700 B. C., if you want to do it, that is all right.

Senator NEUBERGER. It is not dated at all.

Senator SCOTT. It is not dated at all.

Senator NEUBERGER. There is no identification. It is not signed.

Senator GOLDWATER. The Senator can only take it that you doubt the Senator's honesty.

Senator SCOTT. That is not it at all.

Senator GOLDWATER. I do not know how you put the question of a man's honesty.

Senator SCOTT. How do I put it?

Senator GOLDWATER. Yes.

Senator SCOTT. I say let us bring this out in some order, not piecemeal and taking it out of context. This thing will be heard when the man who handed this to you is here. We have not read it yet.

I think that every committee member, if it goes into the record, ought to read it. We will take the time. I will take the time to get everything in, but let us put them in together and a little more in order.

Senator GOLDWATER. As I said before, the Senator is perfectly willing to wait until the proper witness comes, but I take it as a personal inference against my honesty that you doubt the honesty of that paper.

You say there is no date. I do not know for how long it has been that Senators cannot submit evidence for the record. I have never heard a Senator's evidence questioned before.

Representative HOFFMAN. You follow this committee and you will learn a lot of new things.

Senator GOLDWATER. I am sorry that I was not here earlier.

Representative CHUDOFF. Stay around. We are glad to have you.

Mr. REDWINE. May I point out for the committee that the figures that Senator Goldwater submitted as a basis for questioning Mr. Broadgate are based on the last assay made by the A. W. Williams Co., which is entirely contrary to the assay reports made to the instrumentality of the Bureau of Land Management and the Forest Service.

The question which should have been put to Mr. Broadgate should have been double-barreled, whether this composite figure of \$2.06 a ton would lead a prudent man to try to operate the property or whether the composite figure of a broad 87 cents a ton, as shown in the other assay reports, would determine it.

That is the crux of the whole thing under discussion here, if I may say so, Mr. Chairman.

Senator SCOTT. Congressman Chudoff, do you have anything further?

Representative CHUDOFF. I would like to yield to counsel for the subcommittee, Mr. Lanigan.

Mr. LANIGAN. (counsel, House Subcommittee on Public Works and Resources). I have just a couple of questions.

Did you personally do the assaying on the 1949 and 1953 reports that were read?

Mr. McDANIEL. On the 1949 reports, I personally did the assaying.

On the 1953 reports, I personally did the weighing of the original pulp sample and the weighing of the final button, and the parting of the gold and silver; I recall that much.

Some of the other time-consuming parts of it, like the cupellation and watching the furnace during the initial fusions, I may have turned over to assistants in the laboratory.

Mr. LANIGAN. And was that true of both the earlier and the late 1953 samples?

Mr. McDANIEL. That is true.

Mr. LANIGAN. You say you have three men in your company who you believe are qualified to do assay work. Are you one of the three?

Mr. McDANIEL. I am one of the three.

Mr. LANIGAN. There are two others?

Mr. McDANIEL. There are two others.

Mr. LANIGAN. Do they have in the State of Alabama any license for assayers?

Mr. McDANIEL. To my knowledge, no; that is, if I may qualify this, if it is a person who confines his entire business to the assaying of gold and silver ores, there are none, but there are several commercial testing laboratories similar to ours that will handle an occasional assay when ore is submitted.

Mr. LANIGAN. But you have no license from the State to do assaying because perhaps that is not required in Alabama. I do not know.

Do you have a license from the State?

Mr. McDANIEL. Not an assay license.

Mr. LANIGAN. Do you know whether or not the State of Alabama issues assay licenses?

Mr. McDANIEL. As far as I know, the State of Alabama does not issue assay licenses.

Mr. LANIGAN. Now, when these envelopes came in the latter part of 1953, you said you received 28 samples. As I recall, each sample was in 2 envelopes; is that correct?

Mr. McDANIEL. That is correct.

Mr. LANIGAN. How were the envelopes attached together?

Mr. McDANIEL. The two envelopes were tied together in a single package with a string.

Mr. LANIGAN. Was there any identification on each envelope?

Mr. McDANIEL. Yes, sir. There were metal tags on each envelope.

Mr. LANIGAN. What did the identification show?

Mr. McDANIEL. Only the sample number.

Mr. LANIGAN. Just the sample number. It did not show or purport to show from which mine it came, or otherwise identify the material; is that correct?

Mr. McDANIEL. No other identification except the sample number.

Mr. LANIGAN. And you assayed the material in the envelopes by the sample number?

Mr. McDANIEL. By the sample number.

Mr. LANIGAN. Now, did the package in which the envelopes came to you indicate who had sent them to you?



Mr. McDANIEL. I don't remember any details as to the marking on it, but, to my best recollection, they were shipped by D. Ford McCormick.

Mr. LANIGAN. At that time did you know that the Bureau of Mines was interested in the samples?

Mr. McDANIEL. I was later informed that they were.

Mr. LANIGAN. When were you so informed?

Mr. McDANIEL. After Charles and Herbert McDonald returned from Oregon after these samples were taken, they told me that the samples were taken by D. Ford McCormick, representing them, and the Bureau of Mines representative.

Mr. LANIGAN. Was that before or after the assay reports had been made?

Mr. McDANIEL. That was after the assay reports had been made.

Mr. LANIGAN. That is all.

Mr. REDWINE. Mr. McDaniel, an assay scale is a very delicate instrument, is it not?

Mr. McDANIEL. It is.

Mr. REDWINE. Now, a gold assay weight and a silver assay weight are different, are they not?

Mr. McDANIEL. No; the same weights would be used.

Mr. REDWINE. Does not a silver assay weight weigh one gram and a gold assay weight weigh one-half gram? Is that not practice in assay houses, sir, to work your computations out?

Mr. McDANIEL. Well, it would be a heck of a rich ore if it required weights of one gram and one-half gram to weigh the buttons.

Mr. REDWINE. How do you weigh it then? What weights do you use?

Mr. McDANIEL. Well, an ore of \$35 a ton gold value, now the button only has a weight of 1 milligram. A milligram is one-thousandth of a gram. A gram is  $\frac{1}{454}$  of a pound.

Mr. REDWINE. Mr. McDaniel, are you familiar with the Sampling and Assay of the Precious Metals by E. A. Smith?

Mr. McDANIEL. I am not.

Mr. REDWINE. I would like to say for the record at this point that the Library of Congress has informed the staff that it is the bible for assaying.

Representative HOFFMAN. I want to object, Mr. Chairman, unless we have the gentleman from the Library of Congress who will tell us about it and testify as to the accuracy of the information he is about to give us. That is in line again with the ruling when the Senator offered the statement a moment ago from the Department of the Interior.

Mr. REDWINE. Smith says, in the Sampling and Assay of the Precious Metals:

#### ASSAY WEIGHTS

In assaying silver and gold bullion, a special decimal series of weights may be employed in which the unit for silver assay weights is one gramme, which is stamped "1000", and for gold assay weight is  $\frac{1}{2}$  gramme, which also is stamped "1000". The decimal subsidiary weights are stamped as follows: \* \* \*

Then he goes on to say that you must use the utmost care in using these weights because one is twice as heavy as the other.

I wonder if in the early experience in assays of the Williams Co. they used one weight instead of the other, because they are about

double in their value. That is why I asked about the type of weights which you used.

Mr. McDANIEL. We used our regular laboratory weights, which we checked against the standard weights of which we have certificates from the United States Bureau of Standards at frequent intervals.

Senator GOLDWATER. Might I ask, Mr. Redwine, when that book was published?

Mr. REDWINE. 1946. This is the second edition, however, Senator.

Senator GOLDWATER. When was it first published?

Mr. REDWINE. 1851, I believe. That is my recollection. Yes, 1851.

Senator GOLDWATER. And did the author use the word "may"?

Mr. REDWINE. Yes, sir.

Senator GOLDWATER. He did not use the word "shall"?

Mr. REDWINE. No.

Senator SCOTT. Senator Neuberger?

Senator NEUBERGER. Mr. Chairman, just in fairness to the Chair, and I do not think that this was brought out in the confusion earlier, I think that, before we recess for lunch, it should be made part of the record that the carbon copy of the typewritten statement submitted by the distinguished Senator from Arizona, a nine-page statement under the title "The Rule As To What Constitutes a Valid Discovery of Mineral Sufficient To Support a Mining Location," does not contain on it any identification as to which Government department it is from, as to what official of the department wrote it, or as to what date it was prepared.

I think that that should be on the record because I think that is very pertinent to the chairman's ruling.

This is a paper which purports to give legal information about some very technical points with respect to supporting patents for mining claims, and there is no identification whatsoever as to its author, the date of its authorship, or the authority behind it.

I do think that that should be on the record.

Senator GOLDWATER. It is certainly all right with the Senator from Arizona that anything the Senator from Oregon wants to put on the record ought to go on. I think that that privilege has been extended to Senators. I have already said that I will abide by the ruling of the Chair and await the testimony of the Solicitor to present this document which I have been later informed was prepared by Mr. Bradshaw, who has been long associated with the Mining Division of the Department of the Interior.

Senator SCOTT. At this time I want to recognize the Congressmen who are with us. I think that most of you know them.

Congressman Jonas from North Carolina, from my State, will you stand, please, just to be recognized.

Congressman Minshall from Ohio.

Representative HOFFMAN. That is where the presidents come from.

Senator SCOTT. And gold, too. Is that what you said?

We have Congressman Moss from California and Congressman Hoffman.

Will you stand again, Mr. Hoffman?

Representative HOFFMAN. I will be around. Do not worry.

Senator SCOTT. I know that. We have Congressman Chudoff, the chairman of the House subcommittee.

It is now 5 minutes past 12 o'clock.

Without objection, suppose we meet back here, if it is agreeable, at 5 minutes past 2.

Are there any further questions of this witness?

Representative HOFFMAN. Yes; certainly.

Senator SCOTT. He will be back here this afternoon.

Representative HOFFMAN. Three counsel have interrogated him this morning and we have not gotten to the Congressmen.

Senator SCOTT. We will be in recess until 5 minutes after 2 o'clock this afternoon.

(Whereupon, at 12:05 p. m., the hearing was recessed, to reconvene at 2:05 p. m. of the same day.)

#### AFTERNOON SESSION

Senator SCOTT. The meeting will please come to order.

We are honored by having an additional Congressman here this evening.

Mr. Jones, will you sit with us.

I will ask Mr. Coburn if he will go ahead with the witness.

Mr. COBURN. Mr. Chairman, I have no further questions. I understood that some of the Congressmen had questions to ask.

Congressman Chudoff has questions to ask.

Senator SCOTT. Do any of the Congressmen have questions to ask of the witness?

Representative CHUDOFF. Congressman Jonas has some questions.

Representative JONAS. I have one or two questions.

#### TESTIMONY OF J. A. McDANIEL, ASSAYER, A. W. WILLIAMS CO.—

##### Resumed

Representative JONAS. Mr. McDaniel, I understood this morning that the samples you assayed in 1949 amounted to 26, and that the latest group contained 28 samples? How many were in the second group?

Mr. McDANIEL. To my best recollection, 46 samples.

Representative JONAS. In that report of November 18, 1949, based upon your examination of 26 samples, you found that the returns ranged from \$2.25 per ton to 90 cents per ton. Is that a wide range for this sort of sampling, do you know out of your experience?

Mr. McDANIEL. Well, I have personally seen some low-grade ore deposits in East Alabama where at one spot there were probably \$5 worth of mineral per ton in ore, and at a spot a foot away from that it would only be country rock and it would be absolutely valueless.

Representative JONAS. The fact that in that 1949 batch of samples you found the returns would range from \$2.25 down to 90 cents would indicate that the mineralization was not consistent throughout the entire area, and that certain spots were more rich in minerals than others?

Mr. McDANIEL. That is what the report would indicate.

Representative JONAS. That was apparent from your last sampling, was it not, when the range was from \$4.85 down to 79 cents?

Mr. McDANIEL. It does.

Representative JONAS. Would I be safe in assuming then that if another batch of samples were taken, the result would depend upon

where they get the samples, from some of the lower yield areas or from some of the higher yield areas? Is that not true?

Mr. McDANIEL. Yes, that would be true.

Representative JONAS. You said this morning that some of the samples in the last group were less than 2 tons. How far below 2 did those that did not come up to 2 tons run?

Mr. McDANIEL. To my best recollection, all of the samples that did not come up to a total of 2 assay-tons came up to  $1\frac{3}{4}$  assay-tons or more. It would be between  $1\frac{3}{4}$  and 2 assay-tons.

Representative JONAS. Will you please turn to that folder you had in your hand and explain to the committee something about the organization to which the Williams Co. belongs. What is that organization? Is it a trade association, or what is it?

Mr. McDANIEL. Yes, sir. It is somewhat of a trade association. My immediate supervisor, Mr. Morris Miller, is present here. He is a member of some of the committees of this organization and I feel that he can explain.

Representative JONAS. Will he know more about that than you?

Mr. McDANIEL. He would know more about that organization than I do.

Representative JONAS. You are more of a technical man engaged in engineering and chemical analysis work, and you do not run the company?

Mr. McDANIEL. I do not run the company. My job there is running the chemical laboratory and the metallurgical section. I help get work, solicit work, and my job is after the samples get in or we get various jobs. My job is getting the work out and into the reports.

Representative HOFFMAN. Mr. Chairman, will you yield?

Is the gentleman referred to here in the room? May we have him as a witness, Mr. Chairman.

Senator SCOTT. Mr. Miller is to be called.

Representative JONAS. He is to be called.

Mr. McDANIEL, will you be seated, please, sir?

As you look back over the work you did in 1953 in assaying these samples, do you have any reason now even in retrospect to think that you failed to give a good, complete and accurate analysis of the samples that were submitted to you?

Mr. McDANIEL. No, sir; I do not. I gave an accurate assay of the samples as submitted to me.

Representative JONAS. And you personally supervised all of the work that went into the assay?

Mr. McDANIEL. Yes, sir. I either personally did the work or supervised it.

Representative JONAS. Did you give a complete and full analysis or did you bypass any steps? Do you think the work was complete in every respect and that the results you submitted were accurate?

Mr. McDANIEL. Yes, I do.

Representative JONAS. And you are willing to assume the responsibility out of your experience as a chemical engineer and out of the other experience you have had in this field of saying that those analyses you made in December of 1953 were correct and the results correctly reflect what you found from the samples as submitted to you?

Mr. McDANIEL. I do.

Representative JONAS. That is all.

Representative CHUDOFF. Do you have any questions, Mr. Hoffman?  
Representative HOFFMAN. Yes.

Counsel, I think, used your name and that of one of the McDonalds in connection with the term "joint venture".

Were you ever in any joint venture with any of the McDonalds, and, if so, what was it?

Mr. McDANIEL. Yes. I went up into Mississippi on a prospecting trip with them.

Representative HOFFMAN. That was that nickel business?

Mr. McDANIEL. That was that nickel business.

Representative HOFFMAN. How were you hooked up with McDonalds in that?

Mr. McDANIEL. We went up there with this understanding.

Representative HOFFMAN. With what?

Mr. McDANIEL. We made that trip with this understanding: that if we found anything that was worth developing, I would have an interest in it.

Representative HOFFMAN. You might go into it.

Mr. McDANIEL. We might go into it.

Representative HOFFMAN. You found that, in your opinion, it was not worth anything?

Mr. McDANIEL. What we found on that trip was not worth anything.

Representative HOFFMAN. So you did not go into it.

Mr. McDANIEL. We haven't gone into it any further.

Representative HOFFMAN. You just dropped it right there. Did you make any money? Did you lose any money?

Mr. McDANIEL. We spent about \$25 or \$30 expenses.

Representative HOFFMAN. How much?

Mr. McDANIEL. About \$25 or \$30.

Representative HOFFMAN. That was your expense for going up there?

Mr. McDANIEL. That was both of us.

Representative HOFFMAN. You had a good time, did you not?

Mr. McDANIEL. We got a lot of exercise.

Representative HOFFMAN. You got experience and saw the country?

Mr. McDANIEL. We saw the country.

Representative HOFFMAN. Was that the extent of what counsel refers to as a joint venture?

Mr. McDANIEL. Yes.

Representative HOFFMAN. Now, did you ever do any work for GSA?

Mr. McDANIEL. I do.

Representative HOFFMAN. What did you do for them?

Mr. McDANIEL. Well, I handled various analyses. I have analyzed some bauxite.

Representative HOFFMAN. More than once?

Mr. McDANIEL. Well, our company held a contract for sampling and analysis of bauxite for about 18 months at 1 time.

Representative HOFFMAN. Were you connected with the Williams Co. at that time?

Mr. McDANIEL. With the Williams Inspection Co.?

Representative HOFFMAN. Yes.

Mr. McDANIEL. Yes.

Representative HOFFMAN. You were working for them and did this work under a contract that they had with GSA?

Mr. McDANIEL. That is correct.

Representative HOFFMAN. After this contract expired, GSA was satisfied enough so that they hired you again?

Mr. McDANIEL. That is, after the first contract, which ran for 6 months, expired they extended the contract. We got another contract for another year.

Representative HOFFMAN. They did not do any complaining about your work, did they?

Mr. McDANIEL. We did not receive a single complaint.

Representative HOFFMAN. What?

Mr. McDANIEL. The company did not receive any complaints regarding our work during that period.

Representative HOFFMAN. How many times has Williams Co., while you were associated with them, worked for GSA?

Mr. McDANIEL. Offhand, Congressman Hoffman, I can't say how many times.

Representative HOFFMAN. How many?

Mr. McDANIEL. Offhand, I can't say, but I know of a half dozen occasions when we have received paint samples, and then we have these bauxite contracts.

Representative HOFFMAN. Are you doing any business, making any tests, for GSA at the present time under some subcontract?

Mr. McDANIEL. We are not making any chemical analyses. We are sampling bauxite under a subcontract for GSA.

Representative HOFFMAN. That is to say, your reputation is still good enough with GSA so that they are still hiring you?

Mr. McDANIEL. Yes.

Representative HOFFMAN. Have you done anything for any of the large aluminum companies?

Mr. McDANIEL. For 4 years our laboratory sampled bauxite for Reynolds Aluminum Co., Reynolds Metals Co.

Representative HOFFMAN. What kind of a company is that as to size?

Mr. McDANIEL. Well, I would say in the aluminum industry the company is next in size to the Aluminum Company of America.

Representative HOFFMAN. I do not know anything about that, so that I still do not know how big it is. Is it one of the larger ones or medium?

Mr. McDANIEL. It is one of the larger ones.

Representative HOFFMAN. Was the service which you have rendered for the Reynolds Co. satisfactory?

Mr. McDANIEL. It was.

Representative HOFFMAN. How long did your experience cover with them? Did you say?

Mr. McDANIEL. Approximately 4 years.

Representative HOFFMAN. Have you ever at any time had any reason from GSA to believe that your services were not satisfactory to them?

Mr. McDANIEL. No, I have not.

Representative HOFFMAN. I think that is all I have from this witness.

Representative CHUDOFF. Mr. Minshall, do you have questions?

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Mr. McDANIEL. No, I have not.

Representative HOFFMAN. I think that is all I have from this witness.

Representative CHUDOFF. Mr. Minshall, do you have questions?



Representative MINSHALL. I have no questions at this time.

Representative CHUDOFF. Mr. Jones?

Representative JONES. I have no questions.

Representative CHUDOFF. I have no further questions. There are no questions from Members of the House at this time, Mr. Chairman.

Mr. REDWINE. Mr. Chairman, it had been intended by the staff that this letter be read into the record in connection with the testimony of another witness. In view of the fact that this witness has brought in the question of the General Services Administration contracts held with the A. W. Williams Co., I suggest that this letter be read at this time.

Representative HOFFMAN. What was the letter?

Senator SCOTT. General Services Administration, Emergency Procurement Service.

Representative HOFFMAN. Pardon me, Mr. Chairman, but may we not have the General Services Administration man who wrote the letter, following the ruling of this morning? I do not even know about that.

Senator SCOTT. This letter is signed.

Representative HOFFMAN. I do not know anything about his signature. Does anybody here know that that is the signature of the man from the General Services Administration?

I would not be technical about it but, in view of the ruling of this morning, I want to follow the precedent.

Senator SCOTT. The one this morning had no signature or date or identification.

Representative HOFFMAN. It was not worth a tinker's darn except that it was vouched for by a Senator.

Senator SCOTT (reading):

SEPTEMBER 28, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

DEAR SENATOR MURRAY: We submit below a report on service contracts which we have had with A. W. Williams Inspection Co. of Mobile, Ala., as requested by your letter of September 22, 1955.

This agency awarded three sampler-analyst service contracts to this company for evaluating mineral ores purchased by the United States Government as follows:

1. Contract SCM-TS-12743 covering metallurgical bauxite at the port of Mobile was awarded February 8, 1948, and expired June 30, 1949.

2. Contract SCM-TS-16815 covering both metallurgical and abrasive grade bauxite at Mobile was awarded July 25, 1949, and expired June 30, 1950.

3. Contract GS-OOP-7197 (SCM) covering metallurgical grade chrome ore at Gulf Ports of Mobile, Ala., New Orleans, La., and Gulfport, Miss., was awarded April 17, 1953, and expired June 30, 1954.

Many of the assay reports on imported bauxite by the Williams laboratory were questioned by the contractors supplying the bauxite and, as a result, such reports had to be umpired for settlement purposes. In each instance the umpire proved the Williams laboratory results were incorrect. Portions of the same bauxite samples were sent to each of the three firms holding service contracts at that time to determine the difference in their analytical results. This study indicated the Williams laboratory results were quite divergent in both directions on the premium and penalty determinations and were erratic on the other impurities.

Due to insufficient and inexperienced samplers being furnished to handle the first of two cargoes of Turkish chrome ore sampled at Gulfport, Miss., nine cars were shipped without sampling and had to be sampled at destination. Also the screen determination for the whole first cargo was made improperly and had to be umpired at the stockpile site in Kentucky, with the Government losing

the umpire decision. In addition, the Williams assay report was determined by umpire to be over 1 percent high in chromic oxide and  $1\frac{1}{2}$  percent high on iron content. The chemical analysis also had to be umpired on the second cargo of chrome ore.

The contracts were in effect for the full term of performance as awarded on an "as required" basis and were no terminations.

Very truly yours,

A. J. WALSH, *Commissioner*.

Representative HOFFMAN. Now, Mr. Chairman, may I have the letter and then may we have the writer of the letter up here to see what he knows about it? And may we have the other man who made the analysis and found that, in his opinion, these gentlemen were in error?

Senator SCOTT. I would like to ask the witness if he still says that there were no complaints?

Mr. MILLER. Mr. Chairman, as the supervisor——

Senator SCOTT. I am talking to the witness at the table, Mr. McDaniel.

Mr. McDANIEL. Repeat your question, please.

Senator SCOTT. Do you still say that there were no complaints, so far as you know, in regard to your work down there?

Mr. McDANIEL. Well, since that letter was written in that has been read here, there was no complaint during the life of the contracts. At least I never heard of any then, although I had been advised that something may come up about this matter and it would be wise to prepare.

Senator SCOTT. Did you know that the umpire samples had to be redone?

Mr. McDANIEL. We were not advised at any time.

Senator SCOTT. Did you know that any of these shipments were diverted because they felt that it was not done properly?

Mr. McDANIEL. No, sir.

Senator SCOTT. I will read again a part of the letter:

Due to insufficient and inexperienced samplers being furnished to handle the first of 2 cargoes of Turkish chrome ore sampled at Gulfport, Miss., 9 cars were shipped without sampling and had to be sampled at destination. Also the screen determination for the whole first cargo was made improperly and had to be umpired at the stockpile site in Kentucky, with the Government losing the umpire decision. In addition, the Williams assay report was determined by umpire to be over 1 percent high in the chromic oxide and  $1\frac{1}{2}$  percent high on iron content. The chemical analysis also had to be umpired on the second cargo of chrome ore.

Mr. McDANIEL. I was not working for the Williams Inspection Co. at the time the first cargo was handled. I was working for them at the time the second cargo was handled.

Senator SCOTT. Did you say a minute ago that you did not know anything about it?

Mr. McDANIEL. Well, I said I had no knowledge of complaints; that is, we have never received a complaint directly from GSA.

Senator SCOTT. Suppose you tell us just what you do know about it.

Mr. McDANIEL. All right. I would like to read this statement into the record.

Representative CHUDOFF. Mr. Chairman, before the witness reads a statement, I want to give him an opportunity to correct what he said before.

When Congressman Hoffman asked you about the GSA hiring you and that they thought enough about you to hire you on 3 or 4 additional occasions, you did not really mean that. You just did not think when Mr. Hoffman asked you that question.

Representative HOFFMAN. Wait a minute. Let the witness say. I had the witness. You took him out of my hands.

Go ahead. When it comes my turn again, we will straighten it out for you.

Representative CHUDOFF. Did you really mean that?

Suppose we answer the question.

Mr. McDANIEL. I really meant that because we received samples from various GSA offices throughout the country now for our analysis.

Representative CHUDOFF. What you are telling us is that you believe your work so superior that the GSA came to you every time they had an opportunity?

Representative HOFFMAN. You did not say any such thing.

Mr. McDANIEL. I did not say on every opportunity, but on a number of occasions.

Representative CHUDOFF. I understand that you have a prepared statement to read. Is that on this question?

Mr. McDANIEL. On this bauxite deal.

Representative CHUDOFF. If you did not know anything about it, how come you prepared a statement?

Representative HOFFMAN. Know anything about what?

Representative CHUDOFF. He says he did not work for the Williams Co. when this assay was made on the first group of ores. Then he said that the GSA did think enough about him to give him more business.

Now he has a prepared statement to explain it.

If you did not know about complaints, how come you prepared a statement to explain the complaints?

Mr. McDANIEL. Well, for the simple reason, on this Mobile thing by Mr. Redwine, he asked me, "What do you know about the bauxite squawk?"

Representative CHUDOFF. All I am interested in getting from you, Mr. McDaniel, is the truth. You have been fencing. You are under oath and I do not think you are telling the truth.

Representative HOFFMAN. Wait a minute, Mr. Chairman.

Representative CHUDOFF. You talk when you get a chance.

Representative HOFFMAN. I object to any member of the committee charging a witness with not telling the truth. I say it is not the proper function of the member of the committee. That is unheard of.

Representative CHUDOFF. If you think he is telling the truth, you say so. I do not think he is telling the truth.

Representative HOFFMAN. That is not the way to treat a witness.

Representative CHUDOFF. You are not so naive, Mr. Hoffman, as to have a witness tell you he knows nothing about the problem and then ask to read a prepared statement about it. I was not born yesterday.

Senator SCOTT. Go ahead and read the statement.

Mr. McDANIEL. I had no idea that this matter would be brought up at this time, until Mr. Robert Redwine, on his visit to Mobile on December 18, 1955, asked me in his hotel room, "What do you know about the bauxite squawk?"

I told him that I had never heard of any "squawk" or complaint from the General Services Administration about the way the A. W. Williams Inspection Co. had sampled and analyzed the Government bauxite shipments during 1949 and the first 6 months of 1950, and he let this matter drop at that time.

Later, during the McDonald brothers' visit to Mobile, I learned that I should be prepared to testify about this matter also so I have prepared the following statement that I wish to read into the record of these proceedings:

The Shilstone Testing Laboratory of New Orleans, La. secured a contract from the GSA to sample and analyze cargoes of bauxite purchased by the United States Government and imported through the port of Mobile, Ala. To my best recollection, this contract started on July 1, 1949, and the A. W. Williams Inspection Co. subcontracted to sample the shipments dispatched to Mobile. While these shipments were being handled, I became acquainted with Mr. Lawrence Grant, who was an inspector stationed at the Fort Worth, Tex. regional office of the Federal Supply Service.

In the latter part of December 1949 or first part of January 1950, I was informed by Mr. G. F. Bailey that this company had secured the sampling and analysis contract for these shipments for the first half of 1950, and was requested to check our reagent stock shelves and apparatus supply and prepare the necessary orders to insure that fresh reagents and sufficient apparatus was on hand to expedite the analysis of bauxite in the laboratory.

Shortly after this incident, Mr. Grant visited the laboratory and I was called by Mr. Bailey to participate in a conference with him and Mr. Grant to discuss the analysis of bauxite.

Mr. Grant informed us that our contract would include the sampling and analysis of both the chemical and metallurgical grades of bauxite. The metallurgical grade was to be shipped from Bentan in the Dutch East Indies and Billiton in the Surinam District of Dutch Guiana. The supplier was the Mining Equipment Corp. whose principal offices in the United States were located in New York City. The chemical grade bauxite was to be supplied by American Cyanamid Co. and would be shipped from Edgeton to Mobile. We discussed analysis methods to be used in this work and Mr. Grant said that he would supply them.

Mr. Grant had in his possession a number of file folders that contained copies of analysis reports on previous shipments of bauxite that had been submitted by other laboratories.

As the conference was ending, Mr. Grant went into these files and prepared a sheet for us that contained a maximum and minimum content of the various constituents of the bauxite that was to be analyzed in the Williams' laboratory. He further cautioned us to be extremely careful in reporting analytical results that fell outside of these limits, and when we had results to fall outside of the supplied limits, to run a second set of tests in duplicate to check our first results before reporting the tests.

A few days later, a set of directions for the analysis of bauxite was sent by Mr. Grant. These were in the form of 6 or 7 mimeographed sheets and, according to the heading, were prepared in the United States Customs Laboratory, New Orleans, La., and was signed by one of the chemists in that laboratory whose name I do not recall.

I had a later occasion to check these methods against those contributed by Dr. H. V. Churchill of the Aluminum Co. of America for publication in Standard Methods of Analysis by Scott, fifth edition, D. Van Nostrand & Co., and found that both sets of methods were identical. These directions were followed strictly in all analyses of bauxite performed by myself and other chemists on samples of bauxite in the A. W. Williams Inspection Co. laboratory in the performance of United States Government sampler-analyst contracts.

On subsequent visits of Mr. Grant to our laboratory before supervision of the unloading of these cargoes was transferred to the Atlanta, Ga. office of the General Services Administration with Mr. Lewis C. Varnadoe being assigned as inspector, Mr. Grant was questioned about whether our analytical results were satisfactory or not and his reply to us was to the effect that portions of sample submitted to the Federal Supply Service, as required by our contract, had been analyzed in United States Government operated laboratories and their results had checked with ours.

The results of all analyses of Government bauxite were compared before submission with the list of limits furnished us by Mr. Grant, and if our results were outside these limits, a duplicate set of necessary analyses was run, and if these results were still outside the limits, the average of the four tests were reported.

All analytical work on Government analyst contracts in the A. W. Williams Inspection Co. laboratory was performed by myself and Mrs. W. A. Frantzen until her resignation in September 1949, and with assistance from Mr. E. C. Ricks after May 1, 1950; both were graduate and experienced chemists.

The alumina and silica content on most of these samples was determined independently by two chemists who did not compare notes with each other until the analysis was completed.

Representative CHUDOFF. Mr. McDaniel, will you hold up for one second?

I want to ask this gentleman here, isn't that one of the attorneys for the Interior Department?

Mr. J. D. PARRIOTT (Solicitor's Office, Department of the Interior). Yes.

Representative CHUDOFF. Did you prepare the statement this gentleman is reading?

Mr. PARRIOTT. No, I didn't.

Representative CHUDOFF. You distributed it to the press?

Mr. PARRIOTT. Yes.

Representative CHUDOFF. Why are you distributing it to the press?

Representative HOFFMAN. Is that any of your business, why he is distributing something to the press? He is not under oath. He is not your witness.

Representative CHUDOFF. I am finding out why he is the errand boy for Mr. McDaniel.

Representative HOFFMAN. Because he is exercising the same right anybody has a right to exercise.

Representative CHUDOFF. Will you let him answer for himself?

Representative HOFFMAN. If you do not want me to answer for him and if I do not feel like it, yes. If I feel like it, I will answer.

Representative CHUDOFF. You can say anything you want, Mr. Hoffman.

Senator SCOTT. Will you answer the question?

Representative HOFFMAN. You have been making charges here, and so is the chairman.

Senator SCOTT. Mr. Hoffman, you are out of order. I asked the gentleman to answer the question.

Representative HOFFMAN. I will be out of order again.

Senator SCOTT. You stay out of order a good deal of the time.

Representative HOFFMAN. I am not out of order as you were on the 25th of November when you distributed the statement against the Interior Department.

Mr. PARRIOTT. I saw the staff member distributing the letter prepared by the General Services Administration to the press, which I knew to exist. I knew that this statement was multigraphed, so I distributed it to the press.

Representative CHUDOFF. Were you asked to do it, or did you volunteer?

Mr. PARRIOTT. I volunteered.

Representative CHUDOFF. To whom did you volunteer?

Mr. PARRIOTT. I went to Mr. Morris Miller, the head of the lab.

Representative CHUDOFF. You said, "Do you have copies of the statement? I want to give it to the press."?

Mr. PARRIOTT. Yes, I did.

Representative CHUDOFF. Do you feel that that is in your duty as counsel for the Interior Department?

Mr. PARRIOTT. I feel that certainly it is not outside of anything proper, Mr. Congressman.

Representative CHUDOFF. I did not say it was improper. I asked whether it was your duty. I am not accusing you of doing anything improper. I asked why you did it.

Mr. PARRIOTT. I feel it was pertinent.

Representative CHUDOFF. Mr. Hoffman insinuated that it might be improper.

Representative HOFFMAN. I did not insinuate that. I said that your conduct was improper. When you accuse a witness of falsifying his testimony, that is improper.

Senator SCOTT. Will you identify yourself for the record?

Mr. PARRIOTT. I am J. D. Parriott, Solicitor's Office.

Senator SCOTT. What is your title?

Mr. PARRIOTT. Associate Solicitor for the Public Lands Department of the Interior.

Senator SCOTT. It sort of borders on that same thing that we had out there where they tape-recorded those hearings, and none of us knew anything about it, including Congressman Hoffman. He had to point it out for us.

Representative HOFFMAN. What did you say?

Senator SCOTT. I mentioned tape recording out there in Oregon when I had been invited out there as a guest of Secretary McKay time after time, and I got out there and the first public statement I made I find was being tape recorded. I did not think that was much of a reception that we had out there in Oregon on my first visit to the State. Still, that is the way it was.

It was taped in a back room and Mr. Hoffman and his secretary had to find it and call it to our attention. Both agreed that it was all right if they wanted to do it. This is all right if you want to do

it, but let us do it in the orderly fashion and give the whole story when we give part of it.

What interests me in this thing is that I understood him to say that he is doing it on his own volition. So did the man out there say that he was doing it on his own volition. He did not have time to confer. He saw that he was in a muddle out there so he had to say he was doing it on his own volition. Yet he was the public relations man for the Department of the Interior and we were meeting in their building as their guests.

I do not think that we have any right to tap telephones here in Washington to get information from one office to another as to what they are doing. I never did think that that was right. I do not think that it is right now, but they are doing it now. They may be recording this. I do not know.

I see a lot of buttons here. Whatever they are taking down is all right with me. I will stand on my own. You do not have to do anything like that so far as I am concerned.

Representative JONES. I wonder if it would be in order to make inquiries of the witness about the preparation of this statement which he has prepared at this time. Would it be in order, sir?

Senator SCOTT. Yes.

Senator GOLDWATER. Would you yield for a moment?

Mr. Chairman, I would like to ask that the gentleman who was seated at the end of the table who distributed the GSA letter to the press identify himself.

Mr. PERLMAN. I am staff director for the Subcommittee on Public Works and Resources, which is participating in this hearing.

Representative CHUDOFF. He is part of my staff.

Senator GOLDWATER. He is part of the prosecution?

Representative CHUDOFF. It depends on whose ox is being gored.

Senator SCOTT. Senator, that letter was already in the record.

Senator GOLDWATER. It was distributed to the press.

I feel that the Department of the Interior, being charged in this instance, has the perfect right to present evidence if they want to do so.

Representative HOFFMAN. That right has not been acknowledged or admitted, Senator, heretofore.

Senator SCOTT. What I would like to know is why the Department of the Interior is representing the A. W. Williams Co.

In fact, you mentioned some time ago that somebody, and I did not get the name, came to you and said that you had better be ready for a hearing. They did not say, "Get your ducks in a row," but you have them that way.

Who helped you prepare that?

Mr. McDANIEL. This statement was prepared by myself with the assistance of Mr. Morris Miller, the laboratory supervisor.

Senator SCOTT. Anyone else?

Mr. McDANIEL. No.

Senator SCOTT. You are sure of that?

Mr. McDANIEL. I am sure of that. It has been checked.

Senator SCOTT. When was it turned over to the Department of the Interior?

Mr. McDANIEL. It was not turned over to the Department of the Interior until maybe just a few minutes ago when Mr. Miller gave duplicate copies to Mr. Parriott.

Senator SCOTT. Where did you get the duplicates?

Mr. McDANIEL. Well, these were prepared, these duplicates were prepared in Mobile. We brought them up on the plane with us.

Representative HOFFMAN. Mr. Chairman, might I suggest that perhaps that is a proper subject for examination by the Moss committee.

Senator SCOTT. May we have copies?

Mr. McDANIEL. I will give you copies when I finish reading it.

Senator SCOTT. It is interesting that other folks get copies before we do, but that has been done.

Representative JONES. May I ask a few questions relative to the questions which you have raised?

Senator SCOTT. Yes.

Representative JONES. When was that statement prepared, Mr. McDANIEL?

Mr. McDANIEL. This statement was prepared last week.

Representative JONES. When last week?

Mr. McDANIEL. From Monday until Thursday.

Representative JONES. Who helped in the preparation of that statement?

Mr. McDANIEL. Mr. Morris Miller.

Representatives JONES. Did you transmit a copy of that to the Department of the Interior prior to 12 o'clock today?

Mr. McDANIEL. I have not personally.

Representative JONES. Do you know whether or not any of your supervisors or those officials of the Williams Co. transmitted a copy to any of the agencies of the Department of the Interior?

Mr. McDANIEL. Mr. Miller may have.

Representative JONES. Do you know of your personal knowledge as to whether or not this statement had been transmitted, mailed, or communicated either directly, or the substance of it, to the Department of the Interior or any of its agencies?

Mr. McDANIEL. I didn't see one mailed.

Representative JONES. I did not ask you that question, Mr. McDANIEL. I asked you whether or not, from your own knowledge, that information had been communicated to the Department?

Mr. McDANIEL. I think it was.

Representative JONES. And at what time was that sent to the Department of the Interior and what method of communication was used by the Williams Co. or any of its agencies to communicate to the Department of the Interior the substance of the statement that you are making to the committee at this moment?

Mr. McDANIEL. If it was sent ahead of our arrival in Washington, it was sent by mail.

Representative JONES. Well, then, as a matter of fact, the Department of the Interior did know the substance of your statement prior to the issuance of the statement to the press just a few minutes ago?

Mr. McDANIEL. They did.

Representative JONES. Yes. And with whom have you discussed this in the Department of the Interior? Have you discussed it with Mr. Parriott?



Mr. McDANIEL. I have.

Representative JONES. Prior to your testimony here today?

Mr. McDANIEL. Yes.

Representative JONES. And on what occasions, and what was the time when you had this discussion with Mr. Parriott?

Mr. McDANIEL. This morning in his office.

Representative JONES. Did he concur in the statement that you have made in your prepared statement that you are giving by way of explanation?

Mr. McDANIEL. No comment.

Representative JONES. He has no comment.

Did you communicate with any other official of the Department of the Interior prior to your being a witness here today regarding the subject matter upon which you are testifying?

Mr. McDANIEL. No.

Representative JONES. Then the only person that you talked with this morning was Mr. Parriott in his office at the Department of the Interior?

Mr. McDANIEL. I talked with Mr. Miller, who is the Associate Director, in regard to the Al Sarena mines, but not in regard to this bauxite.

Representative JONES. What was the subject of your discussion at that time?

Mr. McDANIEL. The Al Sarena mines case.

Senator SCOTT. They have been coaching you as to what to say; is that right?

Mr. McDANIEL. No, sir.

Representative CHUDOFF. Mr. Jones, would you yield at that point? I want to ask one question.

Did you go to the Department of the Interior voluntarily or did they solicit you to come to see them?

Mr. McDANIEL. Well, we were asked to come down.

Representative CHUDOFF. Who asked you to come down?

Mr. McDANIEL. Mr. Parriott.

Representative CHUDOFF. Did he call you on the telephone?

Mr. McDANIEL. Yes; we were called on the telephone.

Representative CHUDOFF. Were you called long distance?

Mr. McDANIEL. Long distance.

Representative CHUDOFF. When did he call you?

Mr. McDANIEL. He called Mr. Miller sometime last week and Mr. Miller conveyed the information to me.

Representative CHUDOFF. You did not talk to him personally?

Mr. McDANIEL. I didn't talk to him.

Representative CHUDOFF. Mr. Miller talked to him?

Mr. McDANIEL. Mr. Miller talked to him.

Representative CHUDOFF. That is all.

Thank you.

Representative JONES. You said you talked with the Associate Director. The Associate Director of what?

Mr. McDANIEL. Bureau of Mines.

Representative JONES. What was the time of that conversation and where did it take place?

Mr. McDANIEL. It took place in his office between 7:30 and 8:30 this morning.

Representative JONES. Between 7:30 and 8:30. Did he review the statement that you have just uttered?

Mr. McDANIEL. No.

Representative JONES. Did you tell him the substance of your statement?

Mr. McDANIEL. No.

Representative JONES. What was discussed between you and Mr. Miller and the Associate Director of the Bureau of Mines?

Mr. McDANIEL. Assaying procedures of gold and silver ores.

Representative JONES. You did not discuss any aspect of the case in which you are testifying today?

Mr. McDANIEL. No. All we discussed was assaying procedures of gold and silver ores.

Representative JONES. Who was present besides Mr. Miller on this meeting this morning? Was Mr. Parriott there?

Mr. McDANIEL. Part of the time.

Representative JONES. Were any of the associates of the Williams Co. there?

Mr. McDANIEL. Not while I was discussing assaying procedures. Mr. Morris Miller was in another office there.

Representative JONES. But Mr. Parriott, the assistant counsel, knew the substance of your testimony and had seen that statement that you have before you at the moment?

Mr. McDANIEL. Yes.

Representative JONES. Did anyone help edit that statement that you have?

Mr. McDANIEL. No one other than Mr. Morris Miller, my supervisor.

Representative JONES. Mr. Morris Miller is an official with the Williams Co.?

Mr. McDANIEL. That is correct.

Senator SCOTT. Did they have you change anything at all that you had up to that time?

Mr. McDANIEL. No.

Senator SCOTT. I would like to ask this question:

Did they advise you to change anything?

Mr. McDANIEL. No.

Senator SCOTT. I would like to ask this further question. I have worked with and out of Government for a long time, but do you not think it is a little unusual for a Government worker to be moving around at 7 o'clock in the morning? That is not a common disease around here.

Representative HOFFMAN. Not under the last two administrations, it has not been. They are working now.

Mr. McDANIEL. Well, I have no knowledge of the regular office hours that are kept by Government employees in Washington.

Senator SCOTT. The press has asked for copies of this letter. I am asking Mr. Perlman to distribute them to you.

Representative CHUDOFF. Mr. Chairman, is Mr. Miller here? Is he going to be called as a witness?

Senator SCOTT. Yes.

Representative JONES. When was the first moment that you thought that such an explanation would be in order?

Mr. McDANIEL. When Mr. Redwine came down on December 18, 1955, and called me to his hotel room and asked me what I knew about the "bauxite squawk."

Representative JONES. That is the first time that you felt that Mr. Redwine was apprehensive of the activities of the Williams Co. with respect to making assays for the General Services Administration?

Mr. McDANIEL. Yes.

Representative JONES. So you felt that you would be called upon for a detailed explanation as to the practices of the Williams Co. with respect to making an analysis on the ore in question?

Mr. McDANIEL. That is correct.

Representative JONES. So that, for that reason, you made the detailed analysis that you are giving to the committee today. Did you make any inquiry of Mr. Redwine in your conversation with him about what was needed in that explanation?

Mr. McDANIEL. No; because he only asked me the one question; and, if he recalls my answer, I think I am pretty sure that he asked me, "What do you know about the bauxite squawk?" and my answer to him was, "As far as I know, the Williams Co. has never received one," or something to that effect.

Is that not correct, Mr. Redwine?

Mr. REDWINE. I am not on the stand, Mr. Chairman. I will be glad to take the stand, though.

Representative JONES. Is he going to finish the statement?

Senator SCOTT. Proceed.

Mr. McDANIEL. I am going to start this statement reading at the beginning of the paragraph in which I was interrupted by the questioning.

All analytical work on Government analyst contracts in the A. W. Williams Inspection Co. laboratory was performed by myself and Mrs. W. A. Frantzen until her resignation in September 1949, and with assistance from Mr. E. C. Ricks after May 1, 1950; both were graduate and experienced chemists.

The alumina and silica content on most of these samples was determined independently by two chemists who did not compare notes with each other until the analysis was completed and the report was to be compiled. In all cases the results reported by the individual chemist checked within reasonable tolerances. In the case of alumina this tolerance was 1 percent and silica was 0.5 percent.

These tolerances were reported to us by chemists of the Aluminum Company of America and Reynolds Metal Co. as the limits of the most probable error determined by statistical methods applied to the many hundreds of bauxite analyses performed in their laboratories.

Tests on other than alumina and silica on these samples were made by only one of our chemists, in duplicate, and these duplicate results invariably checked within close limits.

All determinations were made in accordance with the analytical methods furnished us by Mr. Grant as the official methods to be used by us in the performance of this contract.

I do not recollect any instance of being called on the carpet or criticized in any way on account of my analytical work on the Government bauxite samples.

In the periods that I was employed by the A. W. Williams Inspection Co. during the 4 years that the Reynolds Co. employed us for sampling their cargoes, I know of numerous occasions that exceptions were taken by Reynolds and the umpire samples were shipped to another laboratory, having packed these samples for shipments personally in a number of instances.

On January 2, 1956, Mr. L. C. Varnadoe, chief inspector for the Atlanta regional area, was in Mobile, Ala., in connection with the sampling of a cargo of Government bauxite. The Shilstone Testing Laboratory of New Orleans holds the contract for this work at the present time, and we perform the actual sampling under a subcontract arrangement. Insofar as we know, the General Services Administration is aware of this.

While in Mobile, Mr. Varnadoe was asked if he was satisfied with our services. He stated that he had supervised the inspection of all Government bauxite handled under GSA contracts in Mobile, since about April 1949, that he was entirely familiar with our facilities, and that our services had at all times been satisfactory.

Mr. Varnadoe made these statements before Mr. Morris Miller, our laboratory manager; Mr. Frank Tusa, chief inspector for Shilstone Testing Laboratory, and me. He said that he was not authorized to issue any formal statement in matters of this kind, but that if he were subpoenaed by this subcommittee, he would testify under oath to the same effect since it was the whole truth.

Senator SCOTT. That is the statement?

Mr. McDANIEL. That is the statement.

Mr. COBURN. May I ask a question, Mr. Chairman?

Senator SCOTT. Yes.

Mr. COBURN. Mr. McDaniel, could I ask a question?

Is it your testimony that you know nothing about the Turkish chromite contract?

Mr. McDANIEL. It is my statement that while the first of those cargoes was being handled, that I was not employed by the Williams Inspection Co.

Mr. COBURN. Do you recall what the dates of the chromite contracts were?

Mr. McDANIEL. Well, on the first, I don't. The second was somewhere after the 24th of June 1953, after I was reemployed by the Williams Inspection Co.

Mr. COBURN. After June of 1953?

Mr. McDANIEL. Right.

Mr. COBURN. According to the letter from the General Services Administration which the chairman read into the record, and I think you heard the letter read, the dates are therein listed April 17, 1953.

Mr. McDANIEL. I was not employed by Williams at that time.

Mr. COBURN. To June 29, 1954. So that at some time during your employment A. W. Williams Inspection Co., you must have become aware of what was happening under that contract. Is that true?

Mr. McDANIEL. Well, yes. I performed some analyses on the second cargo that we handled on that.

Mr. COBURN. So you wish now to change your testimony from its original to what you are saying now?

As I recall your original testimony, you said you knew nothing about the Turkish diversion of cars.

Mr. McDANIEL. I said I knew nothing about the first cargo.

Mr. COBURN. Just the first cargo, in answer to Senator Scott's question.

Would you read back the question that Senator Scott asked him about this contract?

(The record was read by the reporter as follows:)

Senator SCOTT. Did you know that any of these shipments were diverted because they felt that it was not done properly?

Mr. McDANIEL. No, sir.

Senator SCOTT. I will read again a part of the letter:

"Due to insufficient and inexperienced samplers being furnished to handle the first of two cargoes of Turkish chrome ore sampled at Gulfport, Miss., nine cars were shipped without sampling and had to be sampled at destination. Also, the screen determination for the whole first cargo was made improperly and had to be umpired at the stockpile site in Kentucky, with the Government losing the umpire decision. In addition, the Williams assay report was determined by umpire to be over 1 percent high in the chrome oxide and 1½ percent high on iron content. The chemical analysis also had to be umpired on the second cargo of chrome ore."

Mr. McDANIEL. I was not working for the Williams Inspection Co. at the time the first cargo was handled. I was working for them at the time the second cargo was handled.

Senator SCOTT. Did you say a minute ago that you did not know anything about it?

Mr. McDANIEL. Well, I said I had no knowledge of complaints; that is, we have never received a complaint directly from GSA.

Senator SCOTT. Suppose you tell us just what you do know about it.

Mr. COBURN. That is still your testimony?

Mr. McDANIEL. That is still my testimony.

Mr. COBURN. That you were not familiar with the first shipment?

Mr. McDANIEL. That is, I was not familiar with it.

Mr. COBURN. Because you were not in the employ of the company?

Mr. McDANIEL. I was not in the employ of the company.

Mr. COBURN. When did you return to the employ of the company, in June of 1953.

Mr. McDANIEL. June 24, 1953.

Mr. COBURN. Is it still your statement that you have no knowledge of the nine carloads that were sent to destination rather than to your company for sampling?

Mr. McDANIEL. No direct knowledge.

Mr. COBURN. Well, do you have any knowledge?

Mr. McDANIEL. Well, I have been told that those cars were pulled by the railroad without being released by the Williams Co. employees.

Mr. COBURN. What do you mean by that? Were the cars at the Williams Co. at the time?

Mr. McDANIEL. No, sir. The cars were in Gulfport, Miss.

Mr. COBURN. In Government custody, or en route to your company?

Mr. McDANIEL. Well, this work was performed at Gulfport, Miss., which is about 80 miles from the location of our laboratory at Mobile.

Mr. COBURN. And who performed the work there?

Mr. McDANIEL. Well, I don't know just which one of the employees.

Mr. COBURN. But you did learn at that time that these cars were sent to Gulfport, or kept at Gulfport?

Mr. McDANIEL. I learned that those cars were pulled away from Gulfport before we released them to the railroad company, that the

railroad company just pulled those cars without any authorization from anyone.

Mr. COBURN. They were pulled away from your company, in effect?

Mr. McDANIEL. In effect, they were.

Mr. COBURN. They were. Did that make you curious at all as to why they were pulled away?

Mr. McDANIEL. Well, I have later learned that the railroad company—

Mr. COBURN. At the time you first knew of this, did anyone tell you why they were pulled away from your company?

Mr. McDANIEL. No, they did not.

Mr. COBURN. Did you inquire?

Mr. McDANIEL. No, I did not.

Mr. COBURN. So that at that time it was just something that nine carloads of ore that originally were destined for sampling by your company were diverted, and you did not pay any attention to it?

Mr. McDANIEL. Well, that is a matter that I had no connection with as I was not employed by the Williams Co.

Mr. COBURN. You were not? This is after June 1953.

Mr. McDANIEL. Those cars were diverted or pulled away before June of 1953.

Mr. COBURN. On what date were they pulled away?

Mr. McDANIEL. Well, I couldn't tell you.

Mr. COBURN. You do know that it was before June of 1953?

Mr. McDANIEL. I do know.

Mr. COBURN. And you are saying now, are you not, that the time they were diverted you were not even in the employ of the company and therefore you knew nothing about it?

Mr. McDANIEL. Well, we might put that another way. What I know about it is what has been told me by various employees of the Williams Co.

Mr. COBURN. At the time?

Mr. McDANIEL. And later.

Mr. COBURN. And when?

Mr. McDANIEL. At the time that I returned to work for them, and later.

Mr. COBURN. At that time then, you did have some knowledge, did you not, of certain difficulties involving the GSA and the A. W. Williams Co.?

Mr. McDANIEL. If we did, those difficulties were not, that is, the nature of the difficulties was not passed on down to me.

Mr. COBURN. But you knew that there was something wrong?

Mr. McDANIEL. I was told that they had trouble in handling the first cargo.

Mr. COBURN. Who told you that?

Mr. McDANIEL. Well, Mr. Miller who is here, and Mr. Dwyer who was in charge and kind of acted as foreman in sampling that cargo.

Mr. COBURN. You are now saying, are you not, Mr. McDaniel, that at that time you did have at least some knowledge of something being wrong in the contract under which the A. W. Williams Inspection Co. was operating with the GSA?

Mr. McDANIEL. Well, I will repeat my answer, that I have no knowledge of any direct complaints being sent by the GSA to the company on the handling of that.

Mr. COBURN. By "direct," you mean direct knowledge or direct complaint?

Mr. McDANIEL. That is of a direct complaint being sent to Williams by GSA.

Let me go ahead a little further. I have been told that the railroad company assumed full responsibility for the moving of those cars, and the sampling of those nine cars at the destination was at the expense of the I. C. RR.

Mr. COBURN. So, as I understand your previous testimony, sir, you stated that to your knowledge there have been no complaints from the GSA to the A. W. Williams Co.?

Mr. McDANIEL. That is correct.

Mr. COBURN. Do you still wish to stand on that?

Mr. McDANIEL. I wish to stand on that.

Mr. COBURN. That is all.

Representative JONAS. Before you leave that point, Mr. Chairman, might I ask a question or two on this particular point?

Senator SCOTT. Yes.

Representative JONAS. Mr. McDaniel, I noticed that the first contract from GSA was awarded in February of 1948 and expired in June of 1949, and the second contract was awarded in July of 1949 and expired in July of 1950.

The third contract was not awarded until April 17, 1953, and expired June 30, 1954.

Do you know under which of these contracts these complaints that are contained in this letter from the GSA are referred?

Mr. McDANIEL. I do not.

Representative JONAS. Well, they say,

Many of the assay reports on imported material—

and so forth—

were questioned by contractors and in each instance an umpire proved that the Williams laboratory results were incorrect.

Do you know whether they were referring to what transpired under the first contract or under the second contract or under the third contract?

Mr. McDANIEL. I do not.

Representative HOFFMAN. May I have a copy of that letter? I asked for that letter a while ago.

Thank you.

Representative JONAS. Would you assume from the fact that the GSA awarded you the final contract on April 17, 1953, that everything was satisfactory back of that date, or else the GSA was pretty negligent in giving you another contract?

Mr. McDANIEL. I would assume so.

Representative JONAS. You have been with the company since June of 1953 for the second time, and since your return to the company you have testified to the committee that the GSA has made no complaints to you or to the company, to your knowledge?

Mr. McDANIEL. That is correct.

Representative JONAS. Now, under which contract were these cars diverted?

Mr. McDANIEL. That was on the chromite contract, the last one.

Representative JONAS. Under the last contract.

Now, who was the area supervisor or engineer for GSA? Was the man's name in your statement?

Mr. McDANIEL. I do not know who handled that. I didn't go down to Gulfport on any occasion during the sampling of those cargoes, so I do not know.

Representative JONAS. I am asking you the name of the area engineer or chemist, or the person who awarded the contract or supervised it for GSA in Atlanta.

Mr. McDANIEL. I do not know who handled that contract, that is the chromite shipments, down in Gulfport.

Representative JONAS. Well, you gave a man's name in your statement, the last page of the statement, as having had conversation with you about it, and having told you that he would be glad to come here if this committee subpoenaed him.

What is his name?

Mr. McDANIEL. His name is Mr. L. V. Barnadoe. He is the chief inspector at Atlanta.

Representative JONAS. For what organization?

Mr. McDANIEL. For the GSA.

Representative JONAS. May I inquire, Mr. Chairman, if that gentleman is under subpoena?

Mr. REDWINE. Mr. Chairman, may I answer that?

Senator SCOTT. Yes.

Mr. REDWINE. We never heard the man's name until we had the statement of the witness, Congressman. We relied entirely on the policy making group of the GSA who execute the contracts as to what the record was.

The first time we ever heard the name was this afternoon by the witness.

Representative JONAS. Do you plan to subpoena that gentleman? I would suggest that we ought to have him here. He knows a whole lot more about this inspection of this material than Mr. Walsh, who has an office here in Washington and who is the commissioner, and who obviously did not have personal knowledge. I think he might make the best witness, the man from Atlanta.

Mr. REDWINE. Would you suggest also that all of the people who complained about these samples or the work under this contract be brought in, Congressman?

Representative JONAS. I think you and the other staff members have explored that.

Mr. REDWINE. No, sir. We have not gone beyond the letter of Director Walsh.

Representative JONAS. I am just suggesting that the chief inspector of GSA at Atlanta office, which inspector is in charge of Alabama and the work performed under these contracts, would make us a better witness than a letter written by Mr. Walsh.

Mr. REDWINE. I have no objection to his being called, and at the direction of the chairman we will call him.

Representative HOFFMAN. You say you will call him?



Senator NEUBERGER. I would like to say that I do think that if we call this one inspector, then the other inspectors who, though not referred to by name, have their recommendations and work and comments alluded to in the Commissioner's letter, ought to be requested at the same time.

Representative JONAS. I am not objecting. I think that the committee staff has full authority to bring here any witnesses it feels we need. I am just suggesting that we have this one man, because he obviously has some first-hand information about the contract.

Mr. REDWINE. Mr. Chairman, I suggest that probably the way to settle this is to call Mr. Walsh and let Mr. Walsh suggest who should be called to give both sides of this, if there are two sides.

Representative HOFFMAN. Mr. Chairman, I suggest and I move that this gentleman, Mr. L. C. Varnadoe, chief inspector of the Atlanta regional area, be called here as a witness. He is the chief inspector.

You have a letter from Mr. Walsh. Let us have the man in charge down there if we want the facts.

I want to make the motion that he be called if he cannot be called without a motion.

Representative JONAS. It is already indicated that he will be called.

Representative CHUDOFF. I think that you ought to wait until the chairman refuses before making a motion.

Mr. REDWINE. Mr. McDaniel, did Mr. L. C. Varnadoe, the chief inspector, ever personally inspect any of these cargoes?

Mr. MCDANIEL. Yes.

Representative HOFFMAN. The staff comes in here with a charge of bias and prejudice and fraud by this company, and they say that the chief inspector told them they had a clean bill of health.

Senator SCOTT. We have made no such charge, but we will get him up here and maybe we will find some more hidden teletype machines.

Representative HOFFMAN. You are expert at making charges.

Senator SCOTT. I would not have done it if you had not promoted it.

Representative HOFFMAN. You had better read the one you made out at Portland.

Representative JONAS. May I ask the witness another question?

Mr. McDaniel, do you have a copy of the letter from Mr. Walsh?

Mr. MCDANIEL. No.

Representative JONAS. Let me ask you to take a look at this copy while I ask you this question.

In the last paragraph of the letter it says, and I quote:

"Also the screen determination for the whole first cargo was made improperly. It had to be umpired at the stockpile site in Kentucky, with the Government losing the umpire decision."

Does that mean that the umpire found in accordance with what you did?

What does he mean when he says "with the Government losing the umpire decision"?

Mr. MCDANIEL. By that, I would say that the umpire on that one sample had results varying from ours.

Representative JONAS. Their results did what?

Mr. MCDANIEL. Varied.

Representative JONAS. What does he mean when he says "with the Government losing the umpire's decision?"

Did not the umpire decide against the Government and for you?

Mr. McDANIEL. No, the umpire decided against the Government and for the supplier.

Representative JONAS. That was part, then, of the first cargo?

Mr. McDANIEL. That was part of the first cargo.

Mr. REDWINE. I have one question, Mr. Chairman.

Representative HOFFMAN. Mr. Chairman, may I ask for one other thing while we are talking about education. That is the correspondence between Senator Sparkman and General Services, saying that the Williams Co. services were satisfactory. Could we get that letter, too?

It is marked "restricted" but I do not believe "restricted" applies.

Mr. REDWINE. Congressman, I have never heard of such a letter.

Representative HOFFMAN. You do not know anything about that one?

Mr. REDWINE. No, sir; I have never heard of it.

Representative HOFFMAN. I will also ask for the statement of Senator Kefauver, and Congressman Boykin from Alabama.

Mr. REDWINE. Congressman, where would we find the Kefauver letter?

Representative HOFFMAN. Your files show the Boykin correspondence.

Mr. REDWINE. We have that and it will be introduced later. What about the Kefauver letter?

Representative HOFFMAN. The one where the Senator suggested that they keep their suit alive until they got a favorable report or some report from the Interior Department.

Mr. REDWINE. Addressed to the Interior Department?

Representative HOFFMAN. I think it was written to the Williams people, but I think the Interior had something about it.

Mr. REDWINE. We know nothing about it and do not know how to find such a letter, sir.

Representative HOFFMAN. I will try to keep you advised.

Mr. REDWINE. Mr. McDaniel, the last contract that A. W. Williams Inspection Co. had with the General Services Administration expired on June 30, 1954, did it not?

Mr. McDANIEL. That is information that has been given me.

Mr. REDWINE. There has been no contract since then?

Mr. McDANIEL. No direct contract.

Mr. REDWINE. Are there any strategic minerals coming through the ports in the area that normally is served by the A. W. Williams Co.?

Mr. McDANIEL. There is an occasional cargo of abrasive grade bauxite, for which Shilstone has the contract.

Mr. REDWINE. But the Williams Co. has not been used since June 1954 by the General Services Administration?

Mr. McDANIEL. They have on analyses of paint.

Mr. REDWINE. But not on ores?

Mr. McDANIEL. Not on ores.

Mr. REDWINE. That is all.

Representative CHUDOFF. Mr. Chairman.

Senator SCOTT. Mr. Chudoff.

Representative CHUDOFF. Mr. McDaniel, I would like to ask a couple of questions.

I think you testified earlier, before we got into these bauxite questions, that you had a conference this morning with counsel for the Interior Department, or certain officials in the Interior Department, for the purpose of discussing assay procedures; is that right?

Mr. McDANIEL. That is right.

Representative CHUDOFF. Why was that necessary, Mr. McDaniel?

Mr. McDANIEL. That was to satisfy the Interior Department that I had used correct assaying procedures in making the assays of the Al Sareno ores.

Representative CHUDOFF. Did they call you to come in and discuss this with them before you came in to testify?

Mr. McDANIEL. Indirectly; yes.

Representative CHUDOFF. What do you mean by that? I do not know what that means.

Mr. McDANIEL. Well, the call was to Mr. Miller.

Representative CHUDOFF. And do you know who called Mr. Miller?

Mr. McDANIEL. Mr. Parriott.

Representative CHUDOFF. And he said that he would like you to come in to the Interior Department this morning before you appeared here as a witness?

Mr. McDANIEL. That is correct.

Representative CHUDOFF. At what time did you get into the Interior Department?

Mr. McDANIEL. We got there at 7:45.

Representative CHUDOFF. And you went over the assay procedures in your assays for the assay that you made on the Al Sareno mines?

Mr. McDANIEL. That is correct.

Representative CHUDOFF. And after you went over the procedures, did Mr. Parriott make any suggestions as to what you might say if you testified?

Mr. McDANIEL. No.

Representative CHUDOFF. Was he satisfied that the procedures were correct?

Mr. McDANIEL. Yes.

Representative CHUDOFF. Are you satisfied that the procedures are correct?

Mr. McDANIEL. Yes.

Representative CHUDOFF. That is all.

Representative JONAS. Mr. Chairman, I beg your pardon, but the questions asked by my colleague, Mr. Chudoff, cause me to ask the witness one question, if I may?

Senator SCOTT. Yes.

Representative JONAS. How many times were you interviewed, and where, by staff members of this joint committee?

Mr. McDANIEL. The only interview that I have ever had with staff members of this joint committee was in Mobile on December 18, and at the time Mr. Redwine came down to Mobile to subpoena the records, I had maybe said a few words to him, but nothing—

Representative JONAS. You had one interview then with one staff member?

Mr. McDANIEL. With one staff member.

Representative JONAS. Was that Mr. Redwine?

Mr. McDANIEL. It was.

Representative JONAS. Then he came back the second time to Mobile and subpoenaed the records?

Mr. McDANIEL. Well, the records were subpoenaed within a few days after his first visit to Mobile.

Representative JONAS. How long was he there on the first visit?

Mr. McDANIEL. He was at our office approximately an hour, and most of that was spent with Mr. Miller, my supervisor.

Representative JONAS. You said during the course of your testimony that you talked to him in his hotel room. Was that on the 1st or 2d visit?

Mr. McDANIEL. That was on his second visit.

Representative JONAS. Well, he was at the office about an hour on the first visit?

Mr. McDANIEL. On the first visit.

Representative JONAS. And then in a few days your records were subpoenaed, and then subsequent thereto came back to Mobile.

Mr. McDANIEL. That is correct.

Representative JONAS. And talked with you at his hotel. He did not come to the office the second time?

Mr. McDANIEL. Well, he arrived in Mobile on Sunday night and called me at my home and asked me to come down.

Representative JONAS. That interview was at the hotel?

Mr. McDANIEL. That interview was at his hotel room.

Representative JONAS. Was there any subject discussed other than that squabble, this thing asked you with reference to the controversy with GSA?

Mr. McDANIEL. We did not discuss the controversy with GSA further than his asking me what did I know about the squawk, and my answer that if there had been any, I was not aware of it, or words to that effect.

Representative JONAS. Well, he asked, did he not, in the course of these conversations, about the subject on which you would be examined here today? Did he not?

Mr. McDANIEL. No.

Representative JONAS. That is all.

Representative MOSS. Mr. Chairman, I wonder if I might direct a question brought up as a result of Mr. Chudoff's inquiry?

Mr. McDANIEL, the assay report of the Williams firm apparently was the basis for the granting of surface rights in this case to the Al Sarena Mining Co. Prior to this morning did anyone from the Department contact you or discuss with you the adequacy of your assay procedures in determining whether they were sound or not?

Mr. McDANIEL. No; they did not.

Representative MOSS. This is the first time that anyone from the Department has discussed with you or reviewed with you the procedures employed in making your assay?

Mr. McDANIEL. This morning was the first time.

Representative MOSS. This morning was the first time.

Thank you, Representative Chudoff.

But you were called before this morning and asked to come in, were you not?

Mr. McDANIEL. Yes.

Representative CHUDOFF. When were you called?

Mr. McDANIEL. By telephone.

Representative CHUDOFF. When?

Mr. McDANIEL. Yesterday afternoon.

Representative CHUDOFF. Did somebody call from Washington to Alabama, or were you here in Washington?

Mr. McDANIEL. Well, I was subpoenaed to appear here.

Representative CHUDOFF. Then you were here. You got the call in Washington at your hotel here?

Mr. McDANIEL. At the hotel here.

Representative CHUDOFF. How did they know you were at that particular hotel?

Mr. McDANIEL. We were over in Congressman Ellsworth's office yesterday.

Representative CHUDOFF. Did you discuss this with Congressman Ellsworth and tell him that if he needed you, you would be at your hotel where you are staying? Is that right?

Mr. McDANIEL. That is correct.

Representative CHUDOFF. You did not discuss the question with any Interior Department members in Congressman Ellsworth's office, did you?

Mr. McDANIEL. No.

Representative CHUDOFF. So that, if they knew where you were, they got the information from Congressman Ellsworth. That is the only way you feel that they could have gotten the information?

Mr. McDANIEL. That is right.

Representative CHUDOFF. And you received a call yesterday afternoon from Mr. Parriott?

Mr. McDANIEL. Well, Mr. Miller received the call.

Representative CHUDOFF. And they asked you and Mr. Miller to be in the office at quarter of eight this morning?

Mr. McDANIEL. That is correct.

Representative CHUDOFF. So that you could discuss assay procedures?

Mr. McDANIEL. That is correct.

Representative CHUDOFF. That is all.

Mr. REDWINE. I think that is all.

Senator SCOTT. That is all.

I want to thank you for the cooperation on the questions. I know that they have been rather trying in a way, but you made a good witness.

Mr. M. E. Volin.

Senator GOLDWATER. Mr. Chairman, might I inquire? This is a most unusual case. I have sat through many congressional hearings. I have never heard a subject start off in the forests of Oregon and wind up in Mississippi and Alabama.

I came here this morning and listened to gold and silver analysis discussed, and this afternoon we are on the subject of bauxite and chromite. Having only attended this one hearing, and having read in the papers what has been going on, I can only draw one conclusion as to the desire of counsel, and that is to discredit the Williams Inspection Co.

If that is the intent of counsel, and it seems to be perfectly obvious that that is the case, I suggest that it would be very proper to put Mr. Miller of that company on the stand at this time to allow him to

defend some of these remarks that have been directed at the employee of his who has no chance or probability of knowing about the contracts, as to when they were signed, and so forth.

Senator SCOTT. Senator Goldwater, meaning no discourtesy to you whatsoever, he will be put on at the proper time.

Senator GOLDWATER. Mr. Chairman, do you not agree that a company which has been maligned as this one has been maligned this afternoon has the right to defend itself?

Senator SCOTT. Yes, sir; they will be given that right.

Senator GOLDWATER. I think they have a right immediately after the accusations are made.

Senator SCOTT. I differ with you.

Senator GOLDWATER. Do you? You are the chairman.

Representative HOFFMAN. Mr. Chairman, there are three newspaper pieces in the morning Post reflecting on this company. It would seem that this is the opportune time, when the charges are made. The Senator himself, the chairman, is quoted in the press with having made this charge that there is something crooked, something wrong. It says here:

Finds the Al Sarena case smacks of "bottom-of-the-deck" dealing by "high levels" within McKay's department—

and I quote.

When that comes in today, why is not the company entitled to an opportunity forthwith to deny those charges?

Senator SCOTT. They will be heard at the proper time.

Congressman Chudoff, would you swear the witness, please?

Representative CHUDOFF. What is your full name?

Mr. VOLIN. Melden Earl Volin.

Representative CHUDOFF. Do you solemnly swear that the testimony you will give before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VOLIN. I do.

Representative CHUDOFF. Have a seat, please.

### TESTIMONY OF MELDEN EARL VOLIN, CHIEF, RESEARCH, MICHIGAN SCHOOL OF MINES AND TECHNOLOGY

Mr. VOLIN. Could I give a statement on my background?

Mr. REDWINE. We would be happy to have you do so.

Mr. VOLIN. I was born in Idaho and received my high-school education there. I went to the Colorado School of Mines and graduated in 1933 with the degree of engineer of metallurgy and was in the upper fourth of my class.

During the years following graduation, I worked on several mining jobs of short duration. Then I went with the USGS for 2½ years. Then, when a civil-service examination for mining engineers in the United States Bureau of Mines was announced, I applied for that and took the examination. It was a written examination and I received a high grade, was second highest in the western part of the United States, and I received an appointment in the Bureau of Mines, and that began my career with the Bureau of Mines of over 16 years.

During the first part of that career, I was a field engineer on many sampling jobs under the strategic exploration program. Later I became a supervisor.

At the time of the Al Sarena mines sampling, I was Chief, Mining Division, region II, at the Spokane office. Later I became regional director of region V at Minneapolis, and on last January 1 was transferred to Washington, D. C., to take the position of Chief of the Branch of Base Metals.

In July I received an opportunity for employment outside of the Government. I resigned from the Bureau of Mines to accept the position of director of the Michigan Bureau of Mineral Research. I hold that position now.

Mr. REDWINE. Mr. Volin, on September 3, 1953, what was your position?

Mr. VOLIN. I was Chief, Mining Division, region II, with office at Spokane.

Mr. REDWINE. Did you, some time shortly subsequent to September 3, 1953, receive any instructions in respect to the Al Sarena contest?

Mr. VOLIN. No. It is my recollection that the first I heard about the Al Sarena was a letter from, or a memorandum from, Thomas H. Miller, Acting Director, Bureau of Mines, making me representative, appointing me as representative of the Government in this case, and with three attachments, letters giving general instructions to follow in the case.

I received that approximately September 18, I believe.

Mr. REDWINE. In general, what were those instruction, Mr. Volin?

Mr. VOLIN. In general, the instructions were to be present at the sampling which was to be done by an engineer retained by the McDonalds, who had had an application for patent on some claims of the Al Sarena claims, 15, I believe, disputed or denied; and they were trying to establish that and they wanted a resampling.

The Solicitor wanted a resampling job and suggested that the Bureau of Mines provide the representative of the Government to see that that sampling was done accurately and with good workmanship.

Mr. REDWINE. What did you then do to carry out those instructions, Mr. Volin?

Mr. VOLIN. I read those instructions and noted that there was a provision therein for me to delegate the representation and the responsibility for it, and, inasmuch as we had an engineer at Grants Pass in an office there and I was occupied full time with DMEA business, I took advantage of that and delegated that to Mr. Richard Appling, our engineer at Grants Pass.

I called him by telephone and later I confirmed that by a letter.

Mr. REDWINE. Then what happened?

Mr. VOLIN. The instructions to Mr. Appling were that he would contact Mr. McCormick, the engineer for Al Sarena mines, and the two of them would arrange the time at which the sampling would be done, and the plan that would be followed.

I had several telephone conversations with Mr. Appling reviewing what I thought were the proper precautions to observe in this job, and I gave him the general instructions that our performance in this must be above reproach.

Mr. REDWINE. Did you give Mr. Appling any instructions as to the choice of an assayer?

Mr. VOLIN. Not at that time. That didn't come up right at the moment. However, it was noted in the Solicitor's letter that the assay,

the samples would be sent to an assayer that would be mutually acceptable to the McDonalds and the Bureau of Mines. I didn't think much about it at the moment, and early in November, why, I learned that Mr. McCormick and Appling had made their plans for taking the samplings, and then I found that the McDonalds wanted to send the samples to the A. W. Williams Inspection Co., of Mobile.

Mr. REDWINE. Mr. Volin, at that time had you ever heard of the A. W. Williams Inspection Co.?

Mr. VOLIN. No, I had not.

Mr. REDWINE. What, if any, steps did you take to determine whether they were a suitable agency to conduct this assay?

Mr. VOLIN. I wrote an airmail letter to John Thoenen, assistant regional director, region VII, Bureau of Mines, Norris, Tenn., and asked him, gave him the background of the importance of this job.

Mr. REDWINE. Let me interrupt you there.

When you said "background," you mean that this was a matter in dispute, and that kind of thing?

Mr. VOLIN. Well, I believe I said that it was a case of claims to be patented, in which the application had been denied. I believe I did say that. But I did state that these samples would be similar to umpire samples. I believe I used that wording.

Anyway, I inferred, and stated, I am sure, that the firm should be a reputable one, and asked them to look into it. And he didn't reply immediately. Well, I guess it wasn't that, either. It was that the snow conditions were impending. We had to get this job finished.

I followed up the letter with a wire to him and he acted upon that wire apparently without having received the letter, and he came back with a wire stating that the firm had the okay of the State geologist of Alabama and was in the Department of Commerce register.

Mr. REDWINE. Mr. Volin, did you in your request of Mr. Thoenen—is that the way you pronounce that?

Mr. VOLIN. Thoenen.

Mr. REDWINE. Did you point out what the minerals involved were?

Mr. VOLIN. Yes, I did. I pointed out that there would be gold.

Mr. REDWINE. Do you happen to have a copy of the correspondence available?

Mr. VOLIN. I have now.

Mr. REDWINE. Would you read into the record, please, your telegram to him and his reply, and also the letter that you wrote that preceded your telegram?

Read the letter first, then your telegram and his telegraphic reply, please.

Mr. VOLIN. Yes, sir.

The first is my letter to John R. Thoenen, acting regional director, region VII, dated November 9, 1953, on the subject "Information on assaying firm in Mobile, Ala."

Representative CHUDOFF. Mr. Chairman, I do not have any objection to the letter going in, but I note on page 187 of the testimony which we took in Portland, Oreg., that that letter is in the record. I think it can be incorporated by reference.

You can read the letter, but I do not think it is necessary to put it in again.

(Witness reads document.)



Mr. VOLIN. Then there is my telegram to the same man, John R. Thoenen, acting regional director, Norris, Tenn.

Mr. JOHN R. THOENEN,  
*Acting Regional Director, Region VII,  
Norris, Tenn.:*

REOURLET to your November 9 information on A. W. Williams Inspection Co., P. O. Box 314, Mobile, Ala. Check reputation of firm for assaying gold, silver, lead, zinc, and possibly other metals in connection umpire on appeal of patent application mining claims. Acting as Government representative in this resampling claims. Applicant wants samples assayed by Williams Inspection Co. Wire reply because sampling must be undertaken immediately to avoid snow conditions.

It is signed by M. E. Volin.

The next telegram is the reply from Mr. Thoenen to me, dated November 10, 1953, in the afternoon. His previous telegram was 9: 55 a. m.; the reply is 4: 15 p. m.

RE your telegram today. Williams Inspection Co. of Mobile is listed in Department of Commerce directory and has O. K. of State geologist of Alabama by telephone to me today. No other information available. Letter not received.

Mr. REDWINE. Mr. Volin, relying upon that telegram, what did you do; or did you rely on it?

Mr. VOLIN. Yes, I did rely on it. I notified Mr. Appling by telegram, I believe, to send the samples to this firm.

Mr. REDWINE. Mr. Volin, would you recognize the Department of Commerce directory if you saw it?

Mr. VOLIN. I would not. I know of the directory. I have not referred to it.

Mr. REDWINE. Would you identify that booklet, please, Mr. Volin?

Mr. VOLIN. This book is entitled "Directory of Commercial and College Laboratories, U. S. Department of Commerce, National Bureau of Standards."

Senator GOLDWATER. Mr. Chairman, would he read the date?

Mr. REDWINE. Mr. Chairman, the date of this document, as I was going to state, is August 3, 1947. The Department of Commerce representative will testify tomorrow, we are informed, that this is the last copy that was issued, the 1947 copy; that it has been supplemented by the pamphlet that was offered this morning by the distinguished Senator from Arizona; that it is the latest issue of this document.

Senator GOLDWATER. Just a minute, Mr. Chairman.

I did not offer any document from the Department of Commerce this morning.

I offered, and it was refused, a document of the American Council of Independent Laboratories. I just want to keep the record straight. It was not put into the record, so that you do not have to worry about it.

Mr. REDWINE. Will you find the A. W. Williams Co. listed in that document, please? It is at page 5, I believe, Mr. Volin.

Mr. VOLIN. On page 5, under geographical listing of commercial laboratories, under Alabama, at Mobile, is listed A. W. Williams Inspection Co., 208 Virginia Street, Zone 3, and so forth.

Mr. REDWINE. Then, after the listing of the name, it shows the type of work that it does, does it not?

Mr. VOLIN. That is right. Let's see.

The commodities and nature of tests and research are listed by what I take to be symbols.

Mr. REDWINE. Yes, sir.

Will you then check on the symbols? What is the symbol for "metallurgical work" or treatment of ores?

Mr. VOLIN. The symbol for "metallurgical" and "metallographic" work is a small "m."

Mr. REDWINE. That is the only reference in the symbol table as to inspection of ores?

Mr. VOLIN. Well, there are two others here that could possible be. One is chemical. I don't know whether it would have an application to minerals or not. The other is X-ray and radiographic. I don't know whether that would have an application to minerals. I would have to go into this.

Mr. REDWINE. Will you then check the listing of A. W. Williams Co. and see if they are listed with those symbols, please? M is the one.

Mr. VOLIN. I do not find M listed. I find C listed but not M.

Mr. REDWINE. Mr. Volin, I realize that you relied upon the telegram that was sent you by Mr. Thoenen in this matter. If you personally were deciding whether A. W. Williams Co. should do this assay work, would you have approved them getting the assignment on the basis of what is in the Department of Commerce directory? Would you have done that on the basis of what is in the Department of Commerce directory solely, or would you have gone to the GSA and found out what experience they had?

Mr. VOLIN. Well, you are asking me for something in the nature of an opinion now. It is not my intention to dodge your question. I will try to answer it to the best of my ability.

I did give more weight to the fact that the other statement, that this firm was O. K.'d by the State geologist of Alabama, than I did to the Department of Commerce register.

Mr. REDWINE. We will go back to that in just a minute.

Representative HOFFMAN. I would like to hear his last answer.

(The record was then read by the reporter.)

Mr. COBURN. May I interrupt counsel for a moment?

Mr. REDWINE. Certainly.

Mr. COBURN. Mr. Volin, had you been—and I am just asking you this for an opinion—in Mr. Thoenen's position would you have questioned the date on that directory in 1953? Would you have gotten something about 1953?

Mr. VOLIN. I believe I would have ascertained whether that was the last directory.

Representative HOFFMAN. Mr. Chairman, will counsel yield there just for one question?

Would you make any different decision today than you did then, knowing what you know now?

Mr. VOLIN. No, sir; I would do the same.

Mr. COBURN. Let us elaborate on that. What do you mean by you would do today what you did then? You would what?

Mr. VOLIN. If this thing was referred to me I would ascertain whether that directory that I was quoting or whether the thing I was referring to was the latest information available.

Mr. COBURN. Would you also have checked the symbols to see if this firm was qualified as an assayer of minerals?

Mr. VOLIN. In view of my telegram I think that would be necessary.

Mr. COBURN. That is all.

Mr. REDWINE. Mr. Volin, in view of what you have heard today if you had to make the decision today would you select Williams Inspection Co.?

Mr. VOLIN. I don't think that is a fair question. I would prefer not to answer it. If I haven't answered I will try to, but it involves an opinion. I have had a chance to follow only what I have heard today. I don't think it would be fair to A. W. Williams Co. for me as an outsider, and having heard what has been said today, to express an opinion.

Mr. REDWINE. Mr. Volin, I sympathize very much with you in the position you are in and I will withdraw the question.

So after you received this telegram you told Mr. Appling to go ahead and ship them to the company at Mobile?

Mr. VOLIN. Yes, sir.

Mr. REDWINE. Will you proceed, sir, with what went on from then, please?

Mr. VOLIN. The next thing that I remember hearing about this was a telephone call from Sidney Gottley, of the Minerals Division, Washington, D. C., asking about the progress on this case and where is the report. I got in touch with Appling then. That was on December 29. I got in touch with Appling and he said that the report was coming forward. On January 4 or 5, I received the report, which was dated January 2, and I immediately transmitted it to the Director of the Bureau of Mines with the letter of transmittal.

Mr. REDWINE. Did you examine the report prior to transmitting it to your superior?

Mr. VOLIN. Yes; I did. I read the report rather hastily, but I did read it.

Mr. REDWINE. Did you read the assay report?

Mr. VOLIN. Yes, sir; I did, sir.

Mr. REDWINE. Was it in certificate form, or typed form, or what kind of form was it in?

Mr. VOLIN. As I remember it, it is a list, just a typed list of assays.

Mr. REDWINE. With no certificate attached?

Mr. VOLIN. With no certificate attached. I don't recall seeing a certificate.

Mr. REDWINE. Do you happen to have a copy of your letter of transmittal?

Mr. VOLIN. Yes; I have.

Mr. REDWINE. Would you take it out of your briefcase, please, and let me see it for a half minute?

Mr. VOLIN. Yes.

Mr. COBURN. While we are waiting for counsel, did you make any effort to determine at that time where the certificate was?

Mr. VOLIN. I did not.

Mr. REDWINE. Mr. Volin, on the bottom of the first page of your letter of transmittal, which is dated January 5, 1954, you state, and I quote:

The sample splits noted in Mr. Appling's report as stored with the Oregon Department of Geology and Mineral Industries were disposed of upon receipt of the assay results.

Did you have any conversation at any time with Mr. Appling in respect to these splits stored with the Oregon Department of Geology?

Mr. VOLIN. Yes.

Mr. REDWINE. Will you relate that conversation or conversations?

Mr. VOLIN. It would have been telephone calls, and I was aware that there was a split. In fact, I believe that I gave instructions that there would be a split taken, at least as a precaution until assays had been returned. We discussed where would be a security place for these splits. I remember Mr. Appling stated that he tried various places. He tried to get the splits lodged in a local bank vault and then he asked me if I thought it would be all right to leave them at the office of the Department of Geology and Mineral Industries of the State of Oregon. They had an office in Grants Pass, and I thought that would be all right as a temporary location. We also discussed sending them to Albany and putting them in the Bureau of Mines' core warehouse there and decided that wouldn't be a very good place because they could get lost there as they were not core samples.

Mr. REDWINE. How did you become aware that the splits had been destroyed?

Mr. VOLIN. When I called him to ask him about the report I learned then that the splits had been destroyed.

Mr. REDWINE. That was after you received the letter from Washington or message from Washington to hurry up?

Mr. VOLIN. I received a telephone call from Washington after December 29.

I don't know just exactly when that call was, but it was some time between December 29 and January 4.

Mr. REDWINE. Did you have any feeling of concern that those splits had already been destroyed or not?

Mr. VOLIN. Yes; I did. I reviewed with Dick the reasons why we destroyed the splits.

Mr. REDWINE. You say "we" now. Are you taking a part of the responsibility for them being destroyed?

Mr. VOLIN. I didn't have the—well, inasmuch as I did not give Dick full instructions on this perhaps part of the responsibility falls on me, but I did not know the samples were destroyed until after they were.

Then I said, "Why did we do this? Why did we destroy these samples?" And Dick reviewed some of the thoughts on the matter.

Mr. REDWINE. Such as what, Mr. Volin, please?

Mr. VOLIN. The most important was that we did not have a secure place to store samples indefinitely.

Mr. REDWINE. I am not arguing with you, but the place was just as secure on December 29 as it was the day that they were put in there, was it not?

Mr. VOLIN. It wouldn't be what you would call a secure, an absolutely secure place, and it was available to the public, this office was, and I didn't feel that it would come under the category of a secure place for indefinite storage.

Mr. REDWINE. Go ahead.

Mr. VOLIN. Dick felt the same about that. Let me think what else was involved there.

Mr. REDWINE. Do you recall any other details of that discussion with Mr. Appling, as to why they had been destroyed, other than lack of a safe place?

Mr. VOLIN. No, I think that is all I can recall of that discussion.

Mr. COBURN. Mr. Volin, what was your purpose in instructing Mr. Appling to retain these splits?

Mr. VOLIN. It is the normal procedure in sampling where you are shipping samples away to an assayer to retain splits, but, frankly, I believe that my purpose was that we would send those splits to Albany for assaying, and we did not do that because the McDonalds were supposed to take care of the total cost of this work.

We were not supposed to be doing the work for them and there was no way to remunerate the Bureau of Mines for running the assays at Albany, so we discarded that idea.

Mr. COBURN. Was this after you received the detailed instructions?

Mr. VOLIN. These were thoughts we had after I received the detailed instructions.

Mr. COBURN. And by "we"; do you mean Mr. Appling and yourself?

Mr. VOLIN. Yes.

Mr. COBURN. So you discussed the possibility of sending these splits to Albany with Mr. Appling?

Mr. VOLIN. Of sending them to Albany for assay, yes.

Mr. COBURN. Instead of that, after you decided not to do that Mr. Appling destroyed the splits; is that correct?

Mr. VOLIN. He destroyed the splits sometime—I don't know exactly the date.

Mr. COBURN. I am not asking the exact date. I say after you had this discussion—

Mr. VOLIN. Yes.

Mr. COBURN. Then instead of retaining them for any considerable length of time he destroyed them?

Mr. VOLIN. Yes.

Mr. COBURN. How long would you have retained them?

Mr. VOLIN. Well, it would depend upon the instructions, my instructions, and the purpose of these samples. I consider that it was all right to destroy these after the assays had been received if there seemed to be nothing abnormal about the assays.

Mr. COBURN. Have you not testified that you were somewhat, let us put the word aghast or perhaps amazed by the fact that they have been destroyed? Have you not so testified?

Mr. VOLIN. Yes; I said that I wanted to know and review in my mind as to why that was done.

Mr. COBURN. What gave rise to that concern on your part?

Mr. VOLIN. Well, I guess my only answer to that can be that I thought that they were being held a while longer and I hadn't given instructions to have it destroyed, and I just wanted to know why they had.

Mr. COBURN. At that time you had in your custody Mr. Appling's report showing these high assay values, is that correct, or at least assay values that were somewhat higher than had been received theretofore?

Mr. VOLIN. I don't understand your question now.

Mr. COBURN. Were you aware at the time you received Mr. Appling's report of any assay values placed on these claims by other assay firms?

Mr. VOLIN. No, I was not.

Mr. COBURN. Then, that is perfectly all right, but you did realize, did you not, as a mining engineer, that the values reflected in this report were amply sufficient to show mineralization?

**Mr. VOLIN.** It was not in our realm nor did we have any instructions to determine the economics of this case, and if I gave an opinion on that it would only be a personal opinion. It would not reflect the opinion of the Bureau of Mines, or not reflect the policy of the Bureau of Mines, because we were not entering into this case in determining or judging the economics or evaluating the property for a patent.

**Mr. COBURN.** Mr. Volin, when you and Mr. Appling were discussing the possibility of sending these splits to Albany, to the Bureau of Mines laboratory, were you going to do that as a check against what might come out of the Williams Inspection Co. assays?

**Mr. VOLIN.** Yes. We had that in mind. We had in mind checking the sampling too. We discussed a number of things, procedures, that might be used in checking the sampling and in checking the assay.

**Mr. COBURN.** Was that prior to or after you received the report from Mr. Appling?

**Mr. VOLIN.** That was prior.

**Mr. COBURN.** Were you aware at that time, Mr. Volin, of the fact that Mr. Hattan, the minerals examiner for the Bureau of Land Management, had checked, I think it was three times, on the validity of the assays they had taken?

**Mr. VOLIN.** I did not know anything about that.

**Mr. COBURN.** You did know, however, that there was a contest?

**Mr. VOLIN.** I knew there was a contest, yes.

**Mr. COBURN.** That is all.

Representative CHUDOFF (presiding). Mr. Lanigan.

**Mr. LANIGAN.** Yes.

You said that you got some instructions from Washington indicating that Mr. McDonald's engineer was going to do the sampling and the Bureau of Mines was to watch him; is that correct? They were to watch him while he did it?

**Mr. VOLIN.** Our function, as I understood the instructions, was that we would be present during the sampling to be done by the McDonald's representative and that we would determine that the sampling was done fairly and correctly.

**Mr. LANIGAN.** Were your instructions to Mr. Appling to that effect, that he was to watch while the McDonald's representative did the sampling?

**Mr. VOLIN.** Yes. I sent him copies of these instructions.

**Mr. LANIGAN.** Did you send him any map or sketch of the mines of the claims which were to be sampled?

**Mr. VOLIN.** No. The claims were listed by name in the instructions.

**Mr. LANIGAN.** How would Mr. Appling know which claims were the ones that he was supposed to supervise the sampling on?

**Mr. VOLIN.** Normally there will be markers for claims by which you can identify that claim.

**Mr. LANIGAN.** Did you instruct him to check those markers?

**Mr. VOLIN.** I did not instruct him specifically, but I think that was certainly inferred in my instructions.

**Mr. LANIGAN.** Did you instruct him as to the width of the cut in which the sample was to be taken?

**Mr. VOLIN.** You mean the size of channel?

**Mr. LANIGAN.** Perhaps that is a better term for it, yes.

**Mr. VOLIN.** We discussed the kinds of channels, the sizes of channels that would be taken, the weight of sample that would be cut

per foot of channel, but until you know the conditions of the rock and the mineralization, until you observe those, why, you can't make very good plans along that line because the rock might be so difficult to cut that you would have to rely on a chip sample or the distribution of the minerals might be such that a chip sample would be better than a channel sample.

Senator SCOTT. Mr. Lanigan, right now it is time for us to adjourn. We will recess until tomorrow morning and we will pick up right where we left off.

I want to make this statement at this time.

The testimony given here today has been both revealing and shocking.

As any fairminded person would be, I was alarmed to learn that the Department of the Interior is determined to throw every roadblock it can into the path of the subcommittees investigating the Al Sarena case.

I had sincerely hoped that the Department of the Interior would cooperate with Congress in getting at the bottom of this matter and bringing out all of the facts. Instead it is very obvious that the Department of Interior is not only coaching witnesses as to their testimony but has also put itself in the position of acting as a front for an assay company, whose performance has been strongly criticized by another agency of the Federal Government.

As we continue the hearings in this case I sincerely hope that the Department of the Interior will see fit to stop attempting to hide pertinent facts, and facts which must be brought out if we are to learn the truth about this whole matter.

So far testimony has clearly shown that the Al Sarena case was handled by the Interior Department in a shoddy and shabby fashion. If the Department of Interior has information to the contrary, I think it should concentrate on bringing this information to the subcommittee—and it will have full opportunity to do this—instead of coaching witnesses and engaging in obstructive tactics.

Tomorrow the subcommittee will meet at 9:30 a. m. in room 318, Senate Office Building.

We will adjourn until that time.

Representative HOFFMAN. In answer to that, Mr. Chairman, let me put my opinion on there that what you said is mostly bunk.

Senator GOLDWATER. Mr. Chairman, as a Senator, a Member of this Congress, have I a right to make a statement in answer to yours?

Senator SCOTT. We will have that in the morning.

Senator GOLDWATER. You do not want it now?

Senator SCOTT. No, sir.

(Whereupon, at 4:20 p. m., Tuesday, January 10, 1956, the hearing was recessed until 9:30 a. m., Wednesday, January 11, 1956.)

## THE AL SARENA CASE

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WEDNESDAY, JANUARY 11, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT,  
FUNCTION OF THE SENATE COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS,  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 9:35 a. m., in the caucus room, Senate Office Building, Washington, D. C., Hon. Kerr W. Scott (chairman of the Senate committee) presiding.

Present: Senators Scott (North Carolina); Richard L. Neuberger (Oregon); and George W. Malone (Nevada).

Also present: Senator Henry C. Dworshak (Idaho).

Present: Representatives Earl Chudoff (Pennsylvania) (chairman of the House subcommittee); Robert E. Jones (Alabama); John E. Moss, Jr. (California); Clare E. Hoffman (Michigan); Charles Raper Jonas (North Carolina), and William E. Minshall (Ohio).

Senator Scott. The meeting will please come to order.

Mr. Volin will resume the stand, please.

### TESTIMONY OF MELDEN EARL VOLIN, CHIEF, RESEARCH, MICHIGAN SCHOOL OF MINES AND TECHNOLOGY—Resumed

Senator Scott. Mr. Lanigan will continue his examination.

Representative Hoffman. Mr. Chairman, last evening, as I understood the record, Senator Goldwater was told that he could make a statement this morning. Now he has sent one over and requested that I read it. Is this the proper time?

Senator Scott. This is the proper time right now.

Representative Hoffman. All right. [Reading:]

STATEMENT BY SENATOR BARRY GOLDWATER, UNITED STATES SENATOR FROM THE STATE OF ARIZONA

Yesterday I requested the chairman of this joint meeting, Senator Kerr Scott, Democrat, North Carolina, for the privilege of making a reply to a purely political attack which he made in the course of the hearings. He denied me that opportunity, brusquely saying that I could "make it tomorrow."

Ever since these two subcommittees began their hearings on the Al Sarena case, I have had strong suspicions that they were motivated entirely by partisan politics. Yesterday these suspicions were confirmed.

Never have I seen such discourtesy to fellow Members of Congress as the chairman showed in these hearings yesterday by calling Congressman Hoffman out of order on practically every point he raised, and in denying me, on two separate occasions, the right to insert material in the record.



If I may be permitted to insert something there, I do not feel badly about any rulings. My feelings have not been hurt in any way. I am not complaining on my own account. I have been around long enough to not be unduly mentally or physically disturbed by criticism or adverse rulings. Apparently the Senator is.

I continue to read:

I was shocked to see the treatment accorded a witness when, it having become perfectly obvious that the subcommittees' charge had no substance, the counsel attempted to discredit the witness, and the witness's honesty was questioned by a committee member to the extent of a direct charge to that effect.

If investigations being conducted by the Democrat Party in the Congress are to be so politically motivated, with the apparent object of seeking only to smear the Eisenhower administration, then the leadership of that party should expect to be held accountable for permitting the legislative process to be subverted.

The Democrats in these hearings are tossing around the term "giveaway" very loosely and irresponsibly. This charge is without substance, and they know it. By such behavior as I observed yesterday these Democrats are themselves giving away the freedoms of our country through arbitrary violation of established legislative processes.

That is the end of the statement.

Thank you, Mr. Chairman.

Senator SCOTT. It will appear in the record.

We will resume.

Mr. VOLIN. May I make a statement also, Mr. Chairman?

Senator SCOTT. Yes, sir.

Mr. VOLIN. I have not had a good night's sleep, for the first time in my life. I didn't enjoy my breakfast, for the first time, with the fear of what might come forth, what might be asked me here. From what I saw yesterday, I had some trepidation about the hearing here this morning.

Senator SCOTT. Is there anything further?

Mr. VOLIN. That is all.

Senator NEUBERGER. May I ask you a question? I have not asked any questions in this hearing.

Do you consider it improper or in any way out of line that a committee of the Congress of the United States should try to determine the behavior and performance of Government officials who were charged with the custody of natural resources.

Mr. VOLIN. I think that is entirely proper.

Senator NEUBERGER. Thank you very much.

Mr. LANIGAN. I believe, Mr. Volin, that yesterday you testified that your instructions were that a Mr. McCormick, the representative of Al Sarena Mining Co., was to take the samples in the presence of a representative of the Bureau of Mines.

Could you tell us why it was decided to let Mr. McCormick take the samples, rather than have the Bureau of Mines or the Government representative take the samples in Mr. McCormick's presence?

Mr. VOLIN. I don't believe I can tell you the reason why. I can give you this comment that might have some bearing on it.

The work was to be done by the applicant at his expense. There was no provision for Government funds to be expended on this, and the work that was done by the Bureau of Mines was done on regular Bureau allotments of funds, and work, I should say, regularly allotted for the normal objectives of the Bureau of Mines rather than this particular objective.

Mr. LANIGAN. Was it your understanding then that all of the expenses of this examination, other than the travel expenses and the salaries of the Bureau of Mines representative, were to be paid by Al Sarena?

Mr. VOLIN. Will you restate your question, please? I missed one point.

Mr. LANIGAN. Was it your understanding then that the Al Sarena Mining Co. was to pay all of the expense of the examination and the assay other than the salary and travel expense of the Bureau of Mines representative who went to the scene?

Mr. VOLIN. Well, it wasn't stated in terms like that. It was simply stated that the Government would have a representative present at the sampling.

Mr. LANIGAN. Perhaps I should preface the question with this question:

How long had you held the position as supervisor of that area prior to the time that this examination took place?

Mr. VOLIN. The particular position I was occupying at that time, Chief of the Mining Division of Region II, I was appointed to that position in April 1950.

Mr. LANIGAN. What position had you held with the Bureau of Mines prior to that appointment in 1950?

Mr. VOLIN. Going back to the start when I was first employed by the Bureau of Mines in April, no, March 1939, I first held the position of field engineer in charge of exploration investigations under the Strategic Minerals Program until 1952, when I became assistant district engineer of the Colorado District at Denver, Colo.

In December 1943 I became resident engineer on the Leadville Tunnel project. I went into the service, into military service in 1944, and returned to the Bureau of Mines in 1946, in April 1946, when I became assistant to the chief, I believe the title was, of the Salt Lake City District Office. I held that position until 1949 in April. No, it was in May 1949 that I was called upon to go to Afghanistan as a representative or on loan from the Bureau of Mines to the State Department to assist that country in a survey of their mineral resources and try to help them develop those mineral resources.

I returned in December of 1949 to my previous position and then in 1950, April 1950, I was transferred to Albany, Oreg., to take the job that we are talking about.

Mr. LANIGAN. In your experience with the Bureau of Mines, at any time prior to this one had you, or to your knowledge the Bureau, been called upon to conduct an examination of a mining claim or to participate in examination of a mining claim with the owner to get samples to determine the validity of a claim under the mining law?

Mr. VOLIN. In my career with the Bureau of Mines, I had never had any connection with an assignment like this before.

Mr. LANIGAN. Now, I wanted to get something clear in my mind, I think there was some testimony that some assays, the later assays may have shown something like \$4 a ton value.

As I recall, gold runs about \$35 an ounce, so would that mean that there would be four thirty-fifths of an ounce of gold per ton if the value were \$4 of all gold? Is that roughly correct?

Mr. VOLIN. You would determine the number of ounces per ton of sample of what you sampled. If you want to refer to it as ore, it would be the number of ounces of gold per ton of ore. In computing the gross value, and that is the gross value, you would simply multiply that by the market price for gold.

Mr. LANIGAN. That is about \$35 an ounce; is it not?

Mr. VOLIN. Yes. I might point out that in economics, you never figure that you are going to recover all of the mineral values.

Mr. LANIGAN. Well, if the assay were four thirty-fifths of an ounce per ton, the next question is what size samples are used in making these assays on, I think they used the phrase yesterday, the ton-ounce basis? If they said they took a 2-ton sample, what does that mean?

Mr. VOLIN. That is related to the amount of pulp or sample that was weighed up to run an assay. Actually, if you are asking me what size sample is taken, that is related to something different. The size sample that you would take would be related to the occurrence of the mineral in place.

Mr. LANIGAN. Well, to make a 2-ton assay, as the phrase was used, how much pulp would be needed?

Mr. VOLIN. It is my understanding that this assayer weighed up 2 assay tons or 2 weights, which would be twice 29 plus grams to assay or to run the assay on.

Mr. LANIGAN. So that would be roughly 58 grams of pulp which were used in making the assay of the sample?

Mr. VOLIN. That is right. It would be 54, sir.

Mr. LANIGAN. Fifty-four. Can you tell us what the weight of 54 grams is in terms of ounces? Could you tell us that offhand?

Mr. VOLIN. I rely so much on conversion tables that I don't want to trust my memory on that.

Mr. LANIGAN. Would it be about 2 ounces?

Representative HOFFMAN. The witness has said, Mr. Chairman, that he did not want to trust his memory. Why do you fuss around and guess about something that does not appear to be directly involved anyway?

Mr. VOLIN. I remember weighing up samples when I was back in school at the Colorado School of Mines. That is the only assaying I have ever done in my life. It is my recollection that an assay ton of normal weighing pulp is about a tablespoonful. That will visualize it for you about the best way I can describe it.

Mr. LANIGAN. About a tablespoonful of pulp would be an assay ton; so that there would be about 2 tablespoonfuls?

Mr. VOLIN. May I correct myself? I would say a teaspoonful.

Mr. LANIGAN. Now, in order to assay out at \$4 a ton value of gold in those 2 teaspoonfuls of pulp, about how much gold would there have to be?

Mr. VOLIN. Well, I would guess that the gold button you would get would be rather small. It would be perhaps the size of a pinhead.

Mr. LANIGAN. About the size of a pinhead in the two?

Mr. VOLIN. Yes.

Now, you are asking me about something that, although I took assaying in college, it was never necessary for me to pursue that line of business. I am remembering things I did some 20 years ago, and I think there is some excuse for me not to be familiar with this line of work.

Mr. LANIGAN. I do not want to embarrass you. I just thought that, being a more or less neutral person in this, you might give us a little picture. I am not testing your knowledge. I just wanted to get it for my own information.

Mr. VOLIN. I don't feel embarrassed about it. I am glad to comment as I have done.

Mr. LANIGAN. Well, in view of the fact that the samples would consist of about 2 teaspoonsful of pulp, and some gold possibly the size of a pinhead in those two teaspoonsful were involved, would you say it would be quite important in making a mineral examination of a mine to be absolutely sure that the samples were properly taken from the mine?

Mr. VOLIN. The accuracy of an evaluation, of course, would depend upon the accuracy of each of the steps through which you must approach that evaluation, and certainly the taking of the samples is an important step.

Mr. LANIGAN. Now, yesterday you were discussing the discussion that you had with Mr. Appling regarding the taking of samples, and I think you felt that there might be different types of conditions in the mine, and generally it had to be left to Mr. Appling's discretion with some general guidance, you might say, on the subject.

I take it that you did not issue any specific instructions on how those samples were to be taken out of the mine; is that correct?

Mr. VOLIN. We discussed all of the possibilities we could think of that might apply to this case: The type of sample that would be cut, whether it would be a channel sample or a chip sample, the possibilities against salting, how salting might be done, the exact procedures to be used in reducing the samples to pulps, the handling of the pulps, until the time that those samples left our possession. I considered that my main responsibility, and I did go into that as thoroughly as I thought was necessary.

Mr. LANIGAN. Since this was an investigation ordered by the Solicitor, and since it was obvious that there were contested mining claims, and high values, particularly of timber involved—

Mr. VOLIN. I didn't know that, sir. I have never been on the claims.

Mr. LANIGAN. Would it not seem that the Government representative should take the samples, rather than having one of the parties to the contest take the samples?

Mr. VOLIN. Now you are asking for an opinion that, if I expressed it, it wouldn't be the opinion, it may not be the opinion of the Bureau or the Department. I had specific orders and I tried very hard to follow those orders.

Mr. LANIGAN. You did the best you could then within the scope of the order that you were given and bound by; is that correct?

Mr. VOLIN. I really did.

Mr. REDWINE. Mr. Lanigan, may I interrupt at this point?

Mr. LANIGAN. Yes.

Mr. REDWINE. Mr. Appling, in his report, says that he took the samples almost without exception, rather than Mr. McCormick; that Appling himself took the samples. He further says:

Samples were taken from outcrop, pits, or trenches designated by the McDonalds. According to them, locations were selected that had been sampled

with satisfactory results. Location of the sample on the outcrop or in the pit was at the discretion of McCormick and the writer.

He further says in his report that in most instances he, Appling, took the sample.

Mr. LANIGAN. Does he specify in which instances he took them and which Mr. McCormick took them?

Representative HOFFMAN. No, Mr. Chairman; all of the examination of Mr. Lanigan here has proceeded on the theory that McCormick took the samples.

If I understand Counsel Redwine's comments here, Appling took them. It just shows how we are wasting time.

Mr. REDWINE. Appling reported that he took them.

Representative HOFFMAN. Whether he did or did not, may I ask a question? Will you yield, Mr. Lanigan?

Mr. LANIGAN. Yes, sir.

Representative HOFFMAN. Do you know of any reason why, if Appling did not take the samples but watched McCormick, there is anything wrong with that procedure. Have you any reason to doubt that Appling would see that fair samples were taken?

Mr. VOLIN. As long as Appling was watching McCormick take the samples all the time, and Mr. McCormick followed approved procedures, there was nothing wrong with that.

Representative HOFFMAN. Looking back at it now, do you know of any reason why any other policy or procedure should have been followed.

Mr. VOLIN. Well, there was only one thing which came into it. That was impending bad-weather conditions.

Representative HOFFMAN. What was that?

Mr. VOLIN. There was this fact of impending bad weather conditions.

Representative HOFFMAN. Well, were you to blame for that?

Mr. VOLIN. No.

Representative HOFFMAN. Or is anybody in the Department, so far as you know?

Mr. VOLIN. No, sir.

Representative HOFFMAN. I thank you. That is all.

Mr. LANIGAN. Now, on the question of sending the samples to the A. W. Williams laboratory, did you notify the laboratory at any time that the samples were going to be sent to them?

Mr. VOLIN. I did not.

Mr. LANIGAN. Do you know whether anyone else in the Department notified the laboratory?

Mr. VOLIN. I do not.

Mr. LANIGAN. Did you have any instructions on how the samples were to be packed and mailed to the laboratory?

Mr. VOLIN. I left that to Mr. Appling's judgment.

Mr. LANIGAN. Did you discuss with Mr. Appling or Mr. McCormick the advisability of asking the laboratory to retain part of the pulp after the assay had been made?

Mr. VOLIN. I never did have any contact with Mr. McCormick. I cannot recall discussing this with Mr. Appling. I would assume that this laboratory, as a commercial laboratory, would follow the usual procedure of retaining a part of the pulp in case a re-assay was requested, retaining it for a while anyway.

Mr. LANIGAN. Is that the usual procedure in any commercial assay laboratory?

Mr. VOLIN. Well, they have different policies. Most of the ones that I have had anything to do with, and especially if you ask them to, will retain a portion of the pulp until you tell them otherwise, or after a certain period of time, because of limited storage facilities, they have to throw it away.

Mr. LANIGAN. Did you know that Mr. McCormick had told the laboratory to use all the pulp when it was sent to them?

Mr. VOLIN. I heard the testimony on that yesterday and I interpret that as a precautionary statement for the laboratory to combine the 2 portions in the 2 envelopes that were spoken of to guard against having an unrepresentative sample.

In other words, if the assayer has selected his weighed portion from only one of those envelopes, there was the possibility that that would not be representative because, in dividing the portions into the two envelopes, you might have gotten more of your mineral constituents in the one just by natural segregation.

I interpret that statement, I must say truly, to mean that the samples in the 2 envelopes should be mixed together before a sample, a portion was weighed out for assaying.

Mr. LANIGAN. That is all that I have at this time, Mr. Chairman.

Mr. REDWINE. Mr. Volin, to clear up the record of yesterday, let us go over a matter we discussed yesterday again, please.

I believe you testified yesterday, and if you need to do so, refer to any of your documents, please, on this, that you had a talk with Mr. Appling on December 29, 1953, in response to or as a result of the telephone call which you had from Washington to please get this report in.

Mr. VOLIN. It is my recollection that I wrote a letter dated September 29, and I had talked to him by telephone at an earlier date.

Mr. REDWINE. I am talking about December 29, just prior to submission of Appling's report.

Mr. VOLIN. Correct.

Mr. REDWINE. And you instructed Appling to get the report in as soon as possible?

Mr. VOLIN. Yes.

Mr. REDWINE. Will you refer to your file there, to the letter we had yesterday transmitting the Appling report to your superior, please, and see whether it was January 4 or 5?

Mr. VOLIN. Here is the letter, sir, signed by me, addressed to the Director of the Bureau of Mines. It is dated January 5.

Mr. REDWINE. Mr. Volin, that is a true photostatic copy of your letter, is it?

Mr. VOLIN. It is.

Mr. REDWINE. Would you leave that with us today and we will mail it back to you? Will you leave it for inclusion in the record by the reporter, sir, and we will mail it back to you?

Mr. VOLIN. These copies are not my own. They were given to me by the Bureau of Mines. I presume this is proper. I would like to have Mr. Miller say whether it is.

Mr. REDWINE. I believe Mr. Miller is in the room, is he not?

Mr. Miller, would it be all right for Mr. Volin to allow the reporter to have this letter?

Mr. THOMAS H. MILLER (Deputy Director, Bureau of Mines, Department of the Interior). I have the copy. It might serve your purpose better.

Mr. REDWINE. It would, sir. May I see it, please?

(Handed.)

(The letter referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF MINES,  
Spokane, Wash., January 5, 1954.

Memorandum to: Director, Bureau of Mines.

From: Chief, Mining Division, Region II.

Subject: Government representation at sampling of Al Sarena Mines, Inc.

In accordance with your memorandum of September 10, 1953, with attached copies of correspondence from the office of the Solicitor, R. N. Appling, Jr., mining engineer, mining division, region II, acted as Government representative in the sampling of mining claims held by Al Sarena Mines, Inc., in Jackson County, Oreg.

The sampling was done according to instructions outlined in the Solicitor's letter of September 3, 1953, to Al Sarena Mines, Inc., and Mr. Appling's duties as Government representative were discharged as indicated in the attached memorandum report dated January 2, 1954.

The samples were sent for assay to A. W. Williams Inspection Co., of Mobile, Ala. This firm was selected by representatives of Al Sarena Mines, Inc., but before the samples were shipped inquiry as to reliability of the firm was made of John R. Thoenan, acting regional director, region VIII, by memorandum dated November 9 and teletype dated November 10. Mr. Thoenan's telegram of November 10 stated that the firm is listed in the Department of Commerce directory and has the approval of the State geologist of Alabama.

The sample splits noted in Mr. Appling's report as stored with the Oregon Department of Geology and Mineral Industries were disposed of upon receipt of the assay results.

To facilitate early receipt of Mr. Appling's report as requested by Mr. Sidney Gottley, Assistant Chief, Minerals Division, in a telephone call to this office on December 29, and with the approval of Mr. Stephen M. Shelton, regional director, region II, this memorandum along with attachments is being sent directly to your office.

M. E. VOLIN.

Mr. COBURN. Mr. Volin, what was the substance of the telephone call from Mr. Sidney Gottley, and will you identify Mr. Sidney Gottley?

Mr. VOLIN. As I recall, Mr. Gottley was assistant to the Chief of the Minerals Division, and probably was asking for the Chief at that time of the Bureau of Mines here in Washington.

Mr. COBURN. At the Bureau of Mines here in Washington?

Mr. VOLIN. Yes.

Mr. COBURN. Did he ask you to expedite action on this matter?

Mr. VOLIN. He asked me to look into it and see whether it was completed because a report was wanted.

Mr. COBURN. Did he say the Department was in a hurry to get the report?

Mr. VOLIN. I can't recall his words. He wanted to know what could be done to get the report on in.

Mr. COBURN. Did you get the impression of speed or haste at all in the course of your telephone conversation with him?

Mr. VOLIN. I don't recall that, sir.

Mr. COBURN. He just wanted to know about the status of the report?

Mr. VOLIN. Well, he did want the report. He wanted the report to come in, yes.

Mr. COBURN. Right away? As soon as possible?

Mr. VOLIN. I assumed that it was right away.

Mr. COBURN. Did he say "right away"?

Mr. VOLIN. I can't recall that. I honestly can't.

Mr. COBURN. How many days later did you get the report in to him?

Mr. VOLIN. The report was dated January 2 and reached me on the 4th, I presume, because my transmittal forward was on January 5. I believe it is indicated in the last paragraph of my letter that that report did not go through normal channeling through the regional office; in order to expedite transmittal of it, it went directly from my office to Washington, D. C.

Mr. COBURN. To Mr. Gottley?

Mr. REDWINE. Mr. Volin, until you received the report on the 4th, I believe you said, from Mr. Appling—

Mr. VOLIN. I judge it was the 4th.

Mr. REDWINE. Did you know what the reports of the assays were prior to the time you saw the report?

Mr. VOLIN. I am sure that we talked, I am sure I had asked about the assays. I was curious to know how they would come out. I am sure I asked about it. I don't specifically recall it, but for the record I am sure I asked Mr. Appling whether they were good or poor.

Mr. REDWINE. You did not write them down one by one?

Mr. VOLIN. No, there was no list or anything like that.

Mr. REDWINE. So you did not know the actual results until you read it in the Appling report?

Mr. VOLIN. The results as tabulated I did not know.

Mr. REDWINE. Let me ask you this, Mr. Volin: Did you at any time subsequent to the time you saw the Appling reports, at any time from January 4 to January 10 communicate in any form other than transmitting the Appling report as to what the results of the assay were?

Mr. VOLIN. I don't recall doing so. At that time I was being transferred to a new position as regional director at Minneapolis. I can't remember whether I left on January 9 or January 11, but I had a lot of other things on my mind that I was trying to take care of and I do not recall contacting the Washington office.

Mr. REDWINE. I am speaking now in respect to the Appling report only and not whether you would have talked to Washington about any other matter. I am thinking about the Appling report and its contents.

Mr. VOLIN. I don't remember any telephone conversation there. There might have been but it skips my memory.

Mr. REDWINE. If you had had such a telephone conversation would it appear in the records of the Spokane office that you did or not?

Mr. VOLIN. If I initiated the call it would appear in the records at Spokane, that is correct.

Mr. REDWINE. Mr. Chairman, I have no further questions of this witness.

Senator NEUBERGER (presiding). Are there questions from the members of the subcommittee? Do you have questions, Mr. Hoffman?

Representative HOFFMAN. Yes.

Senator NEUBERGER. Would you care to go ahead and ask them?

Representative HOFFMAN. If this is the proper time.



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Senator NEUBERGER (presiding). Are there questions from the members of the subcommittee? Do you have questions, Mr. Hoffman?

Representative HOFFMAN. Yes.

Senator NEUBERGER. Would you care to go ahead and ask them?

Representative HOFFMAN. If this is the proper time.

Senator NEUBERGER. I believe it is. I am just sitting in for Senator Scott but I believe it is.

Representative HOFFMAN. Thank you.

Do you know any reason to question either the ability or integrity of Mr. Appling?

Mr. VOLIN. No.

Representative HOFFMAN. How long have you known him?

Mr. VOLIN. Mr. Appling was working for us on a diamond drilling project as temporary engineer in 1950 in Idaho. I became quite impressed with his work and encouraged him to get a regular appointment with the Bureau of Mines and we were successful in getting an appointment for him as a regular engineer. He first worked on an important project, the Mouat chromite investigation in Montana and did a most credible job there and in the late summer of 1951, I believe it was, we opened up this new office in Grants Pass and decided that Mr. Appling could be in charge of that office, that field office, and I think his work was always done very carefully. I have complete confidence in his integrity and in his ability.

Representative HOFFMAN. Well, do you know of anything in his record or of anything that has happened either before he took these samples or since and on down to the present time, which would give you any reasonable ground to doubt his ability or his loyalty to his job, his integrity, other than the suspicions that might have been cast by the asking of questions?

Mr. VOLIN. I have never found anything to question about his ability, loyalty, or honesty.

Representative HOFFMAN. Now, what is an assay?

Mr. VOLIN. It is simply an analysis of the sample to determine certain constituents in that sample. Generally, they are metals.

Representative HOFFMAN. By chemical determination?

Mr. VOLIN. Well, there are two types of determination. There is the fire assay determination, in which you fuse the charge and then there is the chemical assay, in which you dissolve the sample.

Representative HOFFMAN. Yesterday you were handed the little book which I just gave you, the Bureau of Standards Directory of Commercial Laboratories put out by the Commerce Department, I think. Then counsel directed your attention to page 5 showing the listing of the A. W. Williams Co., and you were asked to testify concerning the symbol "M," and you did. That stood for what?

Mr. VOLIN. As I remember—but I would prefer to check it—"M" is noted in the symbolic references as "metallographic, metallurgical."

Representative HOFFMAN. Were you asked anything at that time, and if you were, what was it, about the chemical determination?

Mr. VOLIN. First let me say that the statement was made, I believe, that that would be the only symbol applying to assays. I noted the possibility that chemical "C" was symbol "C" and clay and radiographic were symbol "K," possibly could apply to analytic procedures.

Representative HOFFMAN. In that connection will you not read just the two top lines there on page 5. Symbol "C" stands for chemical determination, does it not?

Mr. VOLIN. It could stand for chemical determination.

Representative HOFFMAN. What else does it stand for if it does not stand for just that?

Mr. VOLIN. I would like to read this title or description under symbolic references to nature of tests or researches.

Representative HOFFMAN. Are you reading about "C" now?

Mr. VOLIN. I am reading the title of that tabulation.

Representative HOFFMAN. What I was asking you was if "C" didn't stand for this chemical determination, and if it did not, what else did it stand for. And if Williams & Co. was not listed under "C." Maybe you can answer those questions all at once.

Mr. VOLIN. The reason I am taking time on this is that I want to be sure of my answer.

Representative HOFFMAN. That is all right.

Mr. VOLIN. Well, it does say that these alphabetical symbols indicate the nature of the test and "C" as "chemical" would indicate to me that the company does perform chemical tests.

Representative HOFFMAN. So that the Williams Co. were qualified, were they not, under that classification?

Mr. VOLIN. Under that classification this directory shows that they do perform the chemical tests.

Representative HOFFMAN. Yesterday from what counsel said I got the opposite inference, that the Department of Commerce didn't classify them as competent. As a matter of fact, it did. Is that right?

Mr. VOLIN. Sir, I refused yesterday to pass on that question.

Representative HOFFMAN. That is, on their interpretation of it?

Mr. VOLIN. Yes, sir.

Representative HOFFMAN. Now look at the top of page 3 at that top line and those numbers, 600 to 699. Those numbers apply to ores and metals, do they not?

Mr. VOLIN. "600—ores, metals, and manufacturers."

Representative HOFFMAN. Well, that includes gold and silver, does it not?

Mr. VOLIN. It includes precious metals, which would include gold and silver.

Representative HOFFMAN. I do not want to press you, but as a matter of fact, does not that compilation indicate that the Williams Co. were qualified to perform assays?

Mr. VOLIN. It indicates to me that they had been doing this as a commercial firm and apparently that their work had been accepted by others.

Representative HOFFMAN. So far as you know, the folks in Michigan are perfectly satisfied with your services, are they?

Mr. VOLIN. I hope they are.

Representative HOFFMAN. You have not heard anything to the contrary?

Mr. VOLIN. No; I have not.

Representative HOFFMAN. Nobody has cast any reflections on your ability or integrity up there, have they?

Mr. VOLIN. No, sir.

Representative HOFFMAN. And I do not think they ever will. That is all.

Representative JONAS. Mr. Chairman, I have a question or two, at my turn, before you go back to the counsel.

Senator NEUBERGER. We will call on you in just a moment.

All right, Mr. Jonas.

Representative JONAS. Mr. Volin, I understood you to say that you were a career employee of the Bureau of Mines until you left.

Mr. VOLIN. I said my career with the Bureau of Mines had extended over a period of 16-plus years.

Representative JONAS. Well, I mean you were a career employee as distinguished from a political appointee?

Mr. VOLIN. Yes; I was a civil-service appointee—I mean I held a civil-service appointment.

Representative JONAS. And you were engaged in that work for more than 16 years with the Bureau?

Mr. VOLIN. Yes.

Representative JONAS. Now, was Mr. Appling a career employee?

Mr. VOLIN. Yes; I believe he has a civil-service appointment. I am sure he has.

Representative JONAS. When did he come to the Bureau, if you know?

Mr. VOLIN. In 1950.

Representative JONAS. And Mr. Forbes was Director of the Bureau?

Mr. VOLIN. Mr. Forbes was the Director. He has just retired.

Representative JONAS. But he has been Director for how long, and with the Bureau for how long?

Mr. VOLIN. Mr. Forbes was with the Bureau over 37 years. I don't know the exact number of years.

Representative JONAS. Now, your immediate superior, Mr. Miller, how long was he with the Bureau?

Mr. VOLIN. Ever since I can remember. That is no reflection on his age, however.

Representative JONAS. You say you received all of the instructions with reference to this sampling from Mr. Miller?

Mr. VOLIN. He transmitted the instructions; yes, sir.

Representative JONAS. Was it in the nature of a letter or a telegram or a memorandum or what?

Mr. VOLIN. The instructions were contained in a memorandum from the Solicitor's office, a copy of which was attached to Mr. Miller's letter to me designating me as representative, or as alternate representative, and giving me this responsibility.

Representative JONAS. Have you read those instructions into the record? Are they in the record?

Mr. VOLIN. I have not read them into the record; no.

Representative JONAS. Do you have a copy of the instructions with you?

Mr. VOLIN. I do.

Representative JONAS. I would like for you to state to the committee what those instructions include. Before you read the list of instructions, may I ask one other question, Mr. Volin. Do those documents, the list of instructions or the letter of transmittal submitting to you the instructions which you followed, include the entire group of instructions you received, or did you receive other instructions by letter, telegram, telephone, or oral conversation from anybody?

Mr. VOLIN. These instructions are the total instructions that I received and I do not recall any other instructions from Mr. Miller or anybody else in Washington on it.

Representative JONAS. Please tell us just exactly what you were instructed to do.

Mr. VOLIN. This letter is a copy of a letter to Al Sarena Mines, Inc., Trail, Oreg., dated September 3, 1953, and signed by Clarence A. Davis, Solicitor. The letter reads:

GENTLEMEN: Pursuant to my conversation with Mr. Garber, the following modus operandi is acceptable to me in acquiring further evidence of a valid discovery on your contested claims:

1. I should like N. E.—

he has the wrong initial there—

N. E. Volin, a mineral expert from the Bureau of Mines in Spokane, to accompany Mr. D. Ford McCormick when samples are obtained for assaying purposes. In the event Mr. Volin is unable to take the assignment, he will designate one or more substitutes from the Bureau of Mines who will be available.

2. The two men may arrange the time and place of meeting to suit their convenience. They should meet as promptly as possible, however.

3. Accurate record should be kept of the location from whence each sample is taken.

4. Samples should be taken from each of the following claims:

Henry Applegate, J. W. Merritt, Rainboe, Sulphide, Della McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb—

May I say that this copy is not too plain. I interpret that J. L. Grubb—

J. D. McKinnon, Manganese Claim, Staples, Arroyo Verde, Alabama, and La Jolla.

You may take as many samples of whatever weight from each claim as you desire.

5. The samples should be retained in the possession of Mr. McCormick and the Government representative until shipped or delivered to a qualified assayer who is acceptable to both men.

6. The assay reports should be labeled so that they are easily identified to the claim from which they are procured and the report sent to me promptly.

7. Mr. McCormick's salary and expense and the assaying costs will have to be borne by you. The Government will bear only the expense of its representative.

Representative JONAS. Where did you get a copy of that letter, Mr. Volin?

Mr. VOLIN. That was attached and referred to in Mr. Miller's letter.

Representative JONAS. Read Mr. Miller's letter to us.

Mr. VOLIN. This is a memorandum to me dated September 10, 1953, from Director, Bureau of Mines, and signed by Thomas H. Miller as Acting Director, on the subject, Government Representation at Sampling of Al Sarena Mines, Inc.

At the request of the Solicitor of the Department of the Interior, the Bureau of Mines has agreed to provide a qualified engineer to represent the Government in the taking of assay samples of Al Sarena Mines.

Please contact Mr. D. Ford McCormick, Route 1, Box 125, Eagle Point, Oreg., and arrange a time and place of meeting, convenient to you both, for sampling the deposits on each of the claims listed in the Solicitor's letter of September 3 to Al Sarena Mines, Inc., Trail, Oreg. Your responsibility will be limited to the procedure outlined in that memorandum, which you are hereby directed to follow. A copy of the memorandum is attached.

Representative JONAS. Did the two letters that you have just read contain the entire instructions you received from any department, agency or branch of the Government connected with this sampling?

Mr. VOLIN. That is right.

Representative JONAS. Did you receive any instructions, suggestions or requests from anybody in the Department of the Interior or elsewhere to select the A. W. Williams Inspection Co. to do the assaying?

Mr. VOLIN. I did not.

Representative JONAS. Was it not your responsibility as the independent umpire or the representative of the Government to inspect this sampling and supervise it, and to agree upon the assayer to do the work?

Mr. VOLIN. I believe it was, yes, sir.

Representative JONAS. And do you feel that you discharged that responsibility and that duty to your entire satisfaction by the procedures you followed in the selection of Williams?

Mr. VOLIN. I was satisfied at the time, sir.

Representative JONAS. If anybody made a mistake in the selection or agreeing to the use of the A. W. Williams Co. to make this assay, you would have to take the responsibility of that mistake, would you not?

Mr. VOLIN. I am afraid so, sir.

Representative JONAS. Because you did it yourself, thinking it was the proper and reasonable thing to do under the circumstances, but without any suggestion from Secretary McKay or anybody in his department?

Mr. VOLIN. That is right.

Representative JONAS. What did you mean when you responded to the question asked by Mr. Lanigan that you did the best you could within the scope of instructions which were given to you? Did you not have instructions to use your best judgment in seeing that proper samples were taken and that a correct assay was made from them?

Mr. VOLIN. I have just read you my instructions.

Representative JONAS. You did not mean to imply your independence of movement was restricted at all by your instructions, did you?

Mr. VOLIN. I did not intend to imply that.

Representative JONAS. When your report was received from Appling and you were ready to transmit it you transmitted it to your immediate superior in the Bureau of Mines, Mr. Miller, is that correct?

Mr. VOLIN. I transmitted that report to the Director of the Bureau of Mines, J. J. Forbes.

Representative HOFFMAN. What was the name?

Mr. VOLIN. J. J. Forbes.

Representative JONAS. Do you still have that pamphlet from the Department of Commerce to which reference has been made?

Mr. VOLIN. Yes.

Representative JONAS. Would you open it, please, to the proper place. The record will show that Mr. Hattan who took the samples that are alleged to have shown that this mine did not contain proper mineralization, had those samples assayed by the Annes Engineering Co. Will you tell us whether that company is listed in that book. May I ask are they located in Oregon or California, Mr. Coburn or Mr. Redwine?

Mr. COBURN. I think Annes is located in Oregon, as I recall.

Representative JONAS. Turn to Oregon and see if the Annes Engineering Co. is listed there at all.

Mr. Redwine says that they are in California. The record shows that Mr. Hattan sent his samples there and I think somebody on the staff will know where Annes Engineering Co. is located.

Mr. VOLIN. It is not in Oregon.

Representative JONAS. It is not in Oregon. Try California. Mr. Perlman said they are in San Francisco. Look under "California" and see if Annes Engineering Co. is in the book under "California."

Mr. VOLIN. I do not find the firm listed under "California."

Representative JONAS. I believe that is all I have, Mr. Chairman.

Representative JONES. Mr. Chairman, may I ask a question or two?

Senator SCOTT. If I may speak for just a moment here, the order of members of the committee to be heard is Mr. Jones, Mr. Jonas, Mr. Minshall, then Senator Neuberger and Senator Dworshak. That will be the order. I wonder if we might determine at this time just when we are going to adjourn for lunch. I would suggest 12:30. If there is no objection to that time we will try to adjourn at that time.

Representative HOFFMAN. Make it 12:25.

Senator SCOTT. We have had the request to adjourn at 12:25. With no objection we will do so.

Mr. Jones, will you proceed.

Representative JONES. Yes, Mr. Chairman.

Mr. Volin, in answering an inquiry made by Mr. Jonas of North Carolina, you stated that you were satisfied at the time that you issued the order. Does that same satisfaction continue to this time?

Mr. VOLIN. A question like that was asked yesterday. I refused. I stated that I didn't think it was a fair question.

Representative JONES. For what reason is it unfair? Does it jeopardize you in your professional standing?

Mr. VOLIN. No; you are asking me to judge this in the light of other evidence than I had at the time. I made my judgment at the time and I thought it was a reasonably good judgment at the time.

Representative JONES. Now, I did not quite understand your answer to the question of receiving a telephone call from the agency here in Washington asking you to make your report directly to the Washington office rather than going through the district office.

Mr. VOLIN. Well, that procedure is followed lots of times in order to save time. As long as it is all right with the regional office and with the approval of the regional office we followed that procedure on many occasions in order to expedite this.

Representative JONES. Did you follow that procedure in this instance?

Mr. VOLIN. I believe I just took the prerogative to transmit the report directly and send a copy of my letter to Albany to the regional office.

Representative JONES. The need of expedient handling of the case had come about due to the failure of your office to do the work in the ordinary length of time?

Mr. VOLIN. No; I am not sure I understand your question.

Representative JONES. Well, was your office delayed in making the study requested by the Washington office?

Mr. VOLIN. We, of course, could not complete the report until the assays had been returned. That must have been, I am sure, the reason that the report was waiting. As soon as the assays came back, why the report was completed and, inasmuch as Mr. Gottley had



asked for it to be transmitted as soon as possible, I sent it directly to Washington.

Representative JONES. Was there any reason given by the Washington office that this should be treated with some degree of priority?

Mr. VOLIN. I don't recall any reason.

Representative JONES. That was a telephone conversation?

Mr. VOLIN. That was a telephone conversation; yes, sir.

Representative JONES. No reason was given other than they wanted the report hurried up and sent to the Washington office and not sent to the regional office because they did not want to experience any further delay in handling the report?

Mr. VOLIN. Well, you must remember that the regional office did receive a copy of my letter of transmittal and the copy of the report.

Representative JONES. That is all, Mr. Chairman.

Representative HOFFMAN. I have a question, Mr. Chairman.

This case had been held up for 18 months, had it not, by the Chapman administration?

Mr. VOLIN. I don't know that background, sir.

Representative JONAS. Would you yield for one question there?

Representative HOFFMAN. Yes.

Representative JONAS. Mr. Volin, following up the question of Mr. Jones about your return of report directly to Washington, that is the channel through which you received your instructions. They came directly from Washington, did they not?

Mr. VOLIN. They came directly from Washington; yes, sir.

Representative JONAS. And you made your report through the same channels from which you received your instructions?

Mr. VOLIN. That is right, sir.

Representative JONES. That was not unusual?

Mr. VOLIN. We have followed that procedure on a number of occasions; yes, sir.

Senator SCOTT. Congressman Minshall.

Representative MINSHALL. Mr. Chairman, I would like to ask the witness just one question, if I may.

You at all times acted in good faith, did you not, Mr. Volin?

Mr. VOLIN. Yes, sir.

Representative MINSHALL. In your opinion was there any evidence of skulduggery or criminality in this matter?

Mr. VOLIN. I was not on the ground. I asked Appling to be sure and watch for anything that he thought was out of line. He reported to me that he found nothing along that line. I was satisfied myself, too.

Representative MINSHALL. You still share that opinion today, do you not?

Mr. VOLIN. I have no reason to alter that opinion.

Representative MINSHALL. Thank you.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. I think you mentioned, Mr. Volin, early in your testimony today, that you never before had been connected with such an assignment. Did you say something substantially to that effect?

Mr. VOLIN. That is correct, sir.

Senator NEUBERGER. Would you tell us again how long you were with the Bureau of Mines?

Mr. VOLIN. I was with the Bureau of Mines from March 1939 until July 1955.

Senator NEUBERGER. In other words, you were with the Bureau about—

Mr. VOLIN. Sixteen-plus years.

Senator NEUBERGER. About 16-plus years. How long were you in Spokane?

Mr. VOLIN. I was in Spokane from April 1951 until January 1954.

Senator NEUBERGER. And during that period you were the director in a region which has a great deal of public land, a great deal of mining-claim activity and prospecting, is that not correct?

Mr. VOLIN. I would like to note that I was Chief of the Mining Division of Region II which comprises the four Northwest States: Oregon, Washington, Idaho, and Montana.

Senator NEUBERGER. To your knowledge is that not one of the areas in the country, if not the most intensive, certainly ranking near it, in the respect of Government ownership of public lands and prospecting and mineral and mining activity on those lands?

Mr. VOLIN. It has activities along those lines; yes.

Senator NEUBERGER. With the sole exception of this Al Sarena case which we are discussing here today, have you ever before been connected with any such assignment as spelled out to you and your subordinates in this case, or do you have any knowledge of any such assignment?

Mr. VOLIN. I do not and I was never connected before with such an assignment.

Senator NEUBERGER. With such an assignment. In other words, in your experience with the Bureau of Mines, and I want to get this very clearly, because in my opinion this is a very cogent part of this entire situation, you never before were connected with any such assignment or to your knowledge knew of any such assignment?

Mr. VOLIN. I don't want to have this confused with the work that the Bureau had been doing for a number of years, sampling investigations. That isn't what you mean, is it, sir?

Senator NEUBERGER. What I mean is this: Were you ever before connected with an assignment in which you or someone acting for you was assigned to obtain samples in a contested mining-claim case in which the rulings of other Government agencies were challenged, and you were requested to take samples of those samples used to determine the accuracy of the tests made by other Government agencies?

Mr. VOLIN. Thank you for clarifying that. I was never connected with any assignment like that before.

Senator NEUBERGER. Thank you very much.

Now, I would like to ask you several other questions if I may, please, Mr. Volin. The instructions which you received through the Solicitor's office or which came to the Al Sarena Mining Co. and which you were told to follow, said that the samples taken under your direction by you or someone acting for you were to be sent to an assaying laboratory mutually acceptable to you and to the mining company, is that correct?

Mr. VOLIN. That is correct.

Senator NEUBERGER. What is your opinion of such a procedure? Let me amplify what I mean.

That in a case where the rulings of the United States Forest Service and the Bureau of Land Management are challenged, the company making the challenge shall have a role in the selection of a so-called umpire. What is your opinion of that as a matter of Government policy?

Mr. VOLIN. I would prefer not to spread an opinion of that kind if I do not have to.

Senator NEUBERGER. I would like to remind you, though, that you have been expressing opinions in answer to a good many questions which were stated to you just very recently by Congressman Minshall and Congressman Jonas. You do not have to answer the question if you do not care to, but I would like to repeat it if I may.

What is your opinion, as a matter of Government policy, when a mining company questions the professional verdict of the United States Forest Service and the Bureau of Land Management, of giving that mining company a voice in the selection of the umpire to determine the validity of the rulings made by the United States Forest Service and the Bureau of Land Management?

Mr. VOLIN. Well, my personal opinion—and this does not reflect the policy of the Bureau of Mines of the Department of the Interior—is that an applicant should have recourse to review in case of a denial. I think that part of it is all right.

Senator NEUBERGER. You think it is all right?

Mr. VOLIN. That he have recourse to some procedure for review. As far as having something to say about the selection of an umpire, there are so many good umpires that in normal, I mean in general, it should be possible for two contestants about a question to settle on one that is acceptable.

Senator NEUBERGER. What would you have thought of the Secretary's Office remanding this to the Forest Service and the Bureau of Land Management which had the original jurisdiction in the case to make further studies? What would you have thought of that as a matter of procedure?

Mr. VOLIN. I would think that those would be the agencies to which this should be referred because they are directly authorized to deal with this sort of thing and the Bureau of Mines has not gotten into this sort of investigation.

Senator NEUBERGER. You would have seen no objection at all if, in view of the challenge by the company and the appeal by the company, the Interior Department had returned this case to the Forest Service and the Bureau of Land Management and asked them to take further samples and again to report and review the case of Al Sarena? You would have seen no objection to that?

Mr. VOLIN. You said something a minute ago about me expressing an opinion and I am going to express one now. I think it would have been most proper for the Department of the Interior to refer that back to the agency, the Bureau of Land Management, who is concerned with this particular business.

Senator NEUBERGER. I would just like to agree with you, if I may; and what this investigation or hearing is about is to find out why that was not done, because, in my opinion as one of the Senators representing the State where this occurred, that is what I think should have been done.

Now, I would like to ask you several more questions, if I may. The instructions which came from the Solicitor's office said that the company should bear the cost of testing these samples. Was that not one of the features of the instructions?

Mr. VOLIN. Yes; that is right.

Senator NEUBERGER. How much would it have cost to test these samples at the Bureau of Mines laboratory in Albany?

Mr. VOLIN. Let's see. There were 28 samples. A normal charge for gold and silver would be 75 cents to a dollar, let us say a dollar. So \$56 might have covered the actual assaying cost. Albany probably doesn't operate on the same basis as a commercial assaying establishment and possibly could have had higher costs attached to that.

Senator NEUBERGER. You mention the sum of \$56. Do you not think it is rather strange that here is a mining claim in the Rogue River National Forest, about 200 miles from the Bureau of Mines Laboratory, it is about 3,000 miles from a private laboratory in Mobile, Ala.; at stake is timber belonging to the people of the United States estimated value—and there are conflicting estimates—at anywhere from \$200,000 to \$630,000. Yet for the sake of a \$56 assaying charge, these mineral samples are shipped not 200 miles to Albany, Oreg., but 3,000 miles to Mobile, Ala. Do you think that is a strange situation or not?

Mr. VOLIN. I would like to answer that by saying that we discussed the possibility of sending these samples to Albany—I believe that is in the record some place—and we rejected it because of the instructions that the McDonalds were to bear the cost of this and also because there was no way to reimburse the Bureau of Mines for this work, also because there were no funds set up with the Bureau to do this work.

Senator NEUBERGER. I remember very well yesterday when you made that point. I am not criticizing you in any way. You acted within your instructions. But in view of the fact that the testing of the samples would cost around \$56 and there was at stake timber worth perhaps a quarter of a million dollars or a half million dollars—I will not argue about the value of that, that is in disagreement, but in the very lowest estimate the value is substantial, very substantial—what do you think of the instructions? I don't know what was in the mind of the man that wrote that, but he took care to see to it, in effect, that they were done at a private laboratory rather than at the Bureau of Mines laboratory under the jurisdiction of the region which you headed, and only a few hundred miles from the mining claim in the Rogue River National Forest. Do you think there is anything curious about those instructions?

Mr. VOLIN. Well, even at that time, because the Albany laboratory had a big volume of work, we were sending regular Bureau samples to private assaying firms. I did suggest two firms that I knew to be very reputable and located on the west coast close to the scene of this work. The McDonalds objected to these two firms. I don't know whether it was on the basis of previous experience with them, but they did express confidence in the A. W. Williams Co. and then I took the steps to check the A. W. Williams Co., which we are all familiar with now.

Senator NEUBERGER. Would you mind identifying the two firms which you suggested on the west coast just for the sake of the record?

Mr. VOLIN. Yes. One was Abbot A. Hanks, in San Francisco, and the other was Smith-Emery, in Los Angeles.

Senator NEUBERGER. I would like to ask one question, if I may, of counsel.

Was one of those firms the one which was used by the Forest Service?

Mr. COBURN. Abbot Hanks.

Senator NEUBERGER. It is my impression that Abbot Hanks was one of those used by the Forest Service when the assays were made on the basis of which the claims were disallowed.

Representative JONAS. Will the Senator yield?

Senator NEUBERGER. Certainly.

Representative JONAS. I was not at Portland but I have read the record and the record shows that Mr. Hattan sent his samples to the Annes Engineering Co. Later on he sent some supplemental samples that he had to this Hanks, but he used the Annes Engineering Co. as his first assayer.

Mr. COBURN. If the Congressman will read further in the record, he will find that when Mr. Sanborn accompanied Mr. Hattan on the second assay attempt they took the samples to the Abbot Hanks Laboratory in San Francisco.

Senator NEUBERGER. May I ask you this: In view of the experience of the Abbot Hanks Laboratory with samples taken on national forests and since it had been used by the United States Forest Service in similar situations, do you think it might have been preferable if these samples had been sent to the Abbot Hanks Laboratory?

Mr. VOLIN. My experience with Abbot Hanks was not on the basis of samples sent by the Forest Service but on previous work before I came to the Bureau of Mines. I knew that that is a reputable firm of long standing and I recommended it on that basis.

Senator NEUBERGER. And your recommendation of Abbot Hanks and the Annes Laboratories, I believe you mentioned, and Smith-Emery, your recommendation of those laboratories on the Pacific coast were rejected by the Al Sarena Co.?

Mr. VOLIN. That is right.

Senator NEUBERGER. Do you think that at all extraordinary in view of the existence of these reputable laboratories on the Pacific coast in the region involved, and of your own Bureau of Mines laboratory at Albany, Oreg., right in the State involved, that samples they had taken in the Rogue River National Forest should have been sent 3,000 miles for assaying?

Mr. VOLIN. If I had not had the instructions which made it necessary to reach an agreement, I would have sent the samples to one of the west coast firms.

Senator NEUBERGER. If you had not had those instructions from the Solicitor's office you would have sent the samples to one of the west coast firms?

Mr. VOLIN. That is right.

Senator NEUBERGER. In other words, it was those instructions which resulted in the samples being sent to Mobile, Ala., for testing?

Mr. VOLIN. I believe that is a fair statement.

Senator NEUBERGER. Thank you very much.

I would like to ask several questions, if I may, Mr. Volin, about the general practice of retaining umpire samples. In your experience

with the Bureau of Mines and elsewhere in private employment, what would you say was the average length of time that umpire samples are retained?

Mr. VOLIN. Well, I don't think you can state an average time. I will try to outline some comments on that. Let's consider Bureau of Mines procedures first. The Bureau of Mines samples, the samples we took in our field projects were sent to Albany and reduced to pulps there and then a duplicate would be kept of one pulp, would be split and kept at Albany for periods up to a year.

Senator NEUBERGER. For periods up to 1 year?

Mr. VOLIN. Yes.

Senator NEUBERGER. Now, these umpire samples of the Al Sarena tests were retained for how long after the assay was completed?

Mr. VOLIN. Well, you are assigning a definition to them that I don't believe you could call these umpire samples.

Senator NEUBERGER. Well, would you prefer that they be called splits?

Mr. VOLIN. These splits of the samples that were taken were kept only until the assays were examined or the assay results were seen.

Senator NEUBERGER. In other words, they were completely destroyed immediately upon receipt of the assay report, is that correct?

Mr. VOLIN. I don't know exactly when they were destroyed, but the records indicate that they were destroyed in the period from around December 29 or thereabouts.

Senator NEUBERGER. Well, they were destroyed, if I am not mistaken, from the testimony at Portland, within a few weeks. Counsel says within a few days after the report was received.

Mr. VOLIN. Well, that must be correct.

Senator NEUBERGER. In view of your statement that your splits, we will say, have been kept up to 1 year, do you regard the virtually instantaneous or immediate or very speedy destruction of these splits as somewhat an extraordinary situation?

Mr. VOLIN. Well, I regard this whole job as an extraordinary situation in that we had never done it before. We had instructions that we were to follow. I interpreted it as our function that we would see that the samples were taken properly and were dispatched to an assayer mutually acceptable to both parties and that we would submit a report. There are reasons why the splits were not retained. I think I went over that before. The principal reason was that if this was to be retained we would be in further responsibility of this job. That is, we would be responsible for those splits. Actually for them to be secure it would have meant that Mr. Appling had to live with them. He had to have them in his possession all of the time for him to certify that they were the same samples and not a change in any way from the splits that he obtained, which was physically impossible. We did not have a secure place for them and so Mr. Appling—and I understand this—Mr. Appling and Mr. McCormick saw fit to destroy the samples together.

Senator NEUBERGER. You just mentioned a minute ago that this entire project was an extraordinary situation, is that right?

Mr. VOLIN. I meant that we had never had this kind of a job given to us before in my experience. I think I testified to that.

Senator NEUBERGER. Let me ask this, because I have never worked for a Government agency with the exception of the time I was in the military. Despite the length of experience of a Government official in a Federal agency, be that experience long or short, is he not bound to follow superior orders which come to him from the policymaking, politically, politically appointed, officials—let us say—in the Solicitor's office, at the various levels of the Department, or in the Secretary's office? When a civil-service official receives orders, instructions, if you please—I suppose you say orders in the military and instructions in the civilian agencies—is he bound to follow them?

Senator NEUBERGER. That is right. In all your experience you had never had this kind of a job given to you before.

Mr. VOLIN. Yes.

Senator NEUBERGER. And that if it had not been for the instructions which came from the Department you would have handled the assignment in a different way.

Mr. VOLIN. You are sure putting me on the spot.

Senator NEUBERGER. You already have said that if it had not been for those instructions you would have sent the samples to the Abbot Hanks or the Emery Laboratories, is that not correct?

Mr. VOLIN. I expressed that opinion, yes.

Senator NEUBERGER. I think then in very substantial degree you answered my question earlier. So I will not press the witness for an answer.

Now, you were asked by members of this committee earlier about the length of service of yourself and some of your superiors in the Bureau of Mines and you testified that that length of service was very considerable.

Mr. VOLIN. Yes.

I can only speak from my own experience, Senator. In the Bureau of Mines I tried to carry out the orders of my superiors including the Director of the Bureau of Mines to the full extent of my ability to do so.

Senator NEUBERGER. And it is not up to you to question those instructions, but to carry them out as explicitly as you possibly can?

Mr. VOLIN. On some occasions I have asked for clarification, but I have never questioned the policy of an order.

Senator NEUBERGER. You attempt to carry out that policy as best you can?

Mr. VOLIN. That's right.

Senator NEUBERGER. I just want to say that I appreciate the very candid and frank way you have answered the questions that I have put to you.

Mr. VOLIN. Thank you, sir.

Senator NEUBERGER. I feel that this entire matter is unfortunate in the embarrassment or the tension and anxiety it perhaps has caused people like yourself who have been in the field in these Government agencies. You are not the only person who worked for a Government agency who testified in this under considerable stress and strain, because this is not your usual role.

We have had forest rangers from the district of the Rogue River National Forest, the mineral examiners of the Bureau of Land Management, and other people. I want to say that so far as I am concerned there is no criticism implied of yourself or those people from the Forest Service or the Bureau of Land Management. I think

that you did what has been your mission to do as a Government employee, to carry out superior orders.

What we are going to try to find out is why those superior orders were given, instead of, as you said perhaps might have been wise procedure, why this was not remanded to the Forest Service and the Bureau of Land Management, which has jurisdiction under the law for further investigation.

I want to thank you very much.

Representative HOFFMAN. Mr. Chairman, I have some more questions.

Senator SCOTT. Congressman Moss.

Go ahead, Congressman.

Representative MOSS. I have no questions at this point.

Senator SCOTT. Go ahead, Mr. Hoffman.

Representative HOFFMAN. You knew that there was a dispute between the company and the Bureau of Land Management and the Forest Service, did you not, about whether these were or were not mining claims?

Mr. VOLIN. I have heard that; yes, sir.

Representative HOFFMAN. You heard of that, anyway?

Mr. VOLIN. Yes, sir.

Representative HOFFMAN. What is wrong, if anything, with the decision of the Secretary of the Interior to call on the Bureau of Mines to make an impartial investigation?

Mr. VOLIN. I don't like to question the decision of the Secretary, sir.

Representative HOFFMAN. I know, but we have gotten into it through the questions of the Senator. About the last thing he said was that the committee wanted to know why the Secretary made this decision, and so the committee staffs called you and other witnesses, who probably do not know what was in the Secretary's mind, instead of calling the Secretary. If they want to know why he made the decision, I do not know why they do not call him and ask him. I would.

Mr. VOLIN. I think I would like to see the Secretary answer that himself.

Senator SCOTT. The Secretary will be called.

Representative HOFFMAN. Yes; after he has been smeared all over the place.

The company was entitled to an appeal, was it not, from the decision made by Rice?

Mr. VOLIN. I don't know the procedures, whether the first case is final, or whether there is a right of appeal. I expressed the opinion that a person should have the right of appeal, I thought.

Representative HOFFMAN. In this case the company appealed, did they not?

Mr. VOLIN. They did.

Representative HOFFMAN. To the Secretary?

Mr. VOLIN. Yes.

Representative HOFFMAN. Then the Secretary designated the Bureau of Mines to make a sampling?

Mr. VOLIN. That's right, to be present at the sampling, sir.

Representative HOFFMAN. Yes. And the company was given the privilege of objecting to the individual who was to make the assay, was it not?

Mr. VOLIN. That's right.



Representative HOFFMAN. Under the instructions you were told that they wanted a man to make it who was agreeable to both parties?

Mr. VOLIN. That's right.

Representative HOFFMAN. Is that not the way they usually get an arbitrator, get somebody who is agreeable to both parties?

Mr. VOLIN. The only thing I can reach back to is the selection of an umpire by an operating mining company and a smelter. That is the origin of the term "umpire" anyway.

Representative HOFFMAN. We have a strike at Westinghouse and I think some 10 or 17 Senators—I do not know how many—have asked for the appointment of an arbitrator. In selecting an arbitrator, they would get somebody that was acceptable to both the company and the union, would they not?

Mr. VOLIN. I believe that is the usual procedure, sir, that it must be acceptable to both sides; yes.

Representative HOFFMAN. Is there anything wrong, then, in selecting the Bureau of Mines to go ahead with this?

Mr. VOLIN. You mean to select the assaying firm?

Representative HOFFMAN. Yes.

Mr. VOLIN. That would be mutually acceptable to both?

Representative HOFFMAN. Yes. Is there anything wrong with that?

Mr. VOLIN. No; I guess there is nothing wrong with that.

Representative HOFFMAN. If you were appealing from a decision made by a Government official, would you not want someone who you thought was impartial to make the assay?

Mr. VOLIN. I would want a reputable person to make the assay; yes, sir.

Representative HOFFMAN. You would want somebody who was not interested. Naturally the Forest Service would be interested in upholding this protest, would they not?

Mr. VOLIN. I suppose—

Representative HOFFMAN. That is human nature, is it not?

Mr. VOLIN. If they had denied one claim they would be guided by that.

Representative HOFFMAN. They would want to make the decision stick.

Mr. VOLIN. Yes.

Representative HOFFMAN. You have noticed how counsel gets an idea and calls witnesses and tries to slant everything to sustain that opinion?

Mr. VOLIN. I believe that is right.

Representative HOFFMAN. Certainly. That is the way we all do. Then, thinking it over, is there anything ethically wrong in permitting a party who has asked for an appeal to have a voice in selecting the one who is to make the decision?

Representative JONAS. Provided it is not the sole voice.

Representative HOFFMAN. Providing, of course, it is not the sole voice, as my associate suggests.

Mr. VOLIN. I guess there is nothing wrong with that, sir.

Representative HOFFMAN. I was just wondering. It seems to be the opinion of counsel and some of the members of the committee that that is a terrible thing to do, although I assume if any one of those gentle-

men had the question of whether he was to run again he would not leave it to anybody I might select to make the decision for him.

Now, who made the first kick about this decision? Where did this controversy all come up first so far as you know? Here is the Bureau of Land Management. They had this application and the Forest Service makes a protest. Then the Secretary made a decision. Who raised a hullabaloo about it and when?

Mr. VOLIN. You mean when did I first hear about this case?

Representative HOFFMAN. Not about the case, but after the decision was made by the Secretary who instigated the hearings so far as you know?

Mr. VOLIN. This investigation?

Representative HOFFMAN. Yes.

Mr. VOLIN. This hearing?

Representative HOFFMAN. Yes; this one or any previous one.

Mr. VOLIN. The first I—

Representative HOFFMAN. The first you knew about it was in the campaign a year or so ago, was it not?

Mr. VOLIN. I didn't know anything about that. I had moved to—

Representative HOFFMAN. You had gone to a better land?

Mr. VOLIN. That's a very nice statement, Congressman.

Representative HOFFMAN. When did you first hear about it—that somebody was yelling "steal"?

Mr. VOLIN. The first I heard about it was by a telephone call in December—I can't tell you the exact date; I believe it was on a Sunday—from McCormick, I believe, telling me about the hearing in Portland.

Representative HOFFMAN. That is this year?

Mr. VOLIN. That is this fall.

Representative HOFFMAN. You did not know about it a year ago?

Mr. VOLIN. No, I did not.

Representative HOFFMAN. So then I get no information about that so far as you are concerned, as to who instigated the complaint?

Mr. VOLIN. No, I didn't know anything about the background on this and my knowledge of it is largely confined to what I have heard here.

Representative HOFFMAN. You did not know the thing had been thrashed out a year ago on the west coast?

Mr. VOLIN. No, sir.

Representative HOFFMAN. On charges made by that distinguished gentleman, Mr. Drew Pearson?

Mr. VOLIN. No, sir.

Representative HOFFMAN. The Senator, I think, used the figure \$600,000 as the value of the timber.

Senator NEUBERGER. I used the figures of anywhere from around \$250,000 to \$600,000 and I said there were various estimates.

Representative HOFFMAN. That is right.

Senator NEUBERGER. If I am not incorrect that is what I said.

Representative HOFFMAN. Do you know anybody besides Drew Pearson who put \$600,000 on it?

Senator NEUBERGER. I am not—

Representative HOFFMAN. You are not a witness; pardon me for asking.

Do you know of anyone who put a \$600,000 figure on it except Drew Pearson?

Mr. VOLIN. I don't know.

Representative HOFFMAN. You do not know what he did even?

Mr. VOLIN. No.

Representative HOFFMAN. You are missing a lot. Do you not realize that?

Mr. VOLIN. I quit reading his column to preserve my blood pressure.

Representative HOFFMAN. For your information the timber was valued by the Forest Service people at \$77,000 and another similar area in quality and timber and access was sold on a public bid at \$78,000 at the same time, so do not let that worry you that you were a part of anything where the Government lost anything.

What became of those samples, if you know, that Mr. Hattan took? I mean the ones that were not used.

Mr. VOLIN. I didn't know that Mr. Hattan had taken any samples.

Representative HOFFMAN. You did not know he had made 2 or 3 or how many—4?

Representative JONAS. Three, I think.

Representative HOFFMAN. The land is still there, so far as you know?

Mr. VOLIN. I judge it is.

Representative HOFFMAN. Whether it is or is not mineral land justifying the issue of a patent could be easily determined if anybody now wanted to go out there and had the ability and integrity to make an accurate assay, could it not?

Mr. VOLIN. It could be done. The procedure could be repeated and you could expect to check it—I mean to have some check on what you had done before.

Representative HOFFMAN. That would be a short and quick way to find out what actually was there?

Representative JONAS. Will my colleague yield?

Representative HOFFMAN. Yes.

Representative JONAS. You do not mean that everybody would be satisfied regardless of what happened, do you?

Representative HOFFMAN. No. No. Pardon me. If I intimated that, it was wrong.

Representative JONAS. I do not see how you could ever select an assayer now that everybody would agree to. Whatever the result is the one that loses will claim the assay is not correct.

Representative CHUDOFF. Would you yield at that point?

Representative JONAS. Yes.

Representative CHUDOFF. Your argument is very good except for one thing; if we could have had the sample that went in the Rogue River we might have been able to make an umpire assay.

Representative JONAS. Where are the Hattan samples?

Representative CHUDOFF. I do not know. I do not know where anything is in this case. That is what I do not like about it.

Representative HOFFMAN. Now may I go back, if my expert from Philadelphia has finished?

Representative CHUDOFF. Thank you, Mr. Hoffman.

Representative HOFFMAN. You did not find any fault with the instructions that were given you at the time, did you?

Mr. VOLIN. No, sir.

Representative HOFFMAN. I mean in your own mind did you have any question?

Mr. VOLIN. They were quite generalized, but I found no fault.

Representative HOFFMAN. Do you know whether or not the Forest Service ever asked for any sort of a resurvey or rehearing after the decision?

Mr. VOLIN. No; I do not know that.

Representative HOFFMAN. Do you know of anyone else?

Mr. VOLIN. No, sir.

Representative HOFFMAN. I think that is all. I would like to have the staff tell us, and I understand my associates would like to know, too, who first made the complaint and what form it was made in, and a copy of it.

Is that right, Mr. Jonas?

Representative JONAS. Yes, sir. But I have a question or two of Mr. Volin when it comes my turn again.

Representative HOFFMAN. I will quit now.

Representative JONAS. May I do it now?

Senator NEUBERGER. I will defer to Mr. Jonas.

Representative JONAS. Mr. Volin, the Senator from Oregon asked you some questions about your previous experience in this sort of thing, and you said you had never been called upon to do exactly what you were asked to do in this case before. You did not mean to intimate or infer from that that your department and your office has not had wide experience in taking ore samples and having them assayed, did you?

Mr. VOLIN. I tried to make that distinction, sir.

Representative JONAS. I did not get it. I think you started to say that you had had considerable experience taking samples, but I do not think you made that point clear for the record.

Mr. VOLIN. Previously in the testimony somewhere I stated that the Bureau had worked for years, exactly from 1939 until—well, maybe they are still doing some of that work—on strategic minerals and essential minerals, exploration projects, or investigations, let us call them, in which sampling is a very important part of the work.

Representative JONAS. So you think, then, your experience was sufficient from the standpoint of sampling, certainly?

Mr. VOLIN. I think that the Bureau has had a great deal of experience in sampling projects.

Representative JONAS. The Senator also expressed considerable surprise that you did not send these samples for assay to your own laboratory at Albany. That is your laboratory at Albany, the Bureau of Mines laboratory?

Mr. VOLIN. That is the laboratory that serves region 2; yes, sir.

Representative JONAS. I thought I understood you to say that you were not even sending your own samples to Albany?

Mr. VOLIN. No. I said—I meant to say again, sir, to clarify that, I meant to say that the load of work at Albany was so large that we had to send some of our samples to outside assayers.

Representative JONAS. And were you having to send some to outside assayers about this time?

Mr. VOLIN. Yes, sir.

Representative JONAS. Was that the only reason you did not select Albany? Is it not true that the Albany laboratory does not have too good a reputation as a lab?

Mr. VOLIN. I do not have that opinion, sir.

Representative JONAS. Did you read the testimony of Mr. Appling before this committee in Portland in which he said that the record of the lab at Albany was very poor?

Mr. VOLIN. I must confess that I have not read the preceding testimony.

Representative JONAS. May I ask you to comment on this line of questioning which appears on page 202 of the Portland transcript? Mr. Redwine addressing a question to Mr. Appling:

What is the reputation of the Bureau of Mines Laboratory at Albany?

Mr. APPLING. Am I under oath?

Mr. REDWINE. Yes, sir.

Mr. APPLING. Very poor. I would please like the record to read that that is under oath.

Representative HOFFMAN. Mr. Appling, I might add, was reluctant to testify.

Representative CHUDOFF. Mr. Chairman——

Representative JONAS. I do not want to yield until I finish this.

Representative CHUDOFF. Will you read the whole page?

Representative JONAS. Yes, sir. [Reading:]

Mr. APPLING. Very poor. I would please like the record to read that that is under oath.

Mr. REDWINE. What is wrong with this assay laboratory?

Mr. APPLING. I have a number of cases in the file where the assays were entirely incorrect by comparison with check samples.

Representative CHUDOFF. Did you ever complain to your superiors about that?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. How many assayers do you have there, or chemists or whatever these fellows are called?

Mr. APPLING. I do not really know. I suppose about 6 or 8.

Representative CHUDOFF. In your opinion, they do not know what they are doing?

Mr. APPLING. Some of them evidently do not.

Representative CHUDOFF. If no good comes of these hearings, at least we will get up there and get some decent assayers.

Mr. APPLING. I would like to see it.

That is the laboratory characterized by your own assistant, Mr. Appling, who was selected by you to take these samples that the Senator from Oregon says you should have sent, these samples in controversy, to be assayed. Would you expect the company complainer to agree to send samples to a laboratory that the people in your own Bureau say is incompetent? You do not think that would be very smart, do you?

Mr. VOLIN. Could I answer your question by giving my opinion of Albany?

Representative JONAS. I asked you if you would expect that a complainant would agree to let a laboratory make this assay when your own representative says it does not have a good reputation.

Mr. VOLIN. If the complainant knew of that, I suppose he would be reluctant to have his samples sent there.

Representative JONAS. I want to ask you another question along that line. The inference has been made here that the company absolutely refused to have anybody do this assay work except the A. W. Williams Co. Is it not true that the company suggested A. W. Williams Co.? You suggested two other assayers, only two; is that correct?

Mr. VOLIN. I also mentioned the Union Assay Co. in Salt Lake City, but I figured it was farther away; that the ones on the coast would be the most accessible.

Representative JONAS. I understood that you only offered the suggestion of two assayers.

Mr. VOLIN. That is what I said before; yes, sir.

Representative JONAS. Did the company absolutely turn thumbs down on those that you suggested, or did they merely offer a counter suggestion that "We would prefer to have the Williams Co."?

Mr. VOLIN. I think Appling will have to tell you that. All I have is what I got from him and it was my impression that they wanted the A. W. Williams Co. and had some reasons for not selecting the two that I suggested.

Representative JONAS. One reason would be quite obvious, would it not: Because it made the assay that the company felt was incorrect?

Mr. VOLIN. If they had had previous experience with those companies, why, they would have reason not to want to send assays to them. I mean samples.

Representative JONAS. What I am trying to get you to say is whatever it was the company representative said, whether it amounted to a categorical rejection of any assayer out there or if it was merely a counter suggestion which you took under consideration and after investigation you agreed to it? Which was it?

Mr. VOLIN. At the time I took it as a counter suggestion, because if I had as a result of my inquiry been dissatisfied with the A. W. Williams Co. I would have rejected it, and we would have had to arbitrate further on the thing.

Representative JONAS. Then you would have had to have a meeting of the minds about some other company?

Representative CHUDOFF. I did not hear your answer. Did you say if the applicant had insisted on the Williams Inspection Co. you would have insisted they give it to somebody else?

Mr. VOLIN. No, I did not say that.

Representative CHUDOFF. What did you say? I did not hear you.

Mr. VOLIN. I said if, as a result of my inquiry about the A. W. Williams Inspection Co. I had been dissatisfied with the answer I received, I would have asked for further discussion, further negotiations, to select an assaying firm.

Representative CHUDOFF. On that point, where did you make your inquiries? Whom did you make them from?

Mr. VOLIN. Sir, it is all in the record as of yesterday. I can go over it for you. I will be glad to do so.

Representative CHUDOFF. Maybe we can shorten this. My recollection is that you communicated either in writing or orally with the State geologist of the State of Alabama.

Mr. VOLIN. No, sir.

Representative CHUDOFF. You tell me.

Mr. VOLIN. I wrote a letter giving the background and the reason for wanting this information from Mr. Thoenen, assistant regional director, region 7, of the Bureau of Mines. I asked him to look, to find out about this firm, and to see whether it would be in his judgment a reputable firm to receive these samples. I told him what the samples were for and the full background on it. I judged that his reply was satisfactory.

Representative CHUDOFF. I note that there was some inquiry made from the State geologist of Alabama?

Mr. VOLIN. His reply stated that this firm has the okay of the State geologist of Alabama and is listed in the Department of Commerce Register.

Representative CHUDOFF. That is Thoenen's reply to you?

Mr. VOLIN. That is Thoenen's reply to me.

Representative CHUDOFF. I just wanted to get that straight in my mind. Thank you.

Mr. VOLIN. Yes, sir.

Representative JONAS. That is all; thank you, sir.

Senator SCOTT. Senator Neuberger?

Senator NEUBERGER. I would not return to this, Mr. Volin, unless it had been reopened here. The Congressman from Michigan, in questioning you about the right of the Al Sarena Co. to exercise a certain veto power over the selection of an assay company, made the comparison of the selection of an arbitrator in, let us say, a dispute between an employing company and its employees, as to arbitration or wages.

I would like to ask you if there is not a somewhat different comparison to be made? In the case of a company and its employees, when they select an arbitrator, there are two things mutually provided: The employees provide labor and the company provides wages.

Do you know of any other situation involving the property of the United States Government where the entire question is one of disposal of Government property, whether it is physical property or cash assets, in which the person seeking Government property has a veto power over who shall umpire the decision?

Let me make several comparisons, inasmuch as the Congressman from Michigan used that one of a company and its employees. If a veteran of a war applies to the United States Veterans' Administration for a disability pension because he was allegedly wounded in that war, is the determination of the veteran's wound and its nature and how it was incurred made by the physician selected or employed by the United States Veterans' Administration, or does the veteran have a voice in what physician shall examine and determine whether he was disabled? Do you know about that?

Mr. VOLIN. To my knowledge, the Veterans' Administration has its own medical staff who makes that determination.

Senator NEUBERGER. The veteran is is not allowed to arbitrate with the Veterans' Administration over—

Mr. VOLIN. I don't know about that angle, whether he has any recourse to review or not, but I do know that the first determination is made by the Veterans' Administration's own medical staff.

Senator NEUBERGER. That has been my assumption. I may be wrong. If a person feels he is not receiving sufficient or proper social-security funds from the Government, is that determination made by the examiners of the Social Security Administration, or is it made by an arbitrator mutually agreed upon by the Social Security Administration and the person seeking a higher benefit from social security?

Mr. VOLIN. I guess it is made by the people with the social-security setup.

Senator NEUBERGER. The reason I am asking you these questions—I do not expect you to know any more about this than I do and my

knowledge of it is rather sketchy—is for this reason: The gentleman from Michigan has compared this entire proceeding in the Rogue River National Forest to an arbitration between people who are mutually giving things of value to each other, as I say, such as a union which provides labor through its people and a company which pays wages in return for the labor. In this situation if the company received a favorable assay and the assay was used to grant patent to the land, the company received all of the land and all of the timber on that land without any payment to the Government, is that not correct; if patent was granted on the basis of a favorable assay?

Mr. VOLIN. I believe there is a fee of \$5 per claim, is there not?

Senator NEUBERGER. A purely nominal fee rather than anything approaching the value of the land or the timber.

Mr. VOLIN. That is the fee for the patent, yes.

Senator NEUBERGER. It is a purely nominal fee and has nothing to do with the value of the land or the value of the timber; is that correct?

Mr. VOLIN. That is right.

Senator NEUBERGER. For that reason I have introduced this to indicate that this, in my opinion, is not in any way comparable to an arbitration. The entire question was one of disposal of Government property, with nothing on the other side.

I just want to ask one other question, inasmuch as this matter of the company's role in the selection of an assaying company was raised by the distinguished Congressman from North Carolina. Is it not a fact that these instructions which gave the company a voice in the selection of an assaying company virtually gave them veto power over any company you might suggest, such as Abbot Hanks, and so on, inasmuch as it had to be mutually agreed upon?

Mr. VOLIN. That could have been determined if we would have carried it out to an impasse, which we didn't do. When they didn't find my suggestions acceptable, I looked into their suggestion and determined that their suggestion was O. K. And if we had come to an impasse then it would have been determined whether they had an absolute veto on the thing or not.

Senator NEUBERGER. However, you did not press the companies that you originally recommended to make the assay. You did not press those recommendations, in other words?

Mr. VOLIN. I did not insist on them; no.

Senator NEUBERGER. You did not insist upon them. In effect you agreed to the company, the assaying company laboratory, proposed by the Al Sarena Co.?

Mr. VOLIN. That's right.

Senator NEUBERGER. Thank you very much.

Senator SCOTT. In this contested case how long would you have retained the split samples?

Mr. VOLIN. That's a good question. If I had instructions to do so I would have retained them. Again I must impress on you that when you are retaining an umpire sample, that it has to be in a secure place. It cannot leave your person at any time as long as you are responsible for it. Under the circumstances I don't see how I could have retained those samples any length of time unless I could have found a bank vault or something to put them in, and after seeing the assays and deciding in my mind whether I thought those assays were regular or not I might have destroyed the samples.



Senator SCOTT. Do you think it is proper that this Al Sarena matter be referred to the Bureau of Mines?

Mr. VOLIN. I thought we covered that. Again that is an opinion. I would like to answer it in this way, if I may, Senator: That in my experience with the Bureau of Mines I have never had any connection or heard of a case like this before.

Senator SCOTT. That is your answer?

Mr. VOLIN. That is what I would like to submit as an answer, sir.

Senator SCOTT. I want to thank you for it.

Are there any other questions?

Representative MOSS. Mr. Chairman, I have just a few questions.

Senator SCOTT. Congressman MOSS has a question.

Representative MOSS. Mr. VOLIN, did you order destruction of the samples or the splits in this case?

Mr. VOLIN. I did not.

Representative MOSS. Would you have ordered their destruction at the time? You were familiar with the fact that when the case was referred to the Bureau of Mines there was some controversy?

Mr. VOLIN. Yes, I realized or knew of that nature of the investigation.

Representative MOSS. You were aware also that previous assays had been made and that apparently a dispute existed as to whether they correctly reflected the mineral value of the land?

Mr. VOLIN. I did not go into the previous reasons for rejection of the patent application. I did not do that. I did not know that previous assays had been taken, but of course in the normal procedure of a patent application it must be supported by assays, but I did not know who took those assays.

Representative MOSS. Did you assume that they must have been taken previously?

Mr. VOLIN. I didn't think about the matter in this way, no.

Representative MOSS. But you did feel that there was some controversy?

Mr. VOLIN. Oh, yes, I knew there was a denial of application; yes, sir.

Representative MOSS. But you were not aware at all as to the results obtained from the previous assays?

Mr. VOLIN. Not for the reasons of the denial; I was not aware of those reasons, no, sir.

Representative MOSS. Knowing that there was an element of controversy would you have ordered the destruction of the samples or the splits, whatever you might call them?

Mr. VOLIN. After seeing the results, noting the general tenor of them and the apparent low-grade character of them, with the exception of one, which might be discounted as having any great bearing on the whole matter, and without a proper place to keep these samples in security, I think I would have destroyed them; yes.

Representative MOSS. You say the "apparent low-grade character." Then at that point you formed an opinion it was low grade and apparently of no great value as a mining claim?

Mr. VOLIN. Now you are asking me for an opinion. I am expressing a personal opinion. It is not necessarily the opinion of the Bureau of Mines or the Department.

Representative MOSS. In view of your background it would be fairly well-informed opinion, however.

Mr. VOLIN. In my personal opinion the character is very low grade. Representative Moss. Now, on this matter of security of these samples, you say they cannot leave your person. Had they not left the person of your assistant during the period from the date they were taken until the results were obtained?

Mr. VOLIN. I think very good care was exercised about the security of the samples, as great a care as could be exercised under the circumstances. From the time that the samples were cut until they were taken to Grants Pass they were always in Mr. Appling's presence, he tells me. At Grants Pass they were lodged with the office of the Department of Geology and Mineral Industries, which is the most impartial people that we could find to take them. I know that Mr. Appling tried to arrange to put them in a bank vault and could not make those arrangements.

Representative Moss. Did the Department of Geology request that they be removed?

Mr. VOLIN. I believe that the Department of Geology would not want to be—I am sure they would not want to be responsible for samples of that character under any length of time, for any length of time.

Representative Moss. But they had had them in custody for how long at the time of destruction?

Mr. VOLIN. Well, the sampling was done in mid-November—I don't remember exact dates—and until they were mailed—I don't know when the samples were expressed; they were sent by express, I believe—I would say it was a matter of several days, a length of several days, that they were lodged with this office in Grants Pass.

Representative Moss. How bulky were they?

Mr. VOLIN. They were not very bulky. They were in—I understand they were pulps in manila paper envelopes.

Representative Moss. What security provisions do you have for safeguarding the samples which are the property of the Bureau of Mines or you expect some test by the Bureau of Mines under the exploration program or strategic minerals? Do you have to exercise the same degree of security in your custody of those samples?

Mr. VOLIN. No, sir. We have no procedure—I should say we have no reason to have a security for the samples. The duplicate pulps are stored with the chem lab, yes, the chemical lab at Albany, in ordinary storage and not under lock.

Representative Moss. You feel, then, that the security question was one almost insurmountable in this instance?

Mr. VOLIN. I feel that it was a difficult thing to comply with; yes.

Representative Moss. Was any effort made prior to determining that they should be destroyed to find a secure place for a longer period of time?

Mr. VOLIN. Yes, sir. Mr. Appling tried to arrange to have these samples placed in a bank vault.

Representative CHUDOFF. Will you yield?

Mr. Appling testified that he tried to get them in a bank vault, but the bank would not take them and they walked 2 blocks to the Rogue River and threw them in. That is in the testimony.

Representative Moss. Had he been requested then by the Department of Geology to take the samples?

Mr. VOLIN. I don't know that point. That is a point that you will have to get from Mr. Appling.

Representative MOSS. You do not know whether that was discussed?

Representative CHUDOFF. I do not want to leave this to my recollection, but to my recollection Mr. Appling's testimony and your testimony are pretty far apart. Mr. Appling testified there was not any thought about sending the samples to Albany, that in his opinion the assayers who worked for the Bureau of Mines were incompetent; that he had made many complaints to his superiors, and I presume you were one of his superiors—he must have complained to you—but they were ignored.

He then said he and McCormick tried to leave the samples at the post office and the postmaster would not take them.

Then he said they took them to the Bureau of Mines and left them there for a couple of weeks until the assay reports were received. I think the assay reports were received some time right before the first of January. He said about 2 weeks later he then took the samples to the bank in wherever they were. I do not remember the town. The bank refused to take them and he and McCormick then walked down to the Rogue River and threw them into the river.

Then I asked him did he ever throw any previous samples in the river and he said "No".

I asked him "Was it not rather unusual to do it?"

He said "Yes".

I asked him why he did it and he said he could not explain.

Did you ever give him any authority to throw samples in the Rogue River?

Mr. VOLIN. No, sir.

Representative CHUDOFF. Did you ever have any conference with Appling, first of all, concerning the ability and competency of the assayers at Albany?

Mr. VOLIN. It had been discussed. I would like to make my statement about the Albany establishment.

Representative CHUDOFF. You have already said they were good assayers, did you not?

Mr. VOLIN. I don't remember whether I was permitted to say—

Representative CHUDOFF. You tell us about it.

Mr. VOLIN. The Albany Lab is a large one and handles a large volume of business. Necessarily they have to use routine procedures, and it will handle many dozens of assays a day. If you submit a sample and do not ask for a check assay they use the normal routine, which is to get out the results. The results might have a variation or some error, but for the purposes that the samples are submitted they are satisfactory.

However, in cases in which you wanted, an engineer wanted, an accurate return, an accurate analysis, he could ask for a check assay and the work of the Albany Chemical Lab in that case was excellent.

Representative CHUDOFF. You were chief of the Bureau—was it the Salt Lake City office?

Mr. VOLIN. No, sir.

Representative CHUDOFF. Spokane office?

Mr. VOLIN. Yes, sir.

Representative CHUDOFF. And the Albany Laboratory was under your jurisdiction?

Mr. VOLIN. No, sir.

Representative CHUDOFF. It was not?

Mr. VOLIN. No. I was chief of the Mine Division and the Albany Laboratory is under the jurisdiction of the regional director, region 2.

Representative CHUDOFF. And Mr. Appling spoke to you about the incompetency of these assayers in Albany?

Mr. VOLIN. He had stated that he had had some wrong results on samples. I think all of us had had occasions to check back, but the general run of results received from Albany were satisfactory for the purposes that they were submitted for.

Now, if you wanted an undisputably accurate assay, you would ask for it. You would ask for a check assay. It means that they have to give you two results which check each other.

Representative CHUDOFF. I understand that, but that was not done in this case, was it.

Mr. VOLIN. Well, these samples weren't sent to Albany.

Representative CHUDOFF. They were not sent anywhere. They were taken good care of. They were taken good care of by depositing them in the State laboratory and then taken good care of by depositing them in the river.

Mr. VOLIN. The samples were sent to the A. W. Williams Inspection Co.

Representative CHUDOFF. There were no check samples sent to A. W. Williams or any other samples.

Mr. VOLIN. You are talking about the splits?

Representative CHUDOFF. Yes. Do you not think, as a public official knowing the bitter controversy in this case as to whether or not there were sufficient minerals in these mines to warrant a patent, that extra precaution should have been taken?

Mr. VOLIN. I think we took extra precaution, sir.

Representative CHUDOFF. Do you not also think, as a public official, Mr. Appling having complained to you about the poor ability of the assayers in Albany, it was your duty if you were in charge of that laboratory to notify the man in charge the assays coming out of there were incorrect and improper and could not be relied on?

Mr. VOLIN. Congressman, I did that on several occasions.

Representative CHUDOFF. Did you do it in writing?

Mr. VOLIN. Yes, I did.

Representative CHUDOFF. And there would be copies of that writing in the files?

Mr. VOLIN. There would be in the files. I believe it would be in a confidential memorandum, however, but it would be in the files.

I do remember writing such a memorandum to ask that the procedures of analysis at Albany be reviewed. On one occasion, or more than one occasion we had some erroneous results.

I still maintain, and I want you to understand that, that if you asked Albany for a check assay, you would get a check assay, and it was accurate.

Representative CHUDOFF. I tell you why I am concerned about that, Mr. Volin. This lab was assaying strategic stockpile minerals with the Government spending millions of dollars and it was important that they have competent assays.

Would you have any recollection when you sent that memorandum and whom you sent it to?

Mr. VOLIN. The Albany lab was not making assays for stockpiling minerals.

Representative CHUDOFF. What were they doing?

Mr. VOLIN. They were making analyses of samples submitted from the field in surveys of mineral deposits. There is a very great difference, Congressman.

Representative CHUDOFF. Let us accept that. Approximately when did you send this note to and whom did you send it to?

Mr. VOLIN. I don't remember now. I think I sent it to Roberson—let me give you the spelling of his name: R-o-b-e-r-s-o-n, who is in charge of the lab, the chem lab; and the date would be some time in 1951 I guess, or maybe 1952.

Representative CHUDOFF. As a result of your complaint was anything ever done and was anybody ever transferred or examined to determine their competency?

Mr. VOLIN. I also spoke about this matter——

Representative CHUDOFF. Now, you answer my question and then you can explain whom else you spoke to.

Mr. VOLIN. Yes; I received a reply from Roberson in which he said that he appreciated my criticism and they were making every effort to do the procedures and get good results, accurate results.

Representative CHUDOFF. And that is in the record, too, the reply?

Mr. VOLIN. I believe that would be in the record, sir.

Representative CHUDOFF. You were going to say that you also complained to somebody else?

Mr. VOLIN. I also, on a number of occasions—I used to make direct visits to Albany, at least once a month. On several occasions I spoke to the regional director about keeping up the quality of our assaying and maintaining that at satisfactory levels.

Representative CHUDOFF. You had made numerous complaints about the competency of the assayers in Albany?

Mr. VOLIN. I haven't said anything about the competency. I don't think I have used that term.

Representative CHUDOFF. What kind of complaints did you make?

Mr. VOLIN. I simply stated that on certain occasions we had received results and sent back for another assay and they didn't check.

Representative CHUDOFF. That would seem to deny it, to say that somebody was not making a proper assay, would it not?

Mr. VOLIN. It might not be his competency. It might be that they are using an unsatisfactory procedure for that particular sample.

Representative CHUDOFF. I am going to ask you how you can reconcile these statements you made in the last 4 or 5 minutes and your prior statement that in your opinion the people in the Albany Laboratory were doing an excellent job. You said that.

Mr. VOLIN. I will say it again.

Representative CHUDOFF. How do you reconcile that?

If you get a lot of wrong assays how does that make them do an excellent job?

Mr. VOLIN. The results that we received out of Albany were very satisfactory for the type of work we were doing, sir.

Representative CHUDOFF. Then in your opinion Mr. Appling was wrong in saying the kind of work being done at Albany was very poor?

Mr. VOLIN. I don't want to be asked to express that opinion, sir.

Representative CHUDOFF. But in your opinion the work was excellent?

Mr. VOLIN. I wish that you would review my statement. I said that if you wanted an accurate assay out of Albany and you asked for a check assay you would receive an accurate assay.

Representative CHUDOFF. Then an accurate assay is a good assay, an excellent assay, is that not right?

Mr. VOLIN. That's right.

Representative CHUDOFF. And an inaccurate assay is a poor assay?

Mr. VOLIN. Not necessarily. There are limits there that sometimes you don't need to know—

Representative CHUDOFF. Assuming there is a certain amount of tolerance allowed. Even when you do precise machine work you are allowed a tolerance. Would you say, giving the laboratory every benefit of tolerances, that they were doing an excellent job?

Mr. VOLIN. I think they are doing a good enough job under the circumstances; yes, sir.

Representative CHUDOFF. Mr. Lanigan?

Mr. LANIGAN. To get back to the taking of samples at the Al Sarena mine, would you say that it would be necessary for the integrity of the sampling and the assaying that Mr. Appling keep the samples in his possession from the time the samples were taken at the mine until they were expressed to the Williams laboratory?

Mr. VOLIN. That's the normal procedure; yes.

Mr. LANIGAN. Do you know that on the same day that the samples were taken at the mine they were brought back by Mr. McCormick and Mr. Appling and left at the post office overnight?

Mr. VOLIN. I knew that they did—at the end of the first day I believe the samples they had taken that day they tried to lodge—they did lodge—with the post office, the nearest post office, overnight. I would consider that a secure place.

Mr. LANIGAN. Would you consider that retaining possession of the samples?

Mr. VOLIN. The same as retaining possession; yes. It is a United States post office and people do not have access to the place where your samples are lodged.

Mr. LANIGAN. How do you know people did not have access?

Mr. VOLIN. I am leaving that to Appling's judgment, that he cautioned the postmaster that these samples would have to be in a place removed from access to the public.

Mr. LANIGAN. On the question of reimbursement for this, I think there came up this \$56 or some such amount charge that would have been required for assaying these samples at Albany. Did anyone reimburse the Bureau of Mines for the salary of Mr. Appling and the traveling expenses in connection with this examination?

Mr. VOLIN. No, sir. I got in touch with the regional office and asked if there were any funds available for this, because otherwise we would have to charge it to our regular funds—

Representative HOFFMAN. Mr. Chairman, we have been all through that and if the Government had gone ahead they would have had to pay \$56. We have been over it backward and forward.

Representative CHUDOFF. Mr. Chairman, I think Mr. Lanigan as counsel for the committee has a right to ask these questions. If Mr. Hoffman wants to object let him object, and you can rule.

Representative HOFFMAN. All right. I can stay here the rest of the week if you can.

Representative CHUDOFF. You know that I like your company, Mr. Hoffman.

Mr. VOLIN. I asked about the availability of funds and what account to charge this work to. Mark Wright, who was acting regional director at that time, wired or called Washington, D. C., about it and there is a reply, a telegraphic reply, in the files I believe that state to refer back to the instructions and that the Bureau would bear the cost of Appling's salary and the salaries of the Bureau men that were helping Appling and any travel cost incurred by them; and that the McDonalds would bear the cost of McCormick's salary, travel, and the cost of the assay.

Mr. LANIGAN. Did you ever compute what the cost of Mr. Appling's salary and those who assisted him and their travel expenses were for the period involved?

Mr. VOLIN. No. We had a work order system in which Mr. Appling kept his own records and he would have—I believe on this he would have charged this to an account by which we could identify the cost of it, but I don't know the cost of it.

Mr. LANIGAN. That is all.

Senator SCOTT. Are there any further questions?

Representative HOFFMAN. Yes. Oh, yes.

Senator SCOTT. Go right ahead.

Representative HOFFMAN. Thank you, Senator.

The distinguished Senator from Oregon tried to draw a distinction between my statement about selecting an arbitrator and the situation that existed here, and he referred to the Social Security Administration and then to the Veterans' Administration, and it was your understanding, I think, to the effect that when a veteran made a claim for let us say, disability, that the physician's decision in the Veterans' Administration was final.

Now, as a matter of fact, I think it is common knowledge that sometimes a Congressman goes down—I know I have—with the physician for the veteran on the Appeals Board and the opinion of the Veterans' physician has been overruled. Did you ever hear of that?

Mr. VOLIN. I should think that would be—

Representative HOFFMAN. It has happened anyway, if you never heard of it.

Mr. VOLIN. I don't know of it.

Representative HOFFMAN. That is one way of getting reelected. If you can win enough of those cases it is very helpful at the time of reelection; and sometimes that applies in a different way to social security.

In addition to that, if you can show fraud anywhere along the line you can always get into court against these Government agencies and, in this particular case, if they could show fraud they could have this determination set aside.

Then the Senator said that the case was different because in this case the Government had certain property. He referred to the value of it, and there was nothing on the other side.

There is this correction that should be made: That the Congress has written certain laws calling them mining laws, and under these laws you can file an application. You are familiar with that, of course?

Mr. VOLIN. I am familiar with that.

Representative HOFFMAN. And these people or their predecessors, beginning in 1897 and up to 1935, filed certain claims and they paid \$5 an acre, the figure fixed by the Government?

Mr. VOLIN. That was the patent fee; yes.

Representative HOFFMAN. And then there is some testimony here that they also spent \$200,000 in mining operations. Then, there is some testimony that they took off some timber which someone says maybe they should not have taken. Then the case dragged along and there was no hearing on the merits. You are familiar with that, are you not, that there was a hearing held, and the attorney for the McDonalds just filed a demurrer and his demurrer was overruled and he walked out. So that left the Government officials no choice but to rule against the claim of the mining company. You are familiar with that, are you not?

Mr. VOLIN. I didn't know anything about—

Representative HOFFMAN. That is the situation on the record since we have been taking testimony.

Mr. VOLIN. The background.

Representative HOFFMAN. Then the case had dragged along for something like 18 months and a suit was filed down in Alabama. On what grounds I do not know, nor what jurisdiction that court would have; but anyway, one was filed against the Department. So it was brought to a head where the Department had to do something.

Then the new Secretary of the Interior, McKay, ordered this sampling of ores to which you have referred, which was conducted under instructions given to you, and a report was made, then the appeal decided the case on that evidence.

With that whole situation in mind, had you been the claimant would you not have wanted an impartial assayer and would you not think you were entitled to one?

Mr. VOLIN. Well, I am sure the claimant would want an impartial referee, but what I was trying to state was that any of the Government agencies concerned with that should be considered impartial.

Representative HOFFMAN. The Forest Service had already ruled against the claimant. What was the use of taking an appeal if he was going to take the Forest Service's judgment? The Bureau of Land Management, Mr. Hattan, had decided against them. I will not say decided against them; he had taken certain samples. However, here it was.

The Secretary, Chapman, had refused to decide the issue and let it drag along. It was up to the new Secretary; so he sends out for an impartial sampling and assay.

You were impartial, were you not, your Bureau?

Mr. VOLIN. We try to be impartial.

Representative HOFFMAN. You are presumed to be, anyway, and presumed to be competent.

Mr. VOLIN. We try to be competent.

Representative HOFFMAN. What was wrong in referring it to you people instead of sending it to the people who had already rendered a decision, if anything is wrong with it?



Mr. VOLIN. Do you want me to answer that, sir?

Representative HOFFMAN. Surely. I would not have asked you if I did not want your opinion.

Mr. VOLIN. Well, since the Secretary of the Interior made his decision to refer it to the Bureau of Mines I suppose it certainly was his prerogative to do so and it was our bounden duty to follow his instructions.

Representative HOFFMAN. You did not object at the time, did you?

Mr. VOLIN. No, sir, I did not object at the time.

Representative HOFFMAN. You had not taken any position as to the merit of the appeal, had you?

Mr. VOLIN. No, sir.

Representative HOFFMAN. You were not involved in any way in the controversy my colleague suggests?

Mr. VOLIN. No, sir.

Representative HOFFMAN. You were not objecting to the extra work, were you?

Mr. VOLIN. I had lots of work, but I didn't object on that score, sir.

Representative HOFFMAN. You were not responsible for anything except a report, were you?

Mr. VOLIN. I was responsible——

Representative HOFFMAN. To pick an able, competent, honest man?

Mr. VOLIN. Yes, sir.

Representative HOFFMAN. And that you did?

Mr. VOLIN. I thought I did.

Representative HOFFMAN. And you have not seen any reason to change your opinion?

Mr. VOLIN. That's right.

Representative CHUDOFF. Mr. Chairman, I just want to keep the record straight. If I am wrong I would like counsel to advise me.

Somewhere back in my mind I have the impression the law says that the Bureau of Land Management is the statutory judge in these cases.

Mr. REDWINE. That is correct.

Senator SCOTT. That is correct.

Representative CHUDOFF. And not the Forest Service. The Bureau of Land Management is the statutory judge to sit in these disputes and make findings.

Of course, I think it goes further to say that the Secretary of Interior has a right to overrule the findings of the Bureau of Land Management and make any decisions he cares to, or to remand it for further proceedings.

Representative HOFFMAN. Of course, if you go back you will find that the Forest Service was lax in making the complaint and protest.

Representative CHUDOFF. The Forest Service, if my recollection is correct, were complainants. They said they contested the right to grant a patent here and they were not even brought into the thing. They were ignored and the Williams Co. was picked to make the assays.

Representative HOFFMAN. Oh, they borrowed Hattan from the Bureau of Land Management.

Senator NEUBERGER. I think to keep the record straight, something should be borne in mind by the witness and by the committee. I have lived in the Northwest all my life. I was born there. Throughout the

Northwest there have been thousands of people prospecting on public land for precious metals, as the witness knows, some fairly large companies, others individual prospectors. I camped with some of those prospectors and I have known people in those companies.

On a good many occasions those people have been denied patent because either the Forest Service, if it was on national forest land, or the Bureau of Land Management on appeal from the Forest Service, if it was on public domain land, ruled that there was not sufficient mineralization; and those people, either individual prospectors or mining companies, have lost their claim to patent.

Yet, in all the time I have lived in the Northwest I have never heard of another proceeding like this, and you, sir, have testified to us that in all your experience with the Bureau of Mines you have never known of another proceeding like this; is that correct?

Mr. VOLIN. That is what I so testified.

Senator NEUBERGER. Thank you.

Representative JONAS. Mr. Chairman, may I ask a question? I see it is about time to adjourn under your order about lunch. Are we through with this witness? If so, I want to ask a question, but I do not want to interrupt if you have other questions.

Mr. REDWINE. I have one statement I would like to make in connection with this witness, if I may, Mr. Chairman.

Representative HOFFMAN. In answer to the Senator, the record shows that at least 15 percent of the regional cases have been overruled by the Secretaries.

Senator NEUBERGER. On the basis of proceedings like this.

Representative HOFFMAN. Not necessarily. They are not all the same. Of course not. You had one overruled yourself.

Senator SCOTT. Mr. Redwine, go ahead.

Mr. REDWINE. In view of the insinuation made earlier this morning in connection with Mr. Volin, I would like to state very emphatically that there has been no reflection cast by the staff on either Mr. Volin's integrity, his honesty, or anything else, and I think he is to be congratulated on the frank manner in which he has testified.

Mr. VOLIN. Thank you.

Representative JONAS. I would like to concur in that. I did not intend to reflect on him at all and as to the questions I asked I thought he was very fair and very frank and candid in all his answers.

Mr. VOLIN. Thank you.

Representative JONAS. A question I wanted to ask—and it would be more properly directed to the chairman of my own subcommittee on the House side—is how did we get into this? I never remember hearing anything about Al Sarena. It was never brought up in any subcommittee meeting to my recollection.

When you sent me an agenda of what was to be investigated in the Northwest you did not say anything about the Al Sarena mine and I never heard of this case until I read this record since coming back to Washington on January 3. I just would like to know what documents have been submitted to our subcommittee or what complaints have been made, and by whom, and on the basis of what did we get into the investigation?

Representative CHUDOFF. To answer the gentleman's question, I want to say first of all that as far as the committee staff of the House committee was concerned, no investigation was made by our staff con-

cerning the Al Sarena case. We got into the Al Sarena case, I would not want to say accidentally, but it came out as a matter of hearings on the timber question in the Pacific Northwest. As we got into the hearing of witnesses in the Pacific Northwest certain references were made to the Al Sarena case, as to the value of the timber on the land, and of course the scarcity of timber in Oregon and in Washington.

Some of the witnesses alluded that timber was given away by the Government to the Al Sarena Mining Co. by granting them patents that they should not have had, and as a result of that I questioned the Members of the Senate and the members of the Senate staff and they said that they had a complete investigation and they would like at that time to go into it since we were out there and a lot of people who work for the Government in Oregon and close by would be in a position to testify and we would not have to hear them in Washington. That is how it came about.

Representative JONAS. Do I understand from what you said that the record will show that these witnesses did raise these questions?

Representative CHUDOFF. Some witnesses spoke about the Al Sarena case. I think we listened to an old prospector in Roseburg, Oreg., who was trying to get a patent for many years and his counsel raised this question. I think you will find that in the record.

Representative JONAS. I wanted to know if I had been derelict in my duty in not knowing that our committee had been requested to go into this. I never remember the matter having come up before the committee.

Representative CHUDOFF. This witness was a man by the name of Craget who appeared with his counsel in Roseburg, Oreg.; and I want to say to you again that our staff has made no investigation. That came as sort of a byproduct of the original timber investigation.

Representative JONAS. It could not have come up suddenly because you said the Senate staff told you when the question was raised that they had made a complete investigation.

Representative CHUDOFF. The counsel was of the opinion, after discussing it, that this was related to the timber investigation which we were authorized to make by a joint committee investigation.

Representative JONAS. There has been a lot of loose talk about charges that have been made. Has the Bureau of Land Management or the Forest Service filed any complaint or offered any criticism of what happened with either of our committees?

Representative CHUDOFF. I want to say this to you: As I said before, we made no investigation. We have no files on the Al Sarena case. All the complaints, if any were made to our committee, were referred to the Senate staff and I think counsel for the Senate committee can answer those questions.

Senator SCORR. The meeting is adjourned until 2 o'clock.

(Whereupon, at 12:25 p. m. the hearing was recessed to reconvene at 2 p. m. the same day.)

#### AFTERNOON SESSION

Senator SCORR. The meeting will please come to order.

Senator Murray asked me to make this statement for the record, and I will read his statement.

STATEMENT OF SENATOR JAMES E. MURRAY, CHAIRMAN, UNITED STATES SENATE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS CONCERNING THE AL SARENA  
CASE

I have been informed that some question was raised during this morning's hearings before the subcommittee on the legislative oversight function, and the Subcommittee on Public Works and Natural Resources of the House Government Operations Committee concerning the initiation of the investigations of the so-called Al Sarena case.

I wish to point out that the Senate Committee on Interior and Insular Affairs, of which I have the honor to be chairman, has specific and explicit jurisdiction over all mining legislation, as well as mineral resources of the public lands and forest reserves created from the public domain, under the terms of the Legislative Reorganization Act of 1946, Public Law 601, 79th Congress. As chairman of that committee, I am charged with the duty of insuring that all legislation coming within the purview of the committee's jurisdiction shall be thoroughly studied, investigated and reported on. The Al Sarena case directly involves two of the major jurisdictional areas of this committee; that is, forest reserves and the mining laws.

I doubt the wisdom of anyone questioning the propriety of an investigation by the Senate Interior Committee into a matter of this kind which so clearly comes within the jurisdiction of my committee, nor do I feel compelled to enumerate the various sources of the complaints that have come to me, and to other members of my committee, as well as members of the United States Senate, all of which directly bear upon this alleged giveaway of a valuable segment of our Nation's timber resources.

It is my hope that as a result of these public hearings there will be full disclosure of all the facts, so that some of the more curious aspects of the procedures followed in this case will be revealed for the information of the public, and for the guidance of the Congress in the preparation of any remedial legislation that may be needed.

Representative CHUDOFF. Mr. Chairman, in view of Senator Murray's statement, I would just like to add for the record that, under the rules of the Committee on Government Operations and the jurisdiction of the various subcommittees set up thereunder, the Subcommittee on Public Works and Natural Resources has jurisdiction of Government mining matters, Government timber matters, and has jurisdiction over the Interior Department, the Bureau of Land Management, the Bureau of Mines and all the subdivisions of the Interior Department.

Representative HOFFMAN. Mr. Chairman, I raised no question about the jurisdiction of the Senate committee or the subcommittee nor of the House committee.

I want to put into the record again at this point the letter from Senator Murray which directed the investigation and which called attention, as I recall, to four things:

Public hearings to develop further facts and current information relative to problems of access to Government timber, including access roads, inadequate and outdated inventory data on Federal timber resources, increases in the allowable cut, revised timber sales to provide sales of the size and length that meet the need of small and large operators alike, increased acreage sales of diseased and burned timber, and a reexamination of the effect of marketing area and other restrictions on Government timber sales.

That is dated September 21. It is the letter authorizing the public hearings. It is signed by Senator Murray and nowhere does it mention anything about the Al Sarena Mines, as I recall it.

Representative CHUDOFF. Mr. Chairman, I would like to call the attention of the gentleman from Michigan to page 2 of the Al Sarena mining claims hearings held in Portland, Oreg., where Senator Scott made a statement as to why we were going into the Al Sarena case, and the reasons therefor.

I want to further call the gentleman's attention to the fact that he made no objection at that time. I think that it is rather late to object.

Senator NEUBERGER. I also would like to call attention to the fact that in Roseburg we went into the individual case of one isolated prospector, Mr. Craget, who felt that his presence on public lands was being threatened by a Government order, and Mr. Craget was enjoying no such intervention at the top level as the Al Sarena Co. had, and there was no objection from minority members of the committee that we look into the case of Mr. Craget, this lone little isolated, disabled prospector who was not receiving the benefit of this treatment.

If we can look into this case of Mr. Craget, who did not get the benefit of this "special" treatment, we can look into the Al Sarena case.

Representative HOFFMAN. In addition to what the Senator said, in Roseburg—

Senator NEUBERGER. At Roseburg.

Representative CHUDOFF. On November 17, 1955.

Representative HOFFMAN. May I finish my statement?

Representative CHUDOFF. I wanted to give you the date.

Representative HOFFMAN. At Roseburg they brought in the miner and the miner's dog by photographs of this poor miner on some claim that the Government was going to kick him off, I guess, and they made a very touching, tragic case of it, the purpose of which undoubtedly was to lay the foundation of bringing the Al Sarena case into the record.

I have a very distinct recollection of that. It would be a little exaggerated to say that the committee members were weeping over the situation of that poor miner and his dog.

Representative JONAS. Did you know anything about it?

Representative HOFFMAN. I did not know anything about anything. I was never advised of the purpose of the committee. The custom was to give me a statement, if they gave me any at all, when the witness took the stand.

For example, on a Monday when the committee staff had statements from the witnesses, and you know the rule that they are supposed to be filed and the letter of the Senator requires them to be filed in November, some of the statements were filed on Monday. They gave them to me on Wednesday or Thursday. Well, I was not even a stepchild.

Representative CHUDOFF. You always got the Department of the Interior statements 3 days before the chairman and even the committee. The record shows that you had in your possession many statements before the committee had them.

Representative HOFFMAN. I do not want to be discourteous but there is no truth to your statement. I do not know.

Representative CHUDOFF. If you will check the record, you will see that I complained that you were getting copies of Department of the Interior statements.

Representative HOFFMAN. You were kicking that the Department was giving a hearing. You wanted to convict them without a hearing. The record shows that you objected when Heath gave me information, although this is supposed to be a fact-finding committee. When Mr. Heath gave me some information, you squawked. That is

a good word, "squawked", because that is what you did about the fact that he gave it to me.

Representative CHUDOFF. I objected to you meeting him secretly at lunch and getting information from the Department employee before it was given to the committee, information which was not available until I subpoenaed him.

Representative HOFFMAN. You had investigators there since February and I came along and they recognized a fair individual and gave me the information.

Representative CHUDOFF. I think you have gotten fair treatment and I think nobody could satisfy you.

Representative HOFFMAN. Too bad that they do not channel everything through your staff.

Senator SCOTT. If there is no objection, we will recess at 4:30 sharp this afternoon.

Representative HOFFMAN. I guess that is all right, Mr. Chairman. I just want to call your attention to the fact that the Republican members are sacrificing a great deal to attend, and we intend to attend. We are sacrificing because the Republicans are holding a conference about something at 2:30. But I have no objection. I think this will be more profitable for me.

Representative CHUDOFF. Do you mean to tell me that the Republican Party is not advising you as to what their conference is about this afternoon?

Representative HOFFMAN. They are just trying to devise ways and means to meet the false, vicious charges being made by subcommittees through the use of Government money, and having difficulty in getting it.

Senator SCOTT. That is interesting information.

Representative HOFFMAN. They have me about worn out. You mean that we are going to do some business now?

Senator SCOTT. The first witness is Donald Burgess. If he is present, will he come forward?

Mr. Burgess, will you give your name and connection?

Will Congressman Chudoff swear the witness, please?

Representative CHUDOFF. Will you stand and raise your right hand, please?

Do you solemnly swear that the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BURGESS. I so swear.

#### TESTIMONY OF DONALD R. BURGESS, DIRECTOR, OFFICE OF PUBLICATIONS, MANAGEMENT, DEPARTMENT OF COMMERCE

Mr. BURGESS. My name is Donald R. Burgess. I am Director of the Office of Publications, Management, of the United States Department of Commerce.

Mr. REDWINE. Mr. Burgess, will you identify that document, please?

Mr. BURGESS. This document is the publication called Directory and Commercial and College Laboratories, by the National Bureau of Standards of the Department of Commerce.

Mr. REDWINE. Will you read the first paragraph of the introduction, please?

Mr. BURGESS. The first paragraph of the introduction says:

In accordance with the law, the National Bureau of Standards makes tests and carries out investigations for other Government agencies. The Bureau does not make tests for private individuals if other laboratories can do the work with sufficient accuracy. To inform interested persons of the location of other laboratories, the Bureau has attempted to compile a complete list of commercial testing and research laboratories throughout the country, together with indications of the types of commodities which they are willing to test for commodity acceptance or other purposes. Information is given concerning 20 commercial laboratories, with 80 branches or offices. There is also presented a list of the laboratories of 189 colleges that are used not only for purposes of instruction but also to a considerable extent for research and testing work.

Mr. REDWINE. Mr. Burgess, does this document go into the matter of the competency of any agency or company that is listed there?

Mr. BURGESS. It does not.

Mr. REDWINE. What is the date of it, sir?

Mr. BURGESS. The publication was issued August 30, 1947, and it superseded Bureau of Standards Miscellaneous Publication M171.

Mr. REDWINE. Has this directory been revised by the Department of Commerce since 1947?

Mr. BURGESS. No, sir.

Mr. REDWINE. Has any publication been issued since that time that purports to be the successor of it?

Mr. BURGESS. Not by the Department of Commerce.

Mr. REDWINE. By any other agency?

Mr. BURGESS. Yes, sir. A publication has been issued by the American Society for Testing Materials, which indicates on the cover page that it is the successor to this publication.

Mr. REDWINE. But it is issued by a private organization?

Mr. BURGESS. Yes, sir.

Mr. REDWINE. Do you happen to have a copy of it with you, sir?

Mr. BURGESS. I do not.

Mr. REDWINE. This does not purport to be a complete directory of all firms who do this type of work, does it?

Mr. BURGESS. I do not feel qualified to answer fully on the methods of compilation of that directory, sir.

Mr. REDWINE. Have you ever seen that publication there, Mr. Burgess?

Mr. BURGESS. No, sir.

Mr. REDWINE. Do you know anything about it?

Representative HOFFMAN. Will the counsel identify it so that we know what you are talking about?

Mr. REDWINE. I will be glad to, Congressman.

You have never seen it before?

Mr. BURGESS. No, sir.

Mr. REDWINE. It is the American Council of Independent Laboratories, Inc., their ACIL bulletin.

Mr. Chairman, this is the document that Senator Goldwater offered yesterday and wanted put into the record at some time as to the fact that the Williams Inspection Co. was listed in this publication. I suggest that it go in at this time.

Senator SCOTT. Without objection, it will be in the record.

(The document referred to follows:)

ACIL BULLETIN

AUGUST 1955 SPECIAL EDITION

American Council of Independent Laboratories, Inc., the professional association of independent scientific laboratories, Washington, D. C.—Harold M. Dudley, executive secretary; Ruth Dudley, editor.

CONSTRUCTION INDUSTRY SERVED BY INDEPENDENT LABORATORIES

Forty-nine independent scientific laboratories (members of the American Council of Independent Laboratories, Inc.) are currently serving the construction industry.

The American Council of Independent Laboratories, Inc. is the professional association of independent scientific laboratories. It includes in its membership 65 leading independent testing, research, and inspection laboratories located in the chief metropolitan centers of the country, with an additional 64 branch laboratories. Serving American industry and Government they employ 2,000 chemists, biochemists, biologists, bacteriologists, physicists, engineers, metallurgists, physicians, pharmacologists, and technicians covering practically all phases of industrial needs.

The attached chart is based on a questionnaire showing laboratories qualified to make the inspections, physical and chemical tests by the applicable Federal specifications and American Society of Testing Materials requirements.

Independent laboratories also conduct research work in innumerable categories. Many of these are in the construction field. The present survey does not classify research projects. Requests for information on laboratories doing research should be addressed to this office and will be referred to appropriate member laboratories.

The questionnaire which was sent to all members of the American Council of Independent Laboratories was prepared with the assistance of the Veterans' Administration. Arrangements for its distribution have been made with the advice of the Department of Construction, the Chamber of Commerce of the United States, and the American Association of State Highway Officials.

Chart showing ACIL member laboratories qualified to make inspections, physical and chemical tests required by the applicable Federal specifications and American Society of Testing Materials requirements. Questions relating to specific requirements under "specifications" should be addressed to individual laboratories.



	1. Cementitious materials for concrete, etc.	2. Aggregates for concrete, etc.	3. Concrete	4. Mortar for unit masonry	5. Masonry building units, etc.	6. Refractories, fire brick	7. Waterproofing and roofing materials	8. Wood products and wood preservatives	9. Paint, varnish, lacquer, putty, etc.	10. Adhesives	11. Thermal insulating materials	12. Acoustical treatment materials	13. Floor coverings	14. Natural fiber and synthetic wall coverings	15. Rubber products	16. Plastic products	17. Structural steel	18. Steel and iron components	19. Nonferrous metal components	20. Metallic coatings	21. Soils	22. Investigation of foundations	23. Road and paving materials	24. Water and water treatments
Arizona Testing Laboratories	X	X	X	X	X	X	X	X	X	X	X						X	X	X	X	X	X	X	
Associated Laboratories	X	X	X	X	X																			
Barrow-Agee Laboratories, Inc.	X	X	X	X	X				X	X														
Bowser-Morner Testing Laboratories	X	X	X	X	X				X	X														
Bull & Roberts, Inc.	X	X	X	X	X	X	X	X	X	X	X													
California Testing Laboratories, Inc.	X	X	X	X	X	X	X	X	X	X	X													
Charlton Laboratories, Inc.	X	X	X	X	X	X	X	X	X	X	X													
Colburn Laboratories, Inc.	X	X	X	X	X	X	X	X	X	X	X													
W. B. Colman & Co.	X	X	X	X	X																			
The Columbus Water & Chemical Testing Laboratory																								
Commercial Testing & Engineering Co.			X	X	X	X	X			X														
The Detroit Testing Laboratory, Inc.	X	X	X	X	X	X	X	X	X	X														
Abbot A. Hanks, Inc.																								
Harris Laboratories	X	X	X	X	X			X	X	X														
The James H. Herron Co.	X	X	X	X	X	X	X	X	X	X														
Hornikohl Laboratories	X	X	X	X	X	X	X	X	X	X														
Goodwin Joss Laboratories																								
Charles C. Kavin Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Laucks Testing Laboratories, Inc.																								
LaWall and Harrison Research Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Law-Barrow-Agee Laboratories, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Ledoux & Co.																								
Metal Control Laboratories, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Northwest Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Oklahoma Testing Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Patzig Testing Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Penniman & Browne, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Lucius Pitkin, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
The Pope Testing Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
St. Louis Testing Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Shilstone Testing Laboratory	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Smith-Emery Co.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	

[illegible]

<sup>1</sup> All types of weathering, waterproofing, corrosion and sunlight tests (direct and under glass). Actual exposure to predetermine permanency and durability.

**NOTE.**—Radioactive isotopes are used by a number of member laboratories to inspect metal castings, stressed structures, etc. Inquiries may be addressed to the Washington office.

## BUILDING RESEARCH INSTITUTE

National Academy of Sciences—National Research Council, Division of Engineering and Industrial Research, Washington, D. C.

Within the past decade the volume of building and the market for building products have grown enormously to a point beyond any expectations based on pre-war activity. Construction has become one of the major segments of the American economy.

As a result of this growth, many industries are giving attention to new products of all kinds for the building construction market. Many of these are intended essentially for the housing market and still others are intended for large buildings and heavy construction. Some industries like the plastics industry which heretofore paid scarcely any attention to building markets are now actively engaged in the development of materials and products expressly intended for adaptation to building purposes. Other industries, large and small, which previously served the construction industry as a matter of secondary interest to themselves are now concentrating on the development of new products for the building industry.

All new building products must meet certain performance standards imposed by building codes and regulations. In housing, the minimum property requirements of the FHA are in effect a set of standards which must be met by new products. The FHA is currently developing a national acceptance program under which new building products will be approved by the FHA for use in house construction under the FHA mortgage insurance program.

All of this adds up to many instances where new materials and products must be subject to tests by accredited testing laboratories. Even the biggest manufacturing companies must turn to recognized independent laboratories for such tests.

Many of the smaller industries and companies in the building products field also need the help of independent laboratories in their research and development programs because they themselves do not maintain laboratories of their own.

The general situation should indicate many opportunities in the field of research and testing of building materials and products for the independent laboratories of the United States. Many of the smaller producers in the building industry are new to research and development and undoubtedly are virtually unaware of the facilities which exist and are available to them through the independent laboratories. The laboratories themselves should see to it that the manufacturers hear about what they have to offer.

WILLIAM H. SCHEICK,  
*Executive Director.*

JULY 19, 1955.

## AMERICAN COUNCIL OF INDEPENDENT LABORATORIES, INC.

## MEMBERSHIP LIST

American Conditioning House, Inc., 11-17 Melcher Street, Boston, Mass.  
The Anderson Physical Laboratory, 609 South Sixth Street, Champaign, Ill.  
Arizona Testing Laboratories, 817 West Madison Street, Phoenix, Ariz.  
Association Laboratories, 2920 Oak Street, Kansas City, Mo.

## Branch laboratories:

Pryor, Okla.

609 South Peoria, Tulsa, Okla.

Frederick S. Bacon Laboratories, 192 Pleasant Street, Watertown 72, Mass.  
Barrow-Agee Laboratories, Inc., 123 South Front Street, Memphis, Tenn.

## Branch laboratories:

1010 Ferry Street, Decatur, Ala.

403 Victory, Little Rock, Ark.

End of Bell Street, Shreveport, La.

404 West Seventh, Chattanooga, Tenn.

64 Bridge Avenue, Nashville, Tenn.

Bio-Science Laboratories, 2231 South Carmelina Avenue, Los Angeles 64, Calif.

Bowser-Morner Testing Laboratories, 135-143 Bruen Street, Dayton 1, Ohio.

F. C. Broeman & Co., 1926 Race Street, Cincinnati 10, Ohio.

Bull & Roberts, Inc., 117 Liberty Street, New York 6, N. Y.

California Testing Laboratories, Inc., 619 East Washington Boulevard, Los Angeles 15, Calif.

**Albert L. Chaney Chemical Laboratory, 1503 East Chevy Chase Drive, Glendale 6, Calif.**

**Charlton Laboratories, Inc., 2340 Southwest Jefferson Street, Portland 7, Oreg.**

**Clark Microanalytical Laboratory, 104½ R. West Main Street, Urbana, Ill.**

**Colburn Laboratories, Inc., 732 South Federal Street, Chicago 5, Ill.**

**W. B. Coleman & Co., Ninth and Rising Sun Avenue, Philadelphia 40, Pa.**

**The Columbus Water & Chemical Testing Laboratory, 4628 Indianola Avenue, Columbus 14, Ohio.**

**Commercial Testing & Engineering Co., 228 North La Salle Street, Chicago 1, Ill.**

**Branch laboratories:**

1240 Hulman Street, Terre Haute, Ind.

1314 Hamilton Avenue, Cleveland 14, Ohio.

1118 Madison Avenue, Toledo 2, Ohio.

1825-31 Lindsay Avenue, Norfolk 4, Va.

626 Broad Street, Post Office Box 808, Charleston 23, W. Va.

**Subsidiary: Commercial Testing Co., Inc., Sodus Point, N. Y.**

**Curtis & Tompkins, Ltd., 236 Front Street, San Francisco 11, Calif.**

**Branch laboratory: Pershing Hotel Building, Lovelock, Nev.**

**Davis & Bennett, Inc., 194 Front Street, Worcester 8, Mass.**

**The Detroit Testing Laboratory, Inc., 554 Bagley Avenue, Detroit 26, Mich.**

**Elek Micro Analytical Laboratories, 4763 West Adams Boulevard, Los Angeles 16, Calif.**

**Food & Research Laboratories, Inc., 48-14 33d Street, Long Island City 1, N. Y.**

**Geo. W. Gooch Laboratories, Ltd., 2580 East Eighth Street, Los Angeles 23, Calif.**

**Abbot A. Hanks, Inc., 624 Sacramento Street, San Francisco 11, Calif.**

**Harris Laboratories, 816 P Street, Lincoln 8, Nebr.**

**The James H. Herron Co., 1360 West Third Street, Cleveland 13, Ohio.**

**Hornkohl Laboratories, 714 Truxton Avenue, Bakersfield, Calif.**

**Goodwin Joss Laboratories, 718 Washington Avenue North, Minneapolis 1, Minn.**

**Charles C. Kavin Co., 431 South Dearborn Street, Chicago 5, Ill.**

**Branch laboratory: 37 Franklin Street, Buffalo, N. Y.**

**Laboratory of Vitamin Technology, Inc., 7737 South Chicago Avenue, Chicago 19, Ill.**

**Laucks Testing Laboratories, Inc., 1008 Western Avenue, Seattle 4, Wash.**

**LaWall & Harrison, Research Laboratories, 1921 Walnut Street, Philadelphia 3, Pa.**

**Law-Barrow-Agee Laboratories, Inc., 136 Forrest Avenue NE., Atlanta, Ga.**

**Branch laboratories:**

Post-office Box 10073, Tampa 9, Fla.

Post-office Box 432, Albany, Ga.

1005 Wheaton Street, Savannah, Ga.

1815 Statesville Avenue, Charlotte, N. C.

1328 South Front Street, Wilmington, N. C.

**Sales office, Roanoke, Va.**

**Ledoux & Co., 359 Alfred Avenue, Teaneck, N. J.**

**The Markley Laboratories, 312 Fourth Avenue South, Minneapolis 15, Minn.**

**Metal Control Laboratories, Inc., 2735 East Slauson Avenue, Huntington Park, Calif.**

**Northwest Laboratories, Second and James, Seattle, Wash.**

**Oilwell Research, Inc., 1539 West 16th Street, Long Beach, Calif.**

**Oklahoma Testing Laboratories, 310 North Klein, Post Office Drawer 3838,**

**Oklahoma City 6, Okla.**

**Branch laboratories:**

3111 North Corn, Colorado Springs, Colo.

Burns Flat, Okla.

Muskogee, Okla.

**Patzig Testing Laboratories, 2215 Ingersoll Avenue, Des Moines, Iowa.**

**Penniman & Browne, Inc., 341 St. Paul Place, Baltimore 2, Md.**

**Sales office: Albee Building, Washington, D. C.**

**Lucius Pitkin, Inc., 47 Fulton Street, New York 38, N. Y.**

**The Pope Testing Laboratories, Box 903, Dallas 1, Tex.**

**St. Louis Testing Laboratories, 2317 Chouteau Avenue, St. Louis 3, Mo.**

**Shilstone Testing Laboratory, 2301 West Dallas Avenue, Houston, Tex.; 814 Conti Street, New Orleans, La.**

**Branch laboratories:**

1068 Neosho Street, North Baton Rouge Development Area, Baton Rouge, La.

331 Randolph Drive, Lafayette, La.

Post-office Box 4032, Corpus Christi, Tex.

United States Naval Base, Guantanamo Bay, Cuba.

**Smith-Emery Co., 781 East Washington Boulevard, Los Angeles 21, Calif.**

**Foster D. Snell, Inc., 20 West 15th Street, New York 11, N. Y.**

**Branch laboratory: Supplee Division, Bainbridge, N. Y.**

**South Florida Test Service, 4201 Northwest Seventh Street, Miami 34, Fla.**

**South Shore Analytical & Research Laboratory, Inc., 148 Islip Avenue, Islip, N. Y.**

**Southern Testing Laboratories, Inc., 2227 First Avenue South, Birmingham 3, Ala.**

**Branch laboratory: 3702 Brainerd Road, Chattanooga, Tenn.**

**Southwestern Laboratories, 2900 Cullen, Post-office Box 1379, Fort Worth 1, Tex.;**

**1103 Chartres, Post-office Box 175, Houston, Tex.;** 1212 Oak Lawn, Post-office Box 1618, Dallas, Tex.

**Branch Laboratories:**

2860 Prairie, Post Office Box 4125, Beaumont, Tex.

2901 West Highway 80, Post-office Box 1654, Big Spring, Tex.

**Sales office: 5824 Fern Street, Shreveport, La.**

**Stillwell and Gladding, Inc., 130 Cedar Street, New York 6, N. Y.**

**Texas Testing Laboratories, Inc., 1416 Young Street, Dallas 1, Tex.**

**Branch laboratories:**

1300 West Main Street, El Paso, Tex.

406 Avenue M, Lubbock, Tex.

Seventh Street at Broadway, San Antonio, Tex.

**Trinity Testing Laboratories, Inc., 625 Live Oak Street, Post-office Box 2376, San Antonio, Tex.**

**Branch laboratories:**

694 East North 16th Street, Abilene, Tex.

300 Allen Street, Austin, Tex.

3120 Morgan Street, Corpus Christi, Tex.

Highway 77, Harlingen, Tex.

**Truesdaie Laboratories, Inc., 4101 North Figueroa Street, Los Angeles 65, Calif.**

**Tulsa Testing Laboratory, 609 South Peoria, Post-office Box 1046, Tulsa, Okla.**

**Branch laboratories:**

611 West Douglas, Box 2191, Wichita, Kans.

325 West Graham, Pryor, Okla.

734 19th Street, Denver, Colo.

**Twin City Testing and Engineering Laboratory, 2440 Franklin Avenue, St. Paul 14, Minn.**

**Branch laboratories:**

Lakehead Testing Laboratory, Bismarck, N. Dak.

128 South 46th Avenue West, Duluth, Minn.

**United States Testing Co., Inc., 1415 Park Avenue, Hoboken, N. J.**

**Branch laboratories:**

1723 South Maple Avenue, Los Angeles, Calif.

4639 Lafayette Street, Denver, Colo.

2811 Philadelphia Pike, Claymont, Wilmington, Del.

325 West Huron Street, Chicago, Ill.

288 A Street, Boston, Mass.

3925 M Street, Philadelphia, Pa.

211 West Exchange Street, Providence, R. I.

214-215 Cotton Exchange Building, Memphis, Tenn.

1700 Cotton Exchange Building, Dallas, Tex.

**Sales office: Port Authority Bus Terminal, 625 Eighth Avenue, New York, N. Y.**

**Valley Laboratories, Inc., 3802 North 14th Place, Phoenix, Ariz.**

**Walker Laboratories, 2024 Blanding Street, Columbia, S. C.**

**Waltham Laboratories, Inc., 817 Moody Street, Waltham 54, Mass.**

**Warner Laboratories, 617 First Street, Cresson, Pa.**

**Wayne Laboratories, 17 East Main Street, Waynesboro, Pa.**

**A. W. Williams Inspection Co., 208 Virginia Street, Mobile, Ala.**

**Branch laboratories:**

718 South J Street, Pensacola, Fla.

1623 25th Avenue, Gulfport, Miss.

**Sales office:**

St. Louis, Mo.

New York, N. Y.

Mr. REDWINE. I have here a document entitled United States Department of Agriculture Rural Electrification Administration, February 16, 1953, date of issuance; subject, Inspection companies and inspectors:

**PURPOSE**

The purpose of this bulletin is to furnish electric distribution, power and telephone borrowers with a revised list of inspection companies and their inspectors acceptable to REA to inspect poles, crossarms and other timber products. Additions and deletions have been made. This supersedes all previous issues of Engineering, Power and Telephone Engineering memoranda, 72, 323 and 506.

Then it lists the names and addresses of the series of companies, their hammer number of inspectors.

Are you familiar with that document, Mr. Burgess?

Mr. BURGESS. I have seen it.

Mr. REDWINE. Will you see if you can find the name of A. W. Williams Inspection Co. in there, please, Mr. Burgess?

Mr. BURGESS. Yes, sir.

Mr. REDWINE. What does it say, sir?

Mr. BURGESS. It says:

A. W. Williams Inspection Co., Virginia and Franklin Streets, Mobile 3, Ala.

Mr. REDWINE. Mr. Chairman, I suggest that this also go into the record to show that A. W. Williams Inspection Co. is well qualified, if this gives them any qualification, to inspect REA power poles.

(The document referred to follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,  
RURAL ELECTRIFICATION ADMINISTRATION,  
February 16, 1953.

**REA BULLETIN 44-5 (ELECTRIFICATION)****REA BULLETIN 345-2 (TELEPHONE)**

Subject: Inspection companies and inspectors.

*Purpose.*—The purpose of this bulletin is to furnish electric distribution, power and telephone borrowers with a revised list of inspection companies and their inspectors acceptable to REA to inspect poles, crossarms, and other timber products. Additions and deletions have been made. This supersedes all previous issues of Engineering, Power and Telephone Engineering memorandums, 72, 323, and 506.

<i>Name and address</i>	<i>Hammer number of inspectors</i>
Alberta A. Testing & Inspection Co., Ltd., 1910 Ninth Avenue W., Calgary, Alberta, Canada:	
Douglas H. Ewing, 1910 Ninth Ave. W., Calgary, Alberta	ATI
Victor Kastberg, 1910 Ninth Ave. W., Calgary, Alberta	ATI-1
Bacher Inspection Service, 1240 Commercial Trust Building, Philadelphia 2, Pa.:	
R. J. Bacher (See address above)	BIS
Barrow-Agee Laboratories, Box 156, Memphis 1, Tenn.:	
O. C. Attridge, Engineering Dept., Barrow-Agee Laboratories, P. O. Box 156, Memphis 1, Tenn.	BA-2
B. Craig, P. O. Box 156, Memphis 1, Tenn.	BA-14
J. C. Hyche, P. O. Box 1558, Atlanta, Ga.	BA-4
Marshall H. Jacks, Louisville, Miss.	BA-3
I. L. Lacey, P. O. Box 858, Shreveport, La.	BA-12
S. W. Robert, 2149 Olive St., Baton Rouge, La.	BA-1

<i>Name and address</i>	<i>Hammer number of inspectors</i>
Boode Inspection Service, 451 A Ave., Oswego, Oreg.:	
Arthur T. Boode (See address above)-----	B
G. Leo Brown, 322 Mayes St., Jackson 32, Miss-----	BC-1
Commercial Testing Laboratories, Inc., 519 Lipan St. (Formerly C. J. Ray Inspection Service), Denver 4, Colo.:	
Russell L. Anderson, 2029 Perry St., Denver, Colo.-----	R-8
Chester F. Carter, 519 Lipan St., Denver 4, Colo.-----	R-5
Neill A. Gebhart, 319 North Federal Building, Riverton, Wyo.-----	R
C. J. Ray, 519 Lipan St., Denver, Colo.-----	R-2
N. B. Walters, 519 Lipan St., Denver 4, Colo.-----	R-7
R. A. Coster, Route 1, Box 331, Missoula, Mont.-----	C
DeVan Inspection Co., 156 Mohawk St., Mobile 18, Ala.:	
B. C. DeVan, 156 Mohawk St., Mobile 18, Ala.-----	DIC-1
D. M. Hargett, 1213-C Murray Hill St., Mobile, Ala.-----	DIC-2
Forest Products Inspection Co., P. O. Box 146, Station A, Atlanta, Ga., K. M. Ashbaugh, P. O. Box 146, Station A, Atlanta, Ga.-----	EPI-1
Froehling & Robertson, Inc., 814 West Cary St., Richmond 6, Va.:	
S. D. Howard, P. O. Box 1208, Spartanburg, S. C.-----	F&R-1
W. D. Palmer, Box 642, Norfolk 1, Va.-----	F&R-71
J. I. Thomason, Jr., Box 642, Norfolk 1, Va.-----	F&R-17
Gross Inspection Agency, 1235 West 175th St., Innis Arden No. 3, Seattle 77, Wash.:	
C. I. Gordon, 16412 Des Moines Way, Seattle 88, Wash.-----	G-4
Joe Beard, Olympia, Wash.-----	G-5
E. L. Gross, 1235 West 175th St., Innis Arden No. 3, Seattle 77, Wash.-----	G-3
F. D. Mattos, Oakland, Calif.-----	G-6
Woodrow Nishitani, Portland, Oreg.-----	G-7
R. J. Rohrbach, W-1114 Frederick, Spokane, Wash.-----	G-2
Earl G. Smart, Route 4, The Dalles, Oreg.-----	G-1
B. L. Hambleton, P. O. Box 82, Hialeah, Fla.-----	HLB
A. M. Hickox Inspection Service, Inc., 701-802 Failing Bldg., Port- land 4, Oreg., J. H. Weller, 266 A St., Apt. 1, Fort Logan, Colo.-----	H-24
Robert W. Hunt Co., A2200 Insurance Bldg., Chicago, Ill.:	
J. Carpenter, 427 Postal Bldg., Portland, Oreg.-----	H-3
H. R. Fitch, 251 Kearny St., San Francisco 8, Calif.-----	H-4
R. E. Looney Inspection Co., 854 Pryor St., SW., Atlanta, Ga., R. E. Looney, 854 Prior St. SW., Atlanta, Ga.-----	L-1
MacDonald & MacDonald, Ltd., Birks Bldg., Vancouver, B. C.:	
James R. Amundsen, 414 Burns Bldg., Calgary, Albert.-----	M&M 4
W. G. Hermann, Vancouver, B. C.-----	M&M 9
J. M. Marshall, Vancouver, B. C.-----	M&M 1
H. M. Thompson, Vancouver, B. C.-----	M&M 3
McCallum Inspection Co., 113 West Berkley Ave., Norfolk 6, Va.:	
M. C. Briggs, Brewton, Ala.-----	MIC-10
J. L. Doughtie, 910 Spottswood Ave., Norfolk, Va.-----	MIC-23
E. S. Freshwater, 1619 North Marion St., Valdosta, Ga.-----	MIC-19
E. R. Jackson, RFD 4, Box 488, Norfolk, Va.-----	MIC-18
H. Allen Lanier, 4010 Wrightsville Ave., Wilmington, N. C.-----	MIC-15
J. F. Lankford, Box 70, Hallwood, Va.-----	MIC-20
R. R. Luke, 1210 Northwest Thrd Ave., Gainesville, Fla.-----	MIC-31
T. G. Marlin, Jr., Valdosta, Ga.-----	MIC-27
L. B. Mitchell, P. O. Box 700, Augusta, Ga.-----	MIC-22
E. D. Mize, 3328 Norwich St., Brunswick, Ga.-----	MIC-61
C. S. McCallum, 113 West Berkley Ave., Norfolk 6, Va.-----	MIC-1
J. K. Peterson, Pensacola, Fla.-----	MIC-7
A. C. Pons, 1904 Anne St., Wilmington, N. C.-----	MIC-2
John P. Register, Sweetwater, Tenn.-----	MIC-22
W. F. Rountrey, 113 Berkley Ave., Norfolk 6, Va.-----	MIC-3
Aubrey Saunders, 2110 Melrose Dr., Valdosta, Ga.-----	MIC-16
H. I. Smith, 557 Chestnut Drive, Jacksonville, Fla.-----	MIC-9
J. F. Stevens, 113 West Berkley Ave., Norfolk 6, Va.-----	MIC-4
A. C. White, Route 5, Garden City, Savannah, Ga.-----	MIC-5
E. W. Williams, R. R. No. 7, Box 473, Naval Base, S. C.-----	MIC-6
C. L. Williford, Taylor-Colquitt Co., Spartanburg, S. C.-----	MIC-17

<i>Name and address</i>	<i>Hammer number of inspectors</i>
Oklahoma Testing Laboratories, 310 North Klein, P. O. Drawer 3838, Oklahoma City 6, Okla.:	
Paul W. Bean, 930 Acoma St., Denver, Colo.....	OTL 5
Leo B. Irick, Rt. 3, Box 4-11-A, Joplin, Mo.....	OTL 4
C. A. Lashbrook, P. O. Drawer 3838, Oklahoma City 6, Okla.....	OTL 2
Jake H. McDonald, P. O. Box 401, Poteau, Okla.....	OTL 3
Garland V. Shannon, 1935 Southwest 11th (rear) St., Oklahoma City, Okla.....	OTL-7
Grant S. Sinclair, 220 North 15th St., Muskogee, Okla.....	OTL 6
M. E. Wells, P. O. Box 551, Poteau, Okla.....	OTL 1
Julian C. Freeman, 832 Lincoln St., Denver, Colo.....	OTL 8
Roberts Inspection Co., East Fourth Ave., Petal, Miss.: H. P. Roberts, East Fourth Ave., Petal, Miss.....	R-2
Edson L. Senft, 621 Superior St., Sandpoint, Idaho:	
Floyd Armstrong, Box 342, Sandpoint, Idaho.....	S-5
Gordon J. Daugharty, 660 Seventh Ave., W. N., Route 3, Kalispell, Mont.....	S-7
C. Durand, 539 S. Flown St., Sandpoint, Idaho.....	S-3
Edson L. Senft, 621 Superior St., Sandpoint, Idaho.....	S
Shilstone Testing Laboratory, Inc., 510 Gravier St., New Orleans, La.:	
H. M. Shilstone, Jr., 2301 West Dallas Ave., Houston 6, Tex.....	S 1
Southern Inspection Service, P. O. Box 8633, Houston 9, Tex.:	
H. E. Kauffman, 1090 Lola Dr., Pasadena, Tex.....	SI-1
E. L. Nantz, 885 Fourth St., Beaumont, Tex.....	SI-7
G. W. White, 3318 Moore, Houston, Tex.....	SI-2
Southwestern Laboratories, P. O. Box 175, Houston, Tex.:	
J. C. Allardyce, 217 W. 13th St., Texarkana, Tex.....	SL 5
J. B. Baird, 3304 Rice Blvd., Houston, Tex.....	SL 2
C. F. Clewis, 4002 Ridgmoor Dr., Shreveport, La.....	SL 8
D. Cole, P. O. Box 49, Diboll, Tex.....	SL 13
James E. Coleman, Pineville, La.....	SL 10
E. Doxey, 1464 Broadway Dr., Bossier City, La.....	SL 9
N. C. Galloway, P. O. Box 49, DeRidder, La.....	SL 1
D. B. Haygood, 661 Topeka, Shreveport, La.....	SL 22
James A. Jenkins, 847 Rutherford St., Shreveport, La.....	SL 0
F. Listenberger, 417 Woodard, Houston, Tex.....	SL 11
W. C. Lynch, 3804 Moore St., Houston, Tex.....	SL 6
R. W. Miller, 5405 Karcher St., Houston, Tex.....	SL 19
C. A. Perkins, 810 Rutherford St., Shreveport, La.....	SL 7
W. G. Rivers, 2655 Lakehurst, Shreveport, La.....	SL 4
Norbert J. Singleton, Box 102, Blanchard, La.....	SL 20
Lindsay Talley, 1305 W. Bond St., Denison, Tex.....	SL 3
E. Watts, P. O. Box 1232, Lufkin, Tex.....	SL 18
L. O. Watts, 608 McAppine St. (P. O. Box 15), Navasota, Tex.....	SL 16
E. E. Whitehead, 2017 Hazel, Texarkana, Tex.....	SL 31
Thornton & Co., 1145 East Cass St., Tampa, Fla.	
Branch Office at 2729 College St., Jacksonville, Fla.:	
J. H. Pickren, 2729 College St. (P. O. Box 2277), Jacksonville, Fla.....	TC 7
C. C. Thornton, 1145 East Cass St. (P. O. Box 2880), Tampa, Fla.....	TC
Twin City Testing & Engineering Laboratory, 2440 Franklin Ave., St. Paul 4, Minn.:	
C. W. Britzius, Route 3, Wayzata, Minn.....	TC-3
Norman E. Henning, 726 Parkview Ave., St. Paul, Minn.....	TC-2
Van Trump Testing Laboratory, 329 South Wood St., Chicago, Ill.:	
J. W. Hill, 1424 Rock St., Little Rock, Ark.....	VT 3
K. S. Van Trump, 329 South Wood Street, Chicago, Ill.....	VT 2
R. Van Trump, Little Rock, Ark.....	VT 1
W. A. Vaughn, Chicago, Ill.....	VT 4
J. R. White, Inc., P. O. Box 4176, Houston 14, Tex., R. O. Carley, 7722 Curry Road, Houston, Tex.....	JRW 7



<i>Name and address</i>	<i>Hammer number of inspectors</i>
<b>A. W. Williams Inspection Co., Virginia &amp; Franklin Sts., Mobile 3, Ala. :</b>	
R. E. Adams, 1218 West Cambria St., Philadelphia, Pa.....	AWW 14
R. A. Allen, 410 Michigan Ave., Mobile, Ala.....	AWW 8
G. D. Bernardi, P. O. Box 711, Weed, Calif.....	AWW 62
J. M. Black, P. O. Box 161, Shreveport, La.....	AWW 27
A. L. Caples, 1807 Caledge St., Columbus, Miss.....	AWW 52
T. B. Cooper, P. O. Box 503, Brewton, Ala.....	AWW 37
W. M. Cole, P. O. Box 143, Live Oak, Fla.....	AWW 40
W. C. Cory, 600 Siegel St., Tama, Iowa.....	AWW 43
A. H. Dowler, P. O. Box 115, La Rue, Ohio.....	AWW 21
J. H. Doyle, Route 9, Box 617, Mobile, Ala.....	AWW 26
C. V. Dryer, P. O. Box 314, Mobile, Ala.....	AWW 65
W. W. Dwyer, P. O. Box 314, Mobile, Ala.....	AWW 3
J. C. Echols, P. O. Box 724, Winnfield, La.....	AWW 32
N. R. Foley, care of Lewis Wood Preserving Co., Camilla, Ga.....	AWW 51
F. F. Gully, 1 South Wacker Lane, Spring Hill, Ala.....	AWW 1
A. H. Hadley, P. O. Box 131, Wilmington, Calif.....	AWW 36
K. G. Hagler, P. O. Box 294, DeQueen, Ark.....	AWW 57
C. E. Harris, P. O. Box 877, Macon, Ga.....	AWW 41
E. F. Hill, P. O. Box 62, Brownville, Ala.....	AWW 29
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S. L. Huddleston, 136 East Chippewa, Brookhaven, Miss.....	AWW 2
W. T. Jenkins, Route No. 8, Box 721, Charleston, S. C.....	AWW 17
L. R. Johnston, P. O. Box 314, Mobile, Ala.....	AWW 7
W. M. Jordan, Tie Plant, Miss.....	AWW 11
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G. B. Latimer, P. O. Box 284, Longview, Wash.....	AWW 34
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F. J. McGuire, care of Gilbert Hotel, 417 South 5th St., Louisville, Ky.....	AWW 10
T. C. Marriott, P. O. Box 314, Mobile, Ala.....	AWW 55
E. J. Massicotte, 2111 Colfax Ave. South, Minneapolis, Minn.....	AWW 30
W. B. Middlebrooks, P. O. Box 375, Augusta, Ga.....	AWW 5
R. E. Norgard, 904½ West Dalton, Spokane, Wash.....	AWW 38
J. E. Payne, P. O. Box 1183, Florence, S. C.....	AWW 50
R. W. Polglase, 5718 Hughitt Ave., Superior, Wis.....	AWW 42
A. C. Price, Route 3, Box 366, Montgomery, Ala.....	AWW 24
R. W. Reno, P. O. Box 124, Sanford, N. C.....	AWW 49
J. D. Robinson, P. O. Box 36, Wilmington, N. C.....	AWW 54
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R. H. Sessions, P. O. Box 4026, Port Wentworth, Ga.....	AWW 33
Hoke Smith, 1305 3d Ave., Brunswick, Ga.....	AWW 56
C. O. Stafford, 1715 25th Ave., Gulfport, Miss.....	AWW 25
H. L. Thomas, 718 South "J" St., Pensacola, Fla.....	AWW 45
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C. D. Walker, 816 N. W. 33d Ave., Rural Route 3, Gainesville, Fla.....	AWW 37
C. O. Wall, 630 Central Ave., Deerfield, Ill.....	AWW 47
R. K. Wheeler, 718 South "J" St., Pensacola, Fla.....	AWW 18
A. W. Williams, P. O. Box 314, Mobile, Ala.....	AWW 13
A. W. Williams, Jr., P. O. Box 314, Mobile, Ala.....	AWW 4
W. A. Whittle, P. O. Box 139, Spartanburg, S. C.....	AWW 19
A. R. Zemske, 4836 W. Strong St., Chicago, Ill.....	AWW 16
<b>Bruce Williams Laboratories, 620-623 Joplin St., Joplin, Mo. :</b>	
G. Summers, 618-622 Joplin St., Joplin, Mo.....	BW 3
B. Williams, 618-622 Joplin St., Joplin, Mo.....	BW 5
Robert K. Williams, Room 321, Lathrop Bldg., Kansas City, Mo.....	BW 4
<b>A. M. Wood Inspection Co., Box 848, Hattiesburg, Miss. :</b>	
H. P. Brantley, Crosby Forest Products Co., Picayune, Miss.....	W 4
M. P. Hardin, Crosby Lumber & Manufacturing Co., Crosby, Miss.....	W 17
S. C. Richardson, King Lumber Industries, Canton, Miss.....	W 19
C. S. Sizemore, Jr., P. O. Box 848, Hattiesburg, Miss.....	W 24
M. D. Stephens, P. O. Box 105, Picayune, Miss.....	W 5

<i>Name and address</i>	<i>Hammer number of inspectors</i>
A. M. Wood Inspection Co.—Continued	
L. M. Stuart, P. O. Box 848, Hattiesburg, Miss.....	W 10
H. W. Williamson, R. F. D., Oakvale, Miss.....	W 6
A. M. Wood, P. O. Box 848, Hattiesburg, Miss.....	W 1

This REA Bulletin supersedes all other material in conflict with its provisions.

CLAUDE R. WICKARD,  
Administrator.

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Pole Inspection Companies  
Approved Inspection Companies  
Inspection Companies

Representative HOFFMAN. To inspect what?

Representative JONAS. REA power poles.

Mr. COBURN. Mr. Chairman, may I ask the witness a couple of questions?

Senator SCOTT. Yes.

Mr. COBURN. Mr. Burgess, are you prepared to explain to the committee the significance of the symbols appearing in that document?

Mr. BURGESS. Only to the extent that I read them here myself, sir.

Mr. COBURN. I beg your pardon?

Mr. BURGESS. Only to the extent that I read them here myself.

Mr. COBURN. You have no other knowledge?

Mr. BURGESS. No.

Mr. COBURN. Have you made a study of those symbols?

Mr. BURGESS. No, sir.

Mr. COBURN. That is all I have.

Senator SCOTT. Are there any further questions?

Representative HOFFMAN. I have one question.

You have no personal knowledge of the qualifications of any of those people listed in either of those publications, have you?

Mr. BURGESS. No, sir.

Representative HOFFMAN. I have no more questions.

Representative JONAS. I have no questions.

Representative CHUDOFF. There are no questions from the House at this end of the table.

Senator SCOTT. Mr. R. N. Appling, Jr., will you please come forward?

Congressman Chudoff, will you swear him, please?

Representative HOFFMAN. Was he not sworn before?

Representative CHUDOFF. Mr. Appling was sworn in Portland; were you not, Mr. Appling?

Mr. APPLING. Yes, sir.

# **TESTIMONY OF RICHARD N. APPLING, JR., MINING ENGINEER, UNITED STATES BUREAU OF MINES—Resumed**

Mr. REDWINE. Mr. Appling, you testified before this joint committee hearing in Portland, I believe, sir?

Mr. APPLING. That is right.

Mr. REDWINE. Mr. Appling, I would like to direct your attention to your testimony in Portland.

Representative HOFFMAN. What page is that, please?

Mr. REDWINE. Just a moment, sir.

Representative CHUDOFF. It starts at 183, Mr. Hoffman.

Mr. REDWINE. On page 191, which I am reading from now:

Mr. REDWINE. What did you do, keep that alternate sample, as you call it, in the back of your car or where?

Mr. APPLING. No, sir; we deposited that with the State department of geology office in Grants Pass for safekeeping. Mr. McCormick and I took it in and asked them to keep it there until we came after it.

Mr. REDWINE. Then what happened?

Mr. APPLING. Well, we got the assay returns and I wrote the report. Some time afterwards, Mr. McCormick came to Grants Pass and we picked up the samples from the State Department of Geology office and destroyed them.

Mr. REDWINE. At what date?

Mr. APPLING. I could not say, sir.

Mr. REDWINE. I want to go back for a minute. Who received the A. W. Williams assay report?

Mr. APPLING. I do not know.

Mr. REDWINE. Did you receive it?

Mr. APPLING. I have a copy but it was not mailed to me.

Mr. REDWINE. Who told you that it had been received?

Mr. APPLING. Nobody told me. They gave me a copy of the certificate.

Representative CHUDOFF. Whom do you mean by "they"?

Mr. APPLING. I think Mr. McCormick gave it to me.

Mr. REDWINE. You mean this assay report did not come back to the Bureau of Mines? It went to Mr. McCormick?

Representative HOFFMAN. Pardon me. From what page are you reading now?

Mr. REDWINE. 192. [Reading:]

Mr. APPLING. The letter accompanying the assay report is addressed to the Al Sarena Mines, Inc.

Mr. APPLING. It is one of them. I think there were four copies.

Mr. REDWINE. It says here that they went to the First National Bank Building, Mobile, Ala.

Representative CHUDOFF. Do the Al Sarena Mines, Inc., have an office in Mobile?

Mr. APPLING. I could not say, sir.

Mr. REDWINE. You mean that the report did not come directly from the assayer to the Bureau of Mines?

Mr. APPLING. No.

Mr. REDWINE. What was the date that you went and picked up those samples that had been turned over to the Oregon Department of Geology and Mineral Industry?

Mr. APPLING. I cannot say exactly. It was at some time after the date of my report, which was January 2. I honestly couldn't say how long after.

Do you wish to change your testimony as to the date at this time, the date that the destruction of the samples took place and you dumped them into the Rogue River?

Mr. APPLING. Yes, sir. The testimony I gave at that time was to the best of my recollection. I have since checked the files, and I believe that it must have been, it was prior to January 5. The exact date I couldn't say. It may have been the 2d or 3d or possibly before the 1st of January. It was after we got the assay certificate, or after I got it.

Representative CHUDOFF. Pardon me. I want to get this straight.

You said that you got the assay report somewhere around the 2d of January?

Mr. APPLING. No, sir. That was the date of our report. I don't recall the exact date that I got the certificate.

Representative CHUDOFF. How long after you received this certificate did you write your report?

Mr. APPLING. Well, I started writing it right away. That was the date of the final draft.

Representative CHUDOFF. So sometime between January 2 when you wrote your report and January 5, you threw the envelopes into the Rogue River?

Mr. APPLING. No, sir; I wouldn't say January 5. It was prior to that time.

Representative CHUDOFF. Prior to January 5?

Mr. APPLING. Yes.

Representative CHUDOFF. Within 2 or 3 days after you received the assay report?

Mr. APPLING. Well, I really couldn't say. It was several days afterwards, at least. I don't recall exactly when.

Representative CHUDOFF. What did you testify to in Portland, the 15th?

Mr. APPLING. No, sir. I don't think I mentioned any specific date.

Representative CHUDOFF. There is a "15th" in the record somewhere.

Mr. REDWINE. May I read further on page 193:

Mr. REDWINE. How were they destroyed?

Mr. APPLING. They were shaken from the envelopes and dumped in the river, destroyed irrevocably.

Mr. REDWINE. You mean individually?

Mr. APPLING. Yes, sir.

Mr. REDWINE. And you do not remember the date that that was done?

Mr. APPLING. No, sir; for the reasons that I attached no particular importance to it at that time. I had no reason to keep them. The more they would be around, the more they would be open to question.

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Representative CHUDOFF. I thought it was the 15th of something.

Mr. APPLING. If I said that, I didn't really mean that date. I didn't know.

Representative CHUDOFF. What date did you mean?

Mr. APPLING. The 15th of January. If I stated that, I was making a guess and shouldn't have.

Representative CHUDOFF. On what date did you dump the envelopes into the river?

Mr. APPLING. I couldn't say. It was before January 5.

Representative CHUDOFF. Before January 5?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. Within 2 or 3 days after you started writing the report?

Mr. APPLING. No, sir. I can't recall exactly. I believe I received the assays possibly around the 18th or 20th of December, sometime around that.

Representative CHUDOFF. When did you start writing your report?

Mr. APPLING. As soon as I received them.

Representative CHUDOFF. At some time before the 5th of January you destroyed the contents of the check sample envelopes?

Mr. APPLING. Of the alternate samples; yes, sir.

Representative CHUDOFF. Of the alternate samples.

Mr. REDWINE. Mr. Appling, on January 5, Mr. Volin, your superior, wrote the Director of the Bureau of Mines:

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The sample splits noted in Mr. Appling's report as stored with the Oregon Department of Geology and Mineral Industry were disposed of upon receipt of the assay results.

Mr. Volin has testified here that you told him over the telephone on the 29th day of December that the splits had been destroyed. Now, just when were they destroyed? Have you any idea, Mr. Appling?

Mr. APPLING. I can't say. I have given as honest an answer as I can give you.

Mr. REDWINE. Mr. Appling, what other testimony that you gave in Portland would you like to change at this time?

Mr. APPLING. I can't think of a bit, sir.

Mr. REDWINE. We will go into that a little bit later.

Mr. Appling, do you have a copy of your report in front of you?

Mr. APPLING. Yes, sir.

Mr. REDWINE. On page 2, under "Development," you discuss the buildings on the property, mill building, timber shed, and so forth. Upon which particular claim were those buildings located. Are they on contested or uncontested claims?

Mr. APPLING. I believe they were on the A. W. Dahlberg, and I do not believe that claim was contested.

Mr. REDWINE. What about the mill equipment which you referred to in your report?

Mr. APPLING. I think that was on the same claim.

Mr. REDWINE. Mr. Appling, will you tell the committee why you have in your report on these contested claims any reference to what is on the uncontested claims? What has that to do with the mineral values? Your job was to sample the property, was it not?

Mr. APPLING. Yes, sir.

Mr. REDWINE. What did that have to do with what the mineral values were?

Mr. APPLING. Just part of the general background information that I thought might be descriptive.

Mr. REDWINE. You were not following your instructions very closely, were you?

Mr. APPLING. I think I followed them to the letter.

Mr. REDWINE. Did you have any instructions to go on any property other than the disputed claims?

Mr. APPLING. I couldn't have gotten on the disputed claims without going on this property.

Mr. REDWINE. Did you have any instructions to inspect the equipment or development that had gone on the undisputed claims?

Mr. APPLING. I had no instruction as to that.

Mr. REDWINE. In other words, you were just doing that on your own?

Mr. APPLING. Yes, sir.

Mr. REDWINE. I believe that you further testified in Portland that the idea of keeping the splits was entirely your own, did you not?

Mr. APPLING. That is right.

Mr. REDWINE. Do you want to change that testimony?

Mr. APPLING. No, sir; I do not. To the best of my recollection, that was it. I won't say entirely my own. I will say that it was an idea that was developed between Mr. McCormick and myself. I am not sure who suggested it.

Mr. REDWINE. Well, was Mr. Volin in error then in testifying that you discussed that?

Mr. APPLING. No, sir; he was not. We discussed that prior to the start of the sampling and, to the best of my recollection, we decided

against it, against the matter of taking splits to send to Albany, and these other samples, these alternate samples that were stored with the State department of geology. Mr. McCormick and I decided on the spur of the moment to save those. I don't believe Mr. Volin knew anything about that at the time. Perhaps his memory was playing tricks on him.

Mr. REDWINE. Well, Mr. Appling, now, you led this committee to believe—and a few minutes later I will refer you to the exact page—to believe in Portland that you had no discussions on this. You referred to it as a “retained sample,” or something like that. You led the committee to believe there that you had had no discussions with anyone in the Bureau of Mines about that.

Representative HOFFMAN. Now, I object to that question as to what he led the committee to believe. If you want to quote the testimony, that is one thing; but to imply or intimate that this witness was trying to put something over on the committee is not fair to the witness. It is not in accordance with legislative procedure.

I certainly have mind enough not to be led into anything to which the witness has not testified.

Mr. REDWINE. Do you want to answer the question?

Mr. APPLING. Would you repeat it?

(The pending question was read by the reporter.)

Mr. APPLING. Well, if that is what the testimony shows, I am sorry for that. I did not mean to lead the committee to believe anything of that sort. I will repeat that the samples that were stored at the State department of geology were saved at the last moment. This was no previous plan to save them.

Mr. Volin and I did discuss sample splits, but we discussed them, sending them to Albany, and we later discarded the plan before the sampling started.

Mr. REDWINE. Mr. Appling, I refer you to page 194 of the hearing in Portland:

Mr. REDWINE. Did Mr. Volin make the decision that the report should come back to the Al Sarena Corp. rather than the Bureau of Mines?

Mr. APPLING. I do not think that that entered into it. I think the conclusion we arrived at was that they were paying for it.

Representative CHUDOFF. Who is Mr. Volin?

Mr. APPLING. He was formerly the chief.

Representative CHUDOFF. He was your superior and called you and told you to destroy the samples?

Mr. APPLING. No, sir. As a matter of fact, it was my idea to retain the samples. There was no mention made of retaining these alternates.

Now, how in the world could the committee come to any conclusion but what you were trying to make them believe that you had not discussed the matter of the retention of the alternates?

Representative HOFFMAN. Read that last question.

(The pending question was read by the reporter.)

Representative HOFFMAN. That is what he said here, is it not? Where is the discrepancy in the witness' testimony in the record?

You call a witness and then you attack his credibility.

Mr. APPLING. I see no discrepancy there.

Mr. REDWINE. You just testified a few minutes ago that you had not discussed it.

Representative HOFFMAN. What does he say on page 194 in the testimony. He says the same thing.



Mr. REDWINE. He has also testified this afternoon that he did discuss it.

Mr. APPLING. The samples that I discussed with Mr. Volin were different samples to be taken for an entirely different purpose. They were to be taken for the purpose of sending to Albany.

Representative CHUDOFF. Mr. Chairman, my recollection of what he said a couple of minutes ago was that he had had a discussion with Mr. Volin about the samples as to whether to send them to Albany.

Representative HOFFMAN. It was about Albany, not about the other place.

Representative CHUDOFF. He certainly could not have testified anything else. Certainly somebody must have known about him taking the samples. Certainly, if Mr. Volin did not want him to take samples, he should have told him not to take them.

Then he testified further that he did not send them to Albany because he had no confidence in the assayers in Albany to do a good job, that they were poor assayers.

On the other hand, Volin testified today that they were competent assayers.

Representative JONAS. May I interject one word?

As I understand the testimony of this witness, he says that before they went out to take the samples, he and Mr. Volin discussed the idea or possibility of taking alternate samples to send to Albany; but then, for some reason, they rejected that and he went on to the sampling grounds under no instructions from Mr. Volin to take samples and with nothing in his mind about taking alternates. Then, after they took the samples, because it was snowing or they were in the winter season, he testified in Portland, as I understand the record—and I have read it carefully—that they decided they would split up the samples just to prevent having to go back out there and take new samples if the ones they sent to Alabama were lost in transit.

Is that correct?

Mr. APPLING. That is absolutely right.

Representative JONAS. And that the idea of taking the alternate samples, which you actually did take and stored with the State geologist, was an on the spur of the moment decision because of the winter conditions?

Mr. APPLING. That is correct.

Representative CHUDOFF. I am not trying to confuse the witness.

Representative JONAS. I think Mr. Redwine is trying to confuse him.

Representative CHUDOFF. It is a two-part question. I think we ought to straighten out whether or not he discussed with Mr. Volin that they should take samples or discussed with Mr. Volin whether they should send the samples to Albany.

Representative JONAS. Let us suspend and start over and let him start over.

Representative CHUDOFF. Do you see what I am driving at?

Mr. APPLING. I think I do. Original discussion between Mr. Volin and I centered around whether or not we should take check samples, samples that would be true splits that would be sent to the laboratory in Albany. We finally decided against that because the instructions did not say the check samples should be taken, and we had no pro-

visions for paying for them. So we discarded that idea completely. That was completely gone from my mind when we did the sampling.

At the time that we prepared the samples, rather than discard the fourth quarter, we decided to retain it in the event the principal samples should be lost in transit.

Representative CHUDOFF. You and Mr. Volin decided that?

Representative HOFFMAN. Mr. McCormick.

Representative CHUDOFF. Were you here yesterday?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. Did you hear Mr. Volin testify?

Mr. APPLING. Part of it.

Representative CHUDOFF. I would like to read from page 417 of the transcript:

Mr. COBURN. Mr. Volin, when you and Mr. Appling were discussing the possibility of sending splits to Albany, to the Bureau of Mines laboratory, were you going to do that as a check against what might come out of the Williams Inspection Co. assays?

Mr. VOLIN. Yes. We had that in mind. We had in mind checking the sampling too. We discussed a number of things, procedures, that might be used in checking the sampling and in checking the assay.

You discussed everything with Mr. Volin, both the question of whether you were to take that sampling and, if you took them, whether you were going to send them to Albany?

Mr. APPLING. No.

Representative CHUDOFF. Did you reach a conclusion as to what you were going to do?

Mr. APPLING. That we were not going to take check samples.

Representative CHUDOFF. You did it anyway.

Mr. APPLING. No.

Representative CHUDOFF. But you took the samples?

Mr. APPLING. None were taken.

Representative CHUDOFF. What were the samples which were thrown into the Rogue River?

Mr. APPLING. They were alternate samples, any name you apply.

Representative CHUDOFF. Will you tell me the difference between a check sample and splits?

Mr. APPLING. A check sample is taken for the specific purpose of assaying. These alternate samples or sample splits were taken for the principal purpose of safeguarding the principal samples. If the main samples should be lost in transit, then we would have duplicate samples to send down there and thereby avoid the expense of re-sampling.

Representative CHUDOFF. They are check samples. What is the difference?

Mr. APPLING. They were not.

Representative JONAS. Would you yield?

Representative CHUDOFF. Yes.

Representative JONAS. Is this not the explanation?

When you took those samples, you pulverized them and mixed them up together and separated them into four quarters?

Mr. APPLING. Yes, sir.

Representative JONAS. You sent three quarters to Alabama, and, if you had not retained the fourth quarter, you would have destroyed it right there; is that true, and you so testified in Portland.

Mr. APPLING. Pardon me. That was almost true. We used two of the quarters for panning to determine the mineralization at the time. Representative JONAS. But you had a quarter left over?

Mr. APPLING. Yes.

Representative JONAS. And you decided, "If these are lost in transit, we will have to come in the snow and take new samples. We will keep this fourth quarter so that we can have this in the event the others are lost in transit."

Mr. APPLING. That is absolutely right.

Representative CHUDOFF. But this fourth quarter could have been used to make an umpire or check assay, or whatever you want to call it?

Mr. APPLING. It could have been done.

Representative CHUDOFF. Is it not true that you did keep the extra in case the Williams Co. would send back an assay that wasn't correct, so that you would send it to your laboratory to make sure?

Mr. APPLING. No, sir.

Representative CHUDOFF. What did you keep it for; in case it might be lost in transit?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. That is the only reason?

Mr. APPLING. That is right.

Representative CHUDOFF. For supersecurity reasons, you took it to a bank and tried to get them to keep it?

Mr. APPLING. Why?

Representative CHUDOFF. Supersecurity reasons?

Mr. APPLING. Yes, sir. We tried to get them in the bank.

Representative CHUDOFF. You got your report. There was no reason to keep that fourth quarter. Why did you try to take them to the bank?

Mr. APPLING. We tried to take them to the bank before we sent the samples.

Representative CHUDOFF. I think you testified that you tried to take them to the bank and, because the bank would not take them, you walked two blocks to the river and threw them in. You said that?

Mr. APPLING. I didn't say that.

Representative CHUDOFF. I will read the testimony.

Representative HOFFMAN. If you would get yourself straightened out, it would not be difficult.

Representative CHUDOFF. The record speaks for itself.

Representative HOFFMAN. I think it does. When you two fellows cannot get the witness to agree, you say that the witness is lying. You have followed that course throughout.

Representative CHUDOFF. I am trying to find out what happened.

Representative HOFFMAN. I would hate to be a Government witness appearing before this committee.

Representative JONAS. I believe you will find that he tried to get them in the bank before taking them to the State geologist.

Representative HOFFMAN. Before that, they had them in the post office, and before that they had some in a car.

Mr. COBURN. Mr. Appling, would it be possible—

Representative HOFFMAN. You have had four of you picking on him.

Mr. COBURN. Would it have been possible for you to put these samples in the locked compartment of your car?

Mr. APPLING. I could have done it. I don't think they would have been as safe as they were in the State department of geology office.

Mr. COBURN. This was your personal car?

Mr. APPLING. No, sir; a Government car.

Mr. COBURN. A Government car?

Mr. APPLING. Yes, sir.

Mr. COBURN. You draw a distinction, then, between a Government car and a Government post office?

Mr. APPLING. Yes, in a sense.

Representative CHUDOFF. I want to read from page 195 of the testimony:

Mr. REDWINE. Why put them in there if it was not a safe place?

Mr. APPLING. That was the only place we could think of to put them. We tried to put them in a bank vault and the bank would not accept them.

I said they could not get them in the bank so they threw them in the river.

Mr. APPLING. I said that?

Representative CHUDOFF. That is the answer, is it not?

Mr. APPLING. No, sir; it isn't. We tried to get them in the bank vault. They wouldn't take them. We took them to the State Department of Geology.

Representative CHUDOFF. How long did you leave them with the State Department of Geology?

Mr. APPLING. I imagine they were there a month or longer.

Representative CHUDOFF. You just testified that you got the assay report back sometime in the latter part of December and you wrote your report sometime prior to January 5, which is not exactly what Mr. Volin said. He said somewhere around December 29 you destroyed them.

Mr. APPLING. That is right.

Representative CHUDOFF. Is it not usual to keep these samples around for 6 months?

Mr. APPLING. No, sir. These were not umpires or check samples. I don't know any place that that would be required.

Representative CHUDOFF. You also said you did not know why you threw them in the river, you could have dumped them on a trash pile just as well.

Mr. APPLING. Well, the main thing is I wanted to put them somewhere and that was as convenient as any.

Representative CHUDOFF. Did you have a discussion with Mr. McCormick before you destroyed these samples?

Mr. APPLING. We did it together.

Representative CHUDOFF. And you went to the State Department of Geology, got the 56 ounces of samples, and then walked down to the Rogue River and threw them in?

Mr. APPLING. We drove down.

Representative CHUDOFF. Was it Mr. McCormick's idea to throw them in the river?

Mr. APPLING. I don't really know whose idea it was.

Representative CHUDOFF. Did you have a discussion as to what you should do with them?

Mr. APPLING. Yes, we did. We were driving back down toward the field office and decided it would be just as easy to take them on down to the river and throw them in. We had no particular reason for doing it.

Representative CHUDOFF. Actually, you had no problem with the samples in the State Geology Department? They were safe there, were they not?

Mr. APPLING. Well, when we put them in, I considered they would be safe there for a short time. It is a public office. Various people are in and out of there. I suppose janitors. They put them up on a bookshelf. As far as the integrity of the personnel in the office, I don't mean to question that; but, on looking over it later, I decided that it was possible that somebody could have tampered with them.

Representative CHUDOFF. Did you have a conference with Mr. McCormick as to why and where you should destroy these samples?

Mr. APPLING. No, we put them in the car and, as I stated, drove back down to our field office and decided on the way that it would be just as convenient to throw them in the river.

Representative CHUDOFF. Who decided? Did you decide or did Mr. McCormick decide?

Mr. APPLING. I don't recall. It was mutually agreeable.

Representative CHUDOFF. Why did you throw them in the river? Were you afraid that somebody might take them and substitute other samples for them?

Mr. APPLING. If a sample is to be disposed of, it should be disposed of in such a fashion to lose its identity.

Representative CHUDOFF. You have disposed of many samples in the capacity in which you are employed by the Bureau, have you?

Mr. APPLING. Not many.

Representative CHUDOFF. How many have you destroyed?

Mr. APPLING. I couldn't say.

Representative CHUDOFF. Five or ten or twenty?

Give us a figure.

Mr. APPLING. I couldn't.

Representative CHUDOFF. Did you ever throw any in the river before?

Mr. APPLING. It has never been convenient to do so.

Representative CHUDOFF. How far is the river from the State department of geology?

Representative HOFFMAN. Mr. Chairman, I want to again put on the record the fact that this was all gone over in Portland. It is completely in the record. This same witness was examined at length by Mr. Chudoff and by members of the staff. The only purpose it can serve here would be to give a little publicity to their claim that there was something rotten in connection with the State department. It is repetition and does not add anything to the record.

Representative CHUDOFF. I will repeat the question.

How far was the river from the State department of geology?

Representative HOFFMAN. And how deep was it?

Representative CHUDOFF. I guess that has something to do with it, too.

Mr. APPLING. I believe it was 6 or 7 blocks from the State department of geology office.

Representative CHUDOFF. And you believe that it was more convenient to drive 6 or 7 blocks?

Mr. APPLING. We had to drive down toward the field office and we just continued 2 blocks and threw them in.

Representative CHUDOFF. Could you not have tossed them into the wastebasket at the Department of Geology? Would that not have gotten rid of them for you?

Mr. APPLING. I suppose we could have, but I could see no reason to clutter up their wastebasket with our samples.

Representative CHUDOFF. You knew this was a controversial case?

Mr. APPLING. I knew very little about the facts.

Representative CHUDOFF. Did Mr. Volin discuss that with you?

Mr. APPLING. He told me they were contested claims.

Representative CHUDOFF. As a matter of fact, in your letter of instructions, he told you that there was a question of who was going to make the assay, that he wanted some people closer by to make the assay and that the company insisted on the Alabama assay company to do it, did he not?

Mr. APPLING. He suggested several assayers in nearer locations—I think Abbott Hanks, Smith-Emery, Union Assay—and the owners expressed a preference for the Williams Co.

Representative CHUDOFF. In spite of the fact that you knew there might be controversy here, you found it convenient to drive 6 or 7 blocks to drop the packages in the river?

Mr. APPLING. No, sir. If I knew this controversy would come up, I would not have.

Representative CHUDOFF. I guess you have not dropped any since, have you?

Mr. APPLING. No, sir.

Mr. LANIGAN. You said that in your earlier discussions with Mr. Volin about taking splits, it was in connection with sending the samples to Albany, and that that was decided against and later the splits were taken on your idea or on your and Mr. McCormick's idea.

Did you inform Mr. Volin that you had taken those splits and put them in the State geologist's office?

Mr. APPLING. To the best of my knowledge, the first he knew about it would have been from reading my report, unless we had a telephone conversation several days earlier in which I might have mentioned it. I couldn't say. I know it is my recollection that he did not know of it until after they had been disposed of.

Mr. LANIGAN. Well, I believe Mr. Volin testified that over the telephone he asked about the splits and you told him that they were destroyed and he was very much surprised by the fact that they had been destroyed.

Mr. APPLING. I read that testimony. I don't recall it.

Mr. LANIGAN. You do not recall exactly what you had told him previously?

Mr. APPLING. No, sir; I don't.

Mr. LANIGAN. All right.

Mr. COBURN. Mr. Appling, whose idea was it in the first place to split up these samples into four quarters?

Mr. APPLING. I don't really recall. I think that probably first came up when Mr. Volin and I discussed sending check samples to Albany.

Mr. COBURN. Could the suggestion have come from Mr. Volin?

Mr. APPLING. It may have been originally. I think part of the reason that we split them was so they would be rejects for panning and so that it would be easier to handle and to ship.

Mr. COBURN. Would you tell the committee what you mean by "rejects for panning"?

Mr. APPLING. Well, when the samples were ground to a powder, they were split, and two of the quarters or the rejects were then panned in a gold pan to show any heavy minerals that may have been present.

Mr. COBURN. I am still not clear. Why do you refer to them as "rejects"?

Mr. APPLING. Well, ordinarily they are discarded unless there is some particular use for them.

Mr. COBURN. In other words, you had four quarters, two of which became rejects?

Mr. APPLING. Yes.

Mr. COBURN. Automatically?

Mr. APPLING. Well, the idea in splitting the samples in the first place is to reduce the bulk so they are easier to handle.

Mr. COBURN. I see.

Mr. APPLING. And you take out the quarter that you want.

Mr. COBURN. How do you select that quarter that you want?

Mr. APPLING. The splitting is done with a mechanical splitter and you take whichever.

Mr. COBURN. It is just a guess?

Mr. APPLING. They are all supposed to be the same.

Mr. COBURN. It is just a guess as to which quarter you want?

Mr. APPLING. Yes, sir; they are all the same.

Mr. COBURN. What is the purpose of panning two of the quarters? Why did you do that?

Mr. APPLING. To show any heavy minerals present.

Mr. COBURN. In the process of panning, those samples then are destroyed; is that correct? Leaving two quarters?

Mr. APPLING. Yes, sir.

Mr. COBURN. One of which you sent in for assay and one of which you kept on your own responsibility?

Mr. APPLING. Yes.

Mr. COBURN. Did Mr. McCormick agree to the retention of that quarter?

Mr. APPLING. Yes, sir. I don't really know who suggested it in the first place, either Mr. McCormick or myself.

Mr. COBURN. I am not asking that question.

Mr. APPLING. He agreed.

Mr. COBURN. He agreed that you should keep one?

Mr. APPLING. As the alternate; yes, sir.

Mr. COBURN. For what purpose?

Mr. APPLING. As a safeguard against loss of the primary samples in transit.

Mr. COBURN. Was there any discussion between you and Mr. McCormick as to the advisability of checking the retained sample against the results obtained from the Williams Inspection Co. on the samples sent in?

Mr. APPLING. No, not exactly, sir.

Mr. COBURN. What do you mean by "not exactly"?

Mr. APPLING. I think I discussed with Mr. McCormick some of the suggestions that Volin had made regarding Albany assays.

Mr. COBURN. What was Mr. McCormick's reaction to Mr. Volin's suggestion that these samples be sent to Albany?

Mr. APPLING. That was at a time after Mr. Volin and I had decided against it, I believe. I don't recall any particular reaction to it.

Mr. COBURN. You say that you and Mr. Volin had already decided against sending them up there when you discussed it with Mr. McCormick?

Mr. APPLING. I just mentioned it. I didn't discuss it.

Mr. COBURN. You mentioned it?

Mr. APPLING. Yes.

Mr. COBURN. What did he say about it?

Mr. APPLING. I don't recall.

Mr. COBURN. Well, did he state any preference?

Mr. APPLING. Well, it was all settled. There was no preference to be stated.

Mr. COBURN. I see. You just mentioned it to him casually, thinking it might be of some interest?

Mr. APPLING. I don't recall why I did mention it.

Mr. COBURN. I cannot understand it either, but I accept that.

Now, how strongly did you support Mr. Volin's suggestions that some western assay house be utilized instead of A. W. Williams Co., or did you support it?

Mr. APPLING. Well, I certainly suggested those places.

Mr. COBURN. You did? To whom?

Mr. APPLING. At a meeting with Mr. McCormick and the owners.

Mr. COBURN. The McDonalds?

Mr. APPLING. Yes.

Mr. COBURN. And you were, in effect, outvoted; is that correct?

Mr. APPLING. I don't recall the exact details on that. I don't really recall that they vetoed that. I know that they expressed a preference for the Williams Co. and gave as a reason that they had established credit there, or they had an open account there, and that it would be more convenient to them.

That, as I recall it now, seemed to be the reason.

Now, I went then and phoned Mr. Volin and told him about the Williams Co.

Mr. COBURN. Well, did you state to the McDonalds and Mr. McCormick why you and Mr. Volin felt that a western assay house should be utilized?

Mr. APPLING. Well, I normally would have suggested Abbot Hanks myself.

Mr. COBURN. I am sorry. I think you misunderstood the question. During the course of your discussions with the McDonalds and Mr. McCormick, when this matter of an assay house came up as you have testified, and they suggested A. W. Williams Inspection Co., then, as I understand you, you suggested these three western assay houses. They then insisted—is that the word—on A. W. Williams Inspection Co?

Mr. APPLING. I wouldn't put it that strongly. I don't believe they did insist.

Mr. COBURN. Let us put it that they expressed a preference.



Mr. APPLING. Well, that is right.

Mr. COBURN. My question is this:

Then what argument or what reasons did you give in support of Mr. Volin's and your suggestion that a western assay house be used, or did you just accept their recommendation?

Mr. APPLING. I don't recall that I objected particularly strongly. I know I suggested, and it would have been more convenient in many ways for me; but, since they were paying the bill and since I knew nothing about the Williams Co., either for or against them, I could see no reason that I should not pass on their preference.

Mr. COBURN. Did you also feel that, under the instructions that you were operating under, in the final analysis the Al Sarena Co. could select its own assay house in the matter?

Mr. APPLING. Well, I realized that we would have, as you might say, the power of veto.

Mr. COBURN. You would have or they would have?

Mr. APPLING. Well, both the company and the Government would have; that it had to be a company that was mutually agreeable.

Mr. COBURN. And you could veto each other?

Mr. APPLING. Well, presumably.

Mr. COBURN. Where would that end up?

Mr. APPLING. A stalemate.

Mr. COBURN. Then what would happen?

Mr. APPLING. I can't say about that.

Mr. COBURN. But you were aware of this all the time, were you not?

Mr. APPLING. It could lead to an impasse. It was contained in the instructions.

Mr. COBURN. And you felt that, because of the snow involved and perhaps other reasons, this had to be done fairly promptly?

Mr. APPLING. It did have to be done promptly.

Mr. COBURN. So you acceded to the preference of the A. W. Williams Co.?

Mr. APPLING. Well, I passed that on to Mr. Volin. I don't think I acceded because of the imminent approach of the winter. I think I just passed the answer on in view of the fact that they would, according to the instructions, have a right to express a preference.

Mr. COBURN. Do you still want to tell the committee, Mr. Appling, that there was no element of haste or speed in the matter?

Representative HOFFMAN. No element of what?

Mr. COBURN. Haste or speed.

Mr. APPLING. There was an element of speed, but I don't believe that that influenced the decision as to the assayer.

Mr. COBURN. No; I understand that.

Mr. APPLING. As far as the samples themselves were concerned, we didn't permit haste to interfere with the taking of them.

Mr. COBURN. Do you recall what you told Mr. Volin after this conference with the McDonalds and Mr. McCormick as to the choice of an assay house?

Mr. APPLING. No; I don't recall exactly. I know that I told him that they wanted the samples assayed at the Williams Inspection Co.

Mr. COBURN. I am sorry, I cannot hear you.

Mr. APPLING. I told him that they wanted the samples assayed at Williams, and asked him if he knew anything about the company. I had never heard of them before.

Mr. COBURN. Now, I want to get this straight for the record. When you and Mr. Volin first conversed on the telephone regarding the methods of procedure to be followed in this case, is it true that at that time Mr. Volin did not suggest to you that these samples be taken, quartered, and submitted to Albany for analysis?

Mr. APPLING. That point was discussed, but it was decided against. We decided not to do it.

Mr. COBURN. This took place in your first conversation with Mr. Volin on the subject?

Mr. APPLING. I presume so.

Mr. COBURN. You are not sure?

Mr. APPLING. No, I don't recall.

Mr. COBURN. How many conversations did you have with Mr. Volin on this matter?

Mr. APPLING. I can say that I think 2 or 3.

Mr. COBURN. Several conversations?

Mr. APPLING. Yes.

Mr. COBURN. And during the last conversation with Mr. Volin, do you recall, was that when you advised him that the samples had been destroyed?

Mr. APPLING. I don't recall saying it over the phone. I don't know whether I told him by phone. It must have been by phone. I don't recall.

Mr. COBURN. You also included that in your report or the letter of transmittal with your report?

Mr. APPLING. That the samples had been destroyed?

Mr. COBURN. Yes.

Mr. APPLING. I don't believe I did.

Mr. COBURN. You did not mention it?

Mr. APPLING. I don't believe I did.

Mr. COBURN. So he must have learned it from you by phone?

Mr. APPLING. I believe so.

Mr. COBURN. You got a copy of the certificate from the A. W. Williams Co.?

Mr. APPLING. Yes.

Mr. COBURN. What did you do with that copy?

Mr. APPLING. That was sent to Spokane with my report.

Mr. COBURN. Is it not true that Mr. Volin testified that there was no certificate?

Mr. APPLING. I think that is right. I can't explain that. I know I sent one in.

Mr. COBURN. That was a copy?

Mr. APPLING. Yes, sir.

Mr. COBURN. Did you ever see the original?

Mr. APPLING. I don't recall that I did. This was a signed copy, however.

Mr. COBURN. This was a signed and certified copy?

Mr. APPLING. Yes.

Mr. COBURN. I see. You sent that to Spokane?

Mr. APPLING. With my report.

Mr. COBURN. Yet, as I understood Mr. Volin's testimony, the certificate did not accompany the report that he saw.

Mr. APPLING. He testified to that. I don't know.

Mr. COBURN. You have no explanation for that?

Mr. APPLING. No, sir; I haven't.

Mr. REDWINE. Mr. Appling, you stated a few minutes ago that you took this retained alternate sample, or whatever you want to call those splits, out of the Department of Geology of Oregon because they had janitors around there that might get to it.

In your testimony in Portland, you testified that you deposited the first 2 days' samples in the post office?

Mr. APPLING. I think that is right.

Mr. REDWINE. Do they have janitors in the post office in Grants Pass or Trail?

Mr. APPLING. I don't know. I imagine the postmaster is the janitor there.

Mr. REDWINE. You testified also a few minutes ago that you waited until you got the assay report to start writing your report of the sampling? Why was that? Why did you have to wait until then when you knew that they needed this report in a hurry?

Mr. APPLING. I don't know. I don't remember too much about that. It may have been other work that was pressing me. At any rate, I couldn't turn the report in until the assay certificate got there.

Mr. REDWINE. When the package was finally prepared for transmission to Mobile, who prepared it?

Mr. APPLING. Mr. McCormack and myself.

Mr. REDWINE. Who took it to the express office?

Mr. APPLING. Mr. McCormack and I.

Mr. REDWINE. The two of you together?

Mr. APPLING. Yes, sir.

Mr. REDWINE. You testified a few minutes ago that, in this discussion that took place as to what assayer you would use, you met with Mr. McCormack and the McDonalds, I believe?

Mr. APPLING. That is right.

Mr. REDWINE. Was that within the scope of your instructions to work out things with the McDonalds or their representative? Which?

Mr. APPLING. I believe my instructions were to contact Mr. McCormick, and I did so; and then Mr. McCormick and I wanted to visit the property to line up the work and plan it, and the McDonalds were there at the time.

Mr. REDWINE. So the discussion between you and Mr. McCormick as to who the assayer should be was participated in by the McDonalds?

Mr. APPLING. Yes.

Mr. REDWINE. Did you hear the testimony yesterday of Mr. McDaniel as to the weight of the samples received by the Williams Co.?

Mr. APPLING. I couldn't hear too clearly. I heard parts of it.

Mr. REDWINE. I believe the record will bear this out, and I do not think anyone will take exception to the statement, that his testimony was that several, he did not remember how many, of the samples were quite small in volume or weight.

How would you explain that?

Mr. APPLING. Well, they were splits.

Representative JONAS. I beg your pardon, sir. I will take exception to that. He did not say "quite small in weight." He said it ranged from a ton and three-quarters to 2 tons.

Mr. REDWINE. Assay tons, Mr. Chairman. I would like to point out that they are not tons.

Representative JONAS. I am using the words he used. He did not say "quite light in weight." I do not remember his saying that.

Mr. REDWINE. Mr. Chairman, I would like to point out that Mr. McDaniel testified that by agreement that he had had with the McDonalds on previous assays, not this particular group of assays, that they had agreed they could only get an accurate report if they had at least 2 assay tons of samples. He further testified that several of these, he did not recall how many, were less than 2 assay tons.

Representative JONAS. Then I asked him when I examined him if he would say how much less than 2, and he said none of them went under  $1\frac{3}{4}$ .

Mr. REDWINE. How could you explain that there was quite a variation in the volume or weight of the samples?

Mr. APPLING. Well, just that some of the samples were larger than others and, when they were quartered down, we therefore had a larger portion in some.

Mr. REDWINE. How come some were smaller than others? In each sample that you took, before it went in the grinder and powderer and splitter, how much volume or weight was involved there?

Mr. APPLING. The weight of the original sample as taken from the outcrop?

Mr. REDWINE. Yes.

Mr. APPLING. That varied considerably. I don't recall. I imagine it went anywhere from several pounds to possibly 8 or 9 pounds, or 10.

Mr. REDWINE. If none of them were less than several pounds, the original samples—

Mr. APPLING. Yes.

Mr. REDWINE. How did it get down then when you got ready to quarter them that you had less than 108 ounces, we will say?

Mr. APPLING. Well, when we use the term "quartering," that is sort of a general term. It is a little more difficult to say they were one-eighth and they were one-sixteenth. In other words, they were split equally down to a size. If the original sample was a hundred pounds, it might be split 15 or 20 times.

Mr. REDWINE. Mr. Appling, let us go back to your report itself on page 2, "Development," those first two paragraphs there under "Development."

I would like for you to tell the committee just what those two paragraphs had to do with your sampling of the 15 disputed claims. Just what did that have to do with it?

Mr. APPLING. This was just background information, things that I observed, and I put them in the report for whatever they were worth. They had no direct connection perhaps to the 15 claims except that I think one of the trenches, this 100-foot trench was on one of the contested claims, I believe.

As a matter of fact, the bulldozers I mentioned there and some of the roads were on contested claims.

Mr. REDWINE. Why, Mr. Appling, did you not point out "on adjacent property such-and-such is the case?" Why did you leave the impression that this was on the property that you were sampling?

Let me ask a question ahead of that and then read that one back.

Do you not think that these two paragraphs there would make any reasonable man think that you were talking about the 15 disputed claims?

Mr. APPLING. That was not the intent.

Mr. REDWINE. Do you not think that it would?

Mr. APPLING. I think, if the report were thoroughly read and the maps studied, no; I do not believe that it would lead to that belief. The mill buildings and the other buildings are plotted on this map that accompanies the report.

Mr. REDWINE. Will you read my question ahead of the last one, please?

(The record was read by the reporter as follows:)

Why, Mr. Appling, did you not point out "on adjacent property such-and-such is the case?" Why did you leave the impression that this was on the property that you were sampling?

Mr. APPLING. In retrospect. It probably would have been better had I done that. I don't believe that the intent was to deceive, and I don't think the effect was deceiving, as I say, if the report were completely and thoroughly read.

Mr. REDWINE. But it does have the effect. Take the first paragraph of your introduction there. You very specifically talk about the fact that you are, at the request of Mr. Davis, going on there on 15 located mining claims.

Do you not think the effect is, then, turning over to the "Development," that you are talking about 15 mining claims, that no reasonable person could think you were talking about anything except those 15 claims?

Mr. APPLING. Except that the map shows some 23, I believe, and I could have gone into more detail on that, I will admit.

Mr. REDWINE. Mr. Chairman, that is all I have at this time.

Senator SCOTT. Does anyone else have a question?

Representative JONAS. I have.

Representative HOFFMAN. Well, you have been grilled here for half or three-quarters of an hour by these three attorneys and, as I understood you when you started out in answer to Mr. Redwine, you said something about changing your testimony with reference to the time those samples were destroyed.

Did I get that right, and, if you were changing your testimony, what change would you make in it?

Your attention was called, I think, to page 193 and from there on. Have you read it?

Mr. APPLING. Yes, sir; I have read it.

Representative HOFFMAN. What change are you making there? I tried to follow through.

Mr. APPLING. I am not exactly sure myself. Evidently there was some statement I made in there that wasn't right.

Representative HOFFMAN. Make up your mind, if you will, now, for me as to when you think you destroyed those samples.

As I get it, you did not know and all you were doing was giving your best recollection.

Read your testimony given out there and see if there is anything you want to change. At one time you say something about a report coming in on the 2d, and then you say over on a subsequent page that you think you destroyed the samples around or about the 15th, but you do not know.

I am not finding any fault with your testimony. I cannot see anything wrong anywhere with it.

Mr. APPLING. I think I stated here that it was at some time after January 2 and that I thought possibly it might have been around the 15th of January.

Representative HOFFMAN. Yes.

Mr. APPLING. Since this testimony was given, I have checked my files and I find that on the 5th of January reference was made to the samples that had been disposed of.

Representative HOFFMAN. On the 5th of January?

Mr. APPLING. On the 5th of January.

Representative HOFFMAN. Was that in a notebook which you had?

Mr. APPLING. No, sir. It was a reference in a letter.

Representative HOFFMAN. As I recall your testimony, without reading the record again, when you were testifying at Portland you did say something about some other records that you would have to check to get the exact date. Whether it was this date or some other, I do not remember.

Mr. APPLING. Well, I couldn't find the exact date. The only reference I could find was one which on the 5th of January said that they had been disposed of.

Representative HOFFMAN. Do you know whether it makes any difference whether you destroyed them on the 2d or on the 5th?

Mr. APPLING. No, sir; I don't see.

Representative HOFFMAN. I do not either. I would hate to be judged by the standards that these gentlemen are trying to set up for you.

I think that is all I have.

Representative JONAS. Mr. Chairman, I have just a couple of questions.

Senator SCOTT. All right.

Representative JONAS. Mr. Appling, how long have you been with the Bureau of Mines?

Mr. APPLING. Steadily since 1950, and temporarily at various times before then.

Representative JONAS. How long have you been in the mining business professionally? When did you finish your education?

Mr. APPLING. I graduated from the University of Oregon with a master's degree in 1949, I believe.

Representative JONAS. And you have been with the Bureau continuously since 1950?

Mr. APPLING. That is right.

Representative JONAS. And you are what we refer to as a career man in the Bureau?

Mr. APPLING. That is right.

Representative JONAS. Under civil service?

Mr. APPLING. That is right, sir.

Representative JONAS. Now, tell me this:

Did anybody from the Department of the Interior, with the exception of Mr. Volin, give you any suggestions or advice or instructions or requests as to how you would assemble these samples or what you would do with them, or what you would do with the alternates?

Mr. APPLING. No, sir; they did not.

Representative JONAS. Did Secretary McKay or anybody in the Department in Washington call you up on the telephone or write you

a letter, or did anyone purport to give you any instructions from anybody concerning any of those matters?

Mr. APPLING. No instructions at all.

Representative JONAS. And you say to the committee that all of the decisions you made were your own decisions, based upon what you thought was the proper way to take the samples, and the proper way to safeguard them and the proper thing to do with the alternate samples after you got the assay certificate back?

Mr. APPLING. That is right, sir.

Representative JONAS. And that the only instructions you had from anybody were those you received from Mr. Volin, and those are the ones about which you testified?

Mr. APPLING. Yes, sir.

Representative JONAS. Did anybody tell you what to put in your report or how to prepare it, or did anyone suggest that you discuss the mining operations there to which Mr. Redwine has adverted in his questions?

Mr. APPLING. No, sir.

Representative JONAS. Did you prepare that report entirely yourself and as a result of what you knew about it, and with the idea of presenting the report that would be understandable and would present the facts as you understood them?

Mr. APPLING. I did my best to do that.

Representative JONAS. And nobody censored the report or told you what to include in it?

Mr. APPLING. No, sir.

Representative JONAS. I believe that is all.

Representative CHUDOFF. Mr. Chairman?

Senator SCOTT. Congressman Chudoff.

Representative CHUDOFF. Mr. Appling, are you still stationed in Oregon?

Mr. APPLING. No, sir; I am in Spokane.

Representative CHUDOFF. When were you transferred from Grants Pass to Spokane?

Mr. APPLING. Early in October, I believe it was.

Representative CHUDOFF. Of last year?

Mr. APPLING. 1955.

Representative CHUDOFF. Up to the time that you were stationed in Oregon was the Al Sarena Mining Co. mining those minerals in those mines?

Mr. APPLING. As far as I know they were not.

Representative CHUDOFF. How long were you in Oregon?

Mr. APPLING. I went there in the fall of 1951.

Representative CHUDOFF. From 1951 to 1955 to your knowledge they never mined this land?

Mr. APPLING. Not as far as I know.

Representative CHUDOFF. Did you have a chance to look at the assay report? I believe you said you did.

Mr. APPLING. Some that we took; yes.

Representative CHUDOFF. And it met the prudent-man test?

Mr. APPLING. I am not aware of it.

Representative CHUDOFF. To determine whether or not a patent shall be granted, is it not determined on the test of whether a prudent

man can mine the land commercially at a profit? Is that not right?

Mr. APPLING. I have no idea.

Representative CHUDOFF. What do the assay reports show? How much gold and silver in a ton of ore?

Mr. APPLING. As near as I can remember it—

Representative CHUDOFF. You may read it if you have it. There is no use guessing.

Mr. APPLING. They seem to vary from a low of 79 cents to a high of \$4.85.

Representative CHUDOFF. \$4.85 is pretty good mineral content; is it not?

Mr. APPLING. Under certain circumstances it can be so considered.

Representative CHUDOFF. For \$4.85 the mine could be mined profitably; could it not?

Mr. APPLING. Sir, that is an opinion. I am not qualified to answer for the reason that I did not have the time to examine those claims and to go into all the details of it. Had I the time to examine that property I could give you an answer. I prefer not to answer it.

Representative CHUDOFF. I heard that for \$1.90 a ton you can probably mine a mine of precious metals.

Mr. APPLING. It has been done.

Representative CHUDOFF. Did you say \$4.85?

Mr. APPLING. Yes, I believe.

Representative CHUDOFF. So at \$4.85, if the Al Sarena Co. were interested in mining that mine they would be mining it every day; would they not?

Mr. APPLING. I don't know. I have no opinion on that.

Representative CHUDOFF. Could you think of any reason why they would not be mining that land at \$4.85 a ton?

Mr. APPLING. I am not aware of the details of it.

Representative CHUDOFF. Could it possibly be they are not interested in mining; they are only interested in getting the timber?

Mr. APPLING. They seemed to talk like subsequent prospectors.

Representative CHUDOFF. Do you know the last time the Sarena mines were mined?

Mr. APPLING. No, sir; I don't.

Representative CHUDOFF. It was some time back; was it not?

Mr. APPLING. I have no idea at all.

Representative CHUDOFF. Mr. Lanigan?

Mr. LANIGAN. I just want to get 1 or 2 things straight. Mr. Volin testified the instructions he had which he delegated to you were to the effect that a Mr. McCormick was to take the samples in the presence of a representative of the Bureau of Mines. When you had these instructions from Mr. Volin you contacted Mr. McCormick. Is that what happened?

Mr. APPLING. Yes, sir.

Mr. LANIGAN. He told you where to contact him?

Mr. APPLING. Yes.

Mr. LANIGAN. And you arranged to go out to the mine?

Mr. APPLING. Yes, sir.

Mr. LANIGAN. Where did you meet him the day you went out to the mine to take the sample?

Mr. APPLING. I don't recall whether I stopped by his home or not. He lives on the Rogue River and the highway goes right by there.



Mr. LANIGAN. Near what town?

Mr. APPLING. His address is Eagle Point. It is a few miles from Eagle Point.

Mr. LANIGAN. Did you go out to the mine in your car or his car?

Mr. APPLING. I think in my car.

Mr. LANIGAN. In your car?

Mr. APPLING. Yes, sir.

Mr. LANIGAN. And when you got out there whose equipment was used in taking these samples?

Mr. APPLING. Our own equipment; hammer and sacks.

Mr. LANIGAN. The ore sacks brought along were your own?

Mr. APPLING. Yes, sir.

Mr. LANIGAN. Who took the samples in the mine?

Mr. APPLING. Mr. McCormick took the first sample while I assisted him by catching the chips in sacks. Thereafter I took the rest of them.

Mr. LANIGAN. How many samples were taken?

Mr. APPLING. I think there were 28 in all.

Mr. LANIGAN. Then you quartered the samples right at the mine site?

Mr. APPLING. Yes.

Mr. LANIGAN. And you panned 2 of the 4 quarters right there?

Mr. APPLING. Yes.

Mr. LANIGAN. Where did the envelopes come from that they were put into?

Mr. APPLING. I brought them along.

Mr. LANIGAN. Did they have Bureau of Mines identification on them?

Mr. APPLING. No; I think they were just plain envelopes.

Mr. LANIGAN. You put the samples in the envelopes at the mine site; is that what happened?

Mr. APPLING. Yes; after we had prepared them. Yes, I believe that's the way it was.

Mr. LANIGAN. Did you have at that time four envelopes for each site from which you had taken samples?

Mr. APPLING. Four? No, sir. I don't recall how many, but we had the primary sample in sacks and we had the alternate samples in sacks for each sample.

Mr. LANIGAN. You had them in sacks?

Mr. APPLING. In the paper envelopes or sacks.

Mr. LANIGAN. Wait a minute. Did you put them in the paper envelopes, or did you put them in the sacks?

Representative HOFFMAN. Will you let me ask a question there?

Mr. LANIGAN. Yes, sir.

Representative HOFFMAN. What color were those envelopes?

Mr. APPLING. I think they were manila.

Representative HOFFMAN. Are you sure?

Mr. APPLING. Well, reasonably sure.

Representative HOFFMAN. I wish you would verify that if you can, because I would like to know.

That is all; thank you.

Representative CHUDOFF. I am glad to learn from you, Mr. Appling, that you are sure of something. You have not been sure of anything up to this point. At least, you are sure about the color of the envelopes.

Mr. APPLING. That was some time ago, sir. It was a short job. I don't recall too many things about it.

Mr. LANIGAN. Did you put the pulp in the envelopes at the mine?

Mr. APPLING. I don't recall exactly how we handled them as far as envelopes or sacks. We split them. We put them into a container, a paper sack, or an envelope, whichever you may call it.

Representative HOFFMAN. Just a minute. Do you want to correct your testimony? Heretofore you have had them in envelopes. Now you have mentioned a paper sack. We would like to have you be accurate, because you are under oath.

Mr. APPLING. Well, let us say that I can't remember whether they were envelopes or sacks.

Representative HOFFMAN. You put them in something anyway?

Mr. APPLING. Yes, sir; I did.

Mr. LANIGAN. Then you took them into the post office, and were the sacks or envelopes sealed at the time they were put in the post office?

Mr. APPLING. I believe what we used were grocery sacks, small manila grocery sacks. I am not sure. I think that's what we used. And they were placed in a cardboard box, and as I recall it, we sealed the cardboard box with tape, and I believe that Mr. McCormick and I wrote our names across the tape so that we could tell if they had been disturbed.

Mr. LANIGAN. What other processing did they go through between the time you put them in that sealed cardboard box and the time they were finally mailed to the Williams Co.?

Mr. APPLING. Well, I believe we transferred them into pulp sacks with wire clips at a later time. I am not too sure of the details. I don't recall that.

Mr. LANIGAN. Were those a particular kind of sack or envelope; pulp sack?

Mr. APPLING. No; except they have a wire fastener and you fasten them down.

Mr. LANIGAN. And were those Bureau of Mines pulp sacks?

Mr. APPLING. Yes; they were not marked Bureau of Mines, but they were Bureau of Mines envelopes.

Mr. LANIGAN. That is all I have.

Mr. REDWINE. Mr. Appling, did you receive a copy of Mr. McCormick's report?

Mr. APPLING. I have since received a copy from Mr. McCormick; yes.

Mr. REDWINE. You received it from Mr. McCormick?

Mr. APPLING. Yes.

Mr. REDWINE. Do you know to whom he submitted his report?

Mr. APPLING. No, sir; I do not. I paid no attention at all to that.

Senator NEUBERGER. I would like to ask a few questions.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Mr. Appling, in your service with the Bureau of Mines have you ever encountered any situation parallel to this or similar to it in any way?

Mr. APPLING. No, sir; I haven't.

Senator NEUBERGER. Have you ever received any assignment at all similar to this in any way?

Mr. APPLING. No, sir; I have not.

Senator NEUBERGER. The question was asked if you had ever received any orders from Secretary McKay or any other high official of the Department of the Interior and you answered in the negative.

Mr. APPLING. No, sir; I have not.

Senator NEUBERGER. I take it, as a matter of fact, that in no assignment that you have ever undertaken for the Bureau of Mines have you ever received, whether it was this or any other assignment, any orders from the Secretary's Office of the Department of Interior; is that correct?

Mr. APPLING. No, sir; I haven't.

Senator NEUBERGER. To your knowledge have the other officials or personnel whom you know in the Bureau of Mines ever had an assignment similar to that one which you had in this Al Sarena case?

Mr. APPLING. Not as far as I know.

Senator NEUBERGER. You have never talked to anybody in the Bureau of Mines or known anybody in the Bureau of Mines who ever had an assignment at all parallel to this one that you have had in this case?

Mr. APPLING. As far as I know; no.

Senator NEUBERGER. So far as you know the case is extraordinary and unique, at least in your own opinion and that of your associates?

Mr. APPLING. Yes, sir.

Senator NEUBERGER. I just want to say this before the witness leaves the stand, Mr. Chairman: That in my opinion one of the distressing things about this whole case is the obvious tension and distress that has been caused to so many career employees and civil-service employees of the Interior Department and of the Department of Agriculture because of the unique and extraordinary instructions which came from the secretarial level of the Interior Department. That to me is one of the distressing things about this whole case and I would like to thank Mr. Appling for his participation in answering my questions.

Senator SCOTT. Are there any other questions?

Representative HOFFMAN. Yes; I have one.

The distinguished Senator from Oregon here who sits on my right asked you if there was ever any other case like this? Do you know of any other case where the Secretary delayed for 18 months deciding an appeal?

Mr. APPLING. No, sir; I don't know that, either.

Representative HOFFMAN. This is the first one that you have heard of; is it not?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. That is the one that Mr. Chapman held up.

Mr. APPLING. That's right.

Representative HOFFMAN. And then when the new fellow came along and had the Bureau of Mines take a sample and had somebody who appeared to be competent, according to the record up to that time, to make the assay, it was a case of the heck with the pay, was it not?

Mr. APPLING. It looks like it.

Representative HOFFMAN. And it has been ever since?

Mr. APPLING. It sure has been.

Representative HOFFMAN. In the last campaign and now there is another campaign on. It is rehashed again. You took some photographs out there, did you not?

Mr. APPLING. Yes, sir; I did.

Representative HOFFMAN. Out in Portland, if I remember correctly, the committee said they wanted them. Do you have them with you?

Mr. APPLING. Yes, sir; I have them.

Representative HOFFMAN. Does the committee want them? I do not want you to forget anything.

Mr. Chairman, do you want these photographs submitted?

Senator SCOTT. Yes, sir.

Mr. APPLING. They are not identified yet. We had a little trouble in having them processed.

Representative CHUDOFF. I think he ought to tell what the pictures show rather than just offer pictures.

Representative HOFFMAN. I just wanted to be helpful to the committee. The committee asked for them and I thought I could contribute a little.

Mr. APPLING. I can't identify these exactly until I consult my records. They are photographs of the sample locations, in some instances showing the channels we cut.

Mr. REDWINE. Mr. Chairman, I suggest that the witness tell us under what circumstances these were taken; who was present at the time and then properly identify them later on if he cannot do it right now and submit them for the record.

Representative CHUDOFF. Were they taken during the time the sampling taps, or before the sampling taps, or are they recent photographs?

Mr. APPLING. No; they were taken at the time of the sampling taps.

Representative CHUDOFF. I believe if there is no objection we should let the witness keep them and identify them and then submit them to the committee later. He says he cannot identify them now.

Mr. REDWINE. They were taken at the time of the sampling?

Mr. APPLING. Yes.

Mr. REDWINE. Who was present at the time, sir?

Mr. APPLING. Mr. McCormick and Mr. Pattee, my assistant, and Mr. Briggs.

Mr. REDWINE. Mr. Appling, is it a usual procedure where you are doing a sampling job of this type to take a picture?

Mr. APPLING. Well, no, it isn't.

Mr. REDWINE. Why was it done then?

Mr. APPLING. Well, the instructions, among other things, said to be sure of the exact location of each sample. We located them as well as we could by the means we had at hand and then took photographs for further evidence of location and I think that was the principle.

Mr. REDWINE. These are the spots pointed out to you as you testified in Portland, pointed out or designated by the McDonald brothers as their points of discovery; is that correct?

Mr. APPLING. No, sir; that is not correct.

Representative HOFFMAN. No, sir.

Mr. APPLING. They did not point it out as points of discovery or anything else.

Mr. REDWINE. You did not testify to that?

Mr. APPLING. I don't think I did. If I did I was in error. I certainly didn't intend to testify to that.

Representative HOFFMAN. Who pointed it out? Tell us as you did out there?

Mr. APPLING. Well, one of the owners would designate the areas to be sampled. They didn't say whether they were discovery points or what. I suppose some of them may have been.

Senator SCOTT. You have a permanent record of where you took the samples, but you do not have the samples now?

Mr. APPLING. No, sir. We sent those to the assayers.

Senator SCOTT. And you did not keep the rest of them?

Mr. APPLING. No, sir.

Representative HOFFMAN. May I ask, Mr. Chairman, do you have a copy of your report?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. May I have a copy of it? If it is permissible, Mr. Chairman—other parts of the record were offered—I would like to have the press have a copy of his report if that is all right with the chairman.

Mr. APPLING. Do you want the maps that go with it?

Representative HOFFMAN. If you have them.

Mr. APPLING. I only have one copy of this large map.

Representative HOFFMAN. If you will give me a copy of the report that was introduced in the record that will be sufficient.

Unless there is some objection, Mr. Chudoff, I am going to let the press have it if they want it.

Representative CHUDOFF. If it is in the record it is a public record and I have no objection to the press having it. I have no objection to the press having anything in this case. Maybe the Interior Department would like to have a copy of it. They probably will have a copy of it before the day is over.

I wonder if the Forest Service and the Bureau of Land Management have a copy of it?

Representative HOFFMAN. Usually when we were West the press got it long before I knew anything about it. I did not know whether that was customary here or not.

Representative CHUDOFF. Mr. Hoffman, as far as I am concerned you can give anything to the press that you want to, because even if I object you will give it to them anyway.

Representative HOFFMAN. Does that apply to Mr. Parriott, too? May he have the same privilege? He is with the Department.

Representative CHUDOFF. He should distribute material for the Department only and not for witnesses.

Representative HOFFMAN. I would not want him to be in contempt of the committee.

Representative CHUDOFF. I would not want him to be, either.

Mr. REDWINE. Mr. Appling, on page 2 of your report, under the heading of "Location" I find you reported this: "Samples were taken from outcrops, pits, or trenches designated by the McDonalds."

Mr. APPLING. I think that is right. I think I so testified.

Mr. REDWINE. On page 189 of your testimony I read from your report:

Samples were taken from outcrops, pits, or trenches designated by the McDonalds. According to them, locations were selected that had been sampled

with satisfactory results. Location of the sample on the outcrop or in the pit was at the discretion of McCormick and the writer.

Mr. REDWINE. At spots designated by the McDonalds?

Mr. APPLING. Well, in the general locations designated by them; yes, sir.

Those photographs that the Congressman asked be included in the record are photographs of spots designated by the McDonalds?

Mr. APPLING. That's right.

Mr. REDWINE. Thank you.

Representative HOFFMAN. You did not read quite all of it:

Location of the sample on the outcrop or in the pit was at the discretion of McCormick and the writer.

Mr. REDWINE. That was read, Mr. Chairman.

Representative HOFFMAN. And in the general location designated by the McDonalds.

Senator NEUBERGER. I would like to ask several questions more if I may in view of the fact that the distinguished gentleman from Michigan mentioned the alleged delay by Secretary Chapman in this appeal.

Were you informed yourself of the details of that alleged delay by the previous Secretary of the Interior?

Mr. APPLING. No, sir; I was not.

Senator NEUBERGER. To your knowledge, during that alleged delay did this land remain in the possession of the United States Forest Service, and the timber growing on it?

Mr. APPLING. I have no idea. I suppose so.

Senator NEUBERGER. Let me phrase it another way: When you went under the land to take samples that land was still part of the Rogue River National Forest; is that correct or not?

Mr. APPLING. Well, I am not clear as to the law on it. I understand there were location claims at the time and my general understanding there was the location claims in a sense belonged to the locators as long as they are current in their assessment work. Perhaps I am mistaken in that. I don't really know.

Mr. COBURN. Prior to the late change in the law that is correct.

Mr. REDWINE. They had a possessory right only.

Senator NEUBERGER. While they had location claims I would like to ask counsel could they cut the timber?

Mr. REDWINE. Only such timber as was necessary for mining operations.

Senator NEUBERGER. No timber could be cut commercially on the claims until patent was granted?

Mr. REDWINE. That is correct.

Senator NEUBERGER. Let me ask counsel another question so the record is straight on this. While Secretary Chapman allegedly delayed, as claimed by the distinguished gentleman from Michigan, the Al Sarena Co. could not cut commercially any of the timber growing on the land; is that correct or not?

Mr. REDWINE. That is correct, so long as the Secretary of Interior had taken no action overruling the Bureau of Land Management in its decision. The applicant for a patent had no more than a possessory right and could not cut timber.

Senator NEUBERGER. And they could only cut the timber for commercial purposes after final patent was granted?

Mr. REDWINE. That is correct, Senator.

Senator NEUBERGER. And when final patent was granted there was no competitive bidding on the timber by this company or other companies and there was no payment made to the Government for the timber; is that correct?

Mr. REDWINE. That is correct, sir, except I don't know as to whether there was any competitive bidding. That would be between the McDonalds and so forth after they had a patent, sir.

Senator NEUBERGER. I mean there was no competitive bidding in which whatever price was received would go to the United States Government as now takes place under competitive bidding conducted by the United States Forest Service?

Mr. REDWINE. The money would go to the McDonalds.

Senator NEUBERGER. And not to the Government.

Mr. REDWINE. Not to the Government.

Representative CHUDOFF. Do you have anything in your records to indicate exactly how much timber was cut or sold off the land since the patent was granted?

Mr. REDWINE. The testimony by the Forest Service given in Portland, Congressman, was to the effect—I will have to give you this in round figures—that in excess of 2 million board-feet had been cut. The dollar value was attempted to be arrived at and the testimony was that comparable timber in the area, insofar as Douglas fir is concerned, was selling around \$35 a thousand on the stump, and that the four claims upon which timber had been cut off had consisted of about 85 percent Douglas fir, which was worth, comparable timber in the area, approximately \$35 per thousand board-feet. Fifteen percent of what had been cut was sugar pine and it was selling in the area up to \$80 per thousand board-feet.

Representative CHUDOFF. Could you give me—

Representative HOFFMAN. It would be much better if you swear witnesses instead of letting counsel give his opinion, which is all hearsay. He does not pretend to know anything about it himself.

Representative CHUDOFF. You would say roughly there was \$100,000 worth of timber?

Mr. REDWINE. It figures out roughly to something like \$110,000.

Representative CHUDOFF. The record indicates from Mr. Appling's testimony, he being in the neighborhood for 5 years, there had not been any mining at all on the land. They were merely selling the timber and having it cut off.

Mr. REDWINE. That is correct. The testimony in Portland was further to this effect, Congressman, that by the Forest Service charged with the duty of making slash reports "The forester who had been in the area since 1943 said there had been no mining operations up to 1943 and he was quite frequently on the property."

Representative CHUDOFF. I think McDonald himself testified there were no mining operations.

Mr. REDWINE. McCormick.

Representative CHUDOFF. So that actually the Al Serena Mining Co. is in the lumber business rather than the mining business?

Representative JONAS. Mr. Chairman, may I ask Mr. Redwine a question, since he seems to be a witness right at the moment?

Mr. REDWINE. An unwilling witness, Congressman.

Representative JONAS. I remember reading somewhere—and I cannot find it in this record, but it is in here somewhere—that one estimate

made by the Forest Service was that the timber on the disputed claims was estimated as being worth \$77,000. Whose testimony was that? Am I correct in that?

Mr. REDWINE. That was in 1949 when the testimony was given before the hearing officer in the Portland hearing.

Representative JONAS. I mean if they were entitled to a patent or if they ever were entitled to one it will relate back to 1949, would it not?

Senator NEUBERGER. The value of the timber would be what they are going to sell it for.

Representative JONAS. You just let me ask Mr. Redwine a question. Is that not true? They would get the benefit of any enhancement in value if they were entitled to a patent years ago; is that not true?

Mr. REDWINE. That is correct. But the Forest Service, the same men who testified to that effect, also testified in the later Portland hearing that timber was at all times selling at more than twice what the Forest Service was appraising it at. I think you will find that throughout the record of the timber sales hearings.

Representative JONAS. You testified a minute ago that the figure of \$35 a thousand was used and my recollection of the testimony is they said it was somewhere between \$29 and \$30; approximately \$28.

Mr. REDWINE. In excess of \$30, I think it finally came down to.

Representative JONAS. But if I am correct the record does show that the Forest Service estimated the timber on the disputed claims in 1949 was worth \$77,000?

Mr. REDWINE. That is correct.

Representative CHUDOFF. I believe, Mr. Jonas, if you and I owned the Sarena mines and there were \$4.85 worth of precious metals for every ton of ore down there you and I would be mining the devil out of it instead of worrying about the timber.

Representative JONAS. One of the Forest Service reports from the Annes Engineering Co. shows \$2.25 a ton. One of their figures was \$2.25. That is more than just a trace.

Representative CHUDOFF. That was one sample out of 23 claims.

Representative JONAS. I understand. It shows on these disputed claims there is some pretty good mineralization.

Representative CHUDOFF. The thing I cannot understand is why this mining company, anxious to get a mining patent, has not bothered to mine a mine yet and is running around selling timber on the surface.

Representative JONAS. We might ask them. I think we probably will hear they ran out of money, and it takes some money to develop a mine.

Representative CHUDOFF. If they got \$110,000 for the timber they ought to have some money to start mining.

Representative JONAS. Suppose we get them as witnesses. That is what I have been waiting for for 2 days.

Representative CHUDOFF. They have not bothered to sell any more stock in the mine, either.

Representative JONAS. I think we ought to find out whether they have any money and hear from them.

Representative CHUDOFF. The record shows they are just selling timber and not mining minerals.



Senator NEUBERGER. I wonder if we could read for the record a few of the comments made out in the hearings in Portland about the value of the timber.

Representative HOFFMAN. What page?

Senator NEUBERGER. Page 90. Mr. Leavengood, of the Forest Service, is speaking. The previous matter just has to do with the claims, and I will not go into that so as to save time, and I am starting in the middle here:

\* \* \* I believe under Forest Service practice timber would be removed and the value of that timber was around \$77,000 at that time.

Mr. COBURN. \$77,000 at that time?

Mr. LEAVENGOOD. Yes.

Mr. COBURN. Mr. Leavengood, do you think you can get \$30 a thousand for Douglas fir today?

Mr. LEAVENGOOD. Well, I would only be speaking on the Mount Hood Forest. Our bid prices have been averaging somewhat above that recently.

Mr. COBURN. You could say that \$30 is a reasonable price to put on Douglas fir, could you, under present market conditions?

Mr. LEAVENGOOD. Our appraised prices have been running a little less than \$30.

Mr. COBURN. I am talking about fair market value. I do not want to get too technical. I am referring to what can you get today for Douglas fir. Can you get \$30?

Mr. LEAVENGOOD. Are you asking the question for the Mount Hood area or for southern Oregon?

Mr. COBURN. We can confine it to the Mount Hood area.

Mr. LEAVENGOOD. I would say you would get in excess of \$30 at the present time.

Mr. COBURN. But you cannot testify as to what they would get down in the Medford district?

Mr. LEAVENGOOD. Well, I wouldn't be qualified.

Mr. COBURN. Do you think that Douglas fir could bring \$30 down there,

Mr. LEAVENGOOD. Well, wouldn't it be better to check with some of the boys that are working right in that area? They could tell you more specifically.

Mr. COBURN. I understand from counsel that there will be a witness from that area, but you will agree that \$30 is a pretty fair price, that is, a very reasonable price on the Mount Hood area?

Mr. LEAVENGOOD. I would say our appraised prices have been running less than that on the average sale. However, the bid price currently is somewhat more.

Mr. COBURN. Somewhat more than \$28

Mr. LEAVENGOOD. Yes, sir.

Mr. COBURN. That is all.

Senator SCOTT. Are there any other questions?

Representative JONAS. None for me, sir.

Senator SCOTT. Are there any other questions?

Representative JONAS. Sir, may I ask Senator Neuberger to turn back to page 89. You started reading on page 90. What is that response of Mr. Leavengood about \$7 in 1950? Is that in contradiction to what he said later or not?

Senator NEUBERGER. It is my understanding that that very low price is the reason that the total value estimated at that time was only \$77,000, as compared with higher prices today. I think that that is the way it comes out and I think that that was the way they totaled it at \$77,000 at that time.

Representative HOFFMAN. And, Senator, I think it should also be called to attention—I think you did, but not perhaps sufficiently—that Leavengood says here on page 90:

Well, I would only be speaking on the Mount Hood forest.

He does not claim to know anything about the one in question.

Senator NEUBERGER. That is right. I read that three or four times. However, he is a timber appraisal expert and Douglas fir is Douglas fir.

Representative HOFFMAN. You were asking about the price today, and if he did not know anything about it why put it in the record? You might just as well have my opinion.

Senator NEUBERGER. I think we had the people from the Rogue River Forest, so let us put that in if we have it. Here is the testimony of J. H. Wood, who is the forest supervisor of the Rogue River National Forest where this timber has been growing.

Representative CHUDOFF. What page?

Senator NEUBERGER. Page 151.

Mr. REDWINE. What about the sales contracts in that area, Mr. Wood? What is Douglas fir selling for?

Mr. WOOD. Well, currently, we have sales on the forest in Douglas fir that run, oh, roughly between \$20 and \$30. There is a few under that, and a few over that, but the majority of them the Douglas fir has sold in the last year or 18 months for anywhere from \$20 to \$30, depending upon the quality and accessibility and development cost.

Mr. REDWINE. So \$25 maybe would be a fair average, do you think?

Mr. WOOD. Well, fairly close; yes, sir.

Mr. REDWINE. What about sugar pine?

Mr. WOOD. Well, sugar pine is the premium species. It usually sells for not less than \$40. We have one sale that we sold last summer which went for an alltime high of \$80; that is, an alltime high for our forest.

Mr. REDWINE. Mr. Wood, can you tell the committee what the comparable prices for Douglas fir were in 1939?

Representative HOFFMAN. Mr. Chairman, what do you mean by comparable price, fir in the same location?

Mr. REDWINE. Yes, sir.

Representative HOFFMAN. Same road, same everything?

Mr. REDWINE. Same situation.

Let me ask one more question and we will go back to that.

Representative HOFFMAN. Surely.

Mr. REDWINE. This property is served with access roads, is it not?

Mr. WOOD. Yes, sir.

Mr. REDWINE. There are two roads on it, are there?

Mr. WOOD. Yes, sir.

Mr. REDWINE. How long have those roads been there?

Mr. WOOD. A long time, probably 30 years.

Mr. REDWINE. They are Forest Service roads, are they not?

Mr. WOOD. Yes, sir.

Mr. REDWINE. Does that take care of the question you had, Congressman Hoffman? The witness says that the roads have been there probably 30 years. The access situation was the same.

Representative HOFFMAN. He does not tell anything about the elevations or what the cost of hauling to market is. That is my point. If you are going to get a price, conditions should be comparable, of course. Timber might be worth one price one place and something else again, and that \$80 fellow is out of business. He went bankrupt, did he not?

Mr. WOOD. No, sir.

Representative HOFFMAN. You are sure he did not?

Mr. WOOD. Positive.

Representative HOFFMAN. He is not in business, is he?

Mr. WOOD. Yes, sir.

Representative HOFFMAN. Where?

Mr. WOOD. Medford area.

Representative HOFFMAN. What is his name?

Mr. WOOD. Wilson.

Representative HOFFMAN. How much profit did he make on that, do you know?

Mr. WOOD. No, sir, I do not know.

Representative HOFFMAN. Of course what somebody paid for something somewhere is something else again.

Mr. REDWINE. What was Douglas fir worth in 1939, would you say?

Mr. Wood. Mr. Redwine, I don't believe I can answer that question for this reason—

and goes on to say he was stationed elsewhere in the Forest Service.

Representative JONAS. That makes about \$10 difference in the price as intimated by Mr. Redwine and that testified by these witnesses. That makes quite a difference when you are considering two million feet.

Senator NEUBERGER. We have an estimate of \$77,000 based on around \$7 a thousand board feet and yet Mr. Wood, the Forest Supervisor on the Rogue River National Forest has testified between \$20 and \$30, with \$25 a fair average, so \$25 is  $3\frac{1}{2}$  times as much as the \$7. Therefore, if you even have 3 times as much as \$77,000, that is a substantial sum of money.

Representative JONAS. Of course, you are considering modern prices. The \$77,000 figure was based on what timber was worth in 1949 and that is when these people were entitled to their patent if they ever were entitled to one.

Representative HOFFMAN. I will try and bring in another instance of adjoining timber.

Representative JONAS. What if timber had gone down in price? It would have gone from \$77,000 down to something less than that, but there has been an increase in the market price of timber, of course, since 1949.

Senator NEUBERGER. In other words, you are objecting to the fact that we say the timber is worth  $3\frac{1}{2}$  times \$77,000 and you are making the claim that they received timber worth "only" \$77,000 without making any payment to the Government. Is that a defense?

Representative JONAS. No, I don't intend it as a defense. I think when we are talking, though, in terms of the amount of money that has been involved—and I have seen some newspaper reports that claim this timber was worth \$800,000; where they got that figure I have not been able to determine from the record—I just think in our own consideration we ought to try to arrive at the value of the timber at the time they were entitled to the patent, if they ever were entitled to one.

Representative CHUDOFF. They did not get their patent until January 1954, and they had nothing until that time. If you are going to be technical about it, it should be value of timber in 1954.

Representative JONAS. Does it not relate back to the time they applied for their patent?

Representative CHUDOFF. I do not know.

Senator NEUBERGER. Are you saying it was wrong for the Forest Service and Bureau of Land Management to contest this patent if their mineral findings did not support it?

Representative JONAS. Of course, I am not saying that. We are not even on that subject, Senator. We are on the subject of the value of the timber and when you are going to date that value, 1949 or 1956.

Senator NEUBERGER. You are going to date it at the present time, because the Forest Service and the BLM carried out their perfectly legal responsibilities as they are charged with under the law in recommending a denial of patent if their mineral test did not show the patent was warranted, and by so doing it naturally resulted finally in the culmination of these extraordinary proceedings, and so I say that the value of the timber is what it was when finally granted, which was around

at least \$250,000, according to the estimates given us by Mr. Wood and other Forest Service experts.

Representative JONAS. That may be so. I just had an idea that we ought to think in terms of what it was worth at the time they put in their claim for it and if it went up in the meantime. If it went down they would lose.

Senator NEUBERGER. Bear this in mind: The claim was not based on timber. It was on minerals.

Representative JONAS. That is true.

Senator NEUBERGER. It is a mineral claim.

Representative CHUDOFF. It seems to me that the record indicates this: If this company, which is not interested in mining, would have found that the timber value was less than it was when they made their application for a patent they would not press their claim.

The reason why it was well for them to press their claim and why they were fighting so hard to get the patent was because the timber kept going up steadily and steadily. If you have been out with us you would have heard that the prices of timber are getting higher and higher because timber is getting scarcer and scarcer and eventually it is going to be sold at a terrific premium because you are not going to be able to get timber the way they are cutting it down.

Representative HOFFMAN. May I ask the Forest Service or somebody here to come in at the next meeting with the record of the sale in the same township, the Sunshine Creek sale in 1952 and the Jim Creek sale on January 9, 1954, similar timber right adjoining this? Let us see what they sold it for. It was sold on the open market.

Senator SCOTT. We will get that. The Forest Service is going to testify, so we will get that at that time.

Mr. REDWINE. Chairman Scott, you announced that we would adjourn at 4:30, I believe, this afternoon.

Senator SCOTT. That is right.

Mr. REDWINE. It looks like there are further questions that we will probably want to ask Mr. Appling that cannot be developed this afternoon. Mr. Coburn has something he would like to say.

Let me suggest that this witness hold himself in readiness for further appearance which you will tell him at the conclusion, when the decision is made, when we will be here.

Mr. COBURN. Mr. Chairman, I have here from Senator Murray a letter directed to Senator Murray by Senator Morse, dated January 9, 1956, and with your permission and the permission of the committee, I have been requested to read it into the record.

Senator JAMES E. MURRAY,

*Senate Office Building, Washington, D. C.*

MY DEAR SENATOR: It is my understanding that your committee will conduct further hearings in the Al Sarena mining case, which has been a subject of controversy in Oregon. A number of my constituents have sought information on it, and in view of their inquiries, I wish to put some of these questions to you.

1. In what ways do the procedures used in this case differ from other mining appeal cases in the Department of the Interior?

2. Is the Government usually the contestant in mining-patent appeal cases? In such cases, how is the public interest protected by the Department of the Interior, and were adequate steps taken in this case to protect it?

3. By years, how many dollars' worth of minerals were removed from the contested claims as distinguished from the uncontested claims? Also, please segregate by period before and since the patent was issued.

4. What are the periods when active mining operations were conducted on these claims, and particularly the periods since issuance of patent?

5. What was the extent of actual mining or discovery work at the time application for patent was filed?

6. If mining is now in progress, are the contested claims under active operation?

7. What are the theoretical advantages of securing a patent over mining without a patent? Which of these theoretical advantages have actually been exercised by the patentee in this case since issuance of the patent?

8. Is it true that the contestant was allowed to select the assay firm?

9. If so, why was not the protestant, the Forest Service, allowed to participate in the selection of an assay firm or send portions of the samples to a Government laboratory or other assayer?

10. Were the results of the two western-performed assays earlier submitted by the Forest Service ignored in the final decision? Was there any basis for believing these two assays were inaccurate as compared to the one performed in Alabama?

11. The Forest Service and the Secretary of Agriculture have long tried to protect our forests from questionable mining claims. Is it true that they were not consulted as to the final action being taken on this matter?

12. What are the species volume and value (at bid rates for the area at the time of application) of the timber on the contested claim? For the uncontested claims? What are the values on the same basis at the times when the various appeals were filed? What are today's values?

13. Has timber been cut from the claims since patent was issued? If so, from which claims (contested or uncontested), and in what amounts from each?

I realize that this is a rather formidable list of questions and I hope that most of these will be answered by witnesses in the course of your hearings and by the report of your committee. The people are entitled to the facts and I am glad a full and complete view of this much-publicized episode is being undertaken. I shall await the results of the hearings before advising my constituents in any way upon this matter.

When I was in Oregon, I understood that statements were made that unfair treatment was accorded some of the individuals supposedly involved in this case. Having been subjected to wholly unfounded smear attacks, I know you are familiar with the tactic of unfair allegations being made against people who have long and honorably served this Nation. Consequently, I am sure that you will make certain that justice is done to all concerned.

I would consider it a courtesy, if you would make this letter a part of the record during your hearings on this matter.

With warmest personal regards.

Sincerely,

WAYNE MORSE.

Representative HOFFMAN. I just want to call attention of the chairman of the difference between the statement from Senator Morse and the refusal to let Congressman Mack and Congressman Ellsworth participate in the hearings. Of course, they did file a statement; and I have one I would like to read myself, Mr. Chairman, for the record. May I do that?

Representative CHUDOFF. Before you rule on that I just want to say that Congressmen Mack and Ellsworth made statements before this committee both in Oregon and in Washington. They were granted every consideration. The only thing is, under the rules of the House I refused to allow them to ask questions. I am bound by the rules of the House. I am sorry about that.

Representative HOFFMAN. So the Senator submits his list of questions.

Representative CHUDOFF. If Congressmen Mack and Ellsworth want to submit the same kind of letters I have no objection to putting them in.

Representative HOFFMAN. How about reading my own statement to put in the record, Mr. Chairman?

Senator SCOTT. If you will hold it just a minute we will let you do that.

Representative HOFFMAN. I will get it in before the day is over?

Senator SCOTT. Yes, sir.

In view of what has been said so far I would like to say, having been assigned the job of carrying out this investigation by Senator Murray, I intend to do the job and do it thoroughly.

I am aware of the fact that the testimony we have heard so far has created a lot of doubt and confusion about what really took place in the Al Sarena case, how it was handled, and whose decision it was to handle it in the manner in which it was handled.

I would like to say for myself, as acting chairman of this subcommittee, that I intend to get at the bottom of all these questions. I will do this in spite of the repeated cries of politics and smear—and I will do it even if I have to go to Oregon and dig some samples myself and get them analyzed.

I want it to be very clearly understood that I intend to bring out all the facts in a fair and impartial manner and that all persons interested in this case will be given an opportunity to be heard. I will do this regardless of any and all efforts to guide this investigation off its course and efforts to label it as a vehicle in partisan politics.

I want to adjourn this meeting at 4:30 when the time comes, so be guided by your statements.

Right at the present time we will hear from Congressman Hoffman for his statement.

Representative HOFFMAN. First, I want to commend the chairman on that fine declaration of principles and intentions. It is a dandy, if I may use such a word with reference to a congressional hearing.

Senator SCOTT. That is a good word.

Representative HOFFMAN. It is a common word, one that most everybody understands.

Senator SCOTT. We understand that.

Representative HOFFMAN. This statement that I have is rather long and I do not care too much for the sound of my own voice, so unless you have some objection I will just put it in the record and give it to the press.

Representative CHUDOFF. I might object to it. I do not have a copy of it.

Representative HOFFMAN. I will give you a copy.

Representative CHUDOFF. Let me read it.

Representative HOFFMAN. I will give you the original copy.

Senator NEUBERGER. I would like to have it read.

Representative HOFFMAN. This is rather long and I am not a very good reader.

Senator NEUBERGER. Have counsel read it.

Representative HOFFMAN. I am not ashamed of it. In fact, I take a little pride in it, but that is an admission. I would just as soon give it to the press. They have it. They probably do not care about my reading it.

Senator SCOTT. It will just appear in the record, then.

Representative HOFFMAN. All right.

(Statement referred to follows:)

**STATEMENT OF CLARE E. HOFFMAN, MINORITY MEMBER OF THE COMMITTEE, TO  
BE INCORPORATED IN THE RECORD OF HEARINGS**

During my service in the Congress, I have never seen anything to match the handling of this investigation.

Civil liberties, basic concepts of justice and ordinary courtesy and decency seem to have been forgotten.

Yesterday, those responsible for this reprehensible episode graduated from character assassination to a course of conduct bordering on legislative committee lynching.

A witness, a reputable professional man, was flatly accused of untruthfulness by a member and given no chance to defend himself.

A company's reputation was maligned and manhandled. When a witness sought to defend the company's integrity, he was denied the opportunity to testify.

A Member of the United States Senate was gagged when he asked for recognition of his right to be heard.

The Department of the Interior was subjected to another vicious attack and charged—also without an opportunity to answer, of improper activities in relation to these hearings.

An employee of the Department, a lawyer, was disgracefully abused because he had the rashness to pass out to newspapermen copies of a statement which had been prepared for their convenience.

The committee is now in the ridiculous position of having some members who denounce Government departments in the newspapers up and down the land for withholding information, while other members attack an Interior employee because he performs so simple a task as handing out information to the press.

The bias and cowardly tactics exhibited in the conduct of these hearings is unprecedented in our experience.

This case has been shamelessly tried in the press from its inception. A brazen attempt has been made to indict and convict the principals in the public mind before the first word of testimony was taken.

On November 25, last, in Portland, Oreg., the acting chairman issued a statement before the taking of any testimony on the matter. As reported in the press he said: "The committee \* \* \* would be derelict in its duty if it did not seek to determine the truth or falsity of the charges that have been made that, as a result of high level interference in the Department of the Interior, weasel-worded legal opinions and questionable mineral sampling and assaying practices have been substituted for the dedicated judgment and experience of men trained in the art of determining which lands are, or not not, eligible for patent under the mineral laws of the land."

What kind of an inflammatory, prejudiced statement is that, to come from one who knows he is destined to preside at what should be an impartial hearing by a committee of the Congress, where United States citizens will seek justice?

On what is it based, except the reckless and irresponsible allegations of New Deal smear artists? Certainly, it could not have been based on the record of these hearings which did not then, and which does not now, exist.

Also, as reported in the press, the chairman of the House subcommittee, on December 28, last, called the Al Sarena case "the give-away" of rich timber. Does this indicate an unbiased attitude in the matter at issue?

The news story telling of this Member's charge states that it was included in a letter written from Philadelphia to a newsmen in Washington. The assumption is that it must have been after the Member's return from a pre-Christmas trip with 3 or 4 members of the subcommittee staff to the Virgin Islands, where, we understand, he held hearings in violation of the committee rules.

It should be borne in mind that those responsible for these unfair, one-sided hearings are among the very ones who were loudest a few months ago in demanding censure of a Member of the United States Senate for the manner in which congressional committee hearings were allegedly conducted under his direction.

The charges in this case were made prior to the 1954 election by a syndicated mouthpiece for the Democratic Party. They are being revived for 1956 campaign purposes.

It is our understanding that, for the past year, the committee has had two full-time investigators, with unlimited travel authority, trying to substantiate this smear attempt on the Eisenhower administration and the Interior Department.

The minority members of this committee are without an investigative staff or counsel. They have been denied the usual information on witnesses to be called and the nature of the testimony to be offered.

As a further example of the fine, impartial manner in which these proceedings are being conducted, it is our information that the Department of the Interior was arbitrarily denied an official copy of the transcript of the Portland hearing until certain published accounts revealed that others, outside the Government, had access to it.

The record should show that the staff of the House committee is loaded with former New Deal employees of the Department. The object of their present endeavors is plain.

The record should also show that 1 former Department lawyer worked there for the present administration for 2 years; then quit his job on Saturday night and went to work Monday morning for the committee which was then investigating the Department.

This may be common practice in the legal circles in which the lawyer moves. It is not the practice among the lawyers we have known.

The committee has also shown an enthusiastic lack of concern for the pocket-books of American taxpayers in making this inquiry. The same group traveled at taxpayers' expense to California, Oregon, and various other points in the West and Northwest last fall for the ostensible purpose of holding hearings on "timber problems."

It sat in Medford, Oreg., the home community of many of the principals and experts in the case and only 45 miles from the mining claims themselves. But the committee did not bring the matter up at that time. Instead, it waited until it got to Portland, some 300 miles away, where a carefully stage-managed hearing was held before metropolitan newspapermen and radio representatives, as distinguished from the less elaborate coverage similar proceedings would have had in Medford.

The hearing was called with virtually no warning to the minority. Groundwork for it was laid by renewed publication of the reckless charges by a New Deal character assassin. It lasted 1 day. Witnesses seeking to offer testimony in defense of their activities and reputations were told to submit written statements or come to Washington if they wanted to be heard.

Typical and characteristic of the manner in which the hearings have been held was the statement made at the close of the hearings yesterday afternoon by the chairman of the Senate committee that the Interior Department had coached the witnesses.

The accuracy of that statement is challenged.

The charge is evidently based upon the fact that the witness, Mr. J. A. McDaniel, one of those who made the assay of the samples taken by the Bureau of Mines, had at the request of an Interior Department official, called at the Department to advise the Department of the manner in which the assay had been made and of the usual and customary procedure of his company.

In the record there is not one word of testimony which, even by inference, could be construed as an effort on the part of anyone in the Department to change or influence the trend of the witness' testimony or to coach the witness. Since when has it been either criminal, reprehensible, or unethical for department officials to make inquiry of witnesses as to charges which have been made against the department because of its decisions?

A Department of the Interior official was called before the committee and publicly criticized because he had exercised his right, under the Constitution, to give to the press the statement of the witness who had made the assay of the mining samples and who, by inference if not directly, was accused of fraud.

Apparently, the chairman of the committee and those supporting his position have forgotten all about the Constitution, fair treatment, and orderly procedure. They would apparently deny to anyone and to everyone accused of any unethical conduct by any member of their staff or a former employee of a New Deal administration, an opportunity to be heard. One need but to read the record of these hearings to realize that we might well, in our congressional hearings, attempt to follow procedure which would assure those who have been publicly accused of misconduct a fair hearing, before we make an effort to reform the Communists and certain other groups who practice tyranny.



Senator SCOTT. The press has it.

Representative HOFFMAN. It goes with Senator Goldwater's. He had one this morning that I read.

Senator SCOTT. That is right.

I guess it goes to Drew Pearson, too, does it?

Representative HOFFMAN. I do not know. If he does not stick any closer to the truth than he has in the past it would not be worth much.

Senator SCOTT. Mr. Chudoff, do you have anything further?

Representative CHUDOFF. I would like very much to finish reading this statement.

Senator SCOTT. In the meantime, Senator Neuberger, do you have anything further?

Representative HOFFMAN. Why don't you put in one in answer, if I might make a suggestion, when we meet again?

Mr. REDWINE. Senator, may I suggest that Mr. Appling be requested to return Tuesday at 2 o'clock?

Senator SCOTT. No objection. We will look for you at 2 o'clock.

Representative CHUDOFF. Senator Scott, I have no objection to Mr. Hoffman's political oration.

Representative HOFFMAN. You concur in it?

Representative CHUDOFF. I do not concur in it, but I certainly think you have a right to say it.

Senator SCOTT. In other words, you are just saying it is a good political oration?

Representative CHUDOFF. I think it is an excellent one.

Senator SCOTT. If there is nothing further this meeting will adjourn until Tuesday, January 17, at 2 o'clock.

Mr. Appling will be on hand.

(Whereupon, at 4:20 p. m., Wednesday, January 11, 1956, the hearing was adjourned to reconvene at 2 p. m., Tuesday, January 17, 1956.)

## AL SARENA CASE

TUESDAY, JANUARY 17, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION, OF  
THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES,  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 2 o'clock p. m., in the caucus room, Senate Office Building, Washington, D. C., Hon. W. Kerr Scott (chairman of the Senate subcommittee), presiding.

Present: Senators Scott (N. C.); Richard L. Neuberger (Oreg.).

Also present: Senators Henry C. Dworshak (Idaho), and Barry Goldwater (Ariz.).

Present: Representatives Earl Chudoff (Pa.), (chairman of the House subcommittee); John E. Moss, Jr. (Calif.); Clare E. Hoffman (Mich.); Charles Raper Jonas (N. C.); Victor A. Knox (Mich.), and William E. Minshall (Ohio).

Senator Scott (chairman of the Senate subcommittee). The hearing will please come to order.

Mr. Appling, will you please come forward?

### TESTIMONY OF RICHARD N. APPLING, JR., MINING ENGINEER, UNITED STATES BUREAU OF MINES—Resumed

Representative JONAS. Mr. Chairman, before you inquire of Mr. Appling, might I make a very short statement?

Senator SCOTT. Yes, sir.

Representative JONAS. Last Thursday, or on January 11 which I think was Thursday, I asked a question and directed it to Mr. Chudoff, chairman of the House subcommittee, inquiring as to the charges or complaints into the matter of how our committee became involved in this hearing. We never discussed the matter in the subcommittee meeting and our committee has never formally had this matter before it.

I was not aware of what complaints had been filed or what the charges were that we were investigating, and I asked that question of Mr. CHUDOFF. He made a response and the Senator from North Carolina was present and heard the response.

Then later, immediately following the resumption of the hearing after the noon recess, the sitting chairman, the Senator from North Carolina, read a statement from the Senator from Montana in which he made the statement that he doubted the wisdom of anyone question-

ing the propriety of an investigation by the committee, and he stated that he did not feel compelled to enumerate the sources of complaints.

If I was out of order or out of line in directing my inquiry to the chairman of the House subcommittee, I will stand corrected. I thought that, as a member of the subcommittee, I was entitled to know something about the nature of the charges in the case and who had presented them, and I think, further, that I am not out of place asking that I, as a member of the committee, be informed by the staff of the nature of the investigation and what witnesses are proposed to be called and what is expected to be shown by the witnesses.

I may be wrong about this, and my only purpose in making the statement is to explain why I directed the inquiry to Mr. Chudoff the other day and to apologize to Senator Murray. If I offended him in any way by asking the question, I did not intend to do so.

The AP sent out a story over the wires, the first sentence of which is that I had demanded to know why Congress is investigating this matter. I made no such demand. I certainly did not intend it as a demand. I do not think that anything I said could reasonably be construed as making any demand. I was simply raising a question, inquiring how our subcommittee happened to become involved in this and what the nature of the charges was.

I felt that I could do a better job on the committee if I had that information. I did not think it was secret information and I did not think then, nor do I think now, that it is improper for me to have made that request of the chairman of the House subcommittee.

Thank you, sir.

Senator SCOTT. Congressman Jonas, that went from Senator Murray only to the Senate committee, so that nothing was directed at you by that statement.

Representative JONAS. I see.

Senator SCOTT. Mr. Appling, it has been called to my attention that Mr. Clarence Davis, in commenting on the testimony given in this room last week, has suggested that he perhaps learned from you the contents of your report dated January 2, and the results of the assays made by the A. W. Williams Co.

Did you at any time between December 17, 1953, and January 6, 1954, communicate in any way with Mr. Davis or anyone else in Washington, D. C.?

Mr. APPLING. Yes, I did. Mr. Davis phoned me on December 29, asking me about the sampling and assays.

Senator SCOTT. Mr. Redwine, will you take over from there?

Mr. REDWINE (counsel, Senate subcommittee). Mr. Appling, why have you kept hidden, until this moment, that conversation?

Mr. APPLING. I didn't mean to keep it hidden. I have tried to answer any questions that have been put to me as far as I could. The question was not asked.

Mr. REDWINE. You were very definitely asked whether you had had any communications other than with your immediate superior on this matter.

Mr. APPLING. I believe I understood that question—I don't recall the exact words, but I took it to mean had I received instructions from anybody concerning the sampling. I did not.

Senator SCOTT. That was the impression which you left with all of us. At least you left it with me.

Mr. APPLING. I regret that, sir. I meant to convey that I had received no instructions in this.

This particular call was a request for information. It was not instructions concerning the sampling at all.

Mr. REDWINE. On what date did you say that telephone conversation was?

Mr. APPLING. December 29, by reconstructing a paragraph in my letter of transmittal accompanying the report, I stated it in the letter of transmittal that accompanied my report forwarded to Spokane. The letter is dated January 2 and I state that Mr. Davis called me from Washington on Tuesday. I did not give the dates except to say "Tuesday." The previous Tuesday would have been the 29th.

Mr. REDWINE. From what are you reading?

Mr. APPLING. My letter of transmittal that accompanied my report when it was sent to Spokane.

Mr. REDWINE. May I see that letter of transmittal?

Mr. APPLING. I have a copy here.

Mr. REDWINE. Thank you.

Mr. Chairman, I wish at this time to ask members of the committee who are here to examine this copy that Mr. Appling has handed to me, and I call your particular attention to the fact, each of you, that this paragraph in reference to Mr. Davis appears to be an afterthought. Look at the difference in the type.

Was that not, as a matter of fact, typed here, Mr. Appling?

Mr. APPLING. It was not, Mr. Redwine. That was typed in my office in Grants Pass before January 2 or on January 2, 1953.

Mr. REDWINE. Why is there the difference in the physical appearance?

Mr. APPLING. It was added after the letter had been typed. The reason for the difference in type, I think, is that I did not put the carbon copies in later. It was typed at that time, not later.

Mr. REDWINE. Mr. Appling, since you last testified, with what employees of the Department of the Interior from Mr. Davis on down have you conferred? Name each of them, please.

Mr. APPLING. I have talked with Mr. Parriott. I have talked with Mr. Miller. I believe I talked with Mr. Armstrong and a number of other employees in the Department wherein Al Sarena was not discussed.

Representative HOFFMAN. Will you yield?

You talked with me, too, did you not? I asked you how your wife and child were and you told me they were sick?

Mr. APPLING. Yes, sir; I did.

Mr. REDWINE. Mr. Parriott, Mr. Miller, and Mr. Armstrong?

Mr. APPLING. I think that is all of the persons in the Department when the Al Sarena matter was discussed.

Mr. REDWINE. Is Mr. Miller in the room, please?

Will you step forward, Mr. Miller?

Mr. Miller, do you have with you a copy of the letter of transmittal of Mr. Appling to his superior, Mr. Volin?

**STATEMENT OF THOMAS H. MILLER, ACTING DIRECTOR, BUREAU OF MINES**

**MR. MILLER.** Mr. Redwine, the correspondence we have in Washington was that transmitted by the Spokane office to Washington. Mr. Appling brought with him the Spokane file. I have brought with me the Washington file.

**MR. REDWINE.** Mr. Miller, will you immediately get in touch with the Spokane office and get the original of Mr. Appling's letter of transmittal?

**MR. APPLING.** Mr. Redwine, if I may interrupt, this is the original copy. This file came from our Spokane office. This is the original. It has the Spokane date stamp on the front.

**MR. REDWINE.** Mr. Miller, state your full name, please.

**MR. MILLER.** My name is Thomas H. Miller, Acting Director of the Bureau of Mines.

Representative JONAS. Mr. Chairman, may the witness sit down?

Senator SCOTT. Certainly.

**MR. REDWINE.** Mr. Miller, who turned over to Mr. Appling the file that he is talking about now?

**MR. MILLER.** Mr. Appling brought the file he has with him when he came from Spokane. This file has not been a part of the Washington file at all.

**MR. REDWINE.** May I have a look at the file, please, Mr. Appling? Is this the original?

**MR. APPLING.** That is the original.

**MR. REDWINE.** May I take it up and show it to the chairman and the members of the committee, please. (Handed.)

Mr. Chairman, I ask you and other members of the committee to examine that and look at the difference in the type. The original has nothing to do with the order in which the carbon was in the sheets.

**MR. COBURN** (chief counsel, Senate subcommittee). Mr. Appling, do you wish to stand on the statement that when the Solicitor of the Department of the Interior, a very high-ranking officer of the Department of the Interior, called you in Oregon and wanted to get your opinion on the value of these samples that thereafter you thought it of sufficiently little importance not to mention it at all during the course of these hearings?

**MR. APPLING.** Well, I recall no questions where that answer would have been pertinent.

**MR. COBURN.** Then I direct your attention to a question by Congressman Jonas when you were testifying last:

Representative JONAS—

Representative HOFFMAN. What date is that?

**MR. COBURN.** That is the record for January 11, Congressman, on page 581:

Representative JONAS. Now, tell me this:

Did anybody from the Department of the Interior, with the exception of Mr. Volin, give you any suggestions or advice or instructions or requests as to how you would assemble these samples or what you would do with them, or what you would do with the alternates?

**MR. APPLING.** No, sir; they did not.

Now, at that time did it not occur to you, and do you not think that in fairness to the Congressman's question, you should have answered more fully than that?

Mr. APPLING. In retrospect, perhaps I should. I believe it was the intent of the question, or at least it was the way I took it at the time, "Did I receive any instructions," and I did not receive instructions from Mr. Davis.

Mr. COBURN. Now, Mr. Appling, the question is more than just instructions. It says:

Did anybody from the Department of the Interior with the exception of Mr. Volin, give you any suggestions or advice or instructions or requests—and so on.

Representative JONAS. Read the rest of it—

as to how you would assemble these samples \* \* \*

Mr. COBURN. I read that once.

Representative HOFFMAN. Mr. Chairman, there is not a thing in the record contradictory to the testimony he gave. Counsel is trying to say that the witness is falsifying because he did not volunteer.

I might say that it is a cowardly attempt to attack the credibility of his own witness. The testimony read does not dispute him.

I can show throughout the record where these three counsel have attempted to get witnesses to testify to their view of the case instead of letting the witness give his version.

Senator SCOTT. Let us have order.

Representative HOFFMAN. You have had order.

Senator SCOTT. I suggest that you leave with us, and I am going to turn it over to the FBI to check and give committee a report on whether this entire document came from the original typewriter, the same typewriter, some other typewriter, or what, and how much it has been doctored, if any.

Representative HOFFMAN. I suggest—

Senator SCOTT. Just a moment.

Apparently, by way of bringing out information here, you were hiding behind saying you were not asked this or that. There may be something that we should have asked and we have not asked.

If you want to correct something, now is the time to do it. Do not come back here later and say that you were not asked this or that. We want to know what you know about this case.

We are going to ask the FBI now to take this copy that you have and to make a report to this committee available to all members of the committee.

Representative HOFFMAN. I am heartily in accord with that. I wish they would have the FBI or any interested lawyer or investigator read the testimony of Leavengood from page 86 on and note the deliberate attempt of three counsel to get Leavengood to testify as to the value of that timber and put on it a high valuation.

I submit that any reading of the record will show that that is what they deliberately did, and Leavengood would not go for it.

Mr. COBURN. Mr. Chairman, speaking for myself, the implications made by the distinguished Congressman are on the record. I have never at any time during the course of these hearings done anything but try to elicit as full information as I could get from a witness. That is all that I am doing here.

I point to the language of Congressman Jonas when he says "requests."

You must have had a request from Mr. Davis.

Mr. APPLING. A request as to how I would assemble these samples, or what to do with them, or what I would do with the alternates. There was no mention of that.

Mr. COBURN. But you did not feel at that time, in answer to that question, that it was incumbent to elaborate to the extent that Mr. Davis made a request to you as to the value of the samples?

Mr. APPLING. No, sir; it did not occur to me that that was implicit in the question.

Mr. REDWINE. Mr. Chairman, in line with the questions that Mr. Coburn has been asking, I do not believe this last paragraph has been read into the record. It reads:

Mr. Davis called me from Washington on Tuesday. He questioned me about the sampling, and about the property in general. He particularly desired a personal opinion of the value of the property from a mining man, which I answered. He also asked that I send him a copy of the report direct, while sending a copy through regular channels as well. I hedged on this by stating that he would undoubtedly receive a copy by the middle of next week (January 6 or 7). In view of this statement, I would suggest that the report be transmitted as soon as possible.

Representative JONAS. Mr. Chairman.

Senator SCOTT. Yes.

Representative JONAS. While we are on this particular subject, I have been leafing through the transcript of the hearing last Tuesday to try and place the questioning. I cannot put my finger on it. Maybe counsel can.

I have a distinct recollection that Mr. Appling testified somewhere in his testimony when he was on the stand that he was asked a question by Mr. Davis as to his personal opinion.

Can you put your finger on where that occurred in the testimony? Do you recall what member of the committee or staff asked questions that elicited that answer that might throw light on this?

Mr. REDWINE. Congressman Jonas, I have sat through all the hearings and I have read the transcript. I certainly would not want to argue with the Congressman's memory. I have no recollection of anything like that appearing in the transcript, sir.

Representative JONAS. May I ask the witness a question?

Senator SCOTT. Yes.

Representative JONAS. Were you asked at any time when you were on the stand previously, or did you state, that in any conversation Mr. Davis or someone from the Department asked you something about your personal opinion concerning the appearance of this land?

Mr. APPLING. I don't believe I did, sir. I don't recall.

Mr. REDWINE. No, Congressman. I do not think he said it.

Senator NEUBERGER. I do not recall it, but it may be.

Mr. REDWINE. Mr. Appling, referring back to the last time you were on the stand, you say that you had had a conversation with Mr. Parriott, Mr. Miller, and Mr. Armstrong?

Mr. APPLING. Yes, sir.

Mr. REDWINE. That is all?

Mr. APPLING. That is all I can recall.

Mr. REDWINE. What was the substance of your conversation with Mr. Parriott?

Mr. APPLING. I have actually had several conversations with him in which Mr. Parriott asked me about certain phases of this case.

Mr. REDWINE. What phases, please?

Mr. APPLING. The conversation with Mr. Davis was one phase.

Mr. REDWINE. Was Mr. Parriott surprised to learn that you had had a conversation with Mr. Davis?

Mr. APPLING. I believe I had mentioned that to him before. He asked me about that before, so he was not surprised.

Mr. REDWINE. What was the date of your first conversation with Mr. Parriott following your last appearance on this stand?

Mr. APPLING. It may be Thursday or Friday of last week. I do not recall which.

Mr. REDWINE. When did you talk to Mr. Miller?

Mr. APPLING. I have talked to him several times; probably every working day since then.

Mr. REDWINE. When did you talk to Mr. Armstrong?

Mr. APPLING. I believe that was Thursday or Friday of last week.

Mr. REDWINE. Let us pin it down. Was it Thursday or Friday? Can you pin it down?

Mr. APPLING. I can't say.

Mr. REDWINE. You have the most convenient forgetter of any witness.

Mr. APPLING. That is not right, Mr. Redwine.

Mr. REDWINE. Certain things you have very definite memory on. On others you have a very convenient forgetter, Mr. Appling.

Mr. APPLING. It is not convenient. I simply do not remember.

Mr. REDWINE. It certainly is fortuitous.

Representative HOFFMAN. I object to that. It is not within the province, as I understand the rules, of the House or Senate, for that matter, for any counsel to question the motives of a witness or to charge him indirectly with falsifying. That is the thing you raised heck about over in the Senate when McCarthy, you said, was doing something wrong.

Representative CHUDOFF. Mr. Chairman, the gentleman is not referring to me. I have made some remarks about a witness telling the truth at one time and you said I have no right to do that. I think I have a right to tell a witness that I do not think he is telling the truth if I do not think he is.

Representative HOFFMAN. It is not within the province of any staff member or any member of the committee to tell him he is a liar.

Representative CHUDOFF. I did not say that. I said he was not telling the truth.

Representative HOFFMAN. Who made you a judge of the witness' truthfulness?

Representative CHUDOFF. I can express my opinion. You have a right to defend him, Mr. Hoffman. I think that the trouble with all the testimony so far, except from one witness, is that we have not been getting all of the facts.

Mr. REDWINE. Mr. Appling, when did you talk to Mr. Armstrong; did you say?

Mr. APPLING. I believe it was Thursday or Friday of last week.

Mr. REDWINE. Did you seek him out or did he seek you out?



Mr. APPLING. I was in Mr. Parriott's office and Mr. Parriott asked me to go with him to Mr. Armstrong's office.

Mr. REDWINE. Who was present besides Mr. Parriott?

Mr. APPLING. That was all.

Mr. REDWINE. Mr. Armstrong and Mr. Parriott and yourself?

Mr. APPLING. Yes.

Mr. REDWINE. What was the conversation with Mr. Armstrong?

Mr. APPLING. I believe it centered around Mr. Davis' phone call to me.

Mr. REDWINE. Mr. Appling, you say you believe that was only last Thursday or Friday. Had you ever before been in the office of the Solicitor of the Department for which you work?

Mr. APPLING. No, sir.

Mr. REDWINE. It seems to me that you would remember what the conversation was; not "I believe"?

Mr. APPLING. I may have been just a little bit bewildered by it all.

Mr. REDWINE. Take a few minutes and refresh your memory as to what the conversation was.

Mr. APPLING. I believe it centered around Mr. Davis' phone call to me and a discussion of why check samples were not taken.

Mr. REDWINE. You do not want to leave the impression that check samples were not taken—but not retained, you meant?

Mr. APPLING. Why did we not take check samples? We did not take check samples.

Mr. REDWINE. Go ahead.

Mr. APPLING. That is about all there was to it.

Mr. REDWINE. Did you have with you at that time this file that you brought from Spokane with you when you were in Mr. Armstrong's office?

Mr. APPLING. I believe I may have had that with me; yes. I believe I did.

Mr. REDWINE. Did you and Mr. Parriott and Mr. Armstrong take a look at it?

Mr. APPLING. No, sir.

Mr. REDWINE. You kept it under your arm or on the desk?

Mr. APPLING. Yes.

Mr. REDWINE. It was not opened at all?

Mr. APPLING. I don't believe that it was. I don't recall that it was.

Mr. REDWINE. When you left Spokane to come to appear before this committee, you brought that file with you?

Mr. APPLING. Yes, sir.

Mr. REDWINE. Where has it been since then?

Mr. APPLING. I have had it in my possession part of the time and it has been at the Bureau office in Mr. Miller's office part of the time.

Mr. REDWINE. Other than Mr. Miller's office, where has it been?

Mr. APPLING. In the Bureau of Mines office.

Mr. REDWINE. What other office is there?

Mr. APPLING. That is it. In Mr. Miller's office.

Mr. REDWINE. In other words, any time that this was out of your possession it was in the possession of Mr. Miller; is that correct?

Mr. APPLING. I may have had it in my hotel room.

Mr. REDWINE. I said "out of your possession."

Mr. APPLING. Well, if you consider that my possession. I didn't always have my hands on it; no. I believe that that is right. It has either been in Mr. Miller's office or in my own possession.

Mr. REDWINE. Mr. Appling, you sat here in this room and in the other room in which we met throughout the time that Mr. Volin testified. Did you not?

Mr. APPLING. Yes.

Mr. REDWINE. Are you mad at Mr. Volin?

Mr. APPLING. No, sir; I am not.

Mr. REDWINE. You heard Mr. Volin questioned at length about any communication in respect to the transmittal of your report to Washington, and so forth.

You heard the questions asked of Mr. Volin, did you not?

Mr. APPLING. I heard part of them. The reception was very poor. I didn't hear all of it.

Mr. REDWINE. Did you hear Mr. Volin asked in particular about any phone call that might have gone from him to Washington in respect to this report?

Mr. APPLING. I don't recall.

Mr. REDWINE. You forget again. Well, if you had heard Mr. Volin testify that he made no phone call and you had no phone call to Washington in respect to this report, would you have suddenly shown him this file to show that there was a call between you and Mr. Davis?

Mr. APPLING. I don't believe I understand your question.

Mr. REDWINE. Will you read the question?

(The pending question was read by the reporter.)

Mr. APPLING. No, sir.

Mr. REDWINE. You would not have?

Mr. APPLING. If I understand the question, you mean would I have shown him this file recently to describe the phone call to Mr. Davis. He has seen the file. The letter was addressed to him.

Mr. REDWINE. Would you have refreshed his memory that there was a phone call, that his testimony was in error? Would you have paid him that courtesy?

Mr. APPLING. I don't think that I did.

Mr. REDWINE. Well, you say you did not hear his testimony in that respect?

Mr. APPLING. I didn't hear that particular part.

Mr. REDWINE. I am asking you if you had heard that testimony and that he testified that there was no telephoning done on this matter back to Washington, would you have refreshed his memory that you had reported to him you did?

Mr. APPLING. Well, maybe I am dense today, but I still don't understand the question, Mr. Redwine.

Mr. REDWINE. Did you have a conversation with Mr. Volin in respect to a phone call that you now say you had with Mr. Davis?

Mr. APPLING. I don't believe that I remarked on this phone call to Mr. Volin except that it was so stated in the letter.

Mr. REDWINE. Why didn't you?

Did you talk to Mr. Volin when he was here in town?

Mr. APPLING. Yes; I did.

Mr. REDWINE. Why did you not refer to that?

Mr. APPLING. I could see no particular reason to. I think he had a copy of that letter. I think he knew that it was there.

Mr. REDWINE. Let me ask you this, Mr. Appling: Would it not have been the natural thing for you to do, if you had had a phone call from the Solicitor of the Department of the Interior, to notify your chief, Mr. Volin, that you had had such a call?

Mr. APPLING. I think that is the intent of the letter.

Mr. REDWINE. Mr. Volin has testified that you talked to him on the 29th and the 30th and so forth. Why did you not tell him on the telephone?

Mr. APPLING. I believe that Mr. Volin may have called me before I talked to Mr. Davis. I would certainly have mentioned it on the phone to him if I had talked to Mr. Davis first.

Mr. REDWINE. Mr. Chairman, I suggest that the chairman direct the Secretary of the Interior to furnish this committee with a copy of the telephone charge in this purported telephone conversation between Mr. Davis and Mr. Appling and, if the chairman sees fit, one of the staff will prepare a letter to that effect for delivery this afternoon.

Senator SCOTT. That may be done.

Mr. REDWINE. Mr. Chairman, on this particular phase of inquiry of this witness, I have no more questions at the moment. I have some other questions which I want to direct to the witness.

May Mr. Coburn take over the examination at this time?

Senator SCOTT. We are glad to have Senator Goldwater back with us this afternoon.

Senator GOLDWATER. Thank you. It is a great pleasure to be here.

Senator SCOTT. We want to adjourn at 4:30.

Representative CHUDOFF. Mr. Chairman, may I ask the witness a couple of questions, please?

Senator SCOTT. Yes.

Representative CHUDOFF. Mr. Appling, I looked at this memorandum dated January 2, 1954, to the acting chief of the mining division, region No. 11. That is where the extra paragraph has been added in lighter type.

I quote:

He also asked that I send him a copy of the report direct, while sending a copy through regular channels as well. I hedged on this by stating that he would undoubtedly receive a copy by the middle of next week (January 6 or 7).

Why was it necessary that you hedge with Mr. Davis on the information he requested?

Mr. APPLING. I don't know, except that I was acting under orders directly from Spokane. Mr. Davis was in Washington. Frankly, I didn't even know who the Solicitor to the Department was or what his particular capacity was or how important a man he was.

Representative CHUDOFF. You know that the solicitor for a department has a pretty high-level position and has a lot of responsibility; do you not, Mr. Appling?

Mr. APPLING. I so understand now. I didn't at that time.

Representative CHUDOFF. What did you have to hide from him that you were going to tell somebody else?

Mr. APPLING. I had nothing to hide from him. I don't think I suggested that I did.

Representative CHUDOFF. Well, you said you hedged. That means you were not going to give him the right answer; does it not?

Mr. APPLING. No; that does not.

Representative CHUDOFF. What does it mean?

Representative HOFFMAN. Let the witness answer, Mr. Chudoff. Give him that courtesy.

Now, Mr. Chairman, the counsel asked a question and before the witness can answer he cuts him off. I say we like to have a little orderly procedure.

Representative CHUDOFF. Mr. Appling, I apologize for cutting you off.

Will the stenographer read the question, please?

Mr. APPLING. I think I remember the question.

Representative CHUDOFF. If you remember it, would you answer it?

Mr. APPLING. We have rather strict regulations in a region, such as that regarding correspondence and channels through which reports should be sent. I was not aware that Mr. Davis would have the authority to supersede those instructions that we had had. That was the reason that I did not want to send the report directly to him. I wanted it to go through channels.

Representative CHUDOFF. In what way did Mr. Davis' request differ with the written or oral instructions you had from your superiors?

Mr. APPLING. It is my understanding of it that our reports are to be sent to our supervisor and he in turn sends it to his supervisor until they finally get up to the Department. Those were the normal channels.

Representative CHUDOFF. Now, if you got a request from Mr. Davis to send some information to which you were not sure he was entitled, why did you not refer the request to your superior rather than hedge? Could you not say, "I am sorry. I don't now if I can give it to you. It will have to go to Mr. Volin," who was your superior?

Mr. APPLING. Yes, sir. I could have done that. However, Mr. Davis seemed satisfied with the fact that the report would reach him by the middle of the following week.

Representative CHUDOFF. So that, actually, you did not even give the Solicitor of the Department a proper answer?

Mr. APPLING. I don't see anything improper in it, if he was satisfied with that arrangement.

Representative CHUDOFF. Will you tell me exactly what Mr. Davis said to you in your telephone conversation, if you recall?

Mr. APPLING. I don't recall the exact words.

Representative CHUDOFF. Tell us to the best of your recollection.

Mr. APPLING. Well, as nearly as I can remember, he asked me when the report would be through, if it had been sent in, or what was the status of the report.

I told him I believed that I had some of the maps to prepare yet and that I would forward it in the very near future. In general, I think I gave Mr. Davis over the phone the substance of my report. We discussed the matter, the assays, and in general how it was conducted, and he pressed me for an opinion of the value of the property, of the potential of the property.

I recall words to the effect that Mr. Davis said he had a decision to make as to whether to issue the patents or not and needed all the information he could get on which to base that decision.

Representative CHUDOFF. Well, now, he asked you about the samples?

Mr. APPLING. Yes.

Representative CHUDOFF. And he asked you about the property in general, did he not?

Mr. APPLING. Yes.

Representative CHUDOFF. Is that right?

Mr. APPLING. Yes.

Representative CHUDOFF. You say you answered that. How can you reconcile that testimony with the fact that you said you hedged with him because you thought you would have to give the information to your own superior? How can you give him answers to one question and refuse to answer other questions if you have to give everything to your superior?

Mr. APPLING. He didn't ask a question of the report. He merely requested that I send him a copy of it directly. That is what I referred to in that paragraph as "hedging."

Representative CHUDOFF. I think, Mr. Appling, that you are quite an expert when it comes to hedging, not only with Mr. Davis, with your superior, but with us, too.

I have no further questions.

Mr. REDWINE. May I ask a question at this point, Senator?

Senator SCOTT. All right, Mr. Redwine.

Mr. REDWINE. Mr. Appling, how do you account for the fact that Mr. Davis knew you were the man that was handling this thing for the Bureau?

Mr. APPLING. I suppose there was correspondence between the Spokane office and the Washington office on that. I believe there was a letter in there in which Mr. Volin stated that he had given the assignment to me.

Mr. REDWINE. You say that Mr. Davis wanted you to give your personal opinion as to the value of the property, or something like that?

Mr. APPLING. Yes, sir.

Mr. REDWINE. What did you tell him, please?

Mr. APPLING. I would like to say that I was reluctant to answer for the reason that I didn't have all the facts. I did not have enough time to make a thorough investigation of the property. I answered it with reluctance.

In effect, I said to him that I thought the assays were sufficiently good in my own personal opinion to warrant a program of exploration of the property.

Mr. REDWINE. What else?

Mr. APPLING. Well, in substance, that is what it was.

Mr. REDWINE. You are qualified to make such an evaluation of the property, are you not, Mr. Appling?

Mr. APPLING. Yes, sir.

Mr. REDWINE. Let me ask you this:

Did you take the A. W. Williams report of the assays and read it from 1 to 28 to Mr. Davis?

Mr. APPLING. I can't recall that I did. I may have done so. I know that the assays were discussed. I believe that I recall that I gave him the maximum and minimum assays and the general average of the assays. Whether I read them out one by one, I can't honestly say.

Mr. REDWINE. How long did this conversation take place, Mr. Appling?

Mr. APPLING. It was a long conversation. It may have been 30 minutes.

Mr. REDWINE. Mr. Davis was really interested in this matter, was he not?

Mr. APPLING. I would assume so when he talked that long on a long-distance wire.

Mr. REDWINE. What time of day was it?

Mr. APPLING. I couldn't say.

Mr. REDWINE. Was it daytime or nighttime?

Mr. APPLING. It was during office hours; yes, sir. It was sometime between 8 and 5.

Mr. REDWINE. I have no further question of this particular phase of the matter.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Mr. Appling, I would like to ask several questions, if I may.

At any time in your Government career have you ever received a telephone call from an official correspondingly high in the Department of the Interior?

Mr. APPLING. No, sir; I have not.

Senator NEUBERGER. One thing that strikes me as somewhat curious is this: On this report from you in Grants Pass to the Spokane chief of the Bureau of Mines, why is the paragraph about Mr. Davis' phone call in so much lighter type, so far as the typewriter ribbon evidently is concerned, on the document?

Mr. APPLING. I believe the answer, sir, is that the body of the letter had several carbon copies. I don't know exactly why, but I believe that I added that paragraph as an afterthought without the carbon copies in it.

I would like to state this, if I may: that that last paragraph was added at the time that the letter, or on the date or very near the date that the letter was first written. It was written on the same typewriter. It has not been, as was suggested, added recently.

Senator NEUBERGER. May I ask: Was the additional paragraph done on the same typewriter?

Mr. APPLING. I can't recall. I seem to think it was. I had a portable typewriter and a standard typewriter. I think I probably used the standard on both. Both machines are in Spokane at the present time and can be checked.

Senator NEUBERGER. I am certainly not an expert, although I have done a lot of typing in my career. It just looks to me from a very cursory study that the numbers "6" and "7" in the last paragraph referring to Mr. Davis are not quite the same species or kind of type as the numbers on page 1. I certainly could not make that as a flat statement because I am not an expert at typewriter construction, but I would like to have you look and see if you do not think that is true.

Mr. APPLING. I have not examined it that closely, sir. It may possibly have been on a different typewriter.

Senator NEUBERGER. What would your opinion be as to that, because your opinion is just as good as mine as to the type of type face?

Mr. APPLING. Frankly, sir, I would rather not give an opinion if I could. There is an apparent difference. I think it is probably because there were no carbons under the paper when the last paragraph

was added. I really believe they were on the same typewriter, but it is hard to tell from this.

Senator NEUBERGER. You would say, Mr. Appling, that the fact that there were no carbons underneath would make a difference in the appearance of the type?

Mr. APPLING. Well, I am certainly no expert on it, either. If the characters are different, it is a different typewriter, but I couldn't see the difference myself.

Senator NEUBERGER. I would like to ask another question. This is a report to your chief in Spokane; is it not?

Mr. APPLING. Yes, sir; a letter of transmittal.

Senator NEUBERGER. Why would something as important as a phone call from the very highest echelons of the Interior Department be something that you would add as an afterthought to your own immediate superior?

Mr. APPLING. Well, probably I didn't recognize the importance of it. As I stated, I didn't know exactly what position within the Department the Solicitor's Office was. As a matter of fact, this was the first time that I had heard of the Solicitor's Office.

Senator NEUBERGER. In other words, when you prepared your original report to your chief, you did not feel that it was of sufficient importance to tell him that you had had a telephone call about this matter which lasted for about 30 minutes, as you say, from the Solicitor of the Department of the Interior?

Mr. APPLING. Well, I could see no reason to add it in my report. That is why I included it in the letter of transmittal. No, sir; I did not consider it part of the report itself.

Senator NEUBERGER. Was it not something that surprised you?

Mr. APPLING. Mr. Davis' call, you mean?

Senator NEUBERGER. Yes.

Mr. APPLING. Yes; I was very much surprised.

Senator NEUBERGER. It had never before happened to you in your career; is that correct?

Mr. APPLING. No, sir; it had not.

Senator NEUBERGER. Yet you did not include reference to it either in your report or in the first writing which you made of the letter of transmittal?

Mr. APPLING. Well, this was the first writing of the letter of transmittal.

Senator NEUBERGER. But you said you added it as an afterthought?

Mr. APPLING. Yes. I thought you meant that there had been a rough draft prior to this. I really can't explain why I added it as an afterthought. I am sure that is the way it was.

Senator NEUBERGER. Again I do want to ask you about the question of the typewriter. You note how much lighter this final paragraph is on the original. There is no comparison, so far as the texture of the ribbon is concerned.

Now, do you believe that additional carbon copies under the first piece of paper could make that difference in the appearance?

Mr. APPLING. Well, in view of the cushioning effect, I would think it could. It would round the letters or make them a little broader. I may be wrong on that, sir. I am certainly no expert.

Senator NEUBERGER. This paragraph finally added was, if I am not mistaken, without the many carbon copies; is that correct?

Mr. APPLING. Yes.

Senator NEUBERGER. And the heavier type was when you had a good many carbon copies?

Mr. APPLING. Yes.

Senator NEUBERGER. And you think that perhaps the contrast in the extremely dark type and here the extremely light type could be caused by the fact that the last paragraph was without the numerous carbon copies?

Mr. APPLING. I would say that is possible. I am certainly not an expert on it. I don't know.

Senator NEUBERGER. How many copies in all were made of this?

Mr. APPLING. I imagine 3 or 4. I don't recall that either.

Senator NEUBERGER. Now on the carbons of this, did you add this as an original or did you use a carbon?

Mr. APPLING. No, sir. It did not show on the carbon.

Senator NEUBERGER. You just added it to the original?

Mr. APPLING. Yes.

Senator NEUBERGER. In other words, you did not feel that the information about the phone call from the Solicitor of the Interior Department was sufficiently significant to be put on the carbons?

Mr. APPLING. Well, probably not. I don't recall my feeling at the time, but it must have been that way.

Senator NEUBERGER. What was your rating and what salary did you receive at the time this phone call came from Mr. Davis?

Mr. APPLING. I was a GS-7.

Senator NEUBERGER. GS-7?

Mr. APPLING. Yes, sir. I believe it was a salary of \$4,300 or \$4,330.

Senator NEUBERGER. Did it seem at all usual or extraordinary in your mind that a GS-7 in Grants Pass in Oregon should receive a phone call from the Solicitor of the Interior Department when there was in existence in that region your own superiors in the Bureau of Mines?

Mr. APPLING. Well, it did seem odd; yes, sir.

Senator NEUBERGER. Yet you still did not see fit to include it in the first writing of your letter of transmittal or to put it on the carbons of that?

Mr. APPLING. No, sir.

Senator NEUBERGER. Thank you very much.

Mr. REDWINE. Mr. Chairman, may I permit the press to take a look at this? We have had a request from a member of the press.

Senator SCOTT. Without objection, all right.

Representative CHUDOFF. Are you still a GS-7?

Mr. APPLING. No, sir.

Representative CHUDOFF. What are you now?

Mr. APPLING. GS-9.

Representative CHUDOFF. What is the difference in salary?

Mr. APPLING. Well, together with the overall increases, about \$1,200.

Representative CHUDOFF. When did you become a GS-9?

Mr. APPLING. I believe it was effective just about the time this took place. I think it was December of 1953.

Representative CHUDOFF. You became a GS-9?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. You skipped over an eight?

Mr. APPLING. Pardon me.



Representative CHUDOFF. Did you skip over an eight?

Mr. APPLING. Yes, sir. I think that is standard procedure in the professional rating.

Representative CHUDOFF. You say you were a GS-7 when you got the call in from Mr. Davis?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. How long after you got the call from Mr. Davis was it before you became a GS-9?

Mr. APPLING. Perhaps I was a little wrong. I think it came through as a Christmas present, you might say. It came through right after this time. I may have actually had the nine at the time Mr. Davis called. I don't know that I knew about it.

Representative CHUDOFF. It was right close to the time Davis called; either a little before or a little after?

Mr. APPLING. Yes.

Representative CHUDOFF. Thank you.

Senator SCOTT. Are there any further questions?

Senator NEUBERGER. Not at the moment.

Senator SCOTT. Senator Goldwater?

Senator GOLDWATER. I would yield to the Congressman.

Senator SCOTT. Congressman Jonas.

Representative JONAS. Mr. Hoffman.

Representative HOFFMAN. This office memorandum, United States Government, date January 2, 1954, to acting chief, mining division, region II; to whom was that sent? What individual got it?

Mr. APPLING. Thomas Howard, the acting chief at that time in the Spokane office, actually received it. Mr. Volin was in the process of being transferred right at that time.

Representative HOFFMAN. You do not know whether Volin or Howard got it?

Mr. APPLING. I think they both saw it. I don't know who received it.

Representative HOFFMAN. Counsel, do you have a copy of the original or have you the original here?

Mr. COBURN. No, sir.

Representative HOFFMAN. Then I suggest, Mr. Chairman, that we get the original. That will show what was on it at the time. That is the best evidence.

Representative CHUDOFF. Is not that the original?

Senator NEUBERGER. The original is at the press table.

Senator GOLDWATER. That is a photostat.

Representative HOFFMAN. Where did the original come from? Did you produce it?

Mr. APPLING. I brought it from Spokane.

Representative HOFFMAN. Is this so-called afterthought on that, too?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. Who wrote this report? Did you?

Mr. APPLING. Yes. I wrote that letter.

Representative HOFFMAN. That is all I have on that.

They have asked you 3 or 4 times or more if you can ever recall when so high an official in the Department called you and you said, "No." Do you know of any other case that has hung fire for 18 months waiting a decision, in which you were interested?

Mr. APPLING. No, sir; I don't.

Representative HOFFMAN. I think that is all I have.

Senator NEUBERGER. Were you interested in this case for 18 months?

Mr. APPLING. No, sir; I knew nothing about it.

Senator SCOTT. Are there any further questions?

Representative HOFFMAN. He was interested in making a survey, Mr. Senator.

Senator SCOTT. Congressman Jonas?

Representative JONAS. Mr. Appling, you were asked about your promotion.

Mr. APPLING. Yes, sir.

Representative JONAS. Had that been in the books for some time? Were you expecting it? An inference was at least possible from the questions that you were given that this promotion was to pay you off for this report.

Mr. APPLING. That wasn't the case, sir. It had been in the mill for about 10 or 11 months. As I recall, there was what we termed a "promotion freeze" or something like that at the time which had stopped the promotion.

Representative JONAS. How long had your papers been in process?

Mr. APPLING. I think at least 6 or 8 months before they had been originally submitted.

Representative JONAS. You mean you were in line for this promotion before you were given this assignment to take these samples?

Mr. APPLING. Yes, sir; some time before.

Representative JONAS. Now, I want to go back to a question I asked you earlier. I could not have dreamed this up. I definitely read it in this record as testimony by you or Mr. Volin, or I heard somebody say that you or he, one, had been asked the question as to your personal opinion as to whether this looked like a mining operation or not.

Do you recall any testimony before this committee, in Portland or in Washington, along that line?

Mr. APPLING. No, sir; I can't recall it. Of course, I have not remembered all the phases of this testimony, but I do not recall that.

Representative JONAS. Did you not testify the other day that you had a telephone call from Washington as to when your report would be forthcoming?

Mr. APPLING. I don't remember that.

Representative JONAS. Did Mr. Miller call you about anything?

Mr. APPLING. No, sir.

Representative JONAS. Did Mr. Volin testify that someone from Washington called him and asked him when the report was coming in?

Mr. APPLING. That may be. I don't recall that he had knowledge about it. He may have so testified.

Mr. REDWINE. Mr. Sidney Gottley called Mr. Volin.

Representative JONAS. Counsel said that Mr. Volin testified that he received a telephone call. As far as you can remember, today is the first time you have responded to any question with the statement that you talked to anyone in Washington?

Mr. APPLING. That is right, sir.

Representative JONAS. Now, do you have any independent recollection now, sometime after this happened, and please refresh you mem-

ory if you do not recall it at the moment as to when during that day or how soon thereafter it was before you completed your report?

Mr. APPLING. After Mr. Davis called you, you mean?

Representative JONAS. Was it in preparation at the time?

Mr. APPLING. It was in preparation at the time. I seem to recall that I finished the rough draft on it and I wanted to do a little polishing on the report and finish several of the maps. That was the only thing remaining to be done.

Representative JONAS. Now, do you think you had finished the rough draft before you talked to Mr. Davis?

Mr. APPLING. I believe I did.

Representative JONAS. And the part of the report that is in evidence here today was the final draft with the addition of the final paragraph?

Mr. APPLING. On the letter of transmittal—perhaps I misunderstood your question. When you said “report,” I thought you referred to my report on the samples.

Representative JONAS. I mean the letter of transmittal.

Mr. APPLING. I just don’t recall, sir. I assume that this letter was written on January 2. That is the date that I have here. Why I would have added that paragraph as an afterthought, I can’t say.

Representative JONAS. And you say to the committee now under oath that the paragraph in question was added by you in your office at Spokane?

Mr. APPLING. I think it was in Grants Pass.

Representative JONAS. At Grants Pass in your office at the same time you prepared your letter of transmittal, or shortly thereafter?

Mr. APPLING. Yes, sir. I don’t recall the exact details of it but that in substance I would swear to.

Representative JONAS. You have not added anything to that letter of transmittal since you mailed the letter of transmittal?

Mr. APPLING. I have not; no, sir.

Representative JONAS. So the paragraph under consideration you would swear was on the letter of transmittal at the time you put it in the post office?

Mr. APPLING. Yes, sir; I am sure that it was.

Representative JONAS. All right. That is all.

Representative HOFFMAN. Would you yield, Mr. Jonas?

Representative JONAS. Yes, sir.

Representative HOFFMAN. Is there anything in that added paragraph which in your opinion adds to or detracts from the fact that there was a mining claim down there?

Mr. APPLING. As far as I know, it does not.

Representative HOFFMAN. That is all I have.

Senator SCOTT. Are there any further questions?

Senator GOLDWATER?

Senator GOLDWATER. I would like to ask a few questions, if I might.

Mr. APPLING, you may have done this before I came in, but can you remember sufficient details of your conversation with Mr. Davis to bring them out here?

Mr. APPLING. I think I can recall in a general fashion what was said. I can’t recall the exact conversation. I know that Mr. Davis stated to me that he had to make a decision on this matter and that he wanted all the information that he could get and would I—well,

I went over the substance of my report and discussed or described the sampling, and went over the assays and some questions.

I don't recall whether I read the assays to him individually. At any rate, I have the impression that I gave him the maximum and minimum assays and an average figure and, as I previously stated, he then pressed me for an opinion of the value of the property and I gave him a personal opinion that I thought the assays would warrant a program of exploration; and, in substance, that was the conversation which I had with him.

Senator GOLDWATER. Do you recall gaining any impression at that time of what reason might lie behind Mr. Davis' call?

Mr. APPLING. Well, yes, sir. Perhaps I am imagining it as far as the actual words, but he gave me the very distinct impression that he had said that "I have a decision to make in this matter as to whether or not to issue the patents. I need all the information I can in order to help make the decision." Again I can't say those were the exact words, but that was my recollection of them.

Senator GOLDWATER. Now, Mr. Appling, I am not confident that this has been brought out in the testimony thus far. We seem to get a little bit astray in this investigation from what I think is the original purpose, and I would like, by questioning you to your knowledge of mining and being an employee of the Bureau of Mines, to see if we cannot get into the record the easy way in which claims could be patented prior to last year or this fiscal year.

In your work with the Bureau of Mines, could you tell us how a claim was patented prior to the enacting of the new law?

Mr. APPLING. Well, I have never been involved in any other patent cases. It was my understanding that any location plan prior to that time could be patented by performing, I believe it was, \$500 worth of work on the claim, having a mineral survey made and then by application and payment of the fee. There, of course, had to be mineral value on the property.

Senator GOLDWATER. Now, are you certain that the law required that there may be mineral value?

Mr. APPLING. No, sir; I am not certain of the law. I haven't read it. It was my understanding that there should be mineral value there to issue the patent.

Senator GOLDWATER. I attempted to put something into the record the other day that would show what historically had been used as the yardstick, but that was refused. However, the promise was made that it will be put on at a future time. It will be very valuable.

Actually, are you aware of the fact that all you had to show was discovery and discovery does not actually entail value of ore?

Mr. APPLING. No, sir; I was not aware of that.

Senator GOLDWATER. You are not aware of that as a member of the Bureau of Mines?

Mr. APPLING. As I say, I have had very little to do with that.

Senator GOLDWATER. Let me put it this way:

Are you a mining engineer?

Mr. APPLING. I am a graduate geologist. My civil-service rating is mining engineer.

Senator GOLDWATER. If a man had a claim staked out on a ledge, the geologic formation of which would lead any reasonable geologist

or mining engineer to suppose that one might expect to find similar ore under his claim, that would be ground for discovery purposes.

Are you aware of the fact that not one but tens of thousands of claims have been patented on that type of evidence?

Mr. APPLING. Well, I believe I misunderstood your first question. I understand that that is right, yes.

Senator GOLDWATER. Are you aware of that?

Mr. APPLING. That there must be some discovery of mineralization. is my understanding.

Senator GOLDWATER. Mineral position?

Mr. APPLING. That is my understanding, and some reasonable reason to believe that there is an extension of that point of discovery.

Senator GOLDWATER. So that the actual determination can be through assay on which there does not have to be, according to law, any particular value. You will find, for instance, in my State of Arizona, that the average yield per ton last year of gold was 9 cents a ton and the average yield on silver was 9.1 cents per ton. Yet we have heard evidence introduced here that would lead a person not acquainted with mining to believe that 9 cents and 10 cents would be unprofitable, and we are talking about \$2.10 here.

Mr. Appling, you have been in the Bureau of Mines long enough to know that both the Bureau of Mines and the Forest Service with whom you work have long protested the looseness in the old mining law; is that correct?

Mr. APPLING. Yes, sir.

Senator GOLDWATER. You are aware of the fact that efforts have been made in the Congress previous to this to change the mining law to prevent just what has been happening in the West? Are you aware of that?

Mr. APPLING. Yes, sir.

Senator GOLDWATER. The practice of patenting land in the West had become so loose, so promiscuous, that it came to the attention of this administration that changes were needed, and last year, thank the Lord, those changes were made.

I might inject this:

I never liked the old mining law any more than my Democrat friends, who are trying to make something out of their old practice, appeared to like it. I did not like to see people obtain valuable land with no mineral content, but you and I know that that went on, not for 1 year or 10 years; it has gone on practically since the old mining laws were written.

Now, I want to get to one point, having gotten this far. The old mining law said, in effect, that a patent could be issued, or would be issued, when \$500 worth of work was done, and discovery or evidence of a discovery was made.

Are you aware of the fact that an effort was made to patent this land, I understand, 18 months before? In fact, I think it goes back many more years than that.

Mr. APPLING. I understood that it had been started.

Senator GOLDWATER. Would you not be led to believe, then, that we were being governed here more by the law of man than by the letter of the law?

Mr. APPLING. I would rather not answer that, sir.

Senator GOLDWATER. Well, as long as I have opened it up, it is my impression from the history of this case that Secretary Chapman not only sat on this, he sat on innumerable cases in the West. I think it totaled over 280, but that figure is subject to correction, where he put himself above the law and he was going to decide whether or not these claims were to be patented.

I do not want you to comment on that because you expressed a desire not to do so. He never even gave an opinion.

I might say this, and I intend to bring this out in a speech which I am going to make on the floor later:

If this committee wants to investigate something, Secretary Chapman gave away most of the future water supply of the city of Tuscon in the Avra Valley land case in complete violation of the Desert Land Act, which was later changed by this administration.

I was particularly interested in asking you these questions because, from the Director of the Oregon State Department of Geology and Mineral Ind, which I believe is industry, I get the information that there was 1 claim patented in 1948 for 185.66 acres; 2 claims for a total of 94.36 in 1949; none in 1950; 2 in 1951 for a total of 90 acres, and 4 for a total of 146.40 in 1952; so that, in Oregon, as in all Western States, there was a dribble of mining claims being approved.

Now, the fact that this mining claim was on forest land is nothing new either. In fact, I imagine that in as many cases as not you will find minerals under trees, or trees over minerals.

You are aware of the fact, too, that, in this new mining law, the trees on the land do not belong to the patentee. He can only use what he needs in his mining, but under the old law he could use all of the trees or anything on that land or above it to the blue skies, or below it to the center of the earth. Is that true?

Mr. APPLING. That is my impression.

Representative CHUDOFF. Senator, would you yield at that point?

I am grateful for your expression of the laws. I do not have any mines in Philadelphia where I come from, and we do not have these problems.

Did I understand that under the new law the timber does not go with the patent?

Senator GOLDWATER. It is my understanding of the new law that it is only the timber used in the mining operation.

Representative CHUDOFF. I do not know, but my counsel informs me that the timber goes along.

Senator GOLDWATER. I would suggest that the counsel read the law. It was before our committee last year. It is my understanding of the new law that timber is subject to the control of the Forest Service.

Representative CHUDOFF. I wonder if you would let Mr. Lanigan answer the question he raised?

Mr. LANIGAN (counsel, House subcommittee). I will check with the counsel from the Senate committee, but it is my understanding that under the new law the timber does go to the patentee when the land is patented. The only change is in the amount of control the Government has over the timber prior to patent.

Under the old law, the Government felt it could not sell the timber off the claims prior to patent, and that has been changed so that now mature timber can be cleared.

Senator GOLDWATER. I think we might put that new law into the record. I think it would be helpful. If I am wrong on that point, I am glad to be corrected. It is not an important point.

The thing I am trying to bring out here is that at this late date the opposition party is suddenly interested in investigating practices that went on, I might say, under both administrations for years and years past, and that the opposition has had 20 long years to correct what we in the West have asked to be corrected for that length of time and longer. That is my whole point.

We have not been able to get anything into the record about how claims come about, how they are patented. We have not had anything put into the record as to how a patent is issued. I think it is high time in this discussion that we do get it in there. That is my whole purpose.

I am sorry that Mr. Appling has not had closer association with the actual, down-to-earth claim end of mining. I think it is very necessary to get this cleared up.

I am just as anxious as any of you people to find where laws have been taken advantage of. I am also anxious to find cases in this administration or the past where the man himself has put himself above law. I am interested in finding out all of the details of the land that has been obtained under law.

Mind you, any land could be given under these mining claims and patents. I am anxious to see how much of it was done 20 years ago, 10 years ago, 5 years ago, and I think we have to have some basis on which to proceed other than the rather roundabout questioning in which we have been indulging for several days.

That is all I have, Mr. Chairman.

Representative JONAS. Mr. Chairman, may I ask a question?

Senator SCOTT. Yes.

Representative JONAS. In line with the comments made by Senator Goldwater, I would like to ask when it is proposed that we hear from the Department of the Interior? I think we ought to have in this record the law applicable to patents, and I think we should have had it at the beginning, if I may be permitted to say so.

I do not know what the law is concerning how you go about getting patents. We have had newspaper comments that this land was given away or sold for \$5 an acre. I would like to know whether there is any requirement that work be done on the property, and some of the documentary evidence I think ought to be in the record at the beginning so that we can consider testimony in the light of knowledge of what the law is.

We are arguing this afternoon as to what the law is concerning patents.

Representative HOFFMAN. Would you yield there?

Senator SCOTT. Mr. Jonas, as we go along, the Department of the Interior will be called.

Representative JONAS. Mr. Chairman, can we not have the law put into this record so that we can all have the benefit of knowing what you have to do to get a patent.

Representative HOFFMAN. Mr. Chairman, Mr. Jonas said he would yield.

I want to offer at this time chapter 43 of the regulations put out by the Department. I find that I did not bring the book with me.

I would also like to offer title 31, which contains the statutory provisions.

I want to offer a photostat of the notes on section 41. That is an old section but, nevertheless, it contains the law and cites the court decisions all the way through, and the sum and substance of it is that to constitute discovery it is necessary that minerals be found under such circumstances and such character that a reasonably prudent man—and so on. There is no requirement in the law anywhere that I can find that there shall be a certain amount of mineralization. It is nowhere, either in the regulation or the law.

I can understand why counsel never put it in. It was because they did not want it in.

Representative CHUDOFF. Mr. Chairman.

Representative HOFFMAN. Will that be received?

Senator SCOTT. Yes, sir.

I would like to know by whom those notes were prepared.

Representative HOFFMAN. Well, sir, this came from the library and is a photostat from the code. Is that reliable?

Representative CHUDOFF. Probably the United States Code, Annotated; is it, Mr. Hoffman?

(The material referred to follows:)

#### MINERAL LANDS AND MINING

(Title 30, § 23, Note 141, Ch. 2)

It is only necessary to discover a genuine mineral vein or lode, whether small or large, rich or poor, at the point of discovery within the lines of the location to entitle the miner to make valid location of such vein or lode. *North Noonday Min. Co. v. Orient Min. Co.*, C. C. Cal. 1880, 1 F. 522, 531. See, also, *Meydenbauer v. Stevens*, D. C., Alaska 1897, 78 F. 787, 790; *Book v. Justice Min. Co.*, C. C. Nev. 1893, 58 F. 106, 125; *Jupiter Min. Co. v. Bodie Consol. Min. Co.*, C. C. Cal. 1881, 11 F. 668, 675; *Hedrick v. Lee*, 1924, 227 P. 27, 39 Idaho 42.

When the locator finds the rock in place, containing mineral, he has made a discovery, within the meaning of this section, whether the rock or earth assays high or low. *Migeon v. Montana Central R. Co.*, Mont. 1896, 77 F. 249, 255, 23 C. C. A. 156. See, also, *Lange v. Robinson*, Alaska 1906, 148 F. 799, 801, 79 C. C. A. 1; *Nevada Sierra Oil Co. v. Home Oil Co.*, C. C. Cal. 1899, 98 F. 673, 676; *Shoshone Min. Co. v. Rutter*, Idaho 1898, 87 F. 801, 807, 31 C. C. A. 223, reversed on other grounds, 1900, 20 S. Ct. 726, 177 U. S. 505, 44 L. Ed. 864; *Bonner v. Meikle*, C. C. Nev. 1897, 82 F. 697; *Montana Central R. Co. v. Migeon*, C. C. Mont. 1895, 68 F. 811, 814, affirmed *Migeon v. Montana Ry. Co.*, C. C. A. 1896, 77 F. 249; *Book v. Justice Min. Co.*, C. C. Nev. 1893, 58 F. 106; *Murray v. White*, 1911, 42 Mont. 423, 113 P. 754, Ann. Cas. 1912A, 1297; *Fox v. Myers*, 1906, 86 P. 793, 29 Nev. 169, 184; *Muldrick v. Brown*, 1900, 37 Or. 185, 61 P. 428; *McShane v. Kenkle*, 1896, 44 P. 979, 18 Mont. 208, 212, 33 L. R. A. 851, 56 Am. St. Rep. 579; *Shreve v. Copper Bell Min. Co.*, 1891, 11 Mont. 309, 28 P. 315; *Debney v. Iles*, 1907, 3 Alaska 438, 450.

The requirements of this section have been met where minerals have been discovered and the evidence is sufficient to justify a person of ordinary prudence in making an expenditure of labor and money, with a reasonable prospect of success, in developing a valuable mine, though the claim may not contain ore in paying quantities. *Chrisman v. Miller*, Cal. 1905, 25 S. Ct. 468, 471, 197 U. S. 313, 49 L. Ed. 770, affirming *Miller v. Chrisman* 73 P. 1083, 74 P. 444, 140 Cal. 440, 98 Am. St. Rep. 63. See, also, *Mason v. Washington-Butte Mining Co.*, Mont. 1914, 214 F. 32, 130 C. C. A. 426; *Multnomah Mining, Milling & Development Co. v. U. S.*, Wash. 1914, 211 F. 100, 102, 128 C. C. A. 28; *U. S. v. Lavenson*, D. C. Wash. 1913, 206 F. 755; *Cascaden v. Bortolis*, Alaska 1908, 162 F. 267, 268, 89 C. C. A. 247, 15 Ann. Cas. 625; *Charlton v. Kelly*, Alaska 1907, 153 F. 433, 84 C. C. A. 205, 13 Ann. Cas. 518; *Lange v. Robinson*, Alaska 1906, 148 F. 799, 802, 803, 79 C. C. A. 1; *Steele v. Tanana Mines R. Co.*, C. C. A. Alaska 1906, 148 F. 678, 680; *Cascaden*



v. Bartolls, Alaska 1906, 146 F. 739, 741, 77 C. C. A. 496; Shoshone Min. Co. v. Rutter, Idaho 1898, 87 F. 801, 31 C. C. A. 223, reversed on other grounds, 1900, 20 S. Ct. 726, 177 U. S. 505, 44 L. Ed. 864; Bonner v. Meikle, C. C. Nev. 1897, 82 F. 697, 703; Migeon v. Montana Central Railway Co., Mont. 1896, 77 F. 249, 255, 23 C. C. A. 156; Montana Central R. Co. v. Migeon, C. C. Mont. 1895, 68 F. 811, affirmed Migeon v. Montana Central R. Co., C. C. A. 1896, 77 F. 249; Murray v. White, 1911, 113 P. 754, 42 Mont. 423; Golden v. Murphy, 1909, 103 P. 394, 31 Nev. 395, rehearing denied, 1909, 105 P. 99, 31 Nev. 395; Mutchmor v. McCarty, 1906, 87 P. 85, 149 Cal. 603; Fox v. Myers, 1906, 86 P. 793, 29 Nev. 169; Ambergis Min. Co. v. Day, 1906, 85 P. 109, 12 Idaho 108, 117; Muldrick v. Brown, 1900, 61 P. 428, 37 Or. 185; Sanders v. Noble, 1899, 55 P. 1037, 22 Mont. 110, 116; Michael v. Mills, 1896, 45 P. 429, 22 Colo. 439; McShane v. Kenkle, 1896, 44 P. 979, 18 Mont. 208, 33 L. R. A. 851, 56 Am. St. Rep. 579; Brownfield v. Bier, 1895, 39 P. 461, 15 Mont. 403, 409; Shreve v. Copper Bell Min. Co., 1891, 28 P. 315, 11 Mont. 309, 338, 343; Burke v. McDonald, 1888, 13 P. 351, 2 Idaho, Hasb., 339; Harrington v. Chambers, 1881, 1 P. 362, 3 Utah 94; Duffy v. Strandberg, 1915, 5 Alaska 353; Cook v. Johnson, 1908, 3 Alaska 506, 541; Charlton v. Kelly, 1906, 2 Alaska 532.

While a vein or lode discovered by a locator in the side of a hill or mountain and within well-defined walls will assay but a small amount per ton as compared with the cost of extracting, removing, and milling the ore, yet if the miner has good reason to believe from his experience and from that of others in the same mining district that the ore is liable to be richer at a greater depth than at the point of the discovery, he has made such a discovery as will entitle him to make a valid location within the meaning of this section. *Book v. Justice Min. Co.*, C. C. Nev. 1893, 58 F. 106, 124. See, also, *Holdt v. Hazard*, 1909, 102 P. 540, 10 Cal. App. 440, 443.

Discovery made in running a tunnel where there were small seams of iron oxide, quartz, and small quantities of carbonate of lead, and where the indications were of a character which the miners in that district would follow in the expectation of finding ore, and where the rock in such seams was different from the country rock, and where such seams were similar in character to the seams or veins of mineral matter that had induced other miners to locate claims in the same district, is a sufficient discovery to justify a belief in the existence of a lode or vein of great value, and to show that the location was made in good faith and not upon a conjectural or imaginary existence of a vein or lode, which cannot be permitted. *Shoshone Min. Co. v. Rutter*, Idaho 1898, 87 F. 801, 31 C. C. A. 223, reversed on other grounds, 1900, 20 S. Ct. 726, 177 U. S. 505, 44 L. Ed. 864. See, also, *King v. Army & Silversmith Min. Co.*, Mont. 1894, 14 S. Ct. 510, 152 U. S. 222, 227, 38 L. Ed. 419; *Lange v. Robinson*, Alaska 1906, 148 F. 799, 802, 79 C. C. A. 1.

The discovered vein or lode on which a location can be based must be one that from all indications has a present or prospective value. *Montana, etc., R. Co. v. Migeon*, C. C. Mont. 1895, 68 F. 811, 814, affirmed *Migeon v. Montana Central R. Co.*, C. C. A. 1896, 77 F. 249. See, also, *Madison v. Octave Oil Co.*, 1908, 99 P. 176, 154 Cal. 768, 772.

A prospector or miner is not prohibited by this section from making a valid location until he has fully demonstrated that the vein or lode of quartz or other rock in place bearing gold or silver which he has discovered will pay all the expenses in removing, extracting, crushing, and reducing the ore, and leave a profit to himself. *Book v. Justice Min. Co.*, C. C. Nev. 1893, 58 F. 106, 124. See, also, *Fox v. Myers*, 1906, 86 P. 793, 29 Nev. 169, 185.

The discovery of mineral on a hillside may, as against other placer locators of the same ground, be sufficient for a court to say that there had been a discovery of mineral in place. *Migeon v. Montana Central R. Co.*, Mont. 1896, 77 F. 249, 255, 23 C. C. A. 156. See, also, *Ritter v. Lynch*, C. C. Nev. 1903, 123 F. 930, 936; *McShane v. Kenkle*, 1896, 44 P. 979, 18 Mont. 208, 214, 33 L. R. A. 851, 56 Am. St. Rep. 579.

When controversy is between two mineral claimants, the rule respecting the sufficiency of a discovery of mineral is more liberal than when it is between a mineral claimant and one seeking an agricultural entry, since where land is to be taken out of category of agricultural lands, the evidence of its mineral character should be reasonably clear. *Hagan v. Dutton*, 1919, 181 P. 578, 20 Ariz. 476. See, also, *Chrisman v. Miller*, Cal. 1905, 25 S. Ct. 468, 197 U. S. 313, 323, 49 L. Ed. 770; *Lange v. Robinson*, Alaska 1906, 148 F. 799, 803, 79 C. C. A. 1; *Steele v. Tanana Mines R. Co.*, Alaska 1906, 148 F. 678, 680, 78 C. C. A. 412.

The apex of a vein is not necessarily a point, but often a line of great length, and any portion of the apex on the course or strike of the vein found within

the limits of a claim is a sufficient discovery to entitle the locator to obtain title. *Larkin v. Upton*, 1892, 12 S. Ct. 614, 144 U. S. 19, 36 L. Ed. 330, affirming *Upton v. Larkin*, 17 P. 728, 7 Mont. 449. See, also, *Debney v. Iles*, 1907, 3 Alaska 438.

Even slight indications of a defined and mineral bearing ledge have been held sufficient to support a location of a valid mining claim. *Montana, etc., R. Co. v. Migeon*, C.C.Mont.1895, 68 F. 811, 813, affirmed *Migeon v. Montana Cent. R. Co.*, C.C.A.1896, 77 F. 249.

A valid location may be made of a ledge deep in the ground and appearing at the surface, not as ore, but as vein matter only. *Burke v. McDonald*, 1892, 2 Idaho 1022, 29 P. 98. See, also, *Hayes v. Lavagnino*, 1898, 53 P. 1029, 17 Utah 185, 196; *Shreve v. Copper Bell Min. Co.*, 1891, 28 P. 315, 11 Mont. 309; *Harrington v. Chambers*, 1881, 1 P. 362, 3 Utah 94, affirmed *Chambers v. Harrington*, 1884, 4 S.Ct. 428, 111 U.S. 350, 28 L.Ed. 452.

It is enough that gold and silver bearing rock showing on the surface is found. *Score v. Griffin*, 1905, 80 P. 331, 9 Ariz. 295, reversed on other grounds, 1905, 83 P. 350, 9 Ariz. 347.

There must be such a discovery of mineral as gives reasonable evidence of the presence of a vein or lode, or if a placer claim that it is valuable for such mining. *Chrisman v. Miller*, Cal.1905, 25 S. Ct. 468, 197 U.S. 313, 323, 49 L.Ed. 770. See, also, *Cascaden v. Bortolis*, Alaska 1908, 162 F. 267, 268, 89 C.C.A. 247, 15 Ann. Cas. 625.

To constitute discovery, it is necessary that minerals be found, under such circumstances and of such character that a reasonably prudent man, not necessarily a skilled miner, would be justified in expending time and money developing the claim, with the reasonable expectation of finding ore in paying quantities. *U. S. v. Lavenson*, D.C.Wash.1913, 206 F. 755. See, also, *Cameron v. U. S.*, 1920, 40 S.Ct. 410, 252 U.S. 450, 64 L.Ed. 659, affirming, C.C.A.Ariz. 250 F. 943; *Erhardt v. Boaro*, Colo.1885, 113 U.S. 527, 536, 5 S.Ct. 560, 28 L. Ed. 1113; *U. S. v. Ohio Oil Co.*, D.C.Wyo.1916, 240 F. 906, affirmed *U. S. v. Grass Creek Oil & Gas Co.*, C.C.A.1916, 236 F. 481; *Lange v. Robinson*, Alaska 1906, 148 F. 799, 802, 79 C.C.A. 1; *Shoshone Min. Co. v. Rutter*, Idaho 1898, 87 F. 801, 807, 31 C.C.A. 223, reversed on other grounds, 1900, 20 S.Ct. 726, 177 U.S. 505, 44 L.Ed. 864; *Ambergis Min. Co. v. Day*, 1906, 85 P. 109, 12 Idaho 108, 115; *Behrends v. Goldsteen*, 1902, 1 Alaska 518, 525.

To constitute a discovery which will support the location of a gold placer claim as against another mineral claimant it is not necessary that gold should have been found thereon in paying quantity, but there must have been such a discovery of gold as gives reasonable evidence that the ground is valuable for placer mining, taking into consideration its character, location, and surroundings, and this implies not only that the conditions warrant a reasonably prudent man in so proceeding with such reasonable expectation but that the applicant for patent has that expectation.

Representative CHUDOFF. I just wanted to say, Mr. Jonas, that this is a long record and I cannot put my finger on it but, if you will go through the testimony on the Al Sarena case as taken in Portland, Oreg., you will find that the law has been stated innumerable times.

Representative JONAS. Pardon me. It has been somebody's opinion of what the law is that has been stated. I want the statute.

Representative CHUDOFF. I do not think that it is any harm to put it in, but this is not the first time that the law was discussed.

Representative JONAS. You know that lawyers cannot always agree on what the law means. That is why we have courts.

Representative CHUDOFF. I agree definitely on that.

Representative JONAS. I would like to know a little more than I know now as to what a person has to do to qualify for a patent. We have no testimony on that.

Representative CHUDOFF. I think the law speaks for itself and you do not need it in the record. It is in the United States Code. If you want it in, I see no harm in that.

Representative JONAS. I could go to the library and look it up.

Representative CHUDOFF. Under the law, anybody that paid \$5 an acre and could prove that there was enough mineral content in the land so that a prudent man would mine it—I think that is broad enough—would get a patent.

Representative JONAS. I think there is more to it. You must file a claim after a discovery.

Senator NEUBERGER. May I ask several questions of the witness?

Senator SCOTT. Senator Neuberger.

We are glad to have Senator Dworshak back with us.

Senator NEUBERGER. Mr. Appling, in your testimony, I think, if I can recall it, just recently you said you were not certain of the law in answer to one question, and then you said you had never done mining-claim work prior to this case. Am I correct?

Senator Goldwater said, in addressing you, that he was sorry that you had not had down-to-earth experience in administration of the claims. Do you recall that?

Mr. APPLING. Yes, sir.

Senator NEUBERGER. In view of all those circumstances, do you think it strange that a high official of the Interior Department would be granting patents to these lands solely on the basis of a telephone conversation to you?

Mr. APPLING. Well, I would like to be excused from the question, if I may, for the reason that I don't understand all the background material on it. My job in the matter was that of sampling the claims and, as I understood it, my only job was to see what the values were. I presume that he was basing that on my report on the value rather than my opinion.

Senator NEUBERGER. You do not think it was strange that anyone should base granting patents to these lands solely on the basis of a telephone conversation with you, in view of your admitted inexperience in this matter?

Mr. APPLING. Well, my job there was, as I say, reporting the mineral values. I think my experience and qualifications are sufficient for that. If it involved points of law, yes, I would say it would be strange.

Senator NEUBERGER. Mr. Chairman, I would like to answer Senator Goldwater briefly because his remarks were not questions to Mr. Appling but they were, in effect, a statement or speech or whatever you want to call it, and Secretary Chapman was under attack. I can understand the desire to shift the scenery so far as this issue is concerned, but I think we had better get back to the core of the issue. The core of the issue, Mr. Chairman, is this:

While Mr. Chapman, who was attacked here today or criticized, was Secretary of the Interior, these timberlands in the Rogue River National Forest remained in the possession of the United States Forest Service. After Mr. Chapman left office, these timberlands passed into the possession of the Al Sarena Timber Mining Co. That is the meat of the coconut.

Now, why did this take place? We have had on the witness stand a variety of career officials of various Federal agencies in both the Department of Agriculture and the Department of the Interior. They are men whose careers date back through Secretary McKay, Secretary Chapman, Secretary Krug, Secretary Ickes, Secretary Wilbur, and perhaps some of the men's careers date back even earlier.

These men have testified that in all their experience in the handling of mining claims, including mining claims on timberlands, that they have never encountered any such proceeding as this, regardless of the identity of the political party in control of the Government or who happened to be Secretary of the Interior.

The Senator from Arizona said that the loophole in the law regarding timberlands had finally been closed. Of course, that is not true. I submitted a minority report on the law which was passed last year, objecting to the fact that the loophole was not closed and that it still is possible, contrary to the claims made by the Senator from Arizona, for a mining patentee who gets patented lands, as the Al Sarena Co. did, to sell for commercial purposes the timber growing on that land.

The Senator from Arizona is wrong in other particulars of this case as well as to the law.

There is nothing which requires a Secretary of the Interior to overrule the United States Forest Service and his own Bureau of Land Management, as was done in this case. There is no reason why Secretary of the Interior should not let stand an adverse ruling on a mining claim by the Forest Service and the Bureau of Land Management, as was the situation in the Al Sarena case.

The Senator from Arizona and others are trying to make out that there was something obligatory in the law which compelled Secretary Chapman or his successor to act on this.

Let me point out that as long as no action was taken, the ruling of the United States Forest Service stood and the ruling of the Bureau of Land Management stood, and that ruling was that patents should not be granted because the assays conducted by the Forest Service and the Bureau of Land Management did not warrant granting patents.

The Forest Service is the agency that is charged by law with administering these lands in Rogue River National Forest. Now these lands are no longer forest lands. They are now private lands, as a result of the decision reached by the present Secretary of the Interior and his associates.

Again I emphasize that it is incorrect to say that there was anything illegal about letting the decision of the Forest Service and the Bureau of Land Management stand, and time and time again, through many administrations in the Interior Department, such decisions have been let stand.

I should like to say this in conclusion, Mr. Chairman:

The test of this matter is just in one brief question. If this procedure which the Department of the Interior has applied to the Al Sarena Co., of permitting that company to have a voice in who shall assay minerals on the mining claim it seeks, is proper, why does not the Interior Department go ahead and apply that to the thousands of other mining applicants on forest lands all over the United States? If that was proper procedure, why do they not apply that to others?

Then the further question occurs: If it was proper procedure, and they apply it to others, what will become of the national forests?

Representative JONAS. Will the Senator yield?

Senator NEUBERGER. Surely.

Representative JONAS. Is it not true that these claims were on appeal from the Hearing Examiner to Secretary Chapman and remained unacted upon by him for 18 months?

Senator NEUBERGER. And as long as he did not act upon them—  
Representative JONAS. You have stated that. I know that. But do you not think it is incumbent on an executive officer of the Government, where a citizen claims that he has been mistreated, to take action, either deny his claim for relief or grant it?

Senator NEUBERGER. There was no question of relief. These people wanted the timber.

Representative JONAS. That was the relief they asked. They were asking for a patent. He refused to either overrule or affirm the lower decision.

Senator NEUBERGER. As long as he did not, the decision of the Forest Service and the Bureau of Land Management, in very proper hearings, stood.

Representative JONAS. What redress does a citizen have if he cannot appeal to a proper administrative department of the Government to review what he claims are improper decisions?

Senator NEUBERGER. The Bureau of Land Management and the Forest Service are the proper agencies.

Representative JONAS. The law authorizes the Secretary of the Interior to make the final determination, and the only right that the citizen has is to appeal from the adverse ruling of the lower official. I think that if a proper case comes to the Secretary of the Interior on appeal from a citizen of the United States who claims that his rights have not been taken care of in the lower hearing, it is his duty to look at the case and either affirm the lower decision or reverse the lower decision, and not just pocket the thing or put it in his desk drawer and keep it there for 18 months.

Senator NEUBERGER. I have every confidence in Secretary Chapman, and particularly in the Forest Service and the Bureau of Land Management. These people had received the hearing that nearly everybody who goes onto Federal land and files a mining claim receives. The proper agencies concerned with the administration of that natural resource had ruled that they did not have a valid mining claim.

Representative JONAS. There is something strange about the procedure, because the hearing officer did not even want to make the decision. He sent his file to Washington and asked his superior to write the report.

Senator NEUBERGER. Because the mining company had walked out on a hearing, the kind of hearing that this man had given to hundreds of other mining applications.

Representative JONAS. Was that not strange procedure?

Senator NEUBERGER. The whole thing has been a strange procedure.

Representative JONAS. I think it required some strange or new procedures to have it corrected. I do not see anything wrong with the Secretary of the Interior asking the Bureau of Mines, which is particularly qualified to engage in mining operations or certainly qualified to know what is a mining operation, to take samples. I cannot see what is wrong with the Secretary bringing in a brandnew agency of the Government, in view of the controversy that had been raging below for 18 months with a lot of name calling between the claimant and these branches of the Government, which went to such an extent that the hearing officer did not even want to write the report because of the charges and countercharges that had been made.

Do you think it is altogether strange that the Secretary should bring in a brand new agency of the Government, one that is filled with career people in which no politics are supposed to be involved whatever?

The Director of the Bureau has been an officer of the Government for 37 years. What is wrong with the Secretary of the Interior bringing in that agency and saying to it, "Go out there and see that proper samples are taken so that both sides of this controversy can be heard and we can finally come to a determination based on facts and not on charges"?

Senator NEUBERGER. Do you think it is strange that the Secretary of the Interior should say that the mining company should virtually have a veto power over who makes the assay and that there is no money in the Federal budget to pay for this assay?

Representative JONAS. That is not what he said.

Senator NEUBERGER. He said the company should pay for its own assay.

Representative HOFFMAN. That is the law.

Representative JONAS. Is that not correct in all cases?

Senator NEUBERGER. No; it is not correct.

Representative JONAS. The Government does not pay for assays made by claimants.

Senator NEUBERGER. The Government does not pay for assays made on public lands.

Representative JONAS. I am talking about claimants. The Government does not discharge the debts of claimants. They have to prove their own cases and pay for their own assays.

Senator NEUBERGER. In other words, when an assay is taken on Government land, then you believe that the claimant should furnish his own assay and pay for it and that should be determinative?

Representative JONAS. I did not say determinative.

Senator NEUBERGER. However, it was in this case.

Representative JONAS. No. The Secretary had before him the Hattan report and these reports also.

Senator NEUBERGER. And he allowed the claimant's own assay to overrule the Hattan report and Forest Service report.

Representative JONAS. If he had not done so, then the claimant would have contended that he had not received justice yet and we would still have a controversy, would we not?

Senator NEUBERGER. No; the Forest Service would have been upheld and the BLM would have been upheld.

Senator GOLDWATER. Where there is such a controversy raging, where the claimant is dissatisfied with assays made by the Government and the Government is dissatisfied with assays made by the claimant, what is wrong, and why this continual talk about this being some unusual and strange procedure and because it is new it therefore is wrong? What is wrong with the Government or the Secretary of the Interior saying to the Bureau of Mines, "You have not been in this controversy. You have not been charged with any wrongdoing. Nobody is mad at you. You are an independent agency of the Government filled up with career employees. You go out there and see that samples are taken and you have them assayed or you see that they are assayed by a proper party"?

Representative JONAS. They said, "You pick an assay firm that is satisfactory to both sides."

Senator NEUBERGER. What is the difference? If it has to be satisfactory to both sides the claimant had a veto power. We had testimony under oath from Mr. Volin that he recommended two west coast firms which the company rejected.

Representative JONAS. He recommended, but he admitted himself he did not insist upon them.

Senator NEUBERGER. He said if the final say had been with him he would have taken one of those two firms, if I am not mistaken.

Representative JONAS. He said, in response to questions I asked him, that he accepted the responsibility himself of selecting the Williams Co. and that he did not press upon the company the selection of one of the western assay houses.

Senator NEUBERGER. After this recommendations had been flatly rejected by the company.

Representative JONAS. I beg your pardon, sir. He positively testified they were not rejected. He said they offered countersuggestions and he went along with the countersuggestions.

Senator NEUBERGER. They certainly did not accept his recommendations. I do not know what other language there is.

Representative JONAS. There is quite a difference between Mr. Volin standing up and insisting upon the use of a western assay house and going along with the countersuggestion.

Senator NEUBERGER. Because he was under instructions from his superior that the company had to agree.

Representative JONAS. No; he was under simple instructions that he select an assay house that was satisfactory to both sides of a controversy. What can be fairer than that?

Senator NEUBERGER. Could he have selected someone the company did not agree with?

Representative JONAS. He did not offer but two assay houses and the company had experience with both of those and did not like them.

Senator NEUBERGER. Then he could not select anybody with which the company did not agree. You have answered the question.

Representative JONAS. There were scores of other assay houses out in the Far West, I would assume.

Senator NEUBERGER. So they took someone from Mobile, Ala., 3,000 miles from the claim, in the hometown of the company concerned.

Representative JONAS. That is correct, and the only thing I object to is your constant contention that the Secretary of the Interior was responsible for that selection, when I say it was a career employee of the Bureau of Mines.

Senator NEUBERGER. Acting within his instructions.

Representative JONAS. Who had complete authority to make a selection that he thought was satisfactory, just so it was agreeable with both sides.

Senator NEUBERGER. Why do you think, Congressman, that the instructions said the company had to pay for the assay?

Representative JONAS. They did not say it had to pay. I think the instruction said, "The company will pay for the assay. Do not obligate the Government for any expenditure of money."

Senator NEUBERGER. I wonder who paid for the earlier assays when the company was claiming this?

Representative JONAS. I imagine the company paid for all of the assays it had made by the Williams Co., and the Bureau of Land Management probably or the Forest Service probably paid for the assays they had taken. That would be an assumption. I have no way of knowing.

Senator NEUBERGER. Do you think when there is at stake timber worth perhaps a quarter of a million dollars that the Government should not pay a few dollars for its own assay?

Representative JONAS. I think the Government had paid money for assays. The Hattan assays, I would assume, the Government did pay for.

Senator NEUBERGER. Why did they not pay for this assay?

Representative JONAS. I do not know. Maybe you have some point. Maybe the Government should have paid for them, but I still do not see anything obligatory in the instructions that the Secretary issued to Mr. Volin. He had complete freedom of choice and freedom of action. Nobody pressured him into doing anything. He was not instructed and no suggestion was made by the Department of the Interior that the Williams Co. be selected. Yet in all of the inferences that can be drawn from this hearing, and it is even in this statement that I read this afternoon, there is the inference that Solicitor Davis had these samples sent to Alabama, 3,000 miles away from the scene, when he did no such thing, and the record clearly shows that all he said to Mr. Volin was, "You send a representative of the Bureau of Mines out there to see that proper samples are taken and then you see to it that these samples are assayed by a reputable assay house that is acceptable to both sides." I see nothing wrong with the procedure up to that point.

Senator NEUBERGER. A privilege never before granted, if we are not incorrect, to any other mining applicant on our forests and public lands of all the thousands and thousands of applicants that there are and have been; and you do not regard that as extraordinary, although the career people who testified did say it was extraordinary in all their experience?

Representative JONAS. They did not say it was extraordinary. They said they had never been called upon to do this before.

Senator NEUBERGER. I think Mr. Volin said it was extraordinary.

Representative JONAS. If I were a citizen with a claim against the Government I would feel I was entitled to have a say-so in the assay house that was going to make the final assay or final determination of what was in the sample.

Senator NEUBERGER. In other words, you think this procedure was fair?

Representative JONAS. I think it is fair so far as what we are talking about now. I see nothing wrong in the instructions that the Secretary issued and I see nothing wrong in his bringing the Bureau of Mines into the picture.

Senator NEUBERGER. Why does not your side of the table, then, bring in a bill authorizing this procedure in the future for other mining applicants on our national forests?

Representative JONAS. I do not think a bill is necessary. Congress cannot tell Secretaries of the Interior what assay houses to use in determining assays. I do not think that would be proper for a congressional act.



Representative JONAS. They said, "You pick an assay firm that is satisfactory to both sides."

Senator NEUBERGER. What is the difference? If it has to be satisfactory to both sides the claimant had a veto power. We had testimony under oath from Mr. Volin that he recommended two west coast firms which the company rejected.

Representative JONAS. He recommended, but he admitted himself he did not insist upon them.

Senator NEUBERGER. He said if the final say had been with him he would have taken one of those two firms, if I am not mistaken.

Representative JONAS. He said, in response to questions I asked him, that he accepted the responsibility himself of selecting the Williams Co. and that he did not press upon the company the selection of one of the western assay houses.

Senator NEUBERGER. After this recommendations had been flatly rejected by the company.

Representative JONAS. I beg your pardon, sir. He positively testified they were not rejected. He said they offered countersuggestions and he went along with the countersuggestions.

Senator NEUBERGER. They certainly did not accept his recommendations. I do not know what other language there is.

Representative JONAS. There is quite a difference between Mr. Volin standing up and insisting upon the use of a western assay house and going along with the countersuggestion.

Senator NEUBERGER. Because he was under instructions from his superior that the company had to agree.

Representative JONAS. No; he was under simple instructions that he select an assay house that was satisfactory to both sides of a controversy. What can be fairer than that?

Senator NEUBERGER. Could he have selected someone the company did not agree with?

Representative JONAS. He did not offer but two assay houses and the company had experience with both of those and did not like them.

Senator NEUBERGER. Then he could not select anybody with which the company did not agree. You have answered the question.

Representative JONAS. There were scores of other assay houses out in the Far West, I would assume.

Senator NEUBERGER. So they took someone from Mobile, Ala., 3,000 miles from the claim, in the hometown of the company concerned.

Representative JONAS. That is correct, and the only thing I object to is your constant contention that the Secretary of the Interior was responsible for that selection, when I say it was a career employee of the Bureau of Mines.

Senator NEUBERGER. Acting within his instructions.

Representative JONAS. Who had complete authority to make a selection that he thought was satisfactory, just so it was agreeable with both sides.

Senator NEUBERGER. Why do you think, Congressman, that the instructions said the company had to pay for the assay?

Representative JONAS. They did not say it had to pay. I think the instruction said, "The company will pay for the assay. Do not obligate the Government for any expenditure of money."

Senator NEUBERGER. I wonder who paid for the earlier assays when the company was claiming this?

Representative JONAS. I imagine the company paid for all of the assays it had made by the Williams Co., and the Bureau of Land Management probably or the Forest Service probably paid for the assays they had taken. That would be an assumption. I have no way of knowing.

Senator NEUBERGER. Do you think when there is at stake timber worth perhaps a quarter of a million dollars that the Government should not pay a few dollars for its own assay?

Representative JONAS. I think the Government had paid money for assays. The Hattan assays, I would assume, the Government did pay for.

Senator NEUBERGER. Why did they not pay for this assay?

Representative JONAS. I do not know. Maybe you have some point. Maybe the Government should have paid for them, but I still do not see anything obligatory in the instructions that the Secretary issued to Mr. Volin. He had complete freedom of choice and freedom of action. Nobody pressured him into doing anything. He was not instructed and no suggestion was made by the Department of the Interior that the Williams Co. be selected. Yet in all of the inferences that can be drawn from this hearing, and it is even in this statement that I read this afternoon, there is the inference that Solicitor Davis had these samples sent to Alabama, 3,000 miles away from the scene, when he did no such thing, and the record clearly shows that all he said to Mr. Volin was, "You send a representative of the Bureau of Mines out there to see that proper samples are taken and then you see to it that these samples are assayed by a reputable assay house that is acceptable to both sides." I see nothing wrong with the procedure up to that point.

Senator NEUBERGER. A privilege never before granted, if we are not incorrect, to any other mining applicant on our forests and public lands of all the thousands and thousands of applicants that there are and have been; and you do not regard that as extraordinary, although the career people who testified did say it was extraordinary in all their experience?

Representative JONAS. They did not say it was extraordinary. They said they had never been called upon to do this before.

Senator NEUBERGER. I think Mr. Volin said it was extraordinary.

Representative JONAS. If I were a citizen with a claim against the Government I would feel I was entitled to have a say-so in the assay house that was going to make the final assay or final determination of what was in the sample.

Senator NEUBERGER. In other words, you think this procedure was fair?

Representative JONAS. I think it is fair so far as what we are talking about now. I see nothing wrong in the instructions that the Secretary issued and I see nothing wrong in his bringing the Bureau of Mines into the picture.

Senator NEUBERGER. Why does not your side of the table, then, bring in a bill authorizing this procedure in the future for other mining applicants on our national forests?

Representative JONAS. I do not think a bill is necessary. Congress cannot tell Secretaries of the Interior what assay houses to use in determining assays. I do not think that would be proper for a congressional act.

Representative **HOFFMAN**. No, and when an executive officer down there does recommend somebody for business they have a congressional committee on his neck right away, even though it has been customary in the city they have been talking about to divide the business between a Democratic and a Republican organization.

Representative **CHUDOFF**. I think if they went to Albany and had a Government assay maybe we would not be here today.

Representative **JONAS**. If I had been Mr. Volin I do not think I would have sent them to Alabama. I would have insisted on the selection of an assay house that had never assayed samples from this claim.

Senator **NEUBERGER**. He did not have the latitude to do that.

Representative **JONAS**. He did have. He did not so try. He so testified. Let us be fair about it. I asked him the question and he responded to it frankly. I said, "Do you not feel that you have to assume the responsibility for the selection of the Williams Co.?"

He said, "I will have to assume that responsibility."

Senator **NEUBERGER**. He said if the choice had been his he would have taken 1 of the 2 west coast assay houses.

Representative **JONAS**. He did not try it.

Senator **NEUBERGER**. The choice was not his.

Representative **HOFFMAN**. Of course, it was not. Why should it have been?

Senator **NEUBERGER**. Because he was representing the Government. It was the Government's interest at stake.

Representative **HOFFMAN**. Under the law and all fair and decent procedure, you would deny the defendant a chance even to have an attorney or to be represented?

Senator **NEUBERGER**. To be represented by an attorney.

Representative **HOFFMAN**. You would have an assistant prosecutor represent him.

Senator **NEUBERGER**. An assay is a proceeding to protect the Government's interest if there is not mineralization.

Representative **HOFFMAN**. And also to protect the claimant if there is.

Senator **NEUBERGER**. He should not have a stake in the selection of the assay house if that has not been vouchsafed to by other claimants of mining claims on our national forests.

Representative **HOFFMAN**. You yourself have appealed to executive officers with reference to timber sales.

Senator **NEUBERGER**. Yes; in support of competitive sales, where the Government would get the highest price for the timber sold and where the person offering the maximum price would get it, whoever he might be, and not where the timber would go for nothing.

Representative **JONAS**. I would like you, sir, to understand me: I am not defending the selection of Williams. I do not think I would have agreed to the Williams firm if I had been Mr. Volin. All I am saying is that under the instructions from the Secretary of the Interior it looks to me as though Mr. Volin had a perfect right to offer other suggestions and to go much further than he did in trying to get the company to agree to an assay house that had not had any experience with this claim at all.

Representative **HOFFMAN**. May I get this law in?

Senator **SCOTT**. Do not read it.

Representative HOFFMAN. No, no. It is Title 43, Public Lands: Interior, revised 1954. It is the Code of Federal Regulations, beginning with "Procedure to obtain patent," and it begins with section 185.38 and runs over to and includes section 185.64.

May that be printed in the record somewhere? It is the regulations of the Department.

Representative CHUDOFF. Mr. Hoffman, I have no objection, except I would like to know, No. 1, whether that regulation was effective on January 6, 1954, when this controversy arose, because it would not be binding after January 6, 1954.

Representative HOFFMAN. It was in force then and is in force today.

Representative CHUDOFF. January 6, 1954?

Representative HOFFMAN. Yes.

Representative CHUDOFF. What is the date of the regulation? It might be after the controversy.

Representative HOFFMAN. No, no, no. It goes as far back as I could go. I think it was back in 1860 or sometime in there it began.

Representative CHUDOFF. Is there not a section of that code that provides that the Forest Service, the Department of Agriculture, shall represent the Government in making assays of mineral claims on public lands? I think that is part 205. I think we ought to have that, too.

Representative HOFFMAN. I am putting in all the regulations which have to do with the procedure to obtain a patent. If there is anything else you want in, put it in. There is the whole procedure. There is no reason why it should not be in. It is the law. Can those be printed, Mr. Chairman?

Senator SCOTT. Yes.

(The material referred to follows:)

## TITLE 43—PUBLIC LANDS: INTERIOR

### CHAPTER I—BUREAU OF LAND MANAGEMENT

\* \* \* \* \*

#### SUBPART D—PROCEDURE TO OBTAIN PATENT

AUTHORITY: §§ 185.38 to 185.72 issued under R. S. 2478; 43 U. S. C. 1201.

#### LODE CLAIMS

§ 185.38 *Application for survey.* The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.<sup>1</sup>

§ 185.39 *Survey must be made subsequent to recording notice of location.* The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.<sup>2</sup>

<sup>1</sup> Application for authorization of survey should be made to the cadastral engineer of the appropriate area Cadastral Engineering Office. In States for which there is no area office, applications for survey should be made to the Director of the Bureau of Land Management, Washington, D. C.

<sup>2</sup> All matters, relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 185.40 *Plats and field notes of mineral surveys.* When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

§ 185.41 *Particulars to be observed in mineral surveys.* (a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	<i>Acres</i>
Total area of claim-----	10.50
Area in conflict with survey No. 302-----	1.56
Area in conflict with survey No. 948-----	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed----	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 185.42 *Certificate of expenditures and improvements.* (a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the manager a certificate of the office cadastral engineer that not less than \$500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to \$500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein of natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and millsite claim in the same survey the expenditure of \$500 must be shown upon the lode claim.

§ 185.43 *Mineral surveyor's report of expenditures and improvements.* (a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of \$500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

§ 185.44 *Supplemental proof of expenditures and improvements.* If the value of the labor and improvements upon a mineral claim is less than \$500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing \$500 expenditure made prior to the expiration of the period of publication.

§ 185.45 *Amended mineral surveys.* (a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 185.46 *Mineral surveyors may not act in certain matters.* The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

CROSS REFERENCE: For practitioner disqualifications see § 1.5 of this title.

§ 185.47 *Parties who may not assist in making surveys.* The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 185.48 *Contract for surveys.* (a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.<sup>\*</sup>

(b) Neither the cadastal engineer nor the area administrator has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 185.49 *Appointment of mineral surveyors.* (a) Pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39), each area administrator will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the area administrator and shall furnish a performance bond of not less than \$5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. Each area administrator shall maintain a register showing the names and addresses of mineral surveyors appointed for the region and eligible for the survey of mining claims. The area administrator shall furnish the area administrator of each adjoining area with a copy of such register, and shall advise them of any changes therein.

(b) A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of

<sup>\*</sup>All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

§ 185.50 *Payment of charges of the public survey office.* With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

§ 185.51 *Plat and notice to be posted on claim.* The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey.

§ 185.52 *Proof of posting on the claim.* After posting the said plat and notice upon the premises the claimant will file with the proper manager a copy of such plat and the field notes of survey of the claim, accompanied by the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said statement.

§ 185.53 *Application for patent.* (a) At the time the proof of posting is filed, as required by § 185.53, the claimant must file an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.<sup>4</sup>

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

CROSS REFERENCE: For definition of fissionable source materials, see Atomic Energy Commission's regulation, 10 CFR 40.2.

§ 185.54 *Evidence of title.* (a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstractor of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to Form 4-1246.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificate or notice, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

<sup>4</sup> Blank forms of applications for mineral patents are not furnished by the Bureau of Land Management.

The application should be filed in duplicate. See 52 L. D. 199.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 185.55 *Evidence relating to destroyed or lost records.* In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 185.56 *Publication in newspaper.* Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the manager will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semi-weekly or tri-weekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

§ 185.57 *Contents of published notice.* The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 185.58 *Manager to designate newspaper.* The manager shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 185.59 *Proof by applicant of publication and posting.* After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 185.60 *Payment of purchase price and statement of charges and fees.* Upon the filing of the statement required by the preceding section, the manager will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of \$5 for each acre and \$5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the manager of the land office, and a patent shall be issued thereon if found regular.

§ 185.61 *Trustee to disclose nature of trust.* Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 185.62 *Allowance of entry; transfers subsequent to application not recognized.* No entry will be allowed until the manager has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations.<sup>6</sup> Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

<sup>6</sup> If the proof is found regular, certificate should issue even though a protest may have been filed but the claimant should be advised that patent will be withheld by the Bureau of Land Management pending a report by the authorized officer upon the bona fides of the claim.



§ 185.63 *Failure to prosecute application with diligence.* The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 185.64 *Resumption of patent proceedings after suspension due to adverse claim or protest.* The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

#### MILL SITES

§ 185.65 *Application for patent.* (a) Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims. Section 2337 of the Revised Statutes (30 U. S. C. 42) provides for the patenting of mill sites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

§ 185.66 *Mill sites applied for in conjunction with a lode claim.* Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being \$5 for each acre and fractional part of an acre embraced by such lode and mill site claim.

§ 185.67 *Mill sites for quartz mills or reduction works.* In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at the price named in the preceding section.

§ 185.68 *Proof of nonmineral character.* In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable from acquaintance with the land to testify understandingly.

#### PLACERS

§ 185.69. *Application for patent.* (a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at \$2.50 per acres or fractional part of an acre.

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

§ 185.70 *Proof of improvements for patent.* The proof of improvements must show their value to be not less than \$500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 185.71 *Data to be filed in support of application.* (a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim: streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes (30 U. S. C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses.\*

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 185.72 *Applications for placers containing known lodes.* Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the application has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnesses.

Senator NEUBERGER. Just to set the record straight regarding what Mr. Jonas said, the question as to whether Mr. Volin said this was an extraordinary situation, on page 472 Mr. Volin said, "Well, I regard this whole job as an extraordinary situation in that we had never

\*The proof showing must be made in duplicate. See 51 L. D. 205 and 52 L. D. 190.

done it before. We had instructions that we were to follow," et cetera. I will not read the whole thing, but Mr. Volin himself did use the word "extraordinary" and went on to explain why.

Representative JONAS. Mr. Chairman, I request permission to read into the record immediately following that the question I directed to Mr. Volin with respect to the assumption of responsibility as to the selection of the Williams Co. and his response to that question.

Senator SCOTT. You may proceed.

Representative JONAS. I will have to find that and will ask permission to put it in following the insertion of the Senator from Oregon. I do not want to hold up the committee. I will have to find it. I have it now, if you will permit me to put it in before we go any further.

Senator SCOTT. Yes.

Representative JONAS. Starting at the bottom of page 453 there is the following:

Representative JONAS. Was it not your responsibility as the independent umpire or the representative of the Government to inspect this sampling and supervise it, to agree upon the assayer to do the work?

Mr. VOLIN. I believe it was; yes, sir.

Representative JONAS. And do you feel that you discharged that responsibility and that duty to your entire satisfaction by the procedures you followed in the selection of Williams?

Mr. VOLIN. I was satisfied at the time, sir.

Representative JONAS. If anybody made a mistake in the selection or agreeing to the use of the A. W. Williams Co. to make this assay, you would have to take the responsibility of the mistake; would you not?

Mr. VOLIN. I am afraid so, sir.

Representative JONAS. Because you did it yourself, thinking it was the thing to do and the proper thing to do and the reasonable thing to do under the circumstances, but without any suggestion from Secretary McKay or anybody in his Department?

Mr. VOLIN. That is right.

Senator NEUBERGER. May I follow with this, Mr. Chairman, just so we have the full record?

Senator SCOTT. Yes, sir.

Senator NEUBERGER. This is on page 469:

Senator NEUBERGER. May I ask you this: In view of the experience of the Abbot Hanks Laboratory with samples taken on national forests and since it had been used by the United States Forest Service in similar situations, do you think it might have been preferable if these samples had been sent to the Abbot Hanks Laboratory?

Mr. VOLIN. My experience with Abbot Hanks was not on the basis of samples sent by the Forest Service but on previous work before I came to the Bureau of Mines. I knew that that is a reputable firm of long standing and I recommended it on that basis.

Senator NEUBERGER. And your recommendation of Abbot Hanks and the Annes Laboratories, I believe you mentioned, and Smith-Emery, your recommendation of those laboratories on the Pacific coast were rejected by the Al Sarena Co.?

Mr. VOLIN. That is right.

Representative CHUDOFF. Mr. Chairman, so we have everything in the record, I would like to offer in the record at this time, to supplement Mr. Hoffman's offer, from the 1949 edition of the Code of Federal Regulations, title 43, Public Lands: Interior, paragraph 205.9, which covers the notice to officers of the Department of Agriculture of answers, appeals, motions, orders, and decisions.

Senator SCOTT. That may be made a part of the record.

(The material referred to follows:)

§ 205.9 *Notice to officers of Department of Agriculture of answers, appeals, motions, orders, and decisions.* In all Government cases before managers involving lands or claims within a national forest, the regional attorney, Office of the Solicitor of the Department of Agriculture, shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper officers of the Department of Agriculture shall have a right of appeal from any decision by the Bureau of Land Management and a right to take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: *Provided, however,* That the Department of Agriculture shall not be required to take formal appeals from decisions of managers.

Representative HOFFMAN. That is all right. That is the one that requires 60 days within which to file their protest.

Representative CHUDOFF. I will read it to you.

Representative HOFFMAN. I can read it later.

Senator SCOTT. If all these things would not be read we would save a lot of time, but time does not seem to be of the essence.

Senator GOLDWATER. I had one question here that came to my mind.

Mr. Appling, you said, I believe in being asked about your conversation with Mr. Davis, that you told him that in your opinion there was justification in granting this patent, or words to that effect.

Mr. APPLING. I do not believe I said that. I think my statement was I considered the assays sufficiently good to warrant a program of exploration of the property.

Senator GOLDWATER. Do you have any way of knowing the size of that deposit or deposits?

Mr. APPLING. I have a map which shows the claims and the arrangement of the claims, and I know there is a considerable area involved.

Senator GOLDWATER. Has there ever been any determination by the Bureau of Mines as to the possible diameter or length of the deposit?

Mr. APPLING. No, sir. We haven't done that. I might be able to make a guess from the map.

Senator GOLDWATER. I ask that, Mr. Chairman, because someplace I have heard that this deposit was some 3,600 feet in diameter. I cannot recall where I heard that, but if he has such information I think it would be proper to be in the record.

Mr. REDWINE. Mr. Chairman, may we ask the witness if the map he is referring to now is the map that he previously put in the record?

Mr. APPLING. I believe a copy of this has been entered into the record; yes, Mineral Survey No. 879, Oregon. The maximum dimensions on this map are about, I would judge, 5,500, possibly 7,500, feet in one direction and 5,100 feet in the other direction. Those are maximum dimensions. I imagine that about 5,000 by 3,600 feet would be pretty close to the average dimensions.

Mr. REDWINE. Senator, may I interrupt at this point and ask the witness if he is describing now all of the 23 claims, or the 15 contested claims?

Mr. APPLING. I think this includes all of the 23.

Senator GOLDWATER. That was my understanding, too. I am talking about the whole project, not just the contested claims.

It appears to me necessary here to develop the fact that people in mining felt that there was a sizable body here and that people other than yourself have considered it to be worthy of exploration. Did

that fact enter into your mind when you suggested that it might be worthy of further exploration?

Mr. APPLING. Yes, sir; it did. In view of the size and the apparent size of the deposit and based on the assays that I saw, I would say there is justification for exploration.

Senator GOLDWATER. Let me ask you a question. You do not have to answer this. However, if you, with your mining experience, were looking for an investment would you consider this a good investment?

Mr. APPLING. It would take quite a bit more money than I would have to invest.

Senator GOLDWATER. I thought that might be involved in the answer, but let us assume that you were way past a GS-9 and you were able to afford something like this.

Mr. APPLING. That is a difficult question to answer. I know this: that if I had the funds to finance such exploration I would certainly take a closer look at it and I would go over it with much more detail than I did before. I would say with the results that I saw the assays were sufficiently encouraging for that. I would hate to go beyond that.

Senator GOLDWATER. Then, everything you have seen in your experience with this Al Sarena Mining Co. or claim would lead you to believe that there is sufficient value in the land to warrant a prudent man developing it or exploring it further?

Mr. APPLING. Yes, sir; I do. I would agree to that.

Senator GOLDWATER. That is all I have.

Mr. Chairman, of course I cannot let this opportunity pass to exchange pleasantries with my friend from Oregon. It seems that the only point we differ on is that he feels it is a good idea to have men in Government that cannot make up their minds.

Representative CHUDOFF. I just want to ask one question, Mr. Chairman.

Senator SCOTT. Before you ask that, we have had Senator Dworshak here with us for 4 or 5 different meetings and we have not had a word from him yet. I would like to give him an opportunity if he cares to speak.

Senator DWORSHAK. Mr. Chairman, I am not a member of the subcommittee. I have at intervals watched the development, and so far as I am concerned as a member of the full committee I shall do everything I can to terminate this rather shameful hearing which obviously has no other objective than to smear the Secretary of the Interior by innuendoes, and insinuations, and charges that he has been guilty of some malfeasance in the discharge of his duties. I think that it is the duty of our committee to hold hearings and not to continue them indefinitely. I think we ought to make an honest, sincere effort—and I question whether that has been done so far by this joint committee—to get the facts and then to present them to the two committees, the House Committee on Government Operations and the Senate Committee on Interior and Insular Affairs, so that they will have some jurisdiction and some control over the actions of their subcommittees.

I do not think that our Committee on Interior and Insular Affairs has ever authorized the appointment of this subcommittee and I am going to raise that question on Friday. I believe in orderly procedure

at all times and I think it was a shameful demonstration and an abuse of senatorial and congressional power to have held hearings in the Western States for many weeks without reaching any conclusions other than to clutter the pages of our press with publicity with the obvious objective of trying to smear somebody without bringing the facts before reputable jurisdictional committees of both the House and the Senate. Thank you.

Representative CHUDOFF. Will the Senator yield at that point? Does the Senator infer that the House Committee on Government Operations and this subcommittee have no jurisdiction over this matter?

Senator DWORSHAK. Whether you have or not, I question whether you have the right to continue indefinitely hearings when you are not reporting the facts. When do you expect to report the conclusions and findings of this committee?

Representative CHUDOFF. When we finish hearing the testimony of the witnesses.

Senator DWORSHAK. You have traveled all over the West.

Representative CHUDOFF. Will you let me finish?

Senator DWORSHAK. I am sorry.

Representative CHUDOFF. If the Senators will stop making speeches and allow us to question the witnesses I think we will be able to get finished.

Senator DWORSHAK. How many months or years will that take?

Representative CHUDOFF. I do not know, but if we keep having speeches by 4 or 5 Senators we will never get finished.

Senator SCOTT. In other words, you would stop looking at the height of the trees and the width of the trees?

Senator DWORSHAK. No, Mr. Chairman, I would not do that. I would think that under ordinary procedures it would be possible to call in witnesses and to get the pertinent and relevant information dealing with this particular problem. If there has been any abuse—and I am not saying that there has not been—I certainly think it is not in the interest of orderly procedure to drag out such hearings for weeks, and weeks, and weeks, without trying to bring them to some conclusion. If there has been any violation, if there has been malfeasance in the high Office of the Secretary of the Department of the Interior, then I think we ought to lay the facts on the table before the two committees in the House and the Senate and then we will take the proper action.

Representative CHUDOFF. You will not get the facts on the table with everybody making speeches.

Senator NEUBERGER. Mr. Chairman, just for Senator Dworshak's information—I know he will want this—he spoke about traveling around the West for weeks. I think this committee held hearings in the West for about 2 weeks on Federal timber policies. With the exception of about 5 hours of those 2 weeks spent on the Al Sarena case all the rest of those hearings was involved in a study, which was very largely noncontroversial, into the various aspects of managing, selling, and controlling Federal timber on Indian lands, on Forest lands, and on public domain lands; and I think at the most 5 hours of those 2 weeks were spent in the West on Al Sarena.

Representative CHUDOFF. As a matter of fact, Congressman Ellsworth said when he made his statement in Portland, when he testified

before this committee, that the committee was doing a wonderful job, the study was needed, and he hoped we would be able to work out something to meet the problem.

Representative HOFFMAN. Except he excepted the Sarena mining hearings; did he not?

Senator NEUBERGER. Yes.

Representative CHUDOFF. Of course, there was no controversy on the timber investigation.

Representative HOFFMAN. And he was so, so mistaken about the timber. May I get in the rest of the law, Mr. Chairman?

Senator SCOTT. Yes.

Representative CHUDOFF. Could I just ask the witness one question?

Senator SCOTT. Let Mr. Hoffman get the balance in the record.

Representative HOFFMAN. Title 30 of the United States Code, Chapter II: Mineral Lands and Regulations in General, beginning with section 21 over to 34, inclusive. That is the Federal statute.

Representative CHUDOFF. I want to get back to the last question you answered, Mr. Appling. One of the Senators, I believe, asked you whether or not in your opinion the assays justified a prudent man developing the minerals on that particular land, and you said they did; is that right?

Mr. APPLING. I believe he stated exploration. They are different terms.

Representative CHUDOFF. However, you know that this land has not been mined since 1943, do you not?

Mr. APPLING. I don't know.

Representative CHUDOFF. You know personally it has not been mined since 1950?

Mr. APPLING. As far as I know it has not.

Representative CHUDOFF. That is all.

Mr. COBURN. Mr. Chairman, pursuing that question and Senator Goldwater's a little further, could I ask him a question?

Senator SCOTT. Mr. Coburn.

Mr. COBURN. Mr. Appling, this goes to the old 1872 mining law. Is it not true under that law which Senator Goldwater questioned you about that a mining claimant on a valid claim—let us say that he recorded that claim on a national forest—could develop, mine, and sell those ores without any restraints whatever except those imposed by the market conditions?

Mr. APPLING. You are speaking of location claims?

Mr. COBURN. Yes.

Mr. APPLING. I don't know the law. The only thing that I know in that respect is that it is common practice in the mining profession to avoid expensive operations on a location claim. It involves a matter of title or clear deed to the land. Many persons feel that it would not be safe to do so.

Mr. COBURN. But for the color of title problem, and but for the possibility that you could sell no stock in an unpatented claim, and but for the fact that you could not use the timber except for bona fide mining purposes, there is nothing, is there, in the law or the custom of the West, to preclude a man from taking all the ore off that property he wants to and selling it?

Mr. APPLING. I am really not familiar with the law.

Mr. COBURN. Are you familiar with the experience of mining locators?

Mr. APPLING. Yes, sir.

Mr. COBURN. Has that not been common practice?

Mr. APPLING. I know that very little mining, extensive mining, is done on location claims.

Mr. COBURN. Very little what?

Mr. APPLING. Very little mining of any extent, that is, other than small deposits, are mined from location claims.

Mr. COBURN. And you say that in your experience; and that is 5 years with the Bureau of Mines?

Mr. APPLING. Yes.

Mr. COBURN. I think the testimony will show, Mr. Chairman, that that is quite common practice in the West. I think Senator Goldwater may agree that it is.

Senator GOLDWATER. I not only agree with you; I have been very vociferous for years in my objections to the looseness of the mining laws. In fact, I think most western mining people have the same feeling against them. My only reason for bringing that in was to show the people in the East that this is nothing new and that we have objected to it strenuously for many, many years. I do not condone the giving away of anything; if that is the truth. What I maintain is that it has been the granting of patents. It has been going on since the mining laws first went into effect; and if we had not changed the law last year to some extent there would still be some of that looseness in there. I will agree that the present law is not tight enough in my opinion.

Mr. COBURN. Mr. Appling, did you hear the testimony that was given by some witness—and I am sorry I cannot identify it more precisely at the moment—who I believe testified that there has been \$30,000 to \$40,000 in ores or in gold taken off this property? Did you hear that?

Mr. APPLING. I heard something like that.

Mr. COBURN. That was prior to 1943.

Mr. APPLING. I believe it was.

Mr. COBURN. So that there was mining at one time of precious metals on this property?

Mr. APPLING. Yes, sir.

Mr. COBURN. However, there has not been any since 1950?

Mr. APPLING. As far as I know, there has not.

Mr. COBURN. With respect to this office memorandum dated January 2, your letter of transmittal, did this ever get back to Washington, D. C.?

Mr. APPLING. As far as I know it did not.

Mr. COBURN. Did not?

Mr. APPLING. As far as I know it did not.

Mr. COBURN. Was it made a part of the file that you transmitted, that is, the assay report, your report?

Mr. APPLING. No, sir. That letter of transmittal went to Spokane and stayed there.

Mr. COBURN. What was transmitted?

Mr. APPLING. My report.

Mr. COBURN. In other words, this was taken off the file, and kept in Spokane?



Mr. APPLING. Yes.

Mr. COBURN. So when the file got back to Washington, D. C., and was purportedly examined by someone back here this document was not there?

Mr. APPLING. I don't believe it was; no.

Mr. COBURN. Since you have been here you have testified that you have had numerous conferences with Mr. Parriott and Mr. Miller. Did you say Mr. Davis, too?

Mr. APPLING. I did meet Mr. Davis.

Mr. COBURN. During these meetings were you briefed as to your testimony before the committee?

Mr. APPLING. No, sir; I wouldn't say that I was briefed.

Mr. COBURN. Was your prospective testimony discussed?

Mr. APPLING. Yes, sir. I was asked to repeat my part in the matter.

Mr. COBURN. To them?

Mr. APPLING. Yes, sir. I don't recall—I don't think Mr. Davis asked me for that.

Mr. COBURN. Did Mr. Parriott?

Mr. APPLING. Yes, sir; Mr. Parriott asked me to repeat to him what I had done, my actions in the matter.

Mr. COBURN. Did you prepare any written statement?

Mr. APPLING. No, sir.

Mr. COBURN. During these briefings did you ever receive any threats of reprisal or promises of benefit?

Mr. APPLING. No, no, sir; I did not.

Mr. COBURN. You were not told what to say?

Mr. APPLING. No, sir; I was not told.

Mr. COBURN. That is all, Mr. Chairman.

Senator SCOTT. Mr. Redwine.

Mr. REDWINE. Mr. Appling, I notice there, in answer to a question by Mr. Coburn, that you apparently discussed this matter with Mr. Davis too; is that true?

Mr. APPLING. Pardon me?

Mr. REDWINE. With Mr. Davis too.

Mr. APPLING. I met Mr. Davis. That was very soon after I got here and I believe it may have been before my first testimony.

Mr. REDWINE. Are you sure whether it was since you last testified or prior thereto?

Mr. APPLING. It was not since I last testified, no.

Mr. REDWINE. Not since you last testified?

Mr. APPLING. No.

Mr. REDWINE. When did you first discuss with Mr. Parriott, Mr. Miller, Mr. Armstrong, or anyone else this letter of transmittal?

Mr. APPLING. Mr. Parriott asked me if I had received a phone call from Mr. Davis and when. I believe that was yesterday, and I replied by showing him a copy of that letter of transmittal.

Mr. REDWINE. Was he surprised that you had such a document with you?

Mr. APPLING. I don't know that I would say he was surprised.

Mr. REDWINE. Gratified?

Mr. APPLING. Well, he may have been that, yes, sir.

Mr. REDWINE. Did you discuss it with Mr. Armstrong?

Mr. APPLING. I believe I did. I know we discussed the phone call Mr. Davis made and I may have mentioned the letter to him.

MR. REDWINE. Mr. Appling, with respect to that day back on December 29 when Mr. Davis called you up, you just talked freely to him when he began to ask you these questions?

MR. APPLING. No, sir; I wouldn't say that. I know when he asked me an opinion of the property I was reluctant to give it.

MR. REDWINE. You did not question in your own mind as to whether this was Mr. Davis, the Solicitor of the Department? You just answered the call and he said, "I'm Davis of the Department of the Interior," and you started babbling to him about what was in your confidential report?

Representative HOFFMAN. What was that question? Will you read that? I do not think that is proper, if I understood him right, "started babbling to him." What business has a member of the staff asking that?

MR. APPLING. I wouldn't say that I babbled to him. He asked me questions about it.

MR. REDWINE. How did you become convinced in your own mind that the Solicitor of the Department of the Interior called you up and asked you about a simple matter like this?

MR. APPLING. Merely that he said—I think that the call was first put through by Mr. Armstrong, who I understand was Assistant Solicitor at that time, and he said that Mr. Davis, the Solicitor, wanted to talk to me.

MR. REDWINE. You talked to Mr. Armstrong also?

MR. APPLING. He put the call through.

MR. REDWINE. You talked to Mr. Armstrong?

MR. APPLING. I had no conversation with him other than what I just described.

MR. REDWINE. And he told you, "This is Mr. Armstrong talking"?

MR. APPLING. He told me who he was, identified himself, and said that Mr. Davis wanted to talk to me.

MR. REDWINE. Had you at the time that you received that phone call—I believe you said you had some polishing up to do on your report; is that correct?

MR. APPLING. Yes.

MR. REDWINE. That was your testimony?

MR. APPLING. Yes.

MR. REDWINE. Had you finished writing that section in your report that you entitled "Development"?

MR. APPLING. I believe the whole report was finished at that time. I believe that was probably it, yes, sir.

MR. REDWINE. However, you are not sure of it?

MR. APPLING. Well, yes, I think it was. My recollection is that the report was completed except for final submission, punctuation, spelling, and so forth.

MR. REDWINE. Mr. Appling, did anyone tell you prior to the time you received that phone call that Mr. Davis would call you or might call you?

MR. APPLING. No, sir.

MR. REDWINE. Just came out of the clear sky, the call did?

MR. APPLING. Yes, sir.

MR. REDWINE. That is all I have, Mr. Chairman.

Senator SCOTT. Mr. Lanigan.

Mr. LANIGAN. You testified, I believe, that there had been some time in the past about \$30,000 or \$40,000 removed from these claims.

Do you know whether the ore was removed from the 8 claims which were approved for a patent, or from the 15 claims which were originally not approved for patent?

Mr. APPLING. I don't believe that I testified that that value had been removed. I think that I agreed that I have heard that in the testimony, and I do not know where the ore came from.

Mr. LANIGAN. You do not know which claims it came from?

Mr. APPLING. No, sir, I do not.

Mr. LANIGAN. Did you make any memorandum of the phone call from Mr. Davis to you?

Mr. APPLING. I don't believe I did.

Mr. LANIGAN. That is all that I have.

Senator SCOTT. Is there anything further?

Mr. REDWINE. Mr. Appling, I am going to ask you a hypothetical question. In answer to questions put to you by Senator Goldwater and others, you said that you had advised Mr. Davis that this was pretty good property and so forth. Now, I want you out of your experience to answer this hypothetical question. I will give you a copy of it so you can read it carefully. I will read it for the record while you are reading it:

Please consider that you are now acting in a private capacity as a professional mining engineer. In 1954 you were approached for your opinion on a mine of the following characteristics with the idea that you would recommend a substantial investment therein and would at the same time invest some of your own or your family's or friends' funds:

1. The mine is located at approximately 3,400 feet elevation, in a part of the country which might in winter be cut off from transportation for a few days at a time due to winter snows. The mine is about 46 miles from the nearest railroad shipping point and on good roads excepting for the last 5 miles which is a fair forest road with somewhat steep grades. It is about 600 miles from the nearest smelter by rail.

2. Although there are wide zones of low-grade mineralization, the better grade mineralized vein is narrow, averaging about 3 feet, and the average values per ton at present prices would produce mill heads of \$5.50 per ton in gold and silver.

3. The metallurgy has been worked out and recoveries of from 85 to 90 percent can be made in the mill concentration ratio 25 to 1.

4. Milling equipment of a satisfactory type can be installed to make the above recoveries without cyanidation. The mill capacity will be 75 tons per day or 24 hours. Ample milling water is available. Tailings disposal presents no problem.

5. Excepting for the narrow stoping widths which will restrict tonnage production and may cause serious dilution of the ore, mining is not difficult as the vein is nearly vertical and the ground stands well. Plenty of timber is available on the property.

Now, Mr. Appling, (A) is it your opinion that such a mine could be operated at a profit under 1954 cost conditions, assuming, of course, that the necessary capital would be available?

Representative HOFFMAN. I want to object to that question because, first, before a hypothetical question can be put, there must be evidence establishing each and every element in the question, and there is no such evidence in the record.

In the second place, this gentleman has not qualified as an expert because under the law no one can be required to accept an opinion or express an opinion who is not an ordinarily prudent man. There is not any evidence in here that he has the money or that he is ordinarily prudent in business ventures. Whatever he might say would be only a

guess and would have to take into consideration other assumptions. He has already said that he did not have the money. There is no evidence that he is an ordinary prudent man.

Mr. REDWINE. Mr. Chairman, the witness has testified that he has advised the Solicitor how he should go about his decision in this matter, that it is a good property. He has gone into his educational background. His profession itself is one that calls for him advising people in the mining world. I submit that it is a fair hypothetical question to ask the witness.

Representative HOFFMAN. It is merely an attempt to get this subordinate in the Department to express an opinion adverse to the Secretary's opinion and to get him into disfavor with what you might call the higher ups.

Senator SCOTT. Go ahead.

Mr. APPLING. In the first place, there are no figures as to the extent or grade of the low-grade areas. That would be critical in this hypothetical question. If there were no low-grade areas involved, if it were strictly a matter of the ore in the better grade mineralized vein of a 3-foot width and under other conditions, I don't suppose that it could be done unless speaking strictly from the standpoint of the higher grade ore. If there were figures on the extent and grade of the low-grade deposit, it could change the picture materially.

Mr. REDWINE. If you believe that this mine could be operated, as you have qualified it, what kind of net profit per ton before taxes could be expected?

Mr. APPLING. As I said before, I can't answer that because there are not sufficient facts on which to base it.

Mr. REDWINE. What kind of facts did you have when you talked to Mr. Davis about this?

Mr. APPLING. My statement to Mr. Davis was that I thought the assays and the apparent size would be sufficient to justify a program of exploration. That statement doesn't go as far as these questions.

Mr. REDWINE. Were you taking into consideration when you told Mr. Davis what you did only the 15 disputed claims, or this other property that you had described in such detail as to the development that had been done on it?

Mr. APPLING. I was assuming that the whole property would be similar to everything that I saw.

Mr. REDWINE. You certainly went outside the scope of your instructions in that; did you not, Mr. Appling?

Mr. APPLING. I don't know that I did. I could not help seeing the claims that were previously patented. It would seem to me that the whole property were to be developed, the whole property would be developed, and not just one part of it.

Mr. REDWINE. That is all I have, Mr. Chairman.

Representative JONAS. May I ask him a question, Senator Scott?

Senator SCOTT. Yes.

Representative JONAS. Mr. Appling, I take it from your responses to these questions that you looked at the claims that are not in dispute as well as the claims that are in dispute?

Mr. APPLING. We did not sample them.

Representative JONAS. I know, but you examined and inspected the entire area?

Mr. APPLING. Well, we saw it all; yes, sir.

Representative JONAS. And it is true, is it not, that this very claimant, the Al Sarena people, now hold patents on adjacent claims to those in dispute?

Mr. APPLING. That's my understanding.

Representative JONAS. Do you know what Secretary of the Interior granted those patents?

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Senator NEUBERGER. They did find a difference; is that not correct?

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Senator SCOTT. Are there any further questions?

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Mr. APPLING. No, sir.

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Representative HOFFMAN. Thank you, sir. I hope you never do either. I sympathize with you.

**Mr. REDWINE.** Mr. Chairman, I see 4:30 is about here. I have been advised by Congressman Chudoff's counsel that his parent committee is meeting tomorrow morning.

**Representative CHUDOFF.** The full Committee on Government Operations meets the third Wednesday of every month at regular meeting unless the chairman cancels the meeting.

**Mr. REDWINE.** I suggest, Mr. Chairman, that we adjourn until 2 o'clock tomorrow afternoon in this room and Mr. Appling return, please.

**Senator SCOTT.** Without objection, we will do that.

**Representative HOFFMAN.** Before you adjourn, Mr. Chairman, without being requested to do it, but in behalf of Mr. Appling, may I ask about how long it will be before he can be excused and return to his wife and family? I understand they are ill.

**Senator SCOTT.** I could not say at this time.

**Representative HOFFMAN.** I hope you appreciate that, Mr. Appling. I mean the reply.

**Mr. APPLING.** Yes, sir.

**Mr. REDWINE.** Mr. Chairman?

**Representative JONAS.** May I interject? Mr. Appling was on the stand in Portland. He was on the stand here last week. He has occupied the witness chair for this entire afternoon. I think we ought to be able to tell him about how long he will be expected to stay here and when he can go back to Spokane.

**Senator SCOTT.** I will say this: That if he would not be so evasive we could move along faster.

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**Representative HOFFMAN.** And I want to put on the record that he has been subjected to what is known as police court methods, the third degree.

**Senator SCOTT.** The meeting is adjourned.

(Whereupon, at 4:25 p. m., the hearing was adjourned until 2 p. m., Wednesday, January 18, 1956.)



## THE AL SARENA CASE

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WEDNESDAY, JANUARY 18, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION OF  
THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES,  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 2 p. m. in the caucus room, Senate Office Building, Washington, D. C., Hon. W. Kerr Scott (acting chairman of the Senate subcommittee) presiding.

Present: Senators W. Kerr Scott (North Carolina), and Richard L. Neuberger (Oregon).

Also present: Senators Henry C. Dworshak (Idaho); Thomas H. Kuchel (California); Frank A. Barrett (Wyoming); and Barry Goldwater (Arizona).

Present: Representatives Earl Chudoff (Pennsylvania), (chairman of the House subcommittee); Clare E. Hoffman (Michigan); Victor A. Knox (Michigan); and Charles Raper Jonas (North Carolina).

Senator Scott (acting chairman of the Senate subcommittee). The meeting will please come to order.

Yesterday we asked for telephone memorandums and for the tab sheet on that. I believe we have that. If the gentleman has that, would he please come up and be sworn?

Will you stand, please, and raise your right hand and give your name?

Mr. DAVISON. I am C. C. Davison.

Senator Scott. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DAVISON. I do, so help me God.

### TESTIMONY OF C. C. DAVISON, ASSISTANT CHIEF CLERK, DEPARTMENT OF THE INTERIOR

Mr. REDWINE. I am sorry; I came in late. What is your name?

Mr. DAVISON. C. C. Davison.

Mr. REDWINE. Whom are you with?

Mr. DAVISON. I am the Assistant Chief Clerk of the Interior Department?

Mr. REDWINE. Do you have any telephone records, call cards, with you, sir?

Representative HOFFMAN. Of course, I want to call attention to the



point that the committee, as far as the House is concerned, has no jurisdiction because there is only one member of the House committee here.

Senator SCOTT. Go right ahead, sir.

Mr. REDWINE. You do have some records with you, sir?

Mr. DAVISON. I do, sir. I have a certified copy of some records and I brought with me a certified copy of the telephone call that was made, as well as the copy of the bill from the telephone company.

I also have with me the telephone operator who placed that call, identified by her signature on the ticket, and the assistant chief operator.

Senator SCOTT. They will be placed in the record.

(The material referred to follows:)

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DEPARTMENT OF THE INTERIOR,  
Washington, D. C., January 18, 1956.

Pursuant to title 28, section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Ticket covering telephone call made on December 29, 1953, to R. N. Appling, Grants Pass, Oreg.

Bill from Chesapeake & Potomac Telephone Co., showing that this call consumed 18 minutes and cost \$13.25.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.

C. C. DAVISON,  
*Acting Chief Clerk.*

(See illustration on facing page.)

(The telephone service statement referred to is filed with the committee.)

Mr. REDWINE. Sir, will you explain to the committee just what that shows, please?

Mr. DAVISON. This shows that on December 29, 1953, Mr. Davis placed a telephone call to Grants Pass, Oreg., to R. N. Appling, of the Bureau of Mines.

Mr. COBURN (chief counsel, Senate subcommittee). Is that 4:52 p. m., eastern daylight saving time?

Mr. DAVISON. It was placed from the Department of the Interior and that would be eastern daylight.

No, not daylight; standard, December. And the bill shows that the call consumed 18 minutes and cost \$13.25.

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Mr. REDWINE. Or as to the time that is shown there, is that the time that the call was placed with the telephone company, or the time that the conversation—

Mr. DAVISON. No. That is the time that the operator filed the call.

Mr. REDWINE. Filed the call. What I would like to know, sir, is: Have you any record there as to what time the call was completed, and when I say "completed" I mean when contact was made between the parties?

Mr. DAVISON. No, sir; I do not. I do not have anything. Of course, the telephone company takes the call and then we receive a

U.S. Department of the Interior  
 12-29-53 NO.  
 AGENCY *Dep of*  
 T.E.L. NO. *2134*  
 PERSON *Dano*  
 PLACE STATE  
 TO *Stamps Press One*  
 COLLECT *7191*  
*R. N. Appleby*  
 APPROVED *Bureau of Mines*  
*Sept 7, 1953*

FILE NO. TIME *452* *4:15*  
 CONNECT MINS. CLASS  
 DISCONNECT M CHARGE

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5-10004 **OPTIONAL**  
U. S. Department of the Interior

NO. **72-2953**

AGENCY **Det. Ofc**

TITLE **7612 2134**

PERSON **Davis**

PLACE \_\_\_\_\_ STATE \_\_\_\_\_

TO **Stants Press Ore**

COLLECT **7191**

PERSON **R. N. Appleby**

ADDRESS **Bureau of Mines**

REPORTS **Dept of Interior**

FILE NO. **452**

CONNECT **M**

DISCONNECT **M**

MIN. **12**

CLASS **12**

CHANGE **12**

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Representative HOFFMAN. All you know about it is what the telephone record shows; is it not?

Mr. DAVISON. That is correct.



Representative HOFFMAN. That is, you are testifying now from the bill given you by the telephone company?

Mr. DAVISON. And this ticket that we made in the Department when the call was placed.

Representative HOFFMAN. Who made the ticket in the Department when the call was placed?

Mr. DAVISON. The operator, Mrs. White.

Representative HOFFMAN. Does she not know when the connection was made?

Mr. DAVISON. I doubt whether she would remember, but we may call her.

Representative HOFFMAN. No; does not the record show?

Mr. DAVISON. No.

Representative HOFFMAN. Do the records of the telephone company show?

Mr. DAVISON. I can't answer that.

Representative HOFFMAN. Of course, Mr. Chairman, if the matter is of any importance, proper procedure would be to get the report of the telephone company when it was placed, when the connection was made, and when it ended, if you want it.

Mr. REDWINE. Mr. Chairman, I see no reason to pursue this matter any further. I do not know what the other members of the staff think.

Representative CHUDOFF. I just want to ask one question.

Are your records confined to just this one call, or did you bring all the records for a week or two before or after December 29?

Mr. DAVISON. I have with me the records for the long-distance calls made that particular day in the office of the Secretary.

Representative CHUDOFF. Only on that particular day?

Mr. DAVISON. That is correct.

Representative CHUDOFF. Do you have any records on that day that show any calls of any other members of the Secretary's staff calling Mr. Appling?

Mr. DAVISON. No, sir.

Representative CHUDOFF. You do not have any other day, like 2 weeks before or 2 weeks after, do you?

Mr. DAVISON. No, sir.

Representative CHUDOFF. That is all.

Mr. REDWINE. Sir, you have the records of the call made on that day by Mr. Gottley, I believe it was, Sidney Gottley, to Mr. Volin? Do you have a record of that call?

Mr. DAVISON. I do not have any with me. That we would have to check.

Mr. REDWINE. Will you furnish the committee with a record similar to this in reference to that call on the same day?

Mr. DAVISON. The same day from Mr. Gottley to Mr. Appling?

Mr. REDWINE. From Mr. Sidney Gottley to Mr. Volin.

(The material referred to was submitted on the following day.)

Senator SCOTT. Is there anything further?

Representative HOFFMAN. I have some questions, if you are through. You have before you here a pink slip.

Mr. DAVISON. Yes, sir.

Representative HOFFMAN. The young lady who made those slips is here in the room; is she not?

Mr. DAVISON. The one who made this particular slip?

Representative HOFFMAN. The slip we are talking about.

Mr. DAVISON. That is correct.

Representative HOFFMAN. And who handled the call?

Mr. DAVISON. That is right.

Representative HOFFMAN. You do not know anything about it except as she reported to you?

Mr. DAVISON. As she reported to me.

Representative HOFFMAN. Why do you not put her on?

Representative CHUDOFF. I think, under the usual course of business, the rules are that this man is competent to testify.

Let me ask you this: Is it your practice in your office that when a long-distance call is made a ticket is written out; is that right?

Mr. DAVISON. That is correct.

Representative HOFFMAN. And is eventually filed with you as evidence of the call?

Mr. DAVISON. There is a copy kept in the telephone room. The original goes to the telephone company, which they check against their records, and then a copy goes to our accounts.

Representative CHUDOFF. That is your normal course of business; is it not?

Mr. DAVISON. That is the normal course of business.

Representative HOFFMAN. Mr. Chudoff, will you yield there?

I am not making any formal objection. I was just trying to point out that the easy way and the accurate way, and the way that would give us the information, was available here, and you just do not want it.

Senator SCOTT. Are there any further questions?

If not, we thank you for coming. We will call you again if necessary, but I do not think we will need you.

Mr. Appling, would you please come forward? We hope to get through with you in less time than we have been able to so far. It will depend upon the others.

#### TESTIMONY OF RICHARD N. APPLING, JR., MINING ENGINEER, UNITED STATES BUREAU OF MINES—Resumed

Mr. REDWINE. Mr. Chairman, I think we can get through with Mr. Appling very quickly so far as I am concerned. I am sure all of us want Mr. Appling to get back to his family who, I understand, are sick.

Mr. APPLING. Thank you very much.

Mr. REDWINE. Mr. Appling, yesterday afternoon you testified that this call from Mr. Davis came during business hours, between 8 and 5.

Mr. APPLING. Yes, sir; I believe that's right.

Mr. REDWINE. Have you just heard the testimony of the last witness?

Mr. APPLING. Yes, sir.

Mr. REDWINE. The records of the Department of the Interior show that that call was made at 4:52 p. m., placed at that time, in the afternoon.

Do you want to change your testimony in that respect, or what are the business hours and what is the difference in time between Washington and Grants Pass?

Mr. APPLING. If the call originated here at 4:52, that would have been 1:52 in Grants Pass. There is 3 hours' difference in time.

Mr. REDWINE. However, it is still within business hours and all that?

Mr. APPLING. Yes, sir; yes, sir, it is.

Mr. REDWINE. Mr. Appling, there are several other places in your testimony of yesterday where there are some discrepancies, and I am not referring to this particular thing now.

The committee later on may want to ask you some questions about that, but in view of the fact that you have sickness in your family, Mr. Chairman, I suggest that this witness be dismissed from further attendance at this time.

Senator SCOTT. Does anybody want to ask any questions?

Representative CHUDOFF. Mr. Lanigan would.

Senator SCOTT. Mr. Lanigan.

Mr. LANIGAN (counsel, House subcommittee). I just wanted to ask two questions.

First, I think in your report, in your testimony you indicated there was a mill and some other building on the claims adjacent to the ones you were examining.

Mr. APPLING. Yes, sir.

Mr. LANIGAN. Were those new or old buildings?

Mr. APPLING. Well, they were older buildings, possibly 10, 15 years old, I would judge, from the condition of them. They were in good repair but they were not recent.

Mr. LANIGAN. The other question is this: When Mr. Davis called you and you told him that you thought this claim would merit further exploratory work, can you recall just what the nature of the question was to which you gave that answer?

Mr. APPLING. Well, no, sir; I can't exactly, except that he, Mr. Davis, pressed me for my opinion.

Mr. LANIGAN. He wanted your——

Mr. APPLING. He wanted my opinion of the value.

Mr. LANIGAN. Of whatever facts were in your report?

Mr. APPLING. Yes, sir; that's right.

Mr. LANIGAN. And you gave him the opinion which you have related?

Mr. APPLING. Yes, sir. I would like the record to read that I was rather reluctant to give an opinion. As I have stated before, I didn't feel that I had sufficient time to investigate all the facts, but I gave the best I know on what I had seen.

Mr. LANIGAN. When you say he wanted your opinion, was that as to the value of the claim?

Mr. APPLING. I would say he probably desired an opinion of the potential of the claim, rather than the value: Was it a deposit that might be developed? Was it a deposit that had merit? That's the way I recall it, the impression I have.

Mr. LANIGAN. That is all I have.

Senator SCOTT. Are there any further questions?

Mr. APPLING. Mr. Chairman, immediately after I testified yesterday afternoon, Mr. Parriott reminded me that in regard to my testimony as to my file being in my possession, that he had requested the file and that I had given it to him and he kept it overnight. I would like to assure you that I didn't intentionally forget that, but Mr. Parriott did bring it to my attention and I did give him my file—I believe it was on Thursday night—and I got it back from him on Friday morning. I would like to amend my testimony to that extent.

Representative CHUDOFF. What did he need your file for?

Mr. APPLING. I think it was in regard to the letter that I gave to the committee yesterday. I think he wanted to look at that or look over the file.

Representative CHUDOFF. Did he want it for the purpose of advising you as to how to testify or how not to testify?

Mr. APPLING. No, sir; I did not get that impression.

Representative CHUDOFF. He just wanted to read the letter?

Mr. APPLING. I think so.

Representative CHUDOFF. He could have read that in 5 minutes. He did not have to keep the file.

Mr. APPLING. As I recall, he was in a hurry or I was, 1 of the 2, and he wanted it, at any rate.

Representative CHUDOFF. The whole file?

Mr. APPLING. Yes, sir.

Representative CHUDOFF. Did you get it from him the next morning?

Mr. APPLING. Yes, sir; I did.

Representative CHUDOFF. Did you have any discussion with him about the file?

Mr. APPLING. I don't recall that we did.

Representative CHUDOFF. He did not tell you what he read or what the situation was, what he thought the proper thing for you to do was?

Mr. APPLING. No, sir; he had no suggestions like that.

Representative CHUDOFF. He just took the file to read the letter and you got it back from him without comment the next morning?

Mr. APPLING. There may have been comments. I don't recall them if there were. I am not even sure as to why he wanted the file, whether it was in regard to that letter or just anything else that may have been in it.

Representative CHUDOFF. One thing we have learned from the questioning of you, Mr. Appling, is that you have a very bad memory. Your recollection is not very good. That is the only thing we have learned from you, as far as I am concerned.

Representative HOFFMAN. That is not a matter of agreement on the committee by a long shot. I say he has a very good memory and that he has shown a high degree of patience under the third-degree methods that you fellows have employed throughout his examination.

I think he has had a demonstration of how a committee should not treat a citizen, apparently a decent, respectful individual, and a man of good character in the community in which he lives, and treated here as though he were a criminal.

Representative CHUDOFF. Now that we have your opinion and my opinion on the record, I guess we ought to excuse the witness.

Senator SCOTT. If there are no further questions.

Representative HOFFMAN. Wait a minute. I have some questions and so has my colleague, and maybe Senator Goldwater has. Go ahead, Mr. Jonas.

Representative JONAS. I would like to ask Mr. Appling a question. Were you entirely familiar with your file all the time?

Mr. APPLING. Yes, sir; I was.

Representative JONAS. It is your file that you brought with you from Portland?

Mr. APPLING. Yes, sir; Spokane.

Representative JONAS. It is the file that you have maintained regarding this subject since it came up?

Mr. APPLING. All of the papers in the file have gone through my hands. The file was actually put together by the secretaries in the Spokane office and I took it from there.

Representative JONAS. Were you familiar with the contents of the file when you came to Washington?

Mr. APPLING. Yes, sir; I was.

Representative JONAS. Were you familiar with the contents before you let Mr. Parriott have the file?

Mr. APPLING. Yes, sir; I was.

Representative JONAS. Did you examine it after it was returned to you?

Mr. APPLING. Yes, sir; I have.

Representative JONAS. Did you find it intact or did you find anything added to it, or had anything been removed, so far as you could tell?

Mr. APPLING. I saw nothing that had been added or removed.

Representative JONAS. Would you tell the committee whether you observed that any of the documents or papers had been altered, or tampered with, or mutilated?

Mr. APPLING. I saw no alterations at all.

Representative JONAS. Any additions to the file that came to your attention?

Mr. APPLING. No, sir.

Representative JONAS. As you sit here—you are about to be excused, Mr. Appling, and will be on your way back home, we hope, soon—I ask you to reflect for a minute before you answer this question:

You have been subjected to some rather severe cross-examination and I expect it has been rather trying for you. You have been on the stand several times and you have been here over a week now. I would like you, in answer to my final question, to tell me whether at any time throughout this entire experience you have been subjected to any pressure, or have received any instructions, or any suggestions or any requests from Mr. McKay or any official in the Interior Department concerning the sort of testimony you would give or what you would say in response to questions?

It has been intimated that some of the witnesses were coached. Would you tell this committee whether you were coached by anybody in the Interior Department as to how you would answer questions or testify?

Mr. APPLING. Yesterday I believe I testified that I had talked to Mr. Parriott and Mr. Miller, and I also talked to Mr. Armstrong and I met Mr. Davis. No one has coached me in what I should say, if I understand the meaning of coaching.

Mr. Parriott has asked me at several times to repeat my part in the proceedings, and he has advised me to offer to this committee as facts only those things that I know to be facts and not to offer as facts any conjecture or guesswork or anything of that nature. That is the only suggestion that I have received. If that is coaching, why—

Representative JONAS. You were not under any pressure from anybody in the Department to testify a certain way, or did anybody help you formulate the story you have related to the committee, or does it represent the facts as they occurred?

11. Mr. APPLING. The testimony that I have given have been the facts  
as nearly and as accurately as I can remember them. There has been  
no pressure brought to bear on me. Nobody has offered rewards or  
punishment for testifying in any particular fashion. The things that  
I have said have been true as nearly as I can remember.

10. Representative JONAS. Thank you.

Senator SCOTT. Are there any further questions. If not, that is all.

Mr. APPLING. Thank you, Mr. Chairman.

7. Representative HOFFMAN. Yesterday, you were asked, were you not,  
about the time that this call went through between you and Mr. Davis?

Mr. APPLING. Yes, sir; I believe I was.

71. Representative HOFFMAN. You said, as I recall, that it was during  
business hours.

Mr. APPLING. Yes, sir.

Representative HOFFMAN. Today you were here when they put on  
the record the time that the call was placed, were you not?

Mr. APPLING. Yes, sir; I was.

Representative HOFFMAN. And the record shows that it was placed  
at 4:52 p. m., in the afternoon?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. Apparently counsel were figuring here  
and they got to figuring the wrong way. They were going to show  
that it came sometime other than business hours. As a matter of fact,  
what time was it out there when it was 4:52 here?

Mr. APPLING. It would have been 1:52.

Representative HOFFMAN. In the afternoon?

Mr. APPLING. Yes, sir.

Representative HOFFMAN. If it took, say 8 minutes to put it through  
you would have gotten the call about 2 o'clock?

Mr. APPLING. That is approximately right.

Representative HOFFMAN. You did not lie about that; did you?

Mr. APPLING. No, sir; I didn't.

Representative HOFFMAN. I think that is all.

Senator NEUBERGER. May I ask a question?

Senator SCOTT. Yes.

Senator NEUBERGER. I just want to recollect one thing about your  
testimony yesterday, Mr. Appling.

Did you testify that this particular episode involving the Al Sarena  
claims was the first time in your experience and career that you had  
worked on mining claims?

Mr. APPLING. I don't believe it was quite that way. What I in-  
tended to convey was I had never been involved in a patent proceeding  
or a contested patent claim. I have done work on mining claims in  
the course of other work.

Senator NEUBERGER. In other words, you have never before been  
involved in taking assays or determining assays which would be a  
factor in whether patent would or would not be granted to mining  
claims?

Mr. APPLING. No, sir; I have not.

Senator NEUBERGER. You never before had any experience in that  
way?

Mr. APPLING. Never before; no sir.

Senator NEUBERGER. Thank you.

Senator BARRETT. Mr. Chairman, may I ask him a question?

Senator SCOTT. Yes, sir.

Senator BARRETT. Mr. Appling, do I understand the purport of your answer is that you have had considerable experience with mining claims, but that relatively few of the mining claims in that area have gone to patent?

Mr. APPLING. Well, I don't believe that I testified to that. I think that that is—

Senator BARRETT. I think that is true over the country, Mr. Appling, and I would be very much surprised if it were not true out in Oregon.

Mr. APPLING. I think that probably is correct.

Senator BARRETT. I would like to ask you this question, Mr. Appling:

Are you familiar with the provision of law that if a mining claimant holds a mining claim for a period longer than the statutory period of limitations in the State in which it is located, and has performed all of the requirements of the mining law, then he is protected in his possessory right to the claim?

Mr. APPLING. No, sir; I don't know that.

Senator BARRETT. Are you versed in the provisions of the law with regard to mining claims?

Mr. APPLING. Only in a general way. Our work doesn't usually take us into that.

Senator BARRETT. Let me ask you this question then: Assuming that the law provides that if the mining claimant has performed all of the requirements of the mining law and is in possession of the claim for a period longer than the statute of limitations, which I assume is 10 years in Oregon—it may be 20, but in this case I understand that the claimant has been in possession longer than that period—then is there any way under the sun that he could be dispossessed of that claim, save and except through fraudulent actions?

Mr. APPLING. I really don't know, sir. I'm not familiar with the law.

Senator SCOTT. If there are no further questions, I would like to say to the new Senators that have come in for the first time that we will adjourn at 4:30, and I wonder when the committee can meet again.

Representative CHUDOFF. That depends on what happens in the House today. I understand that if they finish the two bills that they are on today without a rollcall, we will have a free day tomorrow and have hearings.

If they are going to have rollcalls tomorrow on these two bills, we are probably going to have to be in the House to answer rollcalls, and things like that.

Senator SCOTT. I was just trying to move along.

Representative CHUDOFF. Mr. Chairman, I tried to get the information before I came over here, and that is the best information I could get from the leadership and the Parliamentarian. They will not know what the program is until they finish the debate today.

Representative JONAS. Before you leave that, may I ask a question of the staff or of the chairman?

Senator SCOTT. Yes.

Representative JONAS. I do not want to keep referring to this—I have mentioned it once or twice—but I think it is pretty important in the interest of fairness and because the public generally having been

made aware of this situation—and whether intentional or not, many inferences have gone out of this committee room concerning what transpired—and I think we ought to have the Department witnesses up here before any further delay occurs.

I am not trying to tell the committee how to run its affairs, but I just believe in fairness, the Secretary of the Interior or whoever handled this matter in the Department should have an opportunity without any further delay to put his story before the committee.

Senator SCOTT. I will ask Mr. Redwine to give you the information on that.

Mr. REDWINE. Mr. Chairman, the order that the staff is working on by the direction of the chairman is this:

The next witness that will be called will be Mr. J. R. Thoenen.

Representative HOFFMAN. Who is he?

Mr. REDWINE. He is a gentleman in the Bureau of Mines who participated in the selection of the Williams Co. I do not see why we should not get through with him in 15 minutes. Of course, it depends on what the Congressmen and the Senators ask.

Representative HOFFMAN. You mean what the staff asks.

Mr. REDWINE. We will be through in 5 minutes, the staff will, and then the next witness will be the Chief of the Forest Service.

The next witness following that will be Mr. Holderer of the staff who will qualify as an expert in engineering.

The next witness, as the staff visualizes it, subject to the approval of the chairman, of course, and members of the committee, is Mr. Davis. I see no reason why we should not get to Mr. Davis soon. I think that we need another half-day after this afternoon, sir, and then Mr. Davis.

Representative HOFFMAN. All right.

Off the record.

(Discussion off the record.)

Senator SCOTT. Without objection, then, suppose we meet tomorrow morning at 9:30, and by that time we will be able to determine whether we will meet in the afternoon or not.

Representative CHUDOFF. I can find that out this afternoon, as soon as the House adjourns.

Mr. REDWINE. Mr. Chairman, we are having a difficulty of this kind:

Before we decide this thing about tomorrow morning, I would like to get my secretary to check with the clerk of the committee and see if we can find a room to meet in tomorrow morning. We are up against that kind of difficulty.

Representative HOFFMAN. You may have my office.

Representative CHUDOFF. We can get the Caucus Room of the Old House Office Building, Room 362, if you are stuck.

Senator SCOTT. The next witness.

Mr. REDWINE. Mr. J. R. Thoenen, please.

Senator SCOTT. Congressman Chudoff, will you swear him in, please?

Representative CHUDOFF. Will you stand and raise your right hand, please? What is your full name?

Mr. THOENEN. John Roy Thoenen.

Representative CHUDOFF. Do you solemnly swear the testimony you are about to give before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. THOENEN. I do.

Representative CHUDOFF. Be seated, please.



**TESTIMONY OF JOHN ROY THOENEN, CHIEF, KNOXVILLE OFFICE  
BUREAU OF MINES**

Mr. REDWINE. Mr. Thoenen, will you state your official position?

Mr. THOENEN. Chief of the Knoxville field office, Bureau of Mines.

Mr. REDWINE. How long have you been in that position?

Mr. THOENEN. Since about the first of the year; that is, first of last year. Pardon me.

Mr. REDWINE. What was your position with the Bureau of Mines in 1943?

Mr. THOENEN. Acting regional director of Region VII.

Mr. REDWINE. Stationed where, sir.

Mr. THOENEN. Knoxville.

Mr. REDWINE. You have been in Knoxville continually since that time?

Mr. THOENEN. That's right.

Mr. REDWINE. When did you first go to that region?

Mr. THOENEN. Well, now, you mean to Knoxville or to the region? I was in the region before I went to Knoxville.

Mr. REDWINE. To the region, sir.

Mr. THOENEN. I was in the region when the region was formed.

Mr. REDWINE. When was that?

Mr. THOENEN. I went to Tuscaloosa in 1945.

Mr. REDWINE. Are you familiar with the mineralogy of the State of Alabama?

Mr. THOENEN. Somewhat.

Mr. REDWINE. How much gold and silver production is there in Alabama?

Mr. THOENEN. There's been none for some years.

Mr. REDWINE. Well, what is the potential?

Mr. THOENEN. What percent?

Mr. REDWINE. Potential.

Mr. THOENEN. I don't know of any operating gold or silver mines.

Mr. REDWINE. Mr. Thoenen, it has been testified earlier that you received a telegram and a letter from Mr. Volin in connection with the Al Sarena Mines.

Mr. THOENEN. Yes.

Mr. REDWINE. Requesting you to determine and advise Mr. Volin as to the reputation and capability of the A. W. Williams Inspection Co. in the assaying of gold and silver.

Mr. THOENEN. That's right.

Mr. REDWINE. What did you do? Step by step, what did you do to fulfill that request?

Mr. THOENEN. Well, first, I got a telegram or teletype—I don't recall which; it's on teletype form, telegraph form quoting or referring to Mr. Volin's letter which had been mailed the day before. I got the telegram first.

I replied to that by a telegram. I did not know anything of the Al Sarena case. Neither did I know anything about the company that was mentioned. I had no recollection of ever having heard of them before.

Mr. REDWINE. Just tell the committee the steps that you took to determine the answer to the question posed by Mr. Volin.

Mr. THOENEN. I looked through our records, and the Bureau of Mines has a brief publication of some companies that do this sort of analysis work. I did not find their name in that publication.

I had another publication in my desk by the Department of Commerce and did find the name listed in that publication. I then thought of Walter Jones, the State geologist of Alabama, and thought possibly he might know of them. I called him on the telephone and he said he did and, so far as he knew, they were O. K.

Mr. REDWINE. So far as he knew, they were O. K.?

Mr. THOENEN. That's right.

Mr. REDWINE. I believe that in your reply to Mr. Volin you said that you had a telephone conversation with the State geologist of Alabama, Walter Jones, or you did mention his name in that.

Mr. THOENEN. That's right.

Mr. REDWINE. And that they were O. K.?

Mr. THOENEN. He said they were O. K.

Mr. REDWINE. Do you consider "so far as he knew they were all right" is the same as "O. K."?

Mr. THOENEN. I don't quite get your question.

Mr. REDWINE. You just testified that Walter Jones, the State geologist of Alabama, said that the A. W. Williams Co., so far as he knew, were all right. Do you consider that that statement of his was not exaggerated when you wired to Mr. Volin that Jones said they were O. K.?

Mr. THOENEN. No; I don't think so.

Mr. REDWINE. You don't think there is any difference in that?

Mr. THOENEN. No.

Mr. REDWINE. You were specifically requested by Mr. Volin to determine whether they were O. K., shall we say, for the purpose of making assays of gold and silver?

Mr. THOENEN. That's right.

Mr. REDWINE. Did you ask Mr. Jones in particular as to gold and silver?

Mr. THOENEN. I can't answer that. I don't know. It's been so long ago.

Mr. REDWINE. I realize it has been a long time.

Mr. Thoenen, this directory of the Department of Commerce, how carefully did you examine that directory, or were you already familiar with it? Answer that first. Were you familiar with that directory?

Mr. THOENEN. I was familiar with the directory, but not a good many details in it; no.

Mr. REDWINE. Is that a standard document in all Bureau of Mines offices? Is it usual to have a directory of the Department of Commerce of that kind in it?

Mr. THOENEN. I don't know.

Mr. REDWINE. However, you did?

Mr. THOENEN. I did have; yes.

Mr. REDWINE. And you were familiar with the directory?

Mr. THOENEN. That's right.

Mr. REDWINE. Are you familiar with their symbols?

Mr. THOENEN. I knew they had symbols. I wouldn't be familiar with the symbols without checking.

Mr. REDWINE. Did you check them at that time?

Mr. THOENEN. I did.

Mr. REDWINE. Do you know anything about how that directory is compiled?

Mr. THOENEN. Do you know as to who compiled it?

Mr. REDWINE. As to how it is compiled. How does a firm get its name in that directory?

Mr. THOENEN. No.

Mr. REDWINE. You are not familiar with that?

Mr. THOENEN. No, sir.

Mr. REDWINE. Mr. Thoenen, if you were in private practice, and a client you represented wanted some assays made which would be the base upon whether he did or did not invest a lot of money, would you rely upon the Department of Commerce directory as to the capability of the assay house picked to decide that question?

Mr. THOENEN. That's a little hard question for me to reply to. I don't know whether I would or not.

Mr. REDWINE. Particularly if the directory that you were checking from was dated 1947 and this was in 1943? Could you answer that question, Mr. Thoenen?

Mr. THOENEN. I have. I say I don't know whether I would or not.

Mr. REDWINE. What do you think you would have done?

Representative HOFFMAN. I object to that line of questioning. It is another one of those "iffy" hypothetical questions which do not state the facts, and it is only calling for an opinion by this witness on a matter in which he was not interested, or rather informed. He correctly answered. He says he does not know whether he would or would not. It is wholly a matter of speculation. An answer would not add any evidential weight to the hearings.

Mr. REDWINE. I submit when the witness replied to Mr. Volin, Mr. Chairman, that he also gave an opinion.

Mr. THOENEN. No, I gave no opinion.

Mr. REDWINE. Just what you had found.

Mr. THOENEN. That's all.

Mr. REDWINE. However, it was your opinion at that time that you had complied with the request?

Mr. THOENEN. No.

Mr. REDWINE. Of Mr. Volin?

Mr. THOENEN. No. I told him that I had no other information.

Mr. REDWINE. Let me ask you this, Mr. Thoenen:

Did you take into consideration when you replied to Mr. Volin that here was a directory 5 years old about which you knew absolutely nothing as to how they decided whether any given name should be in the directory or not? Did you take that into consideration, Mr. Thoenen?

Mr. THOENEN. I merely told him——

Mr. REDWINE. However, you, on the other hand, did not know how they compiled it. On the preface of it, did they disclaim any responsibility as to the competency of the firms listed there?

Mr. THOENEN. I don't know whether they did or not. I don't recall that.

Mr. REDWINE. Mr. Chairman, those are all the questions I have of this witness.

Senator NEUBERGER (presiding). Are there any other questions?

Representative JONAS. May I ask a question? It is not my time.

Senator NEUBERGER. Go right ahead.

Representative JONAS. I yield to the Senator.

Senator KUCHEL. May I ask this question of the counsel?

Is it the purpose of the counsel in asking these questions to impeach the Williams Co. through the use by the witness of a Department of Commerce publication? Is that the purpose for the counsel's question?

Mr. REDWINE. No, not at all.

Senator KUCHEL. What was the purpose of calling this witness?

Mr. REDWINE. As to what precautions were taken by the Bureau of Mines employees to determine whether the assayer selected that the Government representatives had agreed to make this assay was a competent assayer.

Senator KUCHEL. I will ask the witness:

What was the tenor of the teletype message which you received? Did it order you to take any specific action? I mean will you repeat your answer to the earlier question?

Mr. THOENEN. I have the teletype telegram here.

Senator KUCHEL. Would you read it, please?

Mr. THOENEN. It is addressed to John R. Thoenen, acting regional director, region VII, Bureau of Mines, Norris, Tenn.:

Re our letter to you November 9 information on A. W. Williams Inspection Co., post-office box 314, Mobile, Ala. Check reputation of firm for assaying gold, silver, lead, zinc, and possibly other metals in connection umpire on appeal of patent application mining claims. Acting as Government representative in this resampling claims. Applicant wants samples assayed by Williams Inspection Co. Wire reply because sampling must be undertaken immediately to avoid snow conditions.

M. E. VOLIN,

*Chief, Mining Division, Bureau of Mines, Spokane.*

Senator KUCHEL. I will ask you the question whether or not you acceded to that directive and carried it out.

Mr. THOENEN. Well, I took it as a request. It is not a directive. It is a request to me.

Senator KUCHEL. All right; call it a request.

Mr. THOENEN. To which I replied as follows:

Re your telegram today. Williams Inspection Co., of Mobile, is listed in Department of Commerce directory and has O. K. of State geologists of Alabama by telephone to me today. No other information available. Letter not received.

Senator KUCHEL. Had you known the State geologist of Alabama by reputation?

Mr. THOENEN. Yes; for a number of years.

Senator KUCHEL. Did he have a good reputation in his professional field?

Mr. THOENEN. Yes.

Representative HOFFMAN. Will the Senator yield there?

Senator KUCHEL. Yes.

Representative HOFFMAN. You notice when Mr. Redwine was asking him about this, he omitted the State geologist. He tried to get the witness to swear to the wrong thing, that he relied upon the Commerce report, which was not true.

Senator KUCHEL. I say very frankly to the chairman that it seems to me that the time taken by the committee in listening to this Federal

employee is productive of very little good because I think the directive or the request and his answer speak for themselves, and it seems to me that in asking information from the topmost employee at the State government for a professional answer is about all that anyone would normally or reasonably do.

Those are all the questions I have, Mr. Chairman.

Mr. COBURN. Mr. Chairman, could I ask the witness just one question?

Senator NEUBERGER. Mr. Coburn.

Mr. COBURN. Mr. Thoenen, did you, at the time of this inquiry which was made of you by Mr. Volin, have any knowledge of the competency or the reliability of the A. W. Williams Co.? Did you yourself have that knowledge?

Mr. THOENEN. No, sir.

Mr. COBURN. Had you ever heard of the company?

Mr. THOENEN. No, sir.

Mr. COBURN. That is all.

Representative CHUDOFF. I would like to ask the witness one question. I think you testified that when you received this inquiry concerning the reputation of the Williams Co., you contacted the State geologist of the State of Alabama and he said as far as he knew, they were O. K. Did you attempt to make further inquiries with anybody else to determine their competency?

Mr. THOENEN. No, sir.

Representative CHUDOFF. In other words, you just felt that if the State geologist of Alabama said he was O. K., then that made it positive.

Mr. THOENEN. It was satisfactory to me.

Representative CHUDOFF. You did not know the reason why they wanted this information?

Mr. THOENEN. No. Well, except in this telegram.

Representative CHUDOFF. Had you known it was concerning the Al Sarena case and you knew about the Al Sarena case, you certainly would have made further inquiries?

Mr. THOENEN. I think that was mentioned. Oh, possibly in his letter, which came later.

Representative CHUDOFF. However, you did not have the letter at the time?

Mr. THOENEN. No.

Representative CHUDOFF. However, you knew there was a very, very substantial controversy concerning the Al Sarena case?

Mr. THOENEN. No, sir.

Representative CHUDOFF. You did not know anything about it?

Mr. THOENEN. No.

Representative CHUDOFF. Had you known there was a controversy, certainly you would not have just left it to the State geologist of Alabama; you would have made other inquiries; would you not?

Mr. THOENEN. In the first place, I don't know where I would have made other inquiries. I thought Walter would know better than anyone to whom I could refer.

Representative CHUDOFF. So what you were trying to tell me, Mr. Thoenen, is that, as far as you were concerned, you were not a very good source of information to determine whether Williams—

Mr. THOENEN. Very poor source.

Representative CHUDOFF. And if they really wanted to find out about the Williams Co., they should have gone to somebody else, not you?

Mr. THOENEN. Yes.

Senator BARRETT. May I ask a question?

Senator NEUBERGER. Certainly, Senator.

Senator BARRETT. Apparently from your wire you had the O. K. of the State geologist of Alabama, and I believe you testified that you had confidence in his integrity and his ability, and his knowledge of the field, and also you found the name of the Williams Inspection Co. in the book listed by the Department of Commerce for 1947.

I would like to ask you this question: Have you had occasion since the inspection was made to determine the standing of the Williams Inspection Co. and, if so, I would like to ask you to tell the committee here and now whether the Williams Inspection Co. is reliable according to the information available to you at this time?

Mr. THOENEN. I have had no occasion to look into the matter further since that telegram.

Senator BARRETT. Do you know of any reason to suspect or to doubt the ability or the integrity or the honesty of the Williams Inspection Co. at this time?

Mr. THOENEN. No, sir.

Representative CHUDOFF. Did you know about the reports of the GSA, the General Services Administration, concerning the bad assays they had received from the Williams Co.?

Mr. THOENEN. No, sir.

Representative CHUDOFF. Did you hear the testimony, or were you here when the testimony was given, concerning the bad results they got from the Williams Co. when the letter was read into the record?

Representative JONAS. Will you yield there, my colleague, chairman of my subcommittee?

Representative CHUDOFF. I do not mind yielding.

Representative JONAS. I do not think you have asked him a proper question. The GSA has not testified.

Representative CHUDOFF. A letter was read from the GSA.

Representative JONAS. And it was not dated until September 1955; and what this man did was in 1953.

Representative CHUDOFF. All I am asking him is whether he heard the letter read. I am not asking him anything about the contents. Did you hear the letter read?

Mr. THOENEN. I heard parts of it. I could not hear too well in the back of the room.

Representative CHUDOFF. From what you heard, will you agree that the GSA complained that this company did not do a good job?

Mr. THOENEN. I would not know.

Representative CHUDOFF. You do not know enough about it?

Mr. THOENEN. No; I do not.

Senator GOLDWATER. I would just like to comment on that last line of questioning by the Congressman.

It never was developed that day, that I can recall, whether or not the number of cars that were in dispute was an unusually large number. In this type of program it is not unusual to have a contest between the Government and those who are shipping it. I do not think we can judge the Williams Co. on the number of cars that were pre-

sented in evidence that day unless that number was in excess of what is happening around the country.

I think we have been extremely unfair to the Williams Co.

In fact, I make this statement:

If I were the Williams Co. and read the editorial in the Washington Post, my lawyers would have been in their office the next morning.

I do not think it is right to judge here. We have not presented any evidence, to my knowledge, that would cause me to question the Williams Co. I think that should be explored further, if you wanted to press that point.

Representative HOFFMAN. Mr. Chairman, will the Senator yield?

Senator GOLDWATER. Yes.

Representative HOFFMAN. One of the complaints of GSA, as I recall, was that certain cars had been sent on without being tested, but the testimony also showed beyond any dispute that those cars were removed by the railroad company and not on the orders of Williams.

Representative JONAS. Will you yield?

Representative HOFFMAN. Surely. The Senator has the time.

Representative JONAS. The only evidence and the only testimony that is before this committee involving the GSA is that they never made any complaint to the Williams Co. whatsoever, and the only scrap of paper indicating any dissatisfaction was the letter which was dated in September of this year; but I asked yesterday, "Why do we not call the inspector from GSA if we wanted to get the facts about that situation from Atlanta, the inspector who inspected the material?" He is the one who will know; not Mr. Walsh downtown.

Representative CHUDOFF. I just say that all this is much to do about nothing. I think we ought to proceed. What we are doing is arguing the Williams-GSA case, and certainly this is a factfinding body. Let us get some facts.

The letter is in the record. It speaks for itself.

Representative JONAS. Before the witness leaves I have a question. Had you finished?

Senator GOLDWATER. Yes; I finished.

Representative JONAS. Mr. Thoenen, your jurisdiction embraces Alabama?

Mr. THOENEN. Yes, sir.

Representative JONAS. How many other States? Tennessee and Alabama?

Mr. THOENEN. Tennessee; seven States in all. At that time we had Mississippi. Since, Mississippi has been—

Representative JONAS. All I am interested in is Alabama.

Did your duties for you to go to Alabama frequently?

Mr. THOENEN. Occasionally.

Representative JONAS. How often had you been in the State of Alabama?

Mr. THOENEN. Well, I lived at Tuscaloosa for 8 years at our station there.

Representative JONAS. Did you have any representatives in the State of Alabama under your control?

Mr. THOENEN. Yes.

Representative JONAS. Where were they located?

Mr. THOENEN. Tuscaloosa.

Representative JONAS. How far is that from Mobile?

Mr. THOENEN. Oh, I'd say 200, 300 miles.

Representative JONAS. What is he, a subordinate of yours?

Mr. THOENEN. At that time, yes. I was acting as regional director and he was then in the experiment station at Tuscaloosa.

Representative JONAS. You mean you had an experiment station there?

Mr. THOENEN. That's right.

Representative JONAS. When you were put on notice by this telegram from Mr. Volin that a controversy existed and he was seeking information as to the reliability of the Williams Co., and he worked for the same Bureau of Mines that you work for, and you acted upon his telegram, why did you not display a little more initiative and aggressiveness in finding out something about the Williams Co.? Why did you not call your own office in Tuscaloosa?

Mr. THOENEN. Well just prior to the time that I went to Knoxville, I had been for 8 years superintendent of the Tuscaloosa station, and was fairly familiar, quite familiar I might say, with the records in that office. I didn't know of anything that we had in that office that would refer to the Williams Co.

Representative JONAS. Well, you had a man there.

Mr. THOENEN. That's right.

Representative JONAS. How many staff members?

Mr. THOENEN. Oh, probably 30.

Representative JONAS. Thirty? The only reason you say you did not get in touch with that office is because you did not think they would know anything more about it than you?

Mr. THOENEN. That's right.

Representative JONAS. You could not think of anybody else in the State of Alabama except the state geologist to inquire of?

Mr. THOENEN. Oh, I probably could have thought of some other people, but I thought he would know better than anyone else.

Representative JONAS. That is a very good answer and I think that is the reason you relied on his statement.

Mr. THOENEN. That's right.

Representative JONAS. However, there is not any doubt in your mind now, and there was no doubt in your mind at the time you received that telegram, that this was an important matter you were being asked to give some counsel on?

Mr. THOENEN. That's right.

Representative JONAS. Because the telegram specifically directed your attention to the fact that they want this assay house to act as an umpire in the settlement of a dispute.

Mr. THOENEN. That's right.

Representative JONAS. And he was asking you to investigate and report on the reliability of the Williams Co.

Mr. THOENEN. Yes.

Representative JONAS. And you, as a responsible official of the Bureau of Mines, undertook to do that to the best of your ability: is that right?

Mr. THOENEN. That's correct.

Representative JONAS. And you think you did do that and satisfied yourself at least that this was a reliable house and one that you could recommend to the Spokane office?



Mr. THOENEN. I expressed no opinion of my own at all.

Representative JONAS. I know you did not. You stated that the State geologist said they were O. K.

Mr. THOENEN. That's right.

Representative HOFFMAN. And he says the State geologist is all right, so what more do you want?

You do not regard everybody you do business with with suspicion, do you?

Mr. THOENEN. No.

Representative HOFFMAN. You better if you are going to do business with the House committees.

Representative JONAS. I was just wondering if there was something else he might have done to bolster his judgment, or some other information he might have elicited from some other source.

However, you think the office of the State geologist was the proper place to go for that information?

Mr. THOENEN. I thought so at the time.

Representative JONAS. What do you think now?

Mr. THOENEN. I still think so.

Representative HOFFMAN. Do you not know, if you had been floating around with a half dozen other fellows, they would accuse you of taking tax dollars?

Mr. THOENEN. Probably.

Representative HOFFMAN. How much did it cost, do you know, to bring you up here on this one? Your testimony is not any different from that of Mr. Volin, is it?

Mr. THOENEN. No.

Representative HOFFMAN. And how long have you been here?

Mr. THOENEN. Well, I came up last week and went back, and came back again this week.

Representative HOFFMAN. And I think you testified a while ago that ever since this you have never heard anything against the Williams Co.?

Mr. THOENEN. No, sir.

Representative HOFFMAN. Except what has been thrown around here in the committee room by counsel.

Mr. THOENEN. That's right.

Representative HOFFMAN. And you would not want to rely on that, would you? You need not answer that.

Representative JONAS. You mean you were here last week?

Mr. THOENEN. Yes, sir.

Representative JONAS. How many days have you been in Washington on this?

Mr. THOENEN. I was here 2 days and went back, and I was here yesterday and today.

Representative HOFFMAN. Who called on you when you were down home? Mr. Redwine?

Mr. THOENEN. No.

Representative HOFFMAN. Who did? Anybody?

Mr. THOENEN. No. From the committee, you mean?

Representative HOFFMAN. Yes.

Mr. THOENEN. No.

Representative HOFFMAN. They just told you to come up?

Mr. THOENEN. That's right.

Representative HOFFMAN. I have no more questions.

Mr. COBURN. Mr. Thoenen, how long have you known Mr. Volin?

Mr. THOENEN. I think I met Mr. Volin about 1951 or 1952. I'm not sure what year it was.

Mr. COBURN. You had known him before you received this inquiry from him?

Mr. THOENEN. That's right.

Mr. COBURN. You had been associated together in the work of the Bureau of Mines?

Mr. THOENEN. No. He was in the West. I have been in the East.

Mr. COBURN. Did you, at the time that you received the inquiry, realize that Mr. Volin was relying on you for an accurate appraisal of the Williams Co.?

Mr. THOENEN. My impression, whether wrong or right I don't know, but my impression at the time was that I was probably one of several that he had inquired of.

Mr. COBURN. You heard his testimony to the effect that this was the sole inquiry that he made?

Mr. THOENEN. Yes, sir.

Mr. COBURN. You were present in the room at that time?

Mr. THOENEN. Yes, sir.

Mr. COBURN. You also heard him state that he would have to take responsibility for that decision?

Mr. THOENEN. Yes, sir.

Mr. COBURN. That is, to rely on the information you gave him, and to rely solely on that information?

Mr. THOENEN. I don't recall that he said that.

Mr. COBURN. I think the record will show that he said he had to admit that he relied solely on that information. However, you did not realize that at the time of the inquiry?

Mr. THOENEN. No.

Mr. COBURN. You just thought it was a routine inquiry?

Mr. THOENEN. That's right.

Mr. COBURN. Despite the language of the telegram?

Mr. THOENEN. Well, I took the language of the telegram into consideration, yes.

Mr. COBURN. So that you knew there was a controversy?

Mr. THOENEN. That's right.

Mr. COBURN. You knew it was of some importance to Mr. Volin?

Mr. THOENEN. That's right.

Mr. COBURN. And yet the two sources that you contacted were the 1947 directory of the Department of Commerce and the word of the State geologist?

Mr. THOENEN. Yes, sir.

Mr. COBURN. That is all.

Representative CHUDOFF. Mr. Chairman.

Mr. Thoenen, did you have any conversation with any of the lawyers of the Interior Department before you testified here today?

Mr. THOENEN. I talked to Mr. Parriott on the telephone and I talked to him in my hotel room for a few minutes one night last week.

Representative CHUDOFF. Did he call you and see you, or did you call and ask him to come over?

Mr. THOENEN. He called to see me.

Representative CHUDOFF. And he asked you what you were going to testify to; is that it?

Mr. THOENEN. He asked me if I had known of the Williams Co. before that or if I had known anything of them after this matter, this exchange of telegrams; that's all.

Representative CHUDOFF. And you had no other conferences with any other members of the Interior Department?

Mr. THOENEN. I talked to Tom Miller, the acting director, yes, on the telephone.

Representative CHUDOFF. Did he call you, or did you call him?

Mr. THOENEN. I don't recall.

Representative CHUDOFF. What did you talk about?

Mr. THOENEN. The same thing. He asked me if I knew anything about the company prior to this telegram, or had made any inquiry concerning them since.

Representative CHUDOFF. That is all.

Mr. LANIGAN. I just want to ask you this:

When you said that the Williams Co. was listed in the Department of Commerce directory, did you mean that they were listed as assayers?

Mr. THOENEN. Yes.

Mr. LANIGAN. And what was the basis of your deciding they were listed as assayers?

Mr. THOENEN. There was some 30 or more different code numbers listed opposite their name referring to the type of investigations they made. Those codes were referred to in an earlier listing of codes in the same publication.

Mr. LANIGAN. Do you recall which symbols you concluded meant that they did assay work?

Mr. THOENEN. Chemical symbol C.

Mr. LANIGAN. You relied on the chemical symbol?

Mr. THOENEN. Yes.

Senator NEUBERGER. May I ask a question?

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Prior to the time you received the telegram or teletype from Mr. Volin, had you ever heard of the Williams Inspection Co., Mr. Thoenen?

Mr. THOENEN. No, sir.

Senator NEUBERGER. Yet you have said that you were familiar with mining operations in Alabama.

Mr. THOENEN. That's right.

Senator NEUBERGER. Is that correct?

Mr. THOENEN. That's right.

Senator NEUBERGER. However, you had not heard of the Williams Inspection Co.?

Mr. THOENEN. No, sir.

Senator NEUBERGER. How long have you been with the Bureau of Mines?

Mr. THOENEN. Since 1927.

Senator NEUBERGER. Had you ever before encountered any such proceedings or instructions such as you received in this case in your own role?

Mr. THOENEN. I haven't received any instructions in this case.

Senator NEUBERGER. As far as your own role is concerned in checking on this company with respect to the ore samples and so on, had you had similar requests made of you?

Mr. THOENEN. I don't recall any.

Senator NEUBERGER. Have you ever heard of any other occasion when ore samples or mineral samples were sent from Oregon or some other Pacific Northwest State to Alabama for assaying? Is this the only time in your experience that you have heard of such a transcontinental assaying or testing of ores?

Mr. THOENEN. So far as I'm officially concerned with the Bureau, yes.

Senator NEUBERGER. Thank you very much. That is all I have.

Senator SCOTT. Are there any further questions?

Representative JONAS. Mr. Chairman, I will have to ask one following the questioning of Mr. Chudoff.

You testified that you have spoken with Mr. Miller, your superior, in the Bureau of Mines, and with Mr. Parriott?

Mr. THOENEN. That's right.

Representative JONAS. Since coming to Washington?

Mr. THOENEN. Yes.

Representative JONAS. And you have related the subject of the conversations with him. Did either one of those gentlemen coach you in how you should testify here, or undertake any advice to you as to what you should say, or try to get you to change your testimony in any way?

Mr. THOENEN. No, sir.

Representative JONAS. Did anyone in the Department of the Interior or elsewhere undertake to subject you to any pressure about what you would testify about in this case?

Mr. THOENEN. No, sir.

Representative JONAS. Or offer you any advice or any suggestions as to what you should say?

Mr. THOENEN. No, sir.

Representative JONAS. Was the sum and substance of their inquiries of you just about what it has been here today, what steps you took to check on the Williams Co.?

Mr. THOENEN. That's right.

Representative JONAS. You did not consider it was improper, the sort of things they asked you?

Mr. THOENEN. No, sir.

Representative JONAS. Thank you.

Senator BARRETT. Let me ask one question, Mr. Chairman.

Since this matter has come up, have you had any reason to doubt the veracity or the action taken by the State geologist in O. K.'ing this company?

Mr. THOENEN. No, sir.

Senator BARRETT. Do you think that you fulfilled your duty insofar as this wire was concerned by requesting the advice and the judgment of the State geologist of Alabama insofar as the standing of this Williams Inspection Co. is concerned?

Mr. THOENEN. I do.

Senator BARRETT. If you had to do it over, would you do anything different?

Mr. THOENEN. I doubt it.

Senator BARRETT. Of course not.

Senator SCOTT. Are there any further questions?

I want to thank you for appearing and being willing to come and come willingly, for your provided vacation away from your work.

Mr. McArdle, the chief of the Forest Service, will you come forward, please, sir?

Mr. McArdle, I will ask Congressman Chudoff to swear you in, please, sir.

Representative CHUDOFF. Will you please raise your right hand?

What is your full name?

Mr. McARDLE. Richard E. McArdle.

Representative CHUDOFF. Do you solemnly swear the testimony you are about to give before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McARDLE. I do.

Representative CHUDOFF. Be seated, please.

Senator SCOTT. Mr. Redwine.

#### TESTIMONY OF RICHARD E. McARDLE, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. REDWINE. Mr. McArdle, I am kind of at a loss as to how to address you; Mr. McArdle, Dr. McArdle, or what? Out in the field, I found almost without exception your subordinates rather affectionately called you the chief.

What shall we say? Dr. McArdle or the chief?

Mr. McARDLE. Any term you please, Mr. Redwine, only don't call me too often.

Mr. REDWINE. Chief, do you happen to have a statement with you you would like to read at this time, sir?

Mr. McARDLE. I do, Mr. Redwine. I think it might help to clarify the situation, but I am at your disposal to answer questions or read this 2- or 3-minute statement if you like.

Mr. REDWINE. Will you please read your statement, sir?

Senator SCOTT. Go right ahead, Doctor.

Mr. McARDLE. Mr. Chairman and other members, I am glad to respond to your request to testify in connection with your investigation of mining patents issued to Al Sarena Mines, Inc., on the Rogue River National Forest in Oregon. At field hearings in Portland, Oreg., last November you received testimony from several Forest Service witnesses

I have reviewed the transcript of their testimony and have only a brief supplementary statement to make.

The national forests in the West are largely reserved from the public domain by Presidential proclamation pursuant to the act of March 3, 1891. The lands of the Rogue River National Forest, within which the mining claims in question were located, were reserved for national forest purposes under Presidential proclamation of September 28, 1893.

Such national forest lands are subject to mineral location under the general mining laws in the same manner as public domain lands not reserved for national forest purposes. The mining claims in question were located at various times from 1897 through 1936.

The Department of Agriculture administers the surface resources of the national forests. The Department of the Interior administers the mining laws. Therefore, both departments have an interest in, and responsibility with respect to, mining claims and applications for patent under the mining laws when the lands involved are national forest lands.

The Department of Agriculture has always favored and encouraged the bona fide development of the mineral resources underlying the national forests. It has opposed the use of the mining laws by individuals who do not have a bona fide interest in mining, and whose purpose is to obtain use or title to tracts of lands in the national forests primarily valuable for timber or other nonmineral purposes.

There are estimated to be about 200,000 mining claims on the national forests embracing about 4 million acres.

The enactment of Public Law 167 in July 1955 by the 84th Congress was evidence that the mining industry, conservation interests, and administrators of Federal land can work together with the Congress toward solution of the conflicts of interest which arise between surface and subsurface resources.

By a joint order of the Secretaries of Agriculture and Interior which dates back to 1915, the Department of the Interior notifies the Department of Agriculture of all applications to patent mining claims occurring on national forest land. All such claims are examined by qualified mineral examiners employed by the Forest Service, or by mineral examiners from the Bureau of Land Management. These mineral examiners are qualified and experienced mineralogists, geologists, or mining engineers.

The purpose of such examinations is to determine whether the claimant has met the requirements of the mining laws respecting the discovery of minerals and performance of minimum development work. Based on reports of these mineral examiners, the regional foresters, in turn, report to the appropriate field officials of the Bureau of Land Management either recommending issuance of patent or filing a protest against issuance.

If the Forest Service files a protest and if the applicant decides to press his application notwithstanding such protest, a hearing is held by Bureau of Land Management field officials and a decision rendered by them. This decision of the Bureau of Land Management field office may be appealed by either party to the Director of the Bureau of Land Management in Washington, and ultimately to the Secretary of the Interior.

The application for patent of the Al Sarena mining claims has been handled in a standard and normal manner insofar as Forest Service actions have been involved.

In accordance with the agreement between Agriculture and Interior and the rules of practice of the Department of the Interior, the Manager of the Bureau of Land Management office at Portland sent a copy of the application for patent by Al Sarena Mines, Inc., to the Portland office of the Forest Service on December 7, 1948. At that time the Forest Service did not have a mineral examiner assigned to our Portland office, so the regional forester there arranged with the Bureau of Land Management for Mr. E. M. Hattan, a Bureau of Land Management mineral examiner, to make the examination for the Forest Service. This was done in May 1949.

Mr. Hattan's examination and the assay results of the samples he took raised a question in his mind as to whether there was a sufficient showing of minerals to meet the requirements for patenting on some of the 23 claims.

In order to forestall any possibility of error, Mr. Hattan recommended that a Forest Service mineral examiner collaborate with him in a reexamination of the claims.

In accordance with this request, a Forest Service mineral examiner, William C. Sanborn, assigned to our San Francisco office, accompanied Mr. Hattan on a reexamination of the claims July 12-15, 1949. Both of these men testified before your committee last November in Portland.

A report was then prepared by Mr. Hattan, concurred in by Mr. Sanborn, and submitted to our regional forester at Portland. This report recommended that application for patent be protested for 15 of the 23 claims involved.

The Regional Forester accepted this recommendation and formally filed his protest on April 11, 1950.

In September 1950, a hearing was held before the manager of the Bureau of Land Management's Portland office, at which the Forest Service presented its evidence.

On December 14, 1950, the manager rendered a decision denying application for patent to the 15 protested claims. This was appealed by Al Sarena Mines, Inc., to the Director of the Bureau of Land Management, and a decision was rendered by the assistant director on April 27, 1951, sustaining the original decision.

The claimants appealed that decision to the Secretary of the Department of the Interior, acting under delegation from the Secretary, reversed the earlier decisions, and ordered that patent be issued to all 23 of the claims. This patent was issued on February 11, 1954.

Since that time the Forest Service has treated the patented lands exactly as any other private lands within the exterior boundaries of the national forests.

The briefs filed by the Forest Service and the testimony of Forest Service employees before the manager of the Bureau of Land Management in Portland fully reflected Forest Service views and reasons why the Forest Service protested issuance of patent to 15 of the 23 claims.

The views of the Forest Service and its evidence were presented to the Department of the Interior at the hearing before the manager and were a part of the record on the appeals to the director of the Bureau of Land Management and the Secretary of Interior.

Because of the attention directed to this case by your committees, I have checked into Forest Service actions with respect to it with the utmost care.

I am convinced that the Forest Service employees associated with the case acted in good faith and performed their duties in a satisfactory manner.

Mr. REDWINE. Chief, tell the committee something about your career and background in the Forest Service, will you, please?

Mr. McARDLE. I have been in the Forest Service for 32 years, starting in Idaho and in Oregon and in Washington, and in Colorado, Wyoming, and South Dakota; then in the southeastern States, and finally here in Washington.

I started in the research field and changed to the branch which has to do with cooperative relationships with States and private industry, and have been the director of two forest experiment stations.

I was assistant chief here in Washington for about 8 years before I became chief in June of 1952.

Mr. REDWINE. Chief, I believe the chairman of the Senate Committee would be interested in knowing whether you were ever stationed in his State.

Mr. McARDLE. I was stationed in Asheville, N. C.

Senator SCOTT. You worked largely, then, with the Pisgah National Forest and program in the western Carolinas?

Mr. McARDLE. Yes, sir, but the territory at that time, Senator Scott, included also Virginia and West Virginia, Kentucky, and South Carolina.

Senator SCOTT. And you also knew about the Biltmore estate and that development there by Mr. Pinchot, who later became Governor of Pennsylvania?

Mr. McARDLE. I do; yes, sir.

Senator SCOTT. That was a good piece of work; was it not?

Mr. McARDLE. That was a fine piece of work.

Senator SCOTT. The time when you were there which, as you mentioned in the beginning of your testimony, was around 1949, was when this thing became active out in Oregon?

Mr. McARDLE. May I correct you slightly, Senator Scott? I came to Washington in 1944 as Assistant Chief. You were probably thinking of 1939. You are thinking of a meeting that you and I had in, I think, about 1939.

Senator SCOTT. That has been a long time ago. A lot of things have happened. I was commissioner of agriculture and we had a lot of mutual problems which we needed to discuss from time to time. That is when I became acquainted with you.

Mr. McARDLE. We did; yes, sir.

Senator SCOTT. Proceed.

Mr. REDWINE. Chief, getting right down to the nub of what the committee wants to know, among many things, from you, relating directly to the sampling and assaying of the 15 contested claims and the decision of the Solicitor that flowed from that, was the Forest Service ever advised that such a procedure was going on?

Mr. McARDLE. Do I understand you, Mr. Redwine, to mean the sampling done by the Bureau of Mines?

Mr. REDWINE. Yes, sir.

Mr. McARDLE. We were not informed; no, sir.

Mr. REDWINE. You were never informed. The first you knew of it was when? How did you first learn that there had been this sampling, these additional assays, and a decision rendered based on them?

Mr. McARDLE. When we read the decision of the Solicitor in January of 1954.

Mr. REDWINE. Chief McArdle, has there ever been such procedure followed in any other case respecting forest lands?

Mr. McARDLE. Not to my knowledge. It is within the province of the Secretary of the Interior under the rules of the Department to call in outside witnesses.



Mr. REDWINE. That is beside the point, sir. I do not blame you for bringing that in, but, to your knowledge, that has never been done except in this case involving forest lands?

Mr. McARDLE. So far as I know, in no case affecting the Forest Service.

Senator SCOTT. When the Secretary or Assistant Secretary overrules in a matter of this kind, is the Department called into the matter to let you know what is going to be done or anything of that kind?

Mr. McARDLE. The Department of Interior rules of practice require that the party appealing a decision provide the other party with a copy of his appeal brief. We are thus informed each time a claimant appeals a decision of the Manager or Director of the Bureau of Land Management.

Senator SCOTT. Would you call this an unusual procedure as developed in this case?

Mr. McARDLE. Well, it was different than anything I experienced before; yes, sir.

Mr. REDWINE. Chief McArdle, do many cases arise where one seeks patent on forest lands and the Forest Service protests the granting of patents?

Mr. McARDLE. I couldn't give you a figure. I would say that it is more than occasional.

Mr. REDWINE. It is more than occasional. Let us pursue that. Then it goes to the Bureau of Land Management hearing officer for determination; does it not?

Mr. McARDLE. If the claimant objects to our protest.

Mr. REDWINE. Assuming that the claimant objects to your protest, then it goes to a hearing before a Bureau of Land Management hearing officer?

Mr. McARDLE. A local Bureau of Land Management employee.

Mr. REDWINE. Yes, local.

Let me ask you this: May either the Bureau of Land Management or the petitioner for a patent appeal that decision?

Mr. McARDLE. The decision is made by the local manager for the Bureau of Land Management and we may appeal or the claimant may appeal.

Mr. REDWINE. To whom? I am talking about appeal from the local hearing officer.

Mr. McARDLE. To the Director of the Bureau of Land Management.

Mr. REDWINE. Yes, sir. Then what happens?

Mr. McARDLE. Then, if that decision does not suit either party, either party may appeal to the Secretary of the Interior.

Mr. REDWINE. Now, in your experience, where the question was on appeal to the Secretary of the Interior, have you ever been called in to offer additional testimony or anything of that nature to the Secretary of the Interior on an appeal?

Mr. McARDLE. Mr. Redwine, I don't know the answer to that question. I think the original record is made at the local level and that is the record which is reviewed at each stage as it goes up, but I don't know exactly.

Mr. REDWINE. In other words, it is your recollection that the matter is decided at the Secretary's level on the basis of the evidence presented at the local level?

Mr. McARDLE. I think that is the answer; yes.

Mr. REDWINE. That is normal procedure, according to your belief?

Mr. McARDLE. That has been normal procedure; yes, sir.

Mr. REDWINE. That has been normal procedure?

Mr. McARDLE. I think so, but, if you want the exact answer to that, you must ask it of our lawyers.

Mr. REDWINE. Will you make one of the solicitors of your department available to us if the committee desires to ask that question?

Mr. McARDLE. Yes, sir.

Mr. REDWINE. Can you, from memory, tell the committee whether there has ever been a case where a matter was on appeal and the Secretary remanded it back to the lower level for further proceedings?

Mr. McARDLE. I can't answer that, either.

Mr. REDWINE. I make the same request from your solicitor, please.

Mr. McARDLE. I can furnish the answer.

Mr. REDWINE. Please furnish that in writing. We will furnish the questions in writing, and may that be included in the record, Mr. Chairman?

Senator SCOTT. Will you do that, Doctor?

Mr. McARDLE. Yes; we will do that.

Senator SCOTT. It will be included in the record.

(See p. 433.)

Representative JONAS. Before you go on, I do not quite understand what Mr. Redwine proposes. He is going to ask a lawyer in the office of the Forest Service something about the procedure followed in the office of the Secretary of the Interior.

That is not quite according to Hoyle, is it?

Mr. REDWINE. Mr. Chairman, if I may say, what we are asking for is what has been the experience of the Forest Service in respect to Forest Service lands up for patent in a case such as has been postulated; what has been the experience as to whether it is remanded for further hearing, or just how is it handled.

Representative JONAS. Well, the Forest Service does not have anything to do with the hearing. It is one of the contesting parties at the hearing. It is the Bureau of Land Management that conducts the hearing.

Mr. REDWINE. But the Forest Service is the interested party.

Representative JONAS. It is just one of the parties to a contest.

Mr. REDWINE. One of the parties; yes, sir.

Representative JONAS. You are asking one of the parties to a contest to tell you something about the procedures used by the judge when you have the judge available. I think the inquiry should be directed to the Bureau of Land Management or to the Secretary of the Interior if you want the best answer.

Mr. REDWINE. Mr. Chairman, may I say that what we are trying to develop here is: Does the contestant, which in a case of this kind is the Forest Service, ever get an opportunity to offer additional testimony, or are they shut out, as was done in the Al Sarena case? Do they have an opportunity to rebut the new testimony offered by the petitioner and to cross-examine, which the rules of procedure very definitely call for, that both parties shall have the right to cross-examine the witnesses offered by the other side?

Mr. REDWINE. That is beside the point, sir. I do not blame you for bringing that in, but, to your knowledge, that has never been done except in this case involving forest lands?

Mr. McARDLE. So far as I know, in no case affecting the Forest Service.

Senator SCOTT. When the Secretary or Assistant Secretary overrules in a matter of this kind, is the Department called into the matter to let you know what is going to be done or anything of that kind?

Mr. McARDLE. The Department of Interior rules of practice require that the party appealing a decision provide the other party with a copy of his appeal brief. We are thus informed each time a claimant appeals a decision of the Manager or Director of the Bureau of Land Management.

Senator SCOTT. Would you call this an unusual procedure as developed in this case?

Mr. McARDLE. Well, it was different than anything I experienced before; yes, sir.

Mr. REDWINE. Chief McArdle, do many cases arise where one seeks patent on forest lands and the Forest Service protests the granting of patents?

Mr. McARDLE. I couldn't give you a figure. I would say that it is more than occasional.

Mr. REDWINE. It is more than occasional. Let us pursue that. Then it goes to the Bureau of Land Management hearing officer for determination; does it not?

Mr. McARDLE. If the claimant objects to our protest.

Mr. REDWINE. Assuming that the claimant objects to your protest, then it goes to a hearing before a Bureau of Land Management hearing officer?

Mr. McARDLE. A local Bureau of Land Management employee.

Mr. REDWINE. Yes, local.

Let me ask you this: May either the Bureau of Land Management or the petitioner for a patent appeal that decision?

Mr. McARDLE. The decision is made by the local manager for the Bureau of Land Management and we may appeal or the claimant may appeal.

Mr. REDWINE. To whom? I am talking about appeal from the local hearing officer.

Mr. McARDLE. To the Director of the Bureau of Land Management.

Mr. REDWINE. Yes, sir. Then what happens?

Mr. McARDLE. Then, if that decision does not suit either party, either party may appeal to the Secretary of the Interior.

Mr. REDWINE. Now, in your experience, where the question was on appeal to the Secretary of the Interior, have you ever been called in to offer additional testimony or anything of that nature to the Secretary of the Interior on an appeal?

Mr. McARDLE. Mr. Redwine, I don't know the answer to that question. I think the original record is made at the local level and that is the record which is reviewed at each stage as it goes up, but I don't know exactly.

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Representative HOFFMAN. It does not state that they have that right before the Secretary, does it; or, if it does, where is the law that says they shall have the right to put in witnesses before the Secretary?

Mr. REDWINE. Mr. Chairman, the whole question goes as to remanding the matter to the hearing officer, as to what the procedure is on that.

Representative JONAS. I think we would all stipulate that the Secretary has the right to remand or the right to affirm or the right to reverse. I mean that we do not need to clutter up the record getting testimony on that. Will we not all agree that the Secretary could have remanded this case if he had elected to do so?

Mr. REDWINE. The answer that counsel is trying to develop is as to whether in the past it has been the practice to remand in cases of this kind, or whether this is the first and only time where the taking of additional testimony was allowed that it was not remanded but was handled at that level.

Representative CHUDOFF. I would like to understand the issue in this case, because I get confused as to what is going on.

The issue is that they got notice of the appeal, but they got no right to examine the new evidence produced by the claimants, the Al Sarena Co., concerning the assays. They did not have an opportunity to combat the new evidence given by them or to cross-examine it to determine whether it was good evidence.

Representative HOFFMAN. Mr. Chairman, both Sanborn and Hattan took samples and put in their case in September 1950 before the examiner.

Representative CHUDOFF. Is it not good court and hearing procedure that where new evidence is to be taken, the appellate division of the court refers it back to the lower court to take the evidence? They do not take the evidence themselves and decide the case on the basis of new evidence without giving the other side the opportunity to examine and cross-examine on it.

Representative JONAS. My difficulty is that I do not know what was in the Secretary's mind. That is the reason I think we ought to have him here.

Senator SCOTT. I think that that is what we all want to know.

Representative CHUDOFF. I agree. I think that if we finish with these witnesses, we will get Mr. Davis and the Secretary here.

Senator SCOTT. Let us get back to Dr. McArdle now.

Mr. COBURN. Doctor, on page 2 of your statement, in the first full paragraph, you say that there are estimated to be about 2,000 mining claims on the national forests embracing about 4 million acres.

Now, you have also testified, have you not, that this was an unusual procedure in your experience, this Al Sarena case?

Mr. McARDLE. Mr. Coburn, there was nothing unusual about this up to the point that I testified on, that the referral of this to the Bureau of Mines was different than we had experienced before.

Mr. COBURN. That is precisely what I was referring to. Perhaps the question was a little too general.

Mr. McARDLE. The rest of it was routine.

Mr. COBURN. The rest was routine, up until it reached the higher echelons of the Department of the Interior?

Mr. McARDLE. That is right.

Mr. COBURN. If the later procedure followed by the Secretary in ordering the Bureau of Mines into the procedure were to become a

precedent, and I assume that it is a precedent inasmuch as it has been done, what would happen to the administration of the national forests where you say there are 200,000 mining claims?

Mr. McARDLE. That would make a difficult situation even more difficult, but I should say that we considered that matter and, in the opinion of our lawyers, it did not set a precedent, in this particular case.

Mr. COBURN. Your lawyers are hopeful that it did not establish a precedent?

Mr. McARDLE. Yes, sir.

Mr. COBURN. But you will concede, will you not, Dr. McArdle, that, insofar as precedents within the Department of the Interior are concerned, what your lawyers think in the Department of Agriculture may have little bearing?

Mr. McARDLE. We were fearful that it would become a precedent.

Mr. COBURN. You were fearful. You are not fearful now?

Mr. McARDLE. Well, I trust in the lawyers.

Mr. COBURN. They say that this will not be a precedent of the Department of the Interior in its actions in the future?

Mr. McARDLE. That is my understanding.

Representative HOFFMAN. There you go again, Mr. Coburn.

Here we have hearsay. He is telling what his lawyers tell him. Why not follow the usual rules about producing evidence?

Mr. COBURN. Mr. Chairman, I think that is a fair question to ask the witness.

Representative HOFFMAN. I know that or you would not have asked it.

Senator NEUBERGER. I have kept quiet this afternoon. I think that is a fair question.

The gentleman from Michigan has asked the witnesses about their opinion of the committee and their opinion of how they are treated.

Representative HOFFMAN. I have also expressed my opinion about how the committee treated them.

Mr. COBURN. Let us get to this point:

Do your lawyers also tell you that, in their opinion, their belief as to the nature of this precedent would be binding on the Department of the Interior?

Mr. McARDLE. I have not inquired as to that point.

Mr. COBURN. Now, pursuing this a little further, on what legal basis did the Forest Service protest this application for patent?

Mr. McARDLE. I am not absolutely certain, Mr. Coburn, of the legal basis, but I referred in my testimony to the fact that, by joint order of the Secretary of Agriculture and the Secretary of Interior, made in 1915, the Bureau of Land Management, acting for the Department of the Interior, reports to us all applications for patent which involve national forest lands.

Mr. COBURN. That is the normal way of doing it, established in 1915?

Mr. McARDLE. That is the routine manner.

Mr. COBURN. You felt that the Forest Service in this case was duty bound and bound by the order to proceed as it did?

Mr. McARDLE. We did.

Mr. COBURN. And the Forest Service conclusion, at least at the lower echelon, was that there was not sufficient mineralization?

**Mr. McARDLE.** We acted on the recommendation of Mr. Hattan, the mineral examiner for the Bureau of Land Management who served for us in this case.

**Mr. COBURN.** What about the evidence produced by your own man, Mr. Sanborn?

**Mr. McARDLE.** That confirmed the evidence obtained by Mr. Hattan.

**Mr. COBURN.** How many tests were taken in all?

**Mr. McARDLE.** I can provide that information. I don't have it.

**Mr. COBURN.** The record will show that at least three were taken.

**Mr. McARDLE.** If the samples collected by the claimant are included, more than that were taken.

**Mr. COBURN.** More than three. On the basis of the evidence produced by these competent mineral engineers of the Forest Service and the Department of the Interior, your Regional Forester decided that the application for patent should not be granted, or decided to protest?

**Mr. McARDLE.** He decided to protest.

**Mr. COBURN.** He decided to continue this protest?

**Mr. McARDLE.** The protest was carried through to the Secretary of the Interior by the applicant.

**Mr. COBURN.** Can you give us at this time any estimate of the value of the merchantable timber on these mining claims?

**Mr. McARDLE.** I am referring now only to the 15 protested claims.

**Mr. COBURN.** Precisely.

**Mr. McARDLE.** I have no information on the other eight claims.

**Representative JONAS.** Pardon me.

Before he responds, will you have him designate as of what date?

**Mr. COBURN.** I said as of this date.

**Representative JONAS.** Mr. Chairman, I would respectfully suggest that the value of the timber should be dated as of the time application for the patent was made, which would have been 1948, because that is the time the claim was made and, if it is ever approved, relates back to the date it was filed, and the value of the timber, of whatever worth it is to us, should be based on its market value at the time the patent was applied for.

**Mr. COBURN.** Mr. Chairman, perhaps the Chief of the Forest Service would be able to give us both figures. Would that be satisfactory?

**Representative JONAS.** I do not think that the present day figure will have any relationship. It will be worth maybe twice that much 10 years from now, but of what value is that to the committee?

**Mr. COBURN.** Well, it might turn out that, since as I understand it very little timber has been cut to date, we may be able to preserve this natural resource in some way.

**Representative JONAS.** If we have the right to upset this, that is a different matter.

**Mr. COBURN.** Mr. Chairman, I think it is fair to try to determine as accurately as we can the value of this timber, (a) when Congressman Jonas wants it to, (b) what it is today, so that the present public will know what is involved here.

**Representative CHUDOFF.** Mr. Chairman, that has come up before. That was argued yesterday.

**Senator SCOTT.** I think that Mr. Coburn is right in that we ought to have that information as of today as well as on the date referred to by Congressman Jonas.

**Representative CHUDOFF.** I want to make a further request.

I understand that Representative Jonas would like the date as of the date application for the patent was made, and Mr. Coburn would like it as of today.

I would like it as of January 6, 1954, the date that the final decision was entered. I think that is the date that is the prevailing date.

If this had declined in value, the Al Sarena people would not be pressing their claim. You know, if you read the record on our timber investigations, that timber is going to be worth more and more and more because of the scarcity of timber in the Northwest.

I think we can get those three dates, and everybody will be happy.

Senator SCOTT. I think, too, at this point it will be well to bring out, for the reason that we may need it if we need to plug up some more loopholes, and it is being brought out very definitely, not only here but by personal experience wherever we go, that values in all fields are changing and what was of little consequence, say, in 1949, is very important now, not only in this field but in all other fields.

I think that we ought to bring our thinking up to the current date on it and be guided as to what we should do.

Senator NEUBERGER. I think, Mr. Chairman, that one vital thing to remember is this: that the important thing is the value of the timber at the time this company might sell and market it commercially, because all during this proceeding the people who have been defending what happened have been claiming that this is a valid mining operation, that this is not, according to their own claim, a commercial-timber operation. They say it is a valid mine.

Thus, the basic thing is the value of the timber at the time they might market and sell it commercially, which has nothing to do with any mining operation.

Senator GOLDWATER. Mr. Chairman, might I suggest that that is quite a supposition.

Dr. McARDLE has just said, if I heard correctly, that there has been no commercial cutting of timber on this claim.

Mr. McARDLE. I did not say that, Senator Goldwater.

Senator GOLDWATER. What did you say?

Mr. McARDLE. Senator, I said that it was my understanding that little timber had been cut to date.

Senator GOLDWATER. So that when we assume that this Al Sarena Mining Co. is more interested in the timber than in the testified to bulk of ore underneath it, we are treading on the thin ice of supposition, and I think also that that is one of the claims to which we have constantly been objecting.

Representative JONAS. Before we leave that subject, and then I will not ask anything else, will counsel correct me if I am wrong in my recollection that there is evidence in the record that the Al Sarena people were filing claims to this property at a time when timber was not worth anything in Oregon, or from \$2 a thousand? Is there any testimony to that effect in the record anywhere?

Mr. COBURN. There is none, to my recollection, which says it was worth nothing. The values were considerably lower.

Representative JONAS. That property was being sold for taxes, so that the timber was not worth the tax.

Mr. COBURN. That might be true as to other areas.

Representative JONAS. I mean the areas as to these 23 claims.

Mr. COBURN. I recall no testimony as to these claims.



Representative JONAS. I will look it up. I am sure that it is in here.

Representative HOFFMAN. I ask the witness to tell us whether he is basing his estimate of the value of the timber on Drew Pearson's estimate or basing it on Leavengood's.

Mr. McARDLE. I can answer that question. The estimates which I will give the committee if I am asked—and I understand that is what you want at present, but you have asked so many different estimates that I will have to have it clarified—will be based basically on the examination made by our man, Leavengood, whom you heard in Portland, Mr. Hoffman.

Representative HOFFMAN. Let me interrupt once more. Then I understand that your testimony as to value is based solely on the testimony of Mr. Leavengood as contained in the record and which you have read?

Mr. McARDLE. And as contained in his notes on which he based his testimony.

Representative HOFFMAN. Are those before you?

Mr. McARDLE. Mr. Hoffman, as far as I can find from the testimony, the only figure that Leavengood gave the committee was the figure of an average stand of about 25,000 board-feet per acre.

Representative HOFFMAN. Let me interrupt you and then I will not interrupt you again. You are basing your testimony upon the record as made and which you have had before you, and you said something about notes. Did Mr. Leavengood show you other notes that are not in the record?

Mr. McARDLE. That is correct; his field notes that he had in testifying before the Bureau of Land Management.

Representative HOFFMAN. I would like to have those so that I may look at them when I ask the questions, if I may. That would be only fair; would it not?

Mr. McARDLE. Yes, sir; but I wanted to point out that he testified before the committee only to 25,000 board-feet per acre, and then the committee asked him to hazard a guess as to the growth rate, which he did, and then asked for a value figure as of 1950, when he made his survey.

Representative HOFFMAN. And he also testified to 250 feet in the young growth.

Mr. McARDLE. Two hundred and fifty board-feet per acre growth.

Representative HOFFMAN. Young growth?

Mr. McARDLE. Yes, sir; and testified that the old growth—the old timber—was making very little net growth.

Representative HOFFMAN. And that 250 was in addition to the 25,000?

Mr. McARDLE. The 25,000 was average stand or volume of the old overmature timber.

Representative HOFFMAN. I am sorry to interrupt.

Mr. CORBURN. Mr. Chairman, I do not mean this as facetiously as it sounds, but I raise this question: Is it necessary to qualify the Chief of the United States Forest Service to make an estimate of timber growing on a national forest?

Senator GOLDWATER. I might suggest that you have been challenging the qualifications of graduate mining engineers and geologists to tell what is a good assayer and what is not. I do not doubt Dr. McARDLE's word. I think that the Forest Service has the best estimates on board-

feet in the country. I have heard him testify many times on lands that he and I have worked on together. I would like to hear his testimony.

Representative CHUDOFF. Since we agree that Dr. McARDLE is able to give us the value and is competent, I think that we ought to have a value at the date the patent was filed, the date the final decision was made, and the value today, and everybody on the joint committee will have the figure he wants.

Representative JONAS. I do not follow that at all. I can have all the confidence in the world in a witness and I have nothing to say against him at all, but what can he know about the value of some timber in Oregon unless he has inspected it; or is not his evidence bound to be hearsay?

Representative HOFFMAN. All he is testifying to is what Leavengood said.

Representative CHUDOFF. Why are you so anxious to lower the value of this timber? Are you not interested in the true value of the timber?

Representative JONAS. Of course I am, but all I want to know is whether the information he gives us is from an independent investigation he has made or what he got from his subordinates.

Senator NEUBERGER. Let me interject one thing, please.

If the Congressman from North Carolina is going to criticize independent investigations rather than those that come from the Government, the only independent investigation I know of that was included into this was Williams Assay Co.

Representative JONAS. I am not criticizing any independent investigation.

Senator NEUBERGER. You have.

Representative JONAS. I asked him to say whether the information he gives us now comes from Leavengood, who has already testified.

Representative CHUDOFF. He has already said it does. He says it comes from Mr. Leavengood's testimony and from the notes which Mr. Leavengood made, which are not in the record, and he is willing to give us the notes. What better information than that can we get?

Representative JONAS. Go ahead.

Mr. REDWINE. Go ahead, Mr. McARDLE.

Mr. McARDLE. What shall I go ahead with?

Mr. COBURN. We would like to have your estimate of the value of the timber at the time the application was filed.

Mr. McARDLE. I can't give you that because that, if my memory serves me correctly, was in 1948, but the hearing on the protest was held in Portland in September 1950, and Mr. Leavengood made his examination early in September of 1950. He made his calculations based on 1950 prices.

Mr. COBURN. All right, sir.

Mr. McARDLE. Briefly, Mr. Leavengood found that this stand of timber covering some 294 acres on the 15 protested claims consisted about 85 percent of overmature, or at least very mature, Douglas fir timber and about 15 percent sugar pine, also mature.

Mr. COBURN. By "overmature," you mean merchantable?

Mr. McARDLE. I mean it was old timber and merchantable. For trees 16 inches and larger in diameter, he estimated—and you do not

have this figure so far as I know in your record anywhere—7,350,000 board feet on the 15 claims.

Again I will say that that is the total figure for the merchantable old growth timber 16 inches and larger.

He also testified that there was some additional young growth timber. He estimated an average stand per acre of 25,000 board feet, from trees 16 inches and larger in diameter.

It is estimated that, at 1950 prices, Douglas fir would be appraised at \$14.40 a thousand; the sugar pine at \$32.90 a thousand; or an average total price for both species of \$17.17 a thousand board feet.

Mr. COBURN. On 7,750,000 board feet, that comes to how much?

Mr. McARDLE. The figure that you have in the record is \$77,000.

Senator GOLDWATER. Would the counsel allow me to question something there?

Doctor, would you go back over the averaging that you did? You had \$14 for Douglas fir and then you had what for the sugar pine?

Mr. McARDLE. \$32.90. Senator, you do not add those and divide because the volume of each species is different.

Senator GOLDWATER. That \$17 seems a little high with an 85 percent weight on the 14.

Mr. McARDLE. The stand, as estimated by Leavengood, was 6,250,000 board feet of Douglas fir at \$14.40 per thousand. There was 1,100,000 board feet of sugar pine at a price of \$32.90 a thousand.

If you will multiply those out, you will find that the average is \$17.17.

Senator GOLDWATER. Thank you.

Mr. McARDLE. I think I need, Mr. Coburn, to clarify one thing that is in the record.

You have had in the record, and reference has been made to it, a \$77,000 value of this timber. But Mr. Leavengood's testimony was based on cutting approximately two-thirds of the merchantable timber and leaving about one-third, which at that time was standard Forest Service practice.

I assume this committee wants the total value of the total merchantable stand?

Mr. COBURN. That is correct.

Mr. McARDLE. I think it would clarify things if reference were made to total stand and not to a partial stand.

Mr. COBURN. What is the total, then, based on the total merchantable timber stand at that time?

Mr. McARDLE. With the figures that I have given you, the total value of this merchantable stand at 1950 prices was \$126,190.

Mr. COBURN. Now, may we have the same data as to the date January 6, 1954, the date when Mr. Davis rendered his decision.

Mr. McARDLE. I cannot give that figure to you. I can give you the 1955 figure.

Mr. COBURN. As of now?

Mr. McARDLE. Well, as of last year.

Mr. COBURN. As of last year. All right.

Mr. McARDLE. 1955 prices.

Mr. COBURN. Is it possible to compile a figure as to the date that Congressman Chudoff wants; that is, January 6, 1954?

Mr. McARDLE. Yes, sir.

Mr. COBURN. Will you get that information?

(See p. 434.)

Mr. McARDLE. We will get that information.

Mr. COBURN. What is the 1955 figure?

Mr. McARDLE. The figure for 1955—and you will, of course, recognize that, as Congressman Jonas has pointed out, there has been a sharp increase in prices—the figure of \$126,000 changes to \$231,775.

Mr. COBURN. Over a quarter of a million dollars; is that correct?

Mr. McARDLE. There has been a substantial increase.

Mr. REDWINE. Chief, would you at this particular point testify as to this:

All these figures that you have given, including the 1955 figure, give timber 16 inches and under remaining on the stands; do they not?

Mr. McARDLE. Correct, sir. They do not include timber below 16 inches in diameter.

Mr. REDWINE. In that area, what is the practice? Are they cutting timber below 16 inches?

Mr. McARDLE. In some places they are.

Mr. REDWINE. What is the value of timber of that size, sir?

Mr. McARDLE. I would have a hard time guessing at that because, as far as I know, there is nothing in Leavengood's notes to substantiate anything I would say.

Mr. REDWINE. Let us be sure that each knows what the other is thinking.

In the Rogue River, are they cutting timber from 10 to 16 inches in size?

Mr. McARDLE. In some places they are.

Mr. REDWINE. I realize that you may not have these figures at your fingertips, but will you determine and let the committee know what the stand of timber is from 10 inches in diameter up to 16 estimated, and what the going price is in that area for such timber at this time?

Mr. McARDLE. We will attempt to do it.

I understand that it is that area, not on these particular claims.

I have no specific information for these particular claims to answer the question just asked.

Mr. REDWINE. Will you give it area-wise?

Mr. McARDLE. I will attempt to do it.

(See p. 434.)

Mr. COBURN. So long as the patents have been issued, Doctor, you have no way of getting information as to these 15 claims, do you?

Mr. McARDLE. That is private land.

Mr. COBURN. That is correct.

Senator KUCHEL. Mr. Chairman, may I ask a couple of questions?

Senator SCOTT. Yes.

Senator KUCHEL. Dr. McArdle, from a procedural standpoint, did the 23 patents which were sent to your office constitute just one petition? In other words, the petition of this company was composed of 23 different proposed patents?

Mr. McARDLE. Senator Kuchel, I cannot answer that. I believe it is correct that there was one application covering the whole.

Senator KUCHEL. At any rate, the 23 were considered by the Forest Service at the same time?

Mr. McARDLE. We considered all 23 claims included in the application for patent and determined on the basis of the report by the mineral examiner, not to protest 8 but to protest 15.

Senator KUCHEL. Is it fair to say that by not protesting 8 of them you have proved 8 of them and found the balance, the 15, deficient in mineral deposits?

Mr. McARDLE. In the opinion of these experienced mineral examiners, they felt that the mining laws had been complied with and that there would be no reason for objecting.

Senator KUCHEL. Do those 23 patents represent contiguous land in Oregon?

Mr. McARDLE. I have seen the map and, to my recollection, they all adjoin each other.

Senator KUCHEL. Under the law, at what time would title be presumed to vest in this applicant, this Al Sarena Co.; at the time that they filed the petition to the extent that it would not be objected to thereafter by the Department?

Mr. McARDLE. Senator Kuchel, you are over my head now in some legal matters. I would assume that it was when patent was issued.

Senator KUCHEL. What I am getting around to is this:

I think that if we want to make a fair estimate of timber value which is involved in this congressional hearing, it is first necessary to determine whether or not the Al Sarena Co. was deemed to be the owner of 8 of the patents at the time in 1948 at which it originally applied for them and, if that is true, then it would follow that the 1948 value to that extent, I suppose, should be put on at least those patents.

Are you able to break down the value which you have placed on the entire group of 23 and to indicate to the committee the value which you would place on the 8 patents to which no objection was made by you, as of the time the petition was filed?

Mr. McARDLE. May I make one point clear?

The figures I gave you apply only to the 15 protested claims and not to the entire 23. We have absolutely no information on the eight which we did not protest.

Senator KUCHEL. That is helpful to me.

In other words, the figures that you have then given for both 1950 and 1955 represent only those against which you made an objection?

Mr. McARDLE. Yes, sir.

Senator KUCHEL. And you cannot state under the law at what time title to those 15 would be deemed to vest in the Al Sarena Co.?

Mr. McARDLE. In my opinion, it was when patent was issued, February 11, 1954.

Senator KUCHEL. And it would not date back to 1948?

Mr. McARDLE. So far as I am aware, no sir; but that is a legal question which I think you had better inquire further on.

Mr. REDWINE. Mr. Chairman.

Senator SCOTT. Mr. Redwine.

Mr. REDWINE. Would you pardon me, Senator Kuchel?

I have just learned that the Associate Solicitor of the Department of Agriculture, who is adviser to Chief McArdle, is in the room. To clear up some earlier testimony that we asked the Chief to furnish us in writing, may we interrupt at this time, Mr. Chairman, and let Mr. Mynatt come forward and answer some of these legal questions? Then we will call the Chief back.

Senator KUCHEL. I have just a couple more questions. Then I will be through with Dr. McArdle.

Senator SCOTT. I would just like to say, Senator Kuchel, that we want to adjourn at 4:30.

Senator KUCHEL. Yes, sir.

Mr. REDWINE. Pardon me.

Mr. Chairman, I think that the Chief might have his counsel sitting at his side at this time.

Senator KUCHEL. This will not be a legal question.

Representative HOFFMAN. This is the first time, I think, that the Senator has been able to be here. Can we not show him the courtesy and let him finish?

Senator KUCHEL. I will proceed.

Doctor, earlier in your testimony you suggested that it was not and I think you used the word "regular" for you to be notified of the disposition which the Secretary determined to make of this matter. By that do you mean that in other instances where an appeal has been taken after the Forest Service has filed objections that the Secretary's Office has notified you or the Forest Service of every subsequent step it was taking?

Mr. McARDLE. I think my testimony is a little different than that. We are notified of each appeal along the way as a customary, routine procedure. That is normal.

Senator KUCHEL. After the matter is taken by way of appeal to the Secretary?

Mr. McARDLE. All the way for each appeal from the beginning when patents are first applied for.

Senator KUCHEL. Now, I want to be sure that I understand.

Are many appeals taken by private people on their patent petitions after the Forest Service registers objections to them?

Mr. McARDLE. Senator Kuchel, it is not at all unusual for a claimant to object and protest our protest, if I may say it that way.

Senator KUCHEL. Now, when such an appeal is taken, has it been, to your own knowledge, the practice of the Secretary to attempt to obtain other assays on the disputed properties?

Mr. McARDLE. I testified earlier that, to my knowledge, it has not happened before.

Senator KUCHEL. Then what type of notices have you received, Doctor, from the Secretary after an appeal has been taken? What has the procedure on appeal been as you recall?

Representative CHUDOFF. Senator, the procedure is provided for in the rules of procedure; section 205.9 gives the exact procedure. If you will take a look at the 1949 edition of the Code of Federal Regulations, you will find the exact procedure set forth in the regulations.

Senator KUCHEL. But this witness has answered the question as to whether it was regular or not. Since he has answered a question and said it was not regular in his opinion, then I think it would be fair for this record to indicate what has been regular, so far as he knows, in the past.

Mr. McARDLE. May I volunteer something there?

I attempted to clarify my position because of the use of the word "regular." I said it had not been customary. I also said, and again I refer to the word "regular," that, as I understand the regulations of the Secretary, he does have authority to do this. It could be regular

procedure because he has authority. I only said that it was not customary, that it had not been, to my knowledge.

Senator KUCHEL. I have no further questions.

Senator GOLDWATER. Mr. Chairman, before you get the counsel on the stand, I think we ought to have some continuity in this. I have just 1 or 2 short questions to ask.

I would like to ask the chairman to allow the witness to submit for insertion in the record a year-by-year compilation of the timber values on these claims from 1935 up to and including the figures that you have given. I ask that for this reason:

I believe that the McDonalds showed an interest in this property. If that is true and my information is correct, you could buy patented timberland in Oregon at that time on tax sales; there could have been very little incentive at that time other than the mineral value.

I would like to have that put in the record, Mr. Chairman.

Mr. McARDLE. Are you asking me, Senator Goldwater, if the timber had value at what date?

Senator GOLDWATER. I would like you to get from your experts the figures, year by year, of the value of that timber on these claims from 1935 up to 1955, I suppose.

Mr. McARDLE. I can get you the average price paid for national forest timber in comparable circumstances, but I cannot give you the value for the particular area of these 15 protested claims, because we never made any examination of the timber on them until 1950.

Senator GOLDWATER. Is it not possible for you, with your records of growth for Oregon, to give a fairly good estimate of what that timber would have been worth in 1935 at 1935 prices?

Mr. McARDLE. We could make a wild guess; yes, sir.

Representative HOFFMAN. Will the Senator yield?

Senator KUCHEL. Yes.

Representative HOFFMAN. You sold timber in this immediate vicinity, some adjoining this claim: Jim Creek, Sunshine Creek. You have those figures?

Mr. McARDLE. I have.

Representative HOFFMAN. That is what the Senator wants.

Mr. McARDLE. I think he is talking about going back to 1935, and Sunshine Creek and Jim Creek timber were sold in the 1950's.

Representative HOFFMAN. That is right, but I would like those figures as to what this other timber adjoining sold for.

Senator GOLDWATER. I have perfect confidence in Dr. McArdle and I think he knows what we want.

Representative CHUDOFF. Up to 1948, they were not interested. I do not think it makes any difference prior to 1948, but, if you want it in there, I have no objection.

Senator GOLDWATER. Mr. Chairman, I am trying to say that any man who has the courage to go into western lands in the middle of the depression and lay out claims and do his claiming up work where timber values were practically nothing, had something else in mind besides timber. I think it is perfectly proper that this be introduced because the charge has been made that the Department of the Interior has given away X number of dollars of timber.

If those lands had been patented in 1936 or 1940, the timber values would have been negligible. I think that is the same thing as criticiz-

ing the Federal Government for allowing lands to go under patent for \$5 for uranium when a man gets \$25 million.

I think that it is normal business procedure.

I wanted to ask one other question.

Dr. McArdle, in your testimony you state that there are 200,000 mining claims on the national forests, embracing about 4 million acres. What is the total acreage in the national forests?

Mr. McArdle. In the Continental United States, 160 million acres.

Senator GOLDWATER. And you have 4 million acres that are now patented by virtue of the mining laws?

Mr. McArdle. No; I said those are covered by claims. That does not include those which have been patented.

Senator GOLDWATER. You do not have any idea how much has been patented?

Mr. McArdle. I do, but I do not have the figures here.

Senator GOLDWATER. Would you be willing to submit that?

Mr. McArdle. Oh, yes.

(See p. 434.)

Senator GOLDWATER. Would you also have any records to indicate how many of those acres have been abused in the practices of timbering?

Mr. McArdle. I think there is a good deal that we can draw on there, Senator Goldwater, in the testimony on the law which Congress passed last year, on which you worked and which has done so much to correct the situation of the abuse of the mining laws.

We have some information of that kind in that testimony. We can get you the information which I think you want, and we will try.

Senator GOLDWATER. I think that that would be pertinent. I do think that we should know how much land we are talking about when we are talking patented lands in the forests, patented by virtue of the mining laws.

Would you be able to submit that?

Mr. McArdle. I can get you that information and submit it.

Senator GOLDWATER. Thank you.

(The information referred to follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
Washington D. C., February 10, 1956.

U (C).

Adjustments. R-6, Rogue River.

Al Sarena Mines, Inc.

HON. W. KERR SCOTT,

*Chairman, Legislative Oversight Subcommittee,*

*Committee on Interior and Insular Affairs, United States Senate.*

DEAR SENATOR SCOTT: At the hearings on the Al Sarena mining claims certain questions were asked of Mr. McArdle on January 18 and 19 with the request that he provide the answers for the record. The questions as he understood them and the answers are listed below. They are referenced to the page number of the typed transcript of the record.

[P. 797]

Q. Has there ever been a case on appeal to the Secretary of the Interior where he remanded it back to the Director of the Bureau of Land Management for the taking of additional evidence and testimony?—A. So far as Forest Service records show, there has been no such case involving national-forest lands. We believe a more complete statement on this matter could be obtained from the Department of the Interior. However, the Forest Service is aware of some cases which would



fall in the prescribed category. These include: *State of California, Standard Oil Company of California, et al., Transferees* (51 I. D. 141, 144 (1925)); *Challenge to Validity of Mining Claims in National Parks* (53 I. D. 491 (1931)); *Ainsworth Copper Co. v. Rex* (53 I. D. 382 (1931)); *Chichagoff Extension Mining Co.* (53 I. D. 669 (1932)); *Ohio Oil Co. v. W. F. Kissinger* (58 I. D. 753 (1944)); *R. L. Shire v. John H. Page, et al.* (57 I. D. 252 (1941)); *The Shale Oil Co.* (55 I. D. 287 (1935)); *United States v. Robert L. Ferrin* (54 I. D. 276 (1933)); *Ralph T. Richards* (52 I. D. 336 (1928)); and *State of New Mexico* (52 I. D. 741 (1929)).

[P. 816]

Q. What was the appraised value of the timber on the 15 contested claims as of January 6, 1954?—A. The appraised value of the timber on the 15 contested claims as of January 6, 1954, is \$140,600.

[P. 818]

Q. What is the volume and value of timber from 10 to 16 inches in diameter on the 15 contested claims?—A. Mr. Leavengood made no estimate of the volume of timber from 10 to 16 inches in diameter at the time of his examination. In answer to our request for this information, our regional office at Portland, Oreg., estimates that the average stand per acre in this area would contain about 2,000 board feet of merchantable timber from 10 to 16 inches in diameter with 85 percent of the stand Douglas-fir and 15 percent pine.

The estimated appraised value of this timber as of January 6, 1954, is \$2,000,

[P. 825]

Q. What is the value of the timber 16 inches in diameter and up on the 15 contested claims for each year from 1935 through 1955?—A. As no examination was made of the timber on the 15 contested claims prior to 1950, our estimates of the total value of the timber by years prior to 1950 are based on the average prices received for Douglas-fir and sugar pine on the Rogue River National Forest from 1935 to 1950. The timber values from 1950 through 1955 are based on Forest Service appraisal of the timber on the contested claims.

Year:	Total timber value	Year—Con.	Total timber value
1935-----	\$10, 650	1946-----	\$45, 060
1936-----	10, 650	1947-----	59, 200
1937-----	10, 650	1948-----	82, 980
1938-----	12, 850	1949-----	84, 130
1939-----	12, 850	1950-----	126, 190
1940-----	13, 440	1951-----	166, 540
1941-----	17, 080	1952-----	138, 000
1942-----	27, 970	1953-----	136, 240
1943-----	27, 430	1954-----	140, 600
1944-----	35, 070	1955-----	231, 775
1945-----	41, 570		

[P. 827]

Q. What is the area of patented mining claims in the national forests?—A. As of January 1, 1953, there were approximately 924,000 acres of patented mining claims within the national forests.

[P. 828]

Q. Do you have any records to indicate how much of the acreage of patented mining claims has been abused in connection with timbering operations?—A. We do not understand how patented claims may be "abused" with respect to timbering operations. When patent is issued claimant receives fee-simple title and his logging operations are subject only to State regulatory laws, if any exist. The Forest Service treats such lands as any other private land and has no complete information on logging operations subsequent to patent. However, selected

statistical information on patented and unpatented mining claims within the national forests follows:

*Patented mining claims on the national forests (as of Jan. 1, 1952)*

State	Number of claims	Acreage	Estimated percent which are or have ever been commercial mining operations
Arizona.....	1, 110	1 53, 370	5
California.....	3, 068	134, 807	14½
Colorado.....	17, 000	300, 000	12
Idaho.....	3, 203	80, 802	28
Montana.....	5, 124	116, 575	17½
Nevada.....	675	12, 205	50
New Mexico.....	706	24, 498	16
Oregon.....	1, 370	26, 634	22
South Dakota.....	1, 000	74, 000	7
Utah.....	1, 359	57, 210	10
Washington.....	1, 184	20, 738	8
Wyoming.....	761	17, 687	1½
Total.....	36, 660	918, 526	14½

*Estimated number of unpatented mining claims on the national forests (as of Jan. 1, 1955)*

State	Thousand claims	Thousand acres	Estimated percent which are producing minerals in commercial quantities	Estimated percent considered valid under the mining laws	Timber on claims	
					Volume (thousand feet board measure)	1951 value
Arizona.....	34.3	684	9.0	22	70, 000	\$700, 000
California.....	21.0	602	.8	30	3, 460, 000	50, 177, 000
Colorado.....	16.7	375	1.0	37	80, 000	368, 000
Idaho.....	18.4	408	4.3	42	1, 170, 000	8, 425, 000
Montana.....	14.6	282	1.7	48	85, 000	440, 000
Nevada.....	5.2	106	2.0	60	.....	.....
New Mexico.....	8.7	223	3.0	24	225, 000	2, 000, 000
Oregon.....	6.7	215	1.8	55	2, 301, 000	36, 307, 000
South Dakota.....	4.8	103	4.5	30	81, 000	542, 000
Utah.....	28.4	583	2.0	50	7, 000	40, 000
Washington.....	5.3	94	2.2	62	751, 000	4, 111, 000
Wyoming.....	2.1	78	.6	55	36, 000	417, 000
Total.....	166.2	3, 755	2.0	40	8, 266, 000	103, 527, 000

As of January 1, 1955, it is estimated that unpatented mining claims supported over 10 billion board feet of timber with \$112 million.

Very truly yours,

RICHARD E. MCARDLE, *Chief.*  
By EDWARD C. CRAFTS.

Senator NEUBERGER. Mr. Chairman, I am speaking now as a Senator from Oregon, the State which is involved in this controversy, and I should like to say that I think that the distinguished Senator from Arizona has put his finger on the nub of the whole issue.

I help represent in the Senate the leading lumber-producing State in the Union. I do not know of anything which requires a mining operation to be reimbursed with timber owned by the public.

The Senator from Arizona has pointed out that these people first went on this land in 1935 when timber was of a relatively negligible value and we were still in the depression. Between then and 1948 the value of the timber, as a result of the ending of the depression and a vast worldwide war, soared astronomically.

Between 1935 and 1948 the Al Sarena Co. was perfectly free to operate the mine. If I am not mistaken, they could take out minerals and they could take out ore.

The Senator from Arizona has highlighted the whole issue by emphasizing that the company did not apply for patent until 1948 when the value of the timber had gone up enormously. They could operate the mine until 1948, but the thing which they could not do, unless they secured patent, was to harvest and cut this timber commercially, and I thank the Senator from Arizona for so emphasizing and highlighting the whole crux of this controversy.

Representative JONAS. Would the Senator yield?

Senator NEUBERGER. I yield.

Representative JONAS. Now, what would the Senator say with respect to the eight claims on which patents were granted? Did somebody make a mistake there?

Senator NEUBERGER. No, I have great faith in the Forest Service, but just because 8 claims were granted, it does not follow that 15 contiguous claims have to be granted. If that were the case, the whole national forest could go.

If you are arguing about a contiguous claim necessarily having value, you or I could go out and find one valid mining claim and stake out 23 or 24 others and argue that, because they were contiguous, we ought to get those also.

Representative JONAS. But they did not take any minerals off of the eight claims between 1935 and 1948, and then somebody comes along and makes no objection to the eight and grants patent.

Senator NEUBERGER. The only thing the patent changed was their ability to harvest the timber commercially. Even before patent, Congressman Jonas, they could off all the timber they wanted for legitimate use in mining operations, such as pit props or chutes. The one thing which they could not do without patent was to cut this timber for commercial sale.

Representative JONAS. I am directing my arguments to the contention which has been advanced that these people are not interested in mining at all but that their interest in this property arose by reason of the fact that it had valuable timber on it, and I point out that, if that is a valid argument, it applies equally to the eight claims on which patents were granted.

Senator NEUBERGER. I do not know whether they have evidenced any interest in mining either, but the point I am making is that they did not ask for patent until the value of timber had soared astronomically, and I think the Senator from Arizona has brought up an important point which would be valuable to show the difference in that timber between 1935 and 1948, and then in the years after that.

Senator GOLDWATER. The Senator from Oregon should be acquainted with what is going on in his State. Has he any evidence that the claims that were patented in 1939 have been timbered commercially?

Representative **HOFFMAN**. They could have cut it all in 1955, had they wanted to do that.

Senator **NEUBERGER**. I am informed by the counsel that there is a map in the record showing that some of the timber has been cut; how much, I do not know. The point is that these people, as a result of the patent which was given them in January of 1954, now own this timber in fee simple. They can do anything they want with it. They can let it stand for a higher value, or cut it down. It is theirs.

I would like to ask the Chief a question.

Am I right or wrong in this, Dr. McArdle?

Those claims that were granted to patent in January of 1954 are now considered by the Forest Service to be private lands?

**Mr. McARDLE**. All 23 claims; yes, sir.

Senator **NEUBERGER**. The 8 which were not contested and the 15 which were contested and later granted are all considered to be private lands and outside of your jurisdiction?

**Mr. McARDLE**. That is correct.

Representative **JONAS**. May I ask a question before we leave that subject?

Can you tell the committee whether patents were actually granted on the 8 claims in 1949?

**Mr. McARDLE**. No, I cannot. I think that the patents for all 23 claims were granted February 11, 1954.

Representative **JONAS**. If you did not protest the 8, were they not subject to patent then?

**Mr. McARDLE**. I believe that goes back to a question Senator Kuchel raised as to whether all 23 claims were covered in a single application for patent.

Representative **HOFFMAN**. May I ask one question?

Senator **SCOTT**. Will you wait because I want to ask a question?

Representative **HOFFMAN**. If this was a steal of \$600,000 worth of timber, how come you or the Forest Department did not ask for some suit to set it aside on the ground of fraud? Who said it was a steal? You fellows on the staff and Drew Pearson have been charging it as a steal for the last 2 years.

Why did you not appeal to the Justice Department if this was a fraud?

Representative **CHUDOFF**. We are trying to find out if it was a fraud and, if it was, I will ask the Justice Department.

Representative **HOFFMAN**. He has not answered my question.

**Mr. McARDLE**. In the first place, the value of the timber at the time the protest was made was not \$600,000 but \$126,000. I do not know what the value was in January 1954, but I have been asked to find out and will do so.

Senator **SCOTT**. Right at that point, Dr. McArdle, did not this thing become of intense interest on January 6, I believe, of this year, when it was determined to be worth about \$231,000 or \$235,000? That is when it became of interest to the public?

**Mr. McARDLE**. A lot of figures have been bandied about, Senator Scott. The only ones I know about are the ones that my own people have computed. Those are the two figures that I have given you.

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Mr. COBURN. Mr. Chairman, may I ask one question along that line?

Senator SCOTT. Yes.

Mr. COBURN. The figures you have given the committee, however, are based on the appraised value of that timber; is that correct?

Mr. McARDLE. That is correct.

Mr. COBURN. Not the fair market value?

Mr. McARDLE. Not what might be bid if there was spirited competition.

Mr. COBURN. Is there a spirit of competition in Oregon in the Rogue River National Forest?

Mr. McARDLE. There is at present.

Mr. COBURN. Haven't bid prices been substantially higher on the average than appraised prices?

Mr. McARDLE. Yes, sir.

Mr. COBURN. Thank you.

Senator NEUBERGER. Where timber is sold at competitive bid and under competitive conditions in the Northwest, it generally goes for much more than the appraised price; is that not right?

Mr. McARDLE. That is common knowledge, Senator Neuberger.

Representative CHUDOFF. Mr. Chairman, I would like to ask one question and I will be through with Dr. McArdle.

Doctor, I am extremely interested in reading your statement. I think it is an excellent piece of work and I think it is clear and concise. I want to say that in your last sentence you say, and I quote:

I am convinced that the Forest Service employees associated with the case acted in good faith and performed their duties in a satisfactory manner.

That means, Doctor, that in your opinion if they had not acted as they did they would have been derelict and negligent; is that right?

Mr. McARDLE. If they had not, I would have been very much interested in finding out about it.

Senator NEUBERGER. I would like to say to Congressman Chudoff and for the record that, as one of the Senators from Oregon, I have been cognizant of the discussions on this in our State, that, regardless of the political group speaking or regardless of the newspaper commenting. I have never heard one word of public criticism in this case directed against the Forest Service or the Department of Agriculture generally, not one word.

Mr. McARDLE. Thank you, Senator Neuberger, very much.

Senator SCOTT. It is rather gratifying to see a chief of the division backing up his field men. That is really gratifying to the chairman of this committee.

I wonder if we have information about whether we can meet tomorrow?

Mr. REDWINE. Congressman Chudoff is trying to get that right now.

Senator, I would like, if I may, to suggest that we have about 5 minutes of testimony from Mr. Mynatt before we adjourn.

Chief, will you remain available to the committee tomorrow if we meet tomorrow?

Mr. McARDLE. Tomorrow morning?

Mr. REDWINE. Yes, sir. We would like you to sit there now with Mr. Mynatt.

Senator SCOTT. Mr. Mynatt, have you been sworn in?

Mr. MYNATT. I have not, Mr. Chairman.

Representative JONAS. Have we finished with Dr. McArdle?

Senator SCOTT. Will you swear him in?

Representative HOFFMAN. Do you solemnly swear that the testimony which you shall give here before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MYNATT. Yes, sir.

**TESTIMONY OF E. F. MYNATT, ASSISTANT GENERAL COUNSEL,  
DEPARTMENT OF AGRICULTURE**

Mr. REDWINE. State your name and position, please.

Mr. MYNATT. My name is E. F. Mynatt. I am assistant general counsel for the Department of Agriculture.

Mr. REDWINE. In that position you are the legal officer for the Forest Service; is that correct, sir?

Mr. MYNATT. That is correct.

Mr. REDWINE. Mr. Mynatt, you heard the questions asked of Chief McArdle in respect to remanding of appeals. Will you tell the committee briefly, please, what has been the custom in that respect?

Mr. MYNATT. The custom with respect to claims appealed from the Director of the Bureau of Land Management to the Secretary of the Interior has been this: that in the event additional testimony was taken, they have been remanded to the Bureau of Land Management for the taking of that testimony.

Mr. REDWINE. Mr. Mynatt, how long have you been in your present position?

Mr. MYNATT. Ten years, and in the Department, 25.

Mr. REDWINE. During all of your experience, have you ever heard of a case where there was taking of additional testimony and it was not remanded to the field for further hearing?

Mr. MYNATT. No, sir; I have not.

Mr. REDWINE. The Al Sarena case is the only case that you have come across in which that occurred?

Mr. MYNATT. Yes, sir; that is correct.

Mr. REDWINE. That is all I have, Mr. Chairman.

Representative HOFFMAN. I have one question along that same line about this being unusual.

This case was decided when?

Mr. MYNATT. This was decided January 6, 1954.

Representative HOFFMAN. Yes.

Did you ever hear of a case, we will say, along about November 22, 1952, an attorney who is a National Democratic Committeeman from the State of Colorado, who offered to take this matter up and continue conferences here:

My associates in Washington, the law firm of Hudson, Greuke & Lipscomb, will arrange for a hearing in Washington and are willing to represent your firm at the hearings. I will also be available to assist, and have reason to believe that we can obtain a favorable decision.

The gentleman says before that:

Several conferences have been held with officials of the Department of Interior and my associates in Washington concerning the issuing of patents on your mining claims. The following report and recommendations—  
and so on.

He had had the matter up with Chapman and says:

The fee for this service will be \$10,000, of which \$2,000 is payable in advance as a retainer fee and to cover expenses. The remainder of \$3,000 will be due



and payable only if a favorable finding is obtained. In other words, the last \$8,000 of the fee will be on a strictly contingent basis.

Do you know anything about that?

Senator SCOTT. Congressman Hoffman, would you mind introducing that for the record?

Representative HOFFMAN. The whole letter?

Senator SCOTT. Yes.

Representative HOFFMAN. You can have a copy of it.

Senator GOLDWATER. Put in the whole thing.

Representative HOFFMAN. It is suggested that we put in this one, which is earlier, August 22, 1952. It says:

Secretary Chapman will be in Denver this weekend and I will discuss the matter with him while he is here. I am also sending a copy of the brief \* \* \*

Senator SCOTT. Without objection, that will be in the record.

(The letters referred to follow:)

DENVER, COLO., August 27, 1952.

Mr. H. P. McDONALD, Jr.,  
Secretary-Treasurer, Al Sarena Mines, Inc.,  
Mobile, Ala.

DEAR MR. McDONALD: Thank you for your letters of August 23 and 25 and for sending me the briefs in your case. I will get these reviewed within the next day or two.

Secretary Chapman will be in Denver this weekend and I will discuss the matter with him while he is here. I am also sending a copy of the brief into Washington and will advise you further as soon as possible.

It is a pleasure to try to be of service to you and every effort will be made to effect an early understanding.

Sincerely yours,

GEORGE F. ROCK, Attorney at Law.

DENVER, COLO., September 9, 1952.

Mr. H. P. McDONALD, Jr.,  
Secretary-Treasurer, Al Sarena Mines, Inc.,  
Mobile, Ala.

DEAR MR. McDONALD: Thank you for your letter of September 4. I discussed the matter with Secretary Chapman while he was in Denver but he knew nothing about it. He informed me that the matter was undoubtedly in the solicitor's office and had not come to his personal attention.

Secretary Chapman is at present on the Pacific Coast and will not return to Washington for another week. He has asked me to prepare a brief on the matter, which he will personally review at his first opportunity.

In the meantime, my associates in Washington are studying the matter and will make a recommendation in the near future. They have asked me to determine the present status of the case and to inquire as to what disposition was made for summary judgment. Please let me have this information as soon as possible.

With very best personal wishes, I am

Sincerely yours,

GEORGE F. ROCK, Attorney at Law.

DENVER, COLO., September 27, 1952.

Mr. H. P. McDONALD, Jr.,  
Secretary-Treasurer, Al Sarena Mines, Inc.,  
Mobile, Ala.

DEAR MR. McDONALD: It has been impossible to do anything about your case inasmuch as Secretary Chapman has been in and out of Washington almost continually since he was in Denver. I am sure he will review the matter at his first opportunity.

It is most difficult to say whether or not anything can be accomplished by October 1. If it is your desire to set a time limit on the matter, I will be unable to handle it for you.

Yours very truly,

GEORGE F. ROCK, *Attorney at Law.*

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DENVER, COLO., October 18, 1952.

Mr. H. P. McDONALD, Jr.,  
*Secretary-Treasurer, Al Sarena Mines, Inc.,  
Mobile, Ala.*

DEAR MR. McDONALD: Enclosed is a letter received from the Secretary of the Interior regarding your matter, which came in the same day of our telephone conversation.

It will undoubtedly be necessary to discuss the matter with the Secretary before I can give you any worthwhile information. I expect to talk with him within the next few days and will advise you further.

With very best personal wishes, I am

Sincerely yours,

GEORGE F. ROCK, *Attorney at Law.*

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UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D. C., October 9, 1952.

Mr. GEORGE F. ROCK,  
*Attorney at Law,  
Denver, Colo.*

DEAR GEORGE: In compliance with the request contained in your letter of September 27 to me, I have inquired regarding the status of the appeal of Al Sarena Mines, Inc., which is pending in the Office of the Solicitor.

The appeal (A-26248) is from a decision of the Assistant Director of the Bureau of Land Management, who held for cancellation mineral entry Oregon 0665 insofar as that entry embraces 15 lode mining claims situated within the Rogue River National Forest in Oregon.

After the receipt of the appeal by the Solicitor, and while it was under consideration, the corporation instituted in the United States District Court for the Southern District of Alabama a suit against the United States and the Secretary of the Interior. As the suit involves the same subject matter as the appeal in the administrative proceeding, further consideration of the appeal has been postponed until after the final disposition of the litigation. The suit is still pending.

Sincerely yours,

OSCAR L. CHAPMAN,  
*Secretary of the Interior.*

---

1534 CALIFORNIA ST., DENVER, COLO.,  
November 22, 1952.

Dr. H. P. McDONALD, Jr.,  
*Al Sarena Mines, Inc.,  
Mobile, Ala.*

DEAR DR. McDONALD: Several conferences have been held with officials of the Department of the Interior and my associates in Washington concerning the issuing of patents on your mining claims. The following report and recommendations are given to you as a result of these conferences:

Nothing can be done about the matter as long as the suit filed by your company in the United States district court in Alabama is pending. It is the policy of the Department of the Interior to hold in abeyance any administrative proceedings as long as court action is pending.

There is some doubt as to the validity of the suit that has been filed. There is a question as to whether or not a suit can be maintained against the Secretary of the Interior outside of Washington and there is also a question as to whether or not you have obtained valid service of the summons.

It is my opinion that the suit should be dismissed and it will then be possible to reopen administrative proceedings in Washington. Dismissal of the present

suit will in no way prejudice your rights as a suit can be dismissed without prejudice and a new suit filed at any time.

My associates in Washington, the law firm of Hudson, Greuke, and Lipscomb, will arrange for a hearing in Washington, and are willing to represent your firm at the hearings. I will also be available to assist, and have reason to believe that we can obtain a favorable decision.

The fee for this service will be \$10,000, of which \$2,000 is payable in advance as a retainer fee and to cover expenses. The remainder of \$8,000 will be due and payable only if a favorable finding is obtained. In other words, the last \$8,000 of the fee will be on a strictly contingent basis.

With very best personal wishes, I am

Very truly yours,

GEORGE F. ROCK.

Representative HOFFMAN. That is unusual for a Democratic national committeeman from the State to ask to get a patent.

Senator NEUBERGER. Inasmuch as this has been introduced, and Mr. Chapman's name has been bandied about, I should like to cite for the record the fact that these importuning letters were written while Secretary Chapman was Secretary of the Interior, but patent was not granted to these timberlands until Secretary McKay became Secretary of the Interior.

Representative HOFFMAN. That is right. They delayed 18 months.

Senator NEUBERGER. They were written to the McDonalds, who were seeking these claims. But the point which I think is very important and should be made in fairness to Secretary Chapman, who is not here, is that the fact is that these letters, and I do not know whether they were proper or not and they sound bad to me—

Representative HOFFMAN. They are all right, Senator.

Senator NEUBERGER. These letters were written while Oscar Chapman was Secretary of the Interior but, in fairness to Mr. Chapman, it should be emphasized that the patents were granted only after Mr. McKay succeeded Secretary Chapman as Interior Secretary.

Senator GOLDWATER. Mr. Chairman, I might point out that Mr. Chapman made no decision. He neither denied nor approved.

Senator NEUBERGER. They were unable to get away with the political pressure with Mr. Chapman. While he was Secretary, these lands remained the property of the United States Government.

Senator GOLDWATER. I might remind the Senator from Oregon that I mentioned a case yesterday that is very flagrant that went on under Mr. Chapman, and one of our objections is that under the old administration we were not administered by law but were administered by the whims of man, and hundreds of claims were sat on by Secretary Chapman.

Senator NEUBERGER. We are on the Al Sarena claims.

Representative HOFFMAN. They did not come across with the \$8,000.

Senator GOLDWATER. I point out that he did not make up his mind, and I think this is an important point.

If you want to defend a government made up of men who sit on things and determine the law for themselves, I cannot go along with you. I think that that is where you and I differ. If the law is plain and Secretary Chapman preferred to sit on it, we criticize him for it.

Senator NEUBERGER. I would prefer a Secretary who sat on a case and allowed the national forests to remain in the possession of the people to a Secretary who relinquished them.

Representative HOFFMAN. There you have the nub. You do not like the present Secretary.

Senator NEUBERGER. I do not like his policies. I like him personally.

Senator GOLDWATER. We never approved of the policies of straddling and sitting. If the Senator wants to discuss with me some of the cases in my State where we had real giveaways, I will be glad to go into them. He did not straddle them then.

Mr. REDWINE. Mr. Chairman, Congressman Chudoff advises me that he can meet in the morning.

May I suggest that we meet tomorrow morning at 9:30 in room 457 of this building?

We are unable to get this room tomorrow morning and we will have to make that change.

Could we have both Mr. Mynatt and the chief here for about 10 minutes in the morning?

Senator SCOTT. Without objection, we will make it 10 o'clock in the morning.

The hour of adjournment has arrived.

Mr. COBURN. Mr. Chairman, could I ask the Solicitor just this one question? It will not be controversial and will not hold us here.

Senator SCOTT. All right.

Mr. COBURN. Mr. Mynatt, a question was raised here the other day about the status of a mining patent under the new law.

Is it not true that under the new law as well as under the old law when a man gets a patent on a mining claim, he has title to the trees, to the sky, and the ground underneath?

Mr. MYNATT. He has a fee simple title under the new law as well as the old.

Mr. COBURN. Thank you.

Senator SCOTT. The meeting is adjourned.

(Whereupon, at 4:35 p. m., the hearing was adjourned, to reconvene at 10 a. m., Thursday, January 19, 1956.)



## AL SARENA CASE

THURSDAY, JANUARY 19, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION OF  
THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS;  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES,  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 10 o'clock a. m., in room 457, Senate Office Building, Washington, D. C., Hon. W. Kerr Scott (chairman of the Senate subcommittee) presiding.

Present: Senators W. Kerr Scott (North Carolina), Richard L. Neuberger (Oregon), and George W. Malone (Nevada).

Also present: Senators Henry C. Dworshak (Idaho) and Barry Goldwater (Arizona).

Present: Representatives Earl Chudoff (Pennsylvania), (chairman of the House subcommittee); Clare E. Hoffman (Michigan), and Charles Raper Jonas (North Carolina).

Senator SCOTT. The meeting will please come to order.

Representative HOFFMAN. Let the record show that we have no quorum, but personally I do not care.

Senator SCOTT. We will put in the record this certified ticket of a telephone call from Mr. Gottley to Mr. M. E. Volin on December 29, 1953.

(The document referred to follows:)

[1-480]

UNITED STATES OF AMERICA,  
DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., January 19, 1956.*

Pursuant to title 28, section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Ticket of telephone call from Gottley to M. E. Volin on December 29, 1953.

Bill from the Chesapeake & Potomac Telephone Co. showing that this call consumed 9 minutes and cost \$6.90.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.

[SEAL]

C. C. DAVISON,  
*Acting Chief Clerk.*

**OFFICIAL**

1-1004  
U. S. Department of the Interior

DATE 12-29-53 NO. \_\_\_\_\_  
FROM \_\_\_\_\_

AGENCY Mines

FEL. NO. 7649 2456

PERSON Littley

PLACE \_\_\_\_\_ STATE \_\_\_\_\_

TO \_\_\_\_\_  
PLACE \_\_\_\_\_ STATE \_\_\_\_\_

COLLECTOR NO. 1023

PERSON M.E. Volin  
Thomas Howard

ADDRESS OR FIRM \_\_\_\_\_

REPORTS

12-2(300)

FILING TIME <u>9-28a</u> M	OPERATOR <u>[Signature]</u>
CONNECT M	RATE CLASS
DISCONNECT M	CHARGE

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY

STATEMENT OF U. S. GOVERNMENT OFFICIAL TOLL SERVICE

1028  
Du. Sch. 694

1 00000

FROM DEC 13/53 TO JAN 12/54

(Name of Customer)

DEPT OF INTERIOR-BUREAU OF MINES  
(NAME OF U. S. GOV'T SERVICE)

RE

RE 7 Telephone No. 1820

EXPLANATION OF CODE  
No Code Station to Station Day Rate  
N - Station to Station Night and Sunday Rate  
P - Person to Person Day Rate  
PN - Person to Person Night and Sunday Rate  
S - Report Charge  
C (in Place Called Column) - Message Received Collected  
Night and Sunday Rates Effective 8:00 P. M. to 4:00 A. M. Daily and All Hours on Sunday

DATE	PLACE CALLED	TOTAL CHARGE	MIN.	CODE	REMARKS (Not to be used by Telephone Company)	DATE	PLACE CALLED	TOTAL CHARGE	MIN.	CODE	REMARKS (Not to be used by Telephone Company)
TOTAL TOLL CHARGES AS PER 2 PAGES OF STATEMENT ATTACHED								392.95			
TOTAL COLUMN 1 TOTAL						TOTAL COLUMN 2 TOTAL				PAGE NO.	

I certify that the above bill is correct and just and that payment therefor has not been received.

Beulah C. Hicklin  
SUPERVISOR OF GOVERNMENT ACCOUNTS  
THE CHESAPEAKE AND POTOMAC TELEPHONE CO.



**OFFICIAL**

1-1004  
U. S. Department of the Interior

DATE 12-29-53 NO. \_\_\_\_\_

AGENCY Phoenix FROM \_\_\_\_\_

REL. NO. 7619 2456

PERSON Lottley

PLACE \_\_\_\_\_ STATE \_\_\_\_\_

TO \_\_\_\_\_

PLACE Phoenix STATE \_\_\_\_\_

COLLECTOR NO. 1023

PERSON John E. Volin

ADDRESS OR FIRM Thomas Howard

REPORTS

100 (300)

TIME TYPE	M	OPERATOR	
CONNECT	M	LINE	CLASS
DISCONNECT	M	CHARGE	

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY  
STATEMENT OF U. S. GOVERNMENT OFFICIAL TOLL SERVICE

Dr. Sch. 1038  
694

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FROM DEC 13/53 TO JAN 12/54

(Full Period)

DEPT OF INTERIOR-BUREAU OF MINES

RE 7 Telephone No. 1820

DATE		PLACE CALLED	TOTAL CHARGE	CHRG.	CODE	REMARKS (Not to be used by Telephone Company)	DATE	PLACE CALLED	TOTAL CHARGE	CHRG.	CODE	REMARKS (Not to be used by Telephone Company)
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TOTAL TOLL CHARGES AS PER 2 PAGES OF STATEMENT ATTACHED

392.95

ELS

I certify that the above bill is correct and that I have paid the same to the U. S. Government.

*Wm. C. Franklin*

U. S. GOVERNMENT ATTORNEY  
THE CHESAPEAKE AND POTOMAC TELEPHONE CO.

TOTAL COLUMN 1  
TOTAL

TOTAL COLUMN 2  
TOTAL

PAGE NO.

OFFICE OF THE  
ATTORNEY GENERAL

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY  
STATEMENT OF U. S. GOVERNMENT OFFICIAL TOLL SERVICE

Form 6, U. S. G. A.  
10-20

FROM DEC 13/33

TO JAN 12/34

(Both Dates)

BUREAU OF MINES

at

RE 7

Telephone No.

1880

(NAME OF U. S. GOV'T SERVICE)					(NAME OF EXCHANGE)				
EXPLANATION OF CODE					EXPLANATION OF CODE				
N - Station to Station Day Rate					N - Report Charge				
N - Station to Station Night and Sunday Rate					C - In Place Called Column - Storage Received C. Rate				
P - Person to Person Day Rate					REMARKS				
PN - Person to Person Night and Sunday Rate					(Not to be used by Telephone Company)				
DATE	PLACE CALLED	TOTAL CHARGE	MIN.	CODE	DATE	PLACE CALLED	TOTAL CHARGE	MIN.	CODE
DEC					DEC				
14	STILLWATER	7 50	13	P	210-1 E	23	CONF CONN WASH TO	40 00	38
15	CAMBRIDGE	3 90	17	P	546 (310)	AMARILLO	1 60	6	P
	BLUMONT	55	3	P	410 (501)	MORGANTOWN	1 10	3	P
	BOS C	1 55	2	P	710-6	NY C	1 30	5	P
	DMVR	6 70	10	P	410 (501)	PITB	4 25	19	P
	PITB	1 05	3	P	410 (501)	STATE COLLEGE	1 30	5	P
	"	2 45	10	P	220-1 E	LRL	1 20	20	P
	"	1 25	4	P	111-3	PITB	2 45	10	P
	"	1 25	4	P	111-3	PURKSUTAMNEY	1 05	3	P
16	NY C	1 10	2	P	120-1	VINCENNES	3 30	7	P
	"	1 10	3	P	710-9	AMBRIDGE	2 50	10	P
	"	3 10	13	P	710-3	BHAM	5 05	13	P
	PITB	1 05	3	P	111-3	DMVR	3 40	13	P
	"	1 05	7	P	130	NY	1 30	4	P
	"	2 05	8	P	130	N BEA	1 15	10	P
	WK BR	1 40	5	P	410 (100)	PITB	3 25	14	P
17	BHAM	4 35	9	P	111-3	"	1 05	3	P
	MT HOPE	4 70	17	P	220-1 E	"	1 05	3	P
	PITB	1 65	6	P	111-3	29	BOULDER CITY	9 30	13
	PITB	2 45	10	P	220-1 E	JOVL	5 00	14	P
18	BLUMONT	95	7	P	410 (501)	MALVERN	2 20	2	P
	HTGTH	1 15	6	P	410 (100)	MORGANTOWN	2 20	9	P
	PITB	1 05	7	P	111-3	"	70	3	P
	URBANA	3 95	8	P	111-3	NY	4 40	21	P
21	ALBY	2 15	6	P	220-1 E	PITB	1 25	4	P
	BLUE	2 00	6	P	111-3	"	1 05	3	P
	NY	1 10	3	P	122 (302)	"	1 45	3	P
	PITB	2 05	8	P	220-1 E	"	1 05	3	P
	ROAM	1 30	4	P	111-3	"	1 05	3	P
	SALEM	2 75	9	P	111-3	30	SPO	6 20	8
22	BALT	60	4	P	111-3	BLUMONT	2 75	5	P
	DMVR	4 50	6	P	220-1 E	CSO	1 10	10	P
	JOVL	2 90	7	P	122 (301)	NY C	1 10	10	P
	MASSILLON	2 60	8	P	123 (301)	NY	2 10	8	P
	NY	1 30	4	P	111-3	PITB	1 45	5	P
	PITB	3 25	14	P	410 (100)	"	2 25	9	P
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	"	1 45	5	P	111-3	2	ARCADIA	9 35	12
	"	3 45	15	P	410 (501)	4	BLUMONT	55	3
	SOUTH CHAS	1 25	3	P	111-3	CLKSBS	1 45	5	P
	TULSA	3 50	5	P	111-3	MTN	2 00	8	P
	VINCENNES	4 35	10	P	220-1 E	MSUS	4 65	7	P
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TOTAL					TOTAL			PAGE NO.	
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THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY  
STATEMENT OF U. S. GOVERNMENT OFFICIAL TOLL SERVICE

Form No. 1, 1-20-34

FROM DEC 13/33 TO JAN 12/34

(7257)

MINES

at

RE 7

Telephone No.

1820

(NAME OF U. S. GOV'T SERVICE)

(NAME OF EXCHANGES)

EXPLANATION OF CODE

Night and Sunday Rates Effective  
8:00 P. M. to 8:00 A. M. Daily and  
All Hours on Sunday

No. Code-Station to Station Toll Rate

P. - Power to Power Toll Rate

S. - Report Charge

C. (No. Figure Called Collected) - Message Received Collected

S. - Station to Station Night and Sunday Rate

P. - Power to Power Night and Sunday Rate

DATE	PLACE CALLED	TOTAL CHARGE	MIN.	CODE	REMARKS (Not to be used by Telephone Company)	DATE	PLACE CALLED	TOTAL CHARGE	MIN.	CODE	REMARKS (Not to be used by Telephone Company)
JAN	INDIANA	2 00	8	P	111-35	12	PARRISH	4 10	8	P	111-3
	LA	6 75	8	P	111-3		PITB	1 05	3	P	710-1
	NY	1 10	3	P	125-100		DELAYED BUSINESS				
	PITB	1 05	3	P	910-100	OCT					
	"	1 05	3	P	220-1	12	UNIONTOWN	70	3		220-1
	"	2 25	3	P	910-100	16	DAYT	4 25	12	P	600-1 (100)
	"	1 05	3	P	220-1	27	MPLS	2 05	4	P	910-100
	"	1 05	3	P	111-3	NOV					
	SRANTON	2 05	8	P	111-35	2	BECKLEY	1 00	1	PH	220-1
	WILM	90	4	P	111-35	11	PITB	1 25	4	P	120-1
5	AMAR	13 30	22	P	910-9	DEC					
	MT HOPE	2 45	8	P	220-100	9	NY C	1 10	3	P	111-11
	NY	1 10	1	P	121-100						
	NY	2 10	8	P	111-3						
	PITB	1 25	4	P	111-3						
6	MOBANTOWN	1 40	5	P	111-1						
	NY C	1 10	3	P	111-11						
	OAK PARK	6 35	14	P	910-100						
	PITB	1 05	6	P	910-100						
	"	2 05	11	P	910-100						
	"	1 05	3	P	210-1						
	"	1 25	4	P	111-3						
7	AMAR	11 10	18	P	910-100						
	"	3 95	8	P	"						
	"	12 20	20	P	710-9						
	SHVR	8 35	13	P	910-100						
	"	2 05	3	P	"						
	PITB	1 05	3	P	111-3						
8	FAIRMONT	1 05	3	P	111-34						
	PITB	1 05	3	P	313-10						
11	ALBY	5 45	8	P	910-100						
	BOS	1 05	3	P	710-5						
	LA	4 05	10	P	111-3						
	NY	2 50	10	P	"						
	W BEA	1 45	13	P	540-100						
	PITB	2 45	10	P	220-100						
	"	2 05	12	P	111-3						
	SF	5 45	6	P	910-100						
12	BLUMONT	7 45	13	P	124-100						
	"	1 05	3	P	"						
	"	1 05	3	P	"						
	CSO	3 45	8	P	111-3						
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Mr. REDWINE. Will Mr. McArdle and Mr. Mynatt come forward, please?

**TESTIMONY OF RICHARD E. McARDLE, CHIEF, FOREST SERVICE  
AND E. F. MYNATT, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE—Resumed**

Mr. COBURN. Dr. McArdle, I have been furnished with some information from the House Government Operations Subcommittee, which was given to the committee by the Forest Service and the Bureau of Land Management preliminary to their investigation of the administration of timber resources in the Northwest.

I wanted to check these figures against whatever knowledge or information or data you have.

These figures go to the increase in the competitive-bid price over your appraised-price figures which you gave the committee yesterday. I want to make sure that they are accurate. Here is what they are:

There was a 61-percent increase in prices received on competitive-bid for timber in the Rogue River working circle over the Forest Service appraised prices. This is an average figure.

Mr. McARDLE. During what period?

Mr. COBURN. Let me finish—for the year 1954. Is that a dependable figure?

Mr. McARDLE. If you got that figure, Mr. Coburn, from our people in Portland, I would assume that they had actually added up and given you the actual figure.

Mr. COBURN. This information was furnished, according to my understanding, from officials of the Forest Service both in Portland and here.

Mr. McARDLE. Last year they were running, as I recall, about 50 percent above our appraised prices in that area.

Mr. COBURN. You do not recall the figure in 1954?

Mr. McARDLE. I do not recall the figure for 1954.

Mr. COBURN. But in 1955 they ran about 50 percent higher?

Mr. McARDLE. About 50 percent is my recollection.

Mr. COBURN. Now, the record also shows that in those sales between February 1954 and March 1955 where competition occurred, Douglas-fir appraised prices were increased on an average of 49 percent by bidders—this is for Douglas-fir only—white fir was 59 percent, and pine, 8 percent over your appraised prices.

Mr. McARDLE. I assume our people in Portland simply gave you the actual figures that they had.

Mr. COBURN. Therefore, all other factors being equal—that is conditions of accessibility to the timber on these particular claims—you could say, could you not, that if the timber on those claims were sold today by the Al Sarena people, the price received would be substantially in excess of the figure you gave the committee yesterday?

Mr. McARDLE. I would estimate it would be about 50 percent higher if there were sharp competition.

Mr. COBURN. Thank you.

This is on a different subject. When the appeal was taken by the Al Sarena Co. to the Secretary of the Interior and subsequently the Secretary of the Interior directed the Bureau of Mines to conduct an independent investigation, were you or the Forest Service at any

time furnished with the information developed as a result of that independent investigation?

Mr. McARDLE. I don't believe we were, Mr. Coburn. I want to check on that to be absolutely sure.

Mr. COBURN. Do you know, Mr. Mynatt?

Mr. MYNATT. As far as the general counsel's office is concerned, we were not furnished the information.

Mr. COBURN. And would you not the general counsel's office in the usual customary fashion of conducting these things be the office that would be notified?

Mr. MYNATT. Generally speaking, that is true, because we are the attorneys of record in that case.

Mr. COBURN. That is right, and you would have to, as counsel for the protestant, know what new evidence had been adduced so that you could rebut it if you felt that you should protest it; is that correct?

Mr. MYNATT. That is correct.

Mr. COBURN. But that never happened, you say?

Mr. MYNATT. We did not receive any information of this kind.

Mr. COBURN. As a matter of fact, is it not true also that you were never notified that the Bureau of Mines had been asked to do this job?

Mr. MYNATT. That is correct. We were not.

Mr. COBURN. You had no knowledge whatsoever?

Mr. MYNATT. No, sir; we did not. Our first knowledge was when we received a copy of the decision.

Mr. COBURN. That is all I have at the moment, Mr. Chairman.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Yes.

Dr. McArdle, I would like to ask you about a collateral matter, if I can. It is somewhat under a question of personal privilege, Mr. Chairman, because of an attack made upon my integrity.

Dr. McArdle, I think you perhaps are in better position to comment upon this than any other person I know.

A press release was distributed on January 10 of which I will not read the whole thing because it was many pages long:

A more recent example of such aid was the intercession of Senator Neuberger of Oregon to ask Chief Forester McArdle to reverse the decision of a local forester and thus make it possible for a lumber company to buy 75 million feet of timber in the Umpqua National Forest. That intercession, Senator Neuberger said, was his duty to Oregon. The fact that one official of the lumber company had donated \$1,000 to his campaign and another had acted as a county campaign manager for him had no bearing on his action, he said.

I presume this refers to the proposal to sell so-called low-value sub-Alpine timber near Crescent Lake in Oregon. I would like to ask you several questions about that, if I may.

Did I ever ask you in any way to favor any one lumber company in the sale of any timber in Crescent Lake or anywhere else?

Mr. McARDLE. At no time, never. That may not be grammatical, Senator, but I think it expresses my opinion.

Senator NEUBERGER. Have I ever asked you to depart in any way from normal Forest Service procedures in the sale or disposal of timber or any other property under your custody?

Mr. McARDLE. No.

Senator NEUBERGER. If this sale is finally consummated at Crescent Lake, will it be a competitive sale open to all bidders?

Mr. McARDLE. It will.

Senator NEUBERGER. Will the timber go only to that company or companies which offer the highest price to the United States Government?

Mr. McARDLE. Yes; it will.

Senator NEUBERGER. Maybe I did not phrase that right.

In other words, under the terms of this proposed sale, the company getting the timber would be the company that offered the highest price at bid to the Federal Government?

Mr. McARDLE. It must be the high responsible bid. Another bid might be higher but the company might not be able to make good on it.

Senator NEUBERGER. I understand. It will be a competitive sale and any legitimate company can participate in the sale?

Mr. McARDLE. It will in nowise be different from thousands of other such sales that have been made.

Senator NEUBERGER. The harvesting of the timber, as I understand it, would be under the direction of the United States Forest Service?

Mr. McARDLE. Completely.

Senator NEUBERGER. The Forest Service would retain ownership of the land?

Mr. McARDLE. Yes.

Senator NEUBERGER. Is that correct?

Mr. McARDLE. Yes.

Senator NEUBERGER. I would like to read, if I may, a letter which I wrote to you on July 18, which I have here, concerning this sale, because of this comment in this press release that I have favored one company. I would like to offer it for the record and ask you if this is the letter I sent you:

JULY 18, 1955.

HON. RICHARD E. McARDLE,  
*Chief, Forest Service, Department of Agriculture,*  
*Washington, D. C.*

DEAR MR. McARDLE: I should like to state very briefly, for the record, my position concerning the application of the L. & H. Lumber Co. for the letting of bids on timber in the Crescent Lake area and the objections to that application.

As a Senator from Oregon, I would not take sides in any controversy which involves the interests of two communities in my State, concerning the disposition and use of a public resource. I do not do so now.

My major interest is in seeing to it that Oregon has the maximum possible employment from its timber, without doing damage to sound conservation or to watershed protection. Between 1952 and 1954, Oregon suffered the greatest proportionate drop of any State in Federal tax collections, and this fact affords some measure of the urgent need in Oregon for further profitable employment. If subalpine timber species in the Crescent Lake region proves to be a valuable economic resource which can help to provide payrolls, I think that is a desirable goal, regardless of what company or companies develop the timber.

As a Senator, I cannot pass finally upon such matter as watershed protection, conservation of recreational values, and upon proper logging methods. My confidence in the United States Forest Service is such, however, that I feel your agency will authorize no logging which would imperil these goals.

In conclusion, let me again state that I make no choice between the interests of Bend and of communities west of the divide of the Cascade, but I merely urge that the maximum economic use and employment be realized—subject to sound conservation practices—from the timber in question at this time.

I appreciate the interest and time which the Forest Service is devoting to this question which is of such vital importance to Oregon.

Is that, to your recollection, the letter that I addressed to you concerning this?

Mr. McARDLE. Yes; it is. May I volunteer a comment?

Senator NEUBERGER. As far as I am concerned; yes.

Senator SCOTT. Would you speak louder, Doctor?

Mr. McARDLE. Senator, as you have been talking, I have been trying to recall when it was that you came to my office with two officials of—I assume we are referring to—the L. & H. Co.

Senator NEUBERGER. That is right.

Mr. McARDLE. I believe it was in June, early June, but I cannot be absolutely positive of that.

I do recall, however, that you stayed perhaps less than 5 minutes. You were on your way to, as I recall, another meeting. You said that you wanted to meet me—we had not met before—that you wanted to introduced these two constituents from Oregon, that they had a business matter to propose to us, that you knew very little about it, you didn't know enough to comment one way or the other but that you were a Senator from Oregon in favor of anything which would promote the interests of Oregon and would want us to consider this proposal, whatever it was, entirely on its merits. And, with that, as I recall, you took your departure and we did consider it on its merits, and whatever decision was made in that case would be my decision and mine only.

Senator NEUBERGER. Thank you.

Mr. McARDLE. And I might also add—and perhaps this is a comment that maybe I should not make—that it has been my happy experience to have that same attitude taken by a very great many Members of the Congress. It is almost standard operating procedure with Members of the Congress in dealing with us. They ask us only to consider these things on their merit.

Senator NEUBERGER. Thank you very much.

Senator SCOTT. Are there any questions?

Mr. Lanigan?

Mr. LANIGAN. I just want to ask Mr. McArdle whether the Forest Service has any record of the amount of timber cut to date on the 15 claims?

Mr. McARDLE. That question was asked us once before and somewhere along the line I think I wrote or said to someone that we did not have it. Subsequent to that time I find that one of our local Forest Service people, under agreement with the State forester of Oregon, made an examination of the adequacy of slash disposal on the portion of the Al Sarena claims which have been logged over. I know that we do that elsewhere in the State of Oregon, also under agreement with the State forester.

In November of 1955, this man checked on the area, the Al Sarena claims, all 23 claims, because timber had been cut from both the protested and the clear-listed claims, and made an ocular estimate of the timber that had been cut as of November 21 when his report was made.

You will bear in mind that this is not an actual measurement of the timber but an ocular estimate turned into the State forester in his capacity as an agent of the State forester.



From the 15 contested claims he estimated that 962,000 board feet had been cut, and from the 8 uncontested claims 1,658,000 board feet had been cut, or a total of 2,620,000. I have no way of knowing whether that is an accurate estimate or not.

Mr. REDWINE. Chief McArdle, what was the name of the man who made this report?

Mr. McARDLE. I think it was Mr. Ash; but let me check.

That is correct. The man's name was Ash, A-s-h.

Mr. REDWINE. Chief, the report to which you are referring, made by Mr. Ash, was that subsequent to the time that he made his regular slash report on this property?

Mr. McARDLE. According to my records, Mr. Redwine, on July 1 Mr. Ash—and if you want the initials, it is Lowell W. He is the fire-control assistant on that ranger district—he received a copy of the Oregon State Harvesting Permit No. 11441, dated June 24, 1954, that had been issued by the State of Oregon to the Al Sarena Co. to log part of the patented claims.

There was also a permit to the Holman Lumber Co., I believe, to operate a sawmill there, and he made his first inspection on July 8. He made an inspection of the sawmill on July 12. He made additional inspections on August 10 and 13 and September 5 and 9 for compliance with the State law.

On December 6, 1954, he submitted his final annual hazard and conservation status report.

Mr. REDWINE. What was that date?

Mr. McARDLE. December 6.

Mr. REDWINE. 1955?

Mr. McARDLE. In 1954. Then, on November 21, 1955, he submitted his final conservation and hazard reduction report for 1955.

I have attempted to give you here the complete record of all inspections made by Mr. Ash.

Representative JONAS. Mr. Redwine, before you leave that, could we get a dollar value put on that amount?

Mr. REDWINE. I am going to work on another phase of it. I interrupted Mr. Lanigan. I do not know what he has in mind.

Representative JONAS. I would suggest to the chairman at this point that I would like to have an idea of the dollar value of that timber, if it would be possible to get it.

Senator SCOTT. Could you give us that figure?

Representative JONAS. 962,000 board feet.

Representative CHUDOFF. Mr. Chairman, do you not think that, instead of us speculating as to the value, the average value and things that have no real value in evidence, we ought to find out who bought it and how much they paid for it, and then we will find out what it is worth?

Representative JONAS. Mr. McArdle yesterday gave us some dollar values.

Representative CHUDOFF. He gave us an appraised value and told us that the actual value, because of the spirit of competition in timber bidding, was 50 percent in excess. I think we will be guessing.

If we find who bought it and how much they paid, it would give the exact worth of the timber.

Mr. McARDLE. Mr. Chudoff, I have no idea how much the timber was sold for.

Representative CHUDOFF. I understand. I would not expect that you would, Chief. I think that perhaps the owners of the Al Sarena Mine could tell us whom they sold it to and give the figures of what they got for it.

I would not expect you to know it, but I think we ought to have the correct figure and do away with a lot of guessing.

Mr. McARDLE. In that way you might get a more accurate estimate of the amount of timber cut also.

Representative CHUDOFF. I think you are right about that.

Representative HOFFMAN. Mr. Chairman, I suggest that, if they want to talk about the value of the timber, they call the McDonalds and find what they did sell it for.

Are you going to call them?

Mr. REDWINE. Yes.

Representative CHUDOFF. I think that is right, sir.

Senator SCOTT. Mr. Lanigan, will you proceed.

Mr. LANIGAN. After the Forest Service received the decision of January 6 in the Al Sarena case, Mr. McArdle, did you protest or make any recommendation concerning the action that the Forest Service would take on that matter?

Mr. McARDLE. The answer to your question is, "No, Mr. Lanigan, we did not." We received the decision about the 20th of January 1954 and we debated what we should do about it. The only course open to us was to ask the Secretary of Agriculture to intercede personally with the Secretary of the Interior and ask him to reverse the decision.

We had made as complete a case as we knew how to make. We had given all the evidence we had. We did not know what additional evidence was before the Secretary of the Interior in making his decision. We were certain that he had reviewed the whole case, because that is required by the rules of the Department of the Interior and it has been standard practice.

I am afraid we spent most of our time trying to decide whether this would constitute a precedent, and about the time that we had reached that decision, the claims had been patented.

Mr. LANIGAN. As I understand it, you then were concerned as to whether or not this case would constitute a precedent?

Mr. McARDLE. We were concerned with that; yes, sir.

Mr. LANIGAN. Why were you concerned with that?

Mr. McARDLE. I think I had better ask Mr. Mynatt to answer that. I can volunteer my own opinion if you would like it.

Mr. LANIGAN. Perhaps it would be best to get the opinion of both of these gentlemen on that question, Mr. Chairman.

Senator SCOTT. Mr. Mynatt, could you answer that?

Mr. MYNATT. Yes, sir.

First I would say, Mr. Chairman, that as to the question of precedent, I don't think that this was a precedent which would require the Secretary of the Interior to follow this same course in every future case, if that is the idea of the precedent.

I do think it was an indication that the Secretary of the Interior under facts which he deemed appropriate could use this method in future cases.

Mr. LANIGAN. I asked Mr. McArdle why he was worried about whether or not it was a precedent.

Mr. McARDLE. Essentially the same point. We were in conference with each other, the General Counsel's office and the Forest Service, and Mr. Mynatt has expressed my opinion.

Mr. LANIGAN. Were you concerned as to whether or not in future cases evidence would be taken without consultation and notice to the Forest Service?

Mr. McARDLE. Yes, sir.

Mr. LANIGAN. If that occurred, would you think that that would be harmful to the administration of the national forests?

Mr. McARDLE. Not necessarily, but I think we would like to know what is being done.

Representative CHUDOFF. Could I ask your solicitor a question at this point, sir?

Your name is Mynatt?

Mr. MYNATT. Yes; M-y-n-a-t-t.

Representative CHUDOFF. Mr. Mynatt, you are familiar with paragraph 205.9 of the Code of Federal Regulations, chapter 1?

Mr. MYNATT. Yes, sir.

Representative CHUDOFF. Would you say in your opinion that the Secretary of the Interior ignored or forgot or refused to be bound by these regulations in the procedure adopted in this particular case?

Mr. MYNATT. Mr. Chudoff, I would have to answer that question in this way:

The regulations, to me, are not clear as to whether we are or are not entitled to notice where the Secretary of the Interior decides to use Bureau of Mines in arriving at the conclusion. I would just have to say that we were unable to determine whether, on those regulations, we were entitled to notice.

Representative CHUDOFF. Under the regulations you feel you were entitled to it, but you are not sure whether the Secretary, having taken into consultation Bureau of Mines, had to notify you?

Representative HOFFMAN. Read that question.

Representative CHUDOFF. I would like to get it straight, that is all. (The pending question was ready by the reporter.)

Representative HOFFMAN. I understood the counsel to say that there was not anything in the regulations, so far as he knew, or in the statutes although he did not mention it, which requires the Department to notify him. You are trying to get him to say that there was.

Representative CHUDOFF. I am not trying to get him to say anything. I am trying to find out whether or not, in his opinion, the regulations were followed by the Secretary, or did he ignore them.

You say he was not bound to notify you if he took in the Bureau of Mines?

Mr. MYNATT. I said I wasn't sure whether the regulation applied where he took in the Bureau of Mines.

Representative CHUDOFF. To your knowledge, had the Secretary ever taken in the Bureau of Mines before in any case of this type?

Mr. MYNATT. No, sir; not in any case within my knowledge involving national forest lands.

Representative CHUDOFF. This was the first time within your knowledge in the history of these cases that your department was ignored and the Bureau of Mines was taken in on the case?

Mr. MYNATT. Well, it is the first instance in which this procedure was used in our case.

Representative CHUDOFF. And you would say it was very unusual due to the fact that your department had protested and had decided that there was not enough mineral content in the assays to develop the land as a mining claim?

Mr. MYNATT. Mr. Chudoff, I would have to answer that by saying that it wasn't the customary way in which our cases had been handled in the past.

Representative CHUDOFF. And that you did not know anything about this decision or what was being done until you read the final decision itself?

Mr. MYNATT. That is correct, sir.

Representative CHUDOFF. Thank you.

Senator GOLDWATER. Mr. Chairman, might I ask the counsel a question?

Is there anything illegal in the methods used by the Department of the Interior in granting this patent?

Mr. MYNATT. Senator Goldwater, I know of nothing illegal. The question is simply this:

We believe that there was power under the regulations for the Secretary of the Interior to have asked the Bureau of Mines for assistance under circumstances which were known to him. We don't know what those facts were.

We simply say that under the regulations, under appropriate circumstances he could have asked the assistance of the Bureau of Mines.

Senator GOLDWATER. There is nothing in the law that said he had to do so?

Mr. MYNATT. Had to what?

Senator GOLDWATER. Had to seek the Bureau of Mines' assistance?

Mr. MYNATT. No, sir.

Senator GOLDWATER. In other words, what the Department of the Interior did in this case was no infringement of any law?

Mr. MYNATT. It is not an infringement of any statute; no, sir.

Representative HOFFMAN. Any regulation?

Mr. MYNATT. Any law.

Senator GOLDWATER. You and Dr. McArdle have expressed a concern in this case that it might establish a precedent.

Now, these patents were granted in 1954. That is 2 years ago. In 2 years since, has anything happened that would give you any cause to thing that a precedent had been established?

Mr. MYNATT. No, sir.

Senator GOLDWATER. That is all I have.

Representative CHUDOFF. Can I ask you one more question?

Mr. Solicitor, had your department known or received notice about the proposed grant of patents, you would have vigorously opposed it, would you, on the basis of your investigation, your decision, and so forth?

Mr. MYNATT. Well, had we known that additional evidence was to be presented, we would have reviewed that evidence and determined what additional evidence, if any, we could have introduced to give the Secretary of the Interior full information.

Representative CHUDOFF. But you never got the additional evidence? You did not know what was going on? The first thing you knew was when you got the final decision?

Mr. MYNATT. The first we knew that there had been some additional assaying done was when we received the copy of the decision in our office about January 20, 1954.

Representative CHUDOFF. Then, as a result of that, Dr. McArdle went to the Secretary of Agriculture?

Mr. McARDLE. No.

Representative CHUDOFF. You said something about somebody contacting the Secretary of Agriculture and asking him to talk to the Secretary of the Interior about either reconsidering or overruling his decision. Did you say that, Doctor, or was I mistaken?

Mr. McARDLE. No, sir. May I correct that?

I said that we debated what might be done and considered that that probably would be the only course open to us.

Representative CHUDOFF. But you never did go to the Secretary of Agriculture?

Mr. McARDLE. We did not.

Representative JONAS. May I ask Mr. Mynatt a question?

Senator SCOTT. Yes.

Representative JONAS. Mr. Mynatt, you have stated that you do not know of any case that has arisen while you have been in the Department in which this procedure was followed.

Mr. MYNATT. Within the national forests, Mr. Jonas.

Representative JONAS. Now, can you tell us whether you have known of any case in which there was a contest between a claimant or a patentee and the Forest Service, before the Bureau of Land Management, in which the claimant did not press his evidence but stood on a demurrer, and thereby sought to question the right of the Bureau of Land Management to take action in the case because of legal matters?

Mr. MYNATT. There have been cases, Mr. Jonas, in which for some reason or other the claimant failed to produce his evidence before the manager.

Representative JONAS. I am asking you if you have ever heard of a case, or if you know of a case, in which the claimant elected to stand on a demurrer as was done in this case?

Mr. MYNATT. No, sir; I do not.

Representative JONAS. So in that respect, therefore, when the file came to Washington it did present a very unusual situation and one which had never arisen before to your knowledge?

Mr. MYNATT. Well, yes, in the respect that the claimant decided to rely on a demurrer rather than introduce his evidence at the hearing.

Representative JONAS. Now, may I ask you this further question:

Is it true that in Oregon where the hearing was first held a very acrimonious dispute developed between representatives of the Forest Service, the Bureau of Land Management, and the claimants?

Mr. MYNATT. Mr. Jonas, I don't know about that. Our attorneys out there may, but I don't know about that.

Representative JONAS. You never heard that there were a lot of charges back and forth about bad faith?

Mr. MYNATT. At the time of the hearing or before the hearing?

Representative JONAS. Yes, and subsequent to the hearing.

Mr. MYNATT. Oh, I have heard something about it since the hearing; yes, sir; but not prior to the time of the hearing before the manager. There may have been, but I am just not aware of it.

Representative JONAS. You have heard that it developed into a rather bitter name-calling contest between representatives of the Forest Service and the Bureau of Land Management on one side, and these claimants on the other?

Mr. MYNATT. I don't know to what extent the Forest Service was involved, but I know that there was a good deal of discussion about it; yes, sir.

Representative JONAS. Do you know that the hearing examiner who heard the case felt that the dispute had grown so bitter that he didn't even want to render the decision and sent the file to his superior in Washington and asked him to render the decision?

Mr. MYNATT. No, sir; I don't know that.

Representative JONAS. You do not?

Mr. MYNATT. No, sir; I don't.

Representative JONAS. May I ask you one other question?

Mr. MYNATT. Yes, sir.

Representative JONAS. This is a question on the Bureau of Mines. That is an agency of the Government?

Mr. MYNATT. Yes, sir.

Representative JONAS. Do you have confidence in the Bureau of Mines?

Mr. MYNATT. Well, Mr. Jonas, I have confidence in all Government agencies.

Representative JONAS. I did not ask you if you had confidence in all of them. I asked you if you have confidence in the United States Bureau of Mines?

Mr. MYNATT. I have never done any work with the Bureau of Mines, but I would answer that question "Yes."

Representative JONAS. Do you think it is a reputable agency of the Federal Government, staffed by people who know their business?

Mr. MYNATT. Well, to my knowledge; yes.

Representative JONAS. Would you think that the Bureau of Mines would be qualified to take samples of ore and have them assayed?

Mr. MYNATT. Yes; I think that is one of their purposes.

Representative CHUDOFF. Mr. Jonas, let me get this straight from you.

The Bureau of Mines did not assay; the Williams Co. assayed. As a matter of fact, Mr. Appling testified that he had no confidence in the assayers of the Bureau of Mines.

Representative JONAS. Do you want me to ask the question?

Representative CHUDOFF. You may ask the question.

Representative JONAS. Will the stenographer please read the question I asked Mr. Mynatt?

(The question was read by the reporter.)

Representative JONAS. Mr. Chudoff, did you hear the question? The question I asked is, Does the witness think the Bureau of Mines would be qualified to take samples of ore and have them assayed?

Representative CHUDOFF. That is a general question. That applies to all cases.

Representative JONAS. That is exactly what happened in this case. They took samples and had them assayed.

Would you think the Bureau of Mines would be qualified to do that sort of thing?

Mr. MYNATT. I do.

Representative CHUDOFF. Could I ask a question?

There has been a lot of talk about demurrers, and when I used to try civil cases or criminal cases, they used to say that when we demurred the evidence, we say we are admitting everything that the case said in a criminal case or admitting everything that the plaintiff said in a civil case, but we still think that we win.

Is that generally what a demurrer is:

I will not offer any evidence. Based on what the plaintiff offered, we win.

Mr. MYNATT. Yes, sir.

Representative CHUDOFF. This was an argument between the Federal agency and the Al Sarena Mines. The Al Sarena Mines refused to offer any evidence, refused to counteract anything that the Government agency had put in. Therefore, how could the Government agency possibly decide for the mining company without any counteracting evidence or cross-examination?

As a matter of fact, I believe they walked out of the hearing.

Mr. MYNATT. It is my information that they walked out of the hearing.

Representative CHUDOFF. So, on the basis of the record, there could not be any other decision than against the company.

Mr. MYNATT. Mr. Chudoff, as I understand it, on the question of demurrer—and whether this would be the kind of demurrer we use in a court is a question—this is an administrative proceeding. What they asked was a ruling on the demurrer before they presented their evidence.

Representative JONAS. That is right.

Mr. MYNATT. When they didn't get that ruling, they walked out.

That is my understanding of the proceedings in Portland.

Senator NEUBERGER. Mr. Chairman, I think two facts should be put on the record at this point.

First, I think that, in fairness to committee counsel, it should be pointed out that Mr. Jonas quite properly addressed a whole series of questions to Mr. Mynatt based on Mr. Mynatt's opinions.

That was, Mr. Jonas, quite properly right, but I think it should be noted that for the past week there has been constant criticism by members of this committee whenever either Mr. Redwine or Mr. Coburn addressed a question to any witness asking his opinion of something.

I think that should be put on the record.

Secondly, the Senator from Arizona asked if it were not true that this decision was handed down in January of 1954, and there has been no repetition of it since. Mr. Mynatt said that, to his knowledge, that was correct.

I think it should be noted for the record that in February of 1954 there began constant public criticism of this decision in the State of Oregon and the Pacific Northwest generally by people in public life, by conservation groups and by many segments of the press, 1 month after it was handed down. I think that that should be noted for the record, too.

Senator GOLDWATER. I agree with the Senator from Oregon that everything that his people in Oregon have said about this should be

in the record. My question was not directed at anything that pertained to remarks that the Senator has just made.

The question has been repeatedly asked here, has this established a precedent, and if it established a precedent, then I think something would have been done in the intervening 2 years about granting similar patents in a similar manner.

I merely wanted to bring out, and I think I have, that it has not established a precedent.

Representative HOFFMAN. Mr. Chairman, where are we now?

Representative CHUDOFF. In order to settle that question, I have the record of the hearings in Portland, and I think Mr. Rice was testifying and Mr. Redwine said to him:

Mr. REDWINE. At that time did the Al Sarena company and counsel leave the hearing without presenting evidence?

Mr. RICE. Not at that particular time. At the conclusion of the ruling on the demurrer and the motions, the counsel for the Forest Service asked for permission to proceed with the hearing. At that point \* \* \*

and so forth.

It appears from Mr. Rice's testimony that at the conclusion on the ruling of the demurrer and motion they left. Evidently he did make a ruling.

I think the solicitor testified that no ruling was made upon the demurrer. In view of Mr. Rice's testimony, he would be the best person to know.

Representative HOFFMAN. The point of order is that we have been back and forth on that. There is no contest on that, that the attorney got mad and walked out, and then the examiner did the only thing that he could do; rule against him and in favor of the Department.

What is the use of wasting any more time about it?

Representative CHUDOFF. The question of facts is whether he walked out before or after the ruling on the demurrer.

The Solicitor for the Department said he thought he walked out before the ruling. According to Mr. Rice's testimony, it shows he walked out after the ruling on the demurrer.

Representative HOFFMAN. I will concede. I do not care when he walked out, before or after, but he left.

Representative CHUDOFF. I want to keep the record straight, Mr. Hoffman.

Senator SCOTT. Are there any further questions?

Senator MALONE. Mr. Chairman, I would like to ask a couple of questions of Mr. McArdle.

I looked over your statement of yesterday, Mr. McArdle. Unfortunately, I could not be here all the time. We had a meeting of the Senate Finance Committee on a bill. Business is rather pressing.

It is clear from your statement that you have protested issuance of patents on these claims. First, I would like to ask you during what period were these claims located?

Mr. McARDLE. I think I covered that in my statement, Senator, that the mining claims in question were located at various times from 1897 through 1936. Some of the noncontested claims were not located until 1939.

Senator MALONE. 1936 was the last location. How many of them were located, we will say, in 1897 and in the early 1900's?

Mr. McARDLE. I would have to look that up, Senator.



Senator MALONE. You do have the dates, though?

Mr. McARDLE. We must have the dates in our files, but I don't have them with me here today.

Senator MALONE. Then would you complete your testimony by making the dates of original location a part of your testimony?

Mr. McARDLE. Yes, I would be glad to do that.

Senator MALONE. If you could, do that in time so that the transcript in the morning will show it. I will appreciate it. Some of us just have to read the testimony.

Senator SCOTT. Would you do that in the morning?

Mr. McARDLE. We can do that today, I feel quite sure.

Senator MALONE. Thank you.

(The information referred to follows:)

DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
Washington, D. C., January 19, 1956.

C(U).

Adjustments, R-6, Rogue River.

Al Sarena Mines, Inc.

Hon. W. KERR SCOTT,

*Chairman, Legislative Oversight Subcommittee,  
Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.*

DEAR SENATOR SCOTT: Following are two items of information requested by Senator Malone today when Mr. McArdle was testifying before the joint subcommittee investigating the Al Sarena Mines matter:

1. The 23 claims were located in the following years:

Date of location and claim name:

1897—J. W. Merritt	1933—Rainboe
1897—Peter Applegate	1934—Alabama
1897—W. C. Leever	1934—Sulphide
1897—Mark Applegate	1934—Staples
1897—H. McKenzie	1936—Oro Real
1897—J. L. Grubb	1936—La Jolla
1897—J. D. McKinnon	1936—Arroyo Verde
1897—Henry Applegate	1936—Oro Escondido
1897—A. W. Dahlberg	1936—Cougar
1897—D. McKinnon	1939—Oro Alto
1932—Telluride	1939—Oro Rico
1932—Manganese	

2. The number of mining claims of the national forests which have been patented as of January 1, 1955, is 36,770.

Sincerely yours,

RICHARD E. McARDLE, *Chief,*  
By HOWARD HOPKINS.

Senator MALONE. Now, the basis of your protest really, when we come down to it, is the acquisition of mining claims in the Forest Service often proves later that the timber or the surface product is worth more than the mineral that they seek to mine. Is that not about the basis of your protest?

Mr. McARDLE. No, Senator. The protest was made on advice of the Bureau of Land Management mineral examiner, plus additional examination of our own mineral examiner, that the requirements of the mining law had not been met by valid discovery, and on five of the claims the required development work.

Senator MALONE. I guess I am calling for something that I criticized here the other day. I have been reading the papers myself. The claim that you get from the publicity is that there has been collusion

or some kind of crooked work and that you acquire the title to this timber, which is more valuable than the minerals.

You have never said that? You have never said that they located the mining claim in order to get title to the timber and have no interest in the mine?

Mr. McARDLE. To the best of my knowledge, we have never made that statement.

Senator MALONE. All right. Now, what does the mining law provide for patent? What do you have to show to secure patent to a mining claim?

Mr. McARDLE. You have asked me the question. I will attempt to answer it, but you will bear in mind that I am not a lawyer and I will have to give you my own conception of it.

Senator MALONE. You may refer to your lawyer if you wish.

Mr. McARDLE. In order to obtain a patent on a mining claim, a claimant must show evidence of a valid discovery. By that is meant a discovery sufficient to justify, in the words of the law:

\* \* \* a prudent man to spend additional money to develop it.

He must do \$500 worth of development work. He must pay fee of \$5 an acre and he must have the land surveyed.

That is my understanding of what he must do.

Senator MALONE. He must have what?

Mr. McARDLE. He must have a mineral survey made.

Senator MALONE. Did they have \$500 worth of work done?

Mr. McARDLE. Our mineral examiner decided they had not on 5 of the 15 protested claims.

On eight claims which were not protested we felt that all of the requirements of the law including development had been met.

Senator MALONE. And on the other two? There are 15 claims. You have accounted for 13 now. What about the other two?

Mr. McARDLE. I said on eight claims he gave us his opinion that all of the requirements had been met. He recommended no protest. That left 15 claims out of 23.

Senator MALONE. Now, on 5 of the remaining 15 there was not enough development work?

Mr. McARDLE. In his opinion, no, sir.

Senator MALONE. Then what was your protest based on on the other 8?

Mr. McARDLE. We made no protest on the eight.

Senator MALONE. That would be 10 claims left.

Did they patent 23?

Mr. McARDLE. Twenty-three claims were patented.

Senator MALONE. Then there would be 10 claims. What did you do with the 10 claims? Did you protest the other 10?

Mr. McARDLE. There were 23 claims in this lot.

Senator MALONE. I am trying to get the picture.

Mr. McARDLE. Our examiner examined all of them. On 8 of them he recommended no protest. On 15 he did recommend making a protest, and on 5 of those 15 he said that, in addition, there had not been the required development work, in his opinion.

Senator MALONE. Then what was the basis of the protest on the remaining 10. This accounts for 13.

Mr. McARDLE. The basis of the protest on the remaining 10 was that there had not been enough showing of minerals; and that, in his opinion, the requirements of the law had not been met in that respect.

Senator MALONE. As to the development, has there been an engineer's report or does the mineral surveyor's report show that the work that had been done altogether totaled enough work or that it was not done in a manner to develop these claims?

Mr. McARDLE. Now, you are getting into a situation, Senator, where the question should be directed to a mining engineer. But, as I read Mr. Hattan's report, he was the mineral examiner from the Bureau of Land Management who made the first examination, he said that while a large amount of development work had been done which would apply to the 8 unprotested claims, he did not think that all of that development work could apply to all of the remaining 15 because of topography and for other reasons.

Senator MALONE. And he specified those reasons, that the total development work could not apply to these five that you mention specifically?

Mr. McARDLE. He did, and that is in Mr. Hattan's report, as I recall, which has been made a part of this testimony.

Senator MALONE. And also the 10 in addition to the 5? That would apply to the 10, too, that this work had not been done in development?

Mr. McARDLE. No, he made no recommendation that the protests on the remaining 10 be based on insufficient development work.

Senator MALONE. He thought that development work applied in the development of 10?

Mr. McARDLE. He did.

Senator MALONE. And on only 5 of the 23, development work would not apply?

Mr. McARDLE. That was his recommendation.

Senator MALONE. I understand thoroughly now what you mean. That, then, would be a matter of judgment of the Secretary of the Interior if he had reports that showed that the development work did apply, would it not?

Mr. McARDLE. Yes.

Senator MALONE. And that could be a matter of judgment among engineers. I have not myself seen the claims. I am asking you.

Mr. McARDLE. It would be a matter of his judgment of deciding under the law whether the required development work had been done.

Senator MALONE. And whether or not this development work applied to the development of these five claims that were excepted by Mr. Hattan?

Mr. McARDLE. That is my understanding, yes.

Senator MALONE. Then, if another engineer reported to the Secretary differently, or if one of his inspectors reported differently, it was up to the judgment of the Secretary of the Interior?

Mr. McARDLE. That is my understanding; yes, sir.

Senator MALONE. And the law allows such judgment, does it not?

Mr. McARDLE. It does.

Senator MALONE. Now, as to the assay, did all of these claims carry some kind of mineral; that is to say, you got some kind of assay on each of the 23, or were there some barren?

Mr. McARDLE. As I recall the statements in Mr. Hattan's report and later in the testimony by Mr. Hattan and Mr. Sanborn, there was

some trace of certain minerals on all of the claims. I could be wrong on that. It could be that on some of them they found nothing.

Senator MALONE. You are not sure about that?

Mr. McARDLE. I would have to go back and refresh my memory with his report.

Senator MALONE. Now, does the law provide that, at the time of application for patent, it is necessary to show feasibility of mining a mineral on which the work had been done and for which you seek patent?

Mr. McARDLE. Now, Senator, you go to a matter of interpretation of the law, and I am not competent to answer that.

Senator MALONE. I will come to your attorney pretty soon. He testified, I think, that there had been a court decision or at least something that you go by that there must be a discovery of mineral in order to be patented that would convince a prudent man that he should spend his money in development.

Mr. McARDLE. The words I said were:

\* \* \* would justify a prudent man in spending his money for further development.

Senator MALONE. Have you had any experience in mining?

Mr. McARDLE. No, sir.

Senator MALONE. I did not want to ask you any embarrassing questions.

Are you familiar at all with engineers' reports on mines?

Mr. McARDLE. Only those that I have read.

Senator MALONE. Or with engineers' reports on prospects?

Mr. McARDLE. Only those few that I have read. I have made none myself.

Senator MALONE. I am going to ask you a question now that I am asking you because you are here protesting something in a business with which you yourself say you are not familiar.

Do you know what causes a prudent man to dig on ground where there is no showing of minerals at all?

Mr. McARDLE. Senator, I do not know that; nor does our regional forester who made the original protest know that. He relies upon the judgment of experienced mineral examiners and their recommendation.

Senator MALONE. Now, was it an experienced mineral surveyor that made the surveys?

Mr. McARDLE. I assume that he was. There was no protest made regarding his survey, so far as I know.

Senator MALONE. There has been no protest on the capability of the engineer, or whoever made the survey. Has anyone protested?

Mr. McARDLE. We are talking about the surveyor or the mineral examiner?

Senator MALONE. The surveyor.

Mr. McARDLE. As far as I know, no protest.

Senator MALONE. Now, for your information, I am going to tell you that much money is spent on ground where there are geological reports by competent engineers and geologists where there is very little, if any, immediate showing of mineral.

You have never heard of that sort of thing, have you?

Mr. McARDLE. Yes; I have heard of that.

Senator MALONE. Then you know that many important companies make money, companies known nationally and internationally, and they do that all the time. Are you familiar with their methods?

Mr. McARDLE. Yes, they do that; but we are talking about an application for patent, Senator.

Senator MALONE. In other words, I am directing this to the prudent man idea which you brought out. I understand that there is a Supreme Court decision along that line that if a prudent man would not dig on a certain discovery, you would not consider it a discovery.

Mr. McARDLE. There has been, as you know far better than I do, a large body of law on this subject dealing with the interpretation of the mining laws, Senator.

Mr. MALONE. That is true, and it is one reason why I have been against amending this mining law every time the moon changes, because we do have that long line of decisions. I understand it very well.

I am now addressing these questions to you because you are the protestant and I want to know what you know about it.

Mr. McARDLE. My protest and the Regional Forester's protest is based on the opinion of men that we consider competent mineral examiners.

Senator MALONE. They are men that work for you?

Mr. McARDLE. Mr. Hattan is an employee of the Bureau of Land Management. The other mineral examiner, Mr. Sanborn, is an employee of the Forest Service.

Senator MALONE. Do you have the records of those men here?

Mr. McARDLE. I don't have their records with me, but their records were read into the testimony at Portland.

Representative CHUDOFF. They gave a full disclosure of everything they had in the record of the Portland hearing.

Senator MALONE. I want to be sure that they are in the record because over many years one of the great differences of opinion occurring among engineers—

Representative CHUDOFF. These men not only gave their records, but also testified.

Senator MALONE. If you will allow me, I will complete the testimony here because I happen to be in the engineering business, and that is where the grave difference of opinion in mining and in the feasibility of projects comes.

Representative CHUDOFF. Senator, I am not trying to stop you. I just wanted you to know that that information was in the record.

Senator MALONE. I already found that out. Thank you, anyway.

Now, then, if you are convinced that not particularly the Al Sarena Mines—but that happens to be under consideration, but if geological reports and engineering reports recommended that money be spent in the development of these claims, or any claim as a matter of fact, and the amount of work up to \$500 per claim had been done on the claims, would you then protest the patent?

Mr. McARDLE. You say who made these examinations?

Senator MALONE. No. I say if reputable engineers and geologists recommend that money be expended, maybe \$1,000, \$2,000, \$5,000, or \$50,000 be expended on a showing on a claim, a discovery which may be a trace of gold or a quarter of 1 percent manganese, or 10 percent manganese or some other metal, but due to the geological formation,

the geologist or engineers recommend that money be expended for further development of this ground, would you then say that they were not prudent men to follow these recommendations?

Mr. McARDLE. I am going to answer your question, but first I want to comment that Mr. Hattan made exactly that recommendation in the case of the uncontested claims, that there were several claims showing no metal, but the geologic formation indicated further research and development.

As to the question, I don't want to answer it exactly in the form it was asked in my position, and I cannot forget that I am an employee of the Government.

Senator MALONE. Do the best you can. Answer it in any way you want.

Mr. McARDLE. I would want to employ a Government mineral examiner, a man in whom I had confidence. If I didn't have confidence in him, I would get another one, but I would want him to report direct to me and have no other connection.

Senator MALONE. What if there was a difference of opinion?

Mr. McARDLE. And I think I would be guided very strongly by his recommendation because, as I would have volunteered if you had not brought it out, I am not competent to speak on the mining aspect.

Senator MALONE. We understand that. In engineering you can talk freely because you are not responsible, and in law I can talk freely because I would not be responsible. We will have that understanding to start with.

Now, if a reputable engineer in whom men who had the money had confidence, and on his recommendation they did spend the money, recommended that they dig on these claims with the hope of developing a zone or finding a mineralized zone, would that shake your faith at all in a strong protest?

Mr. McARDLE. It would cause me to hesitate and to question whether I had the right answer or not.

Senator MALONE. How much money had these people expended on these claims?

Mr. McARDLE. I have heard various figures, Senator. They range from \$50,000 to \$250,000. I do not know.

Senator MALONE. I have heard a figure around \$100,000 to \$200,000 also, but, at least, if they spent \$50,000, they must have had some advice that they might find mineral if they expended that amount of money. Do you not think so?

Mr. McARDLE. They must have hoped that they would find something, but again I would have to point out something which you know far better than I do, that the protest cannot be based on how much money they spent. It has to be based on whether or not our mineral examiner found any evidence of mineralization.

Senator MALONE. I am going to tell you one thing now that will help you in the future. I have been a mineral surveyor for 30 years, and I have sat in the United States Senate, and I have never been asked a question as to whether or not it was currently a commercial project that we were patenting.

Did you ever hear that question being asked of a mineral surveyor?

Mr. McARDLE. No; I don't believe I did.

Senator MALONE. I do not think you will ever find it.

Now, when you come down to the basis of your protest—and I am here for 2 or 3 more years and I suppose you are, at least—I ask you what is the basis of your protest, why your interest, because all the publicity is that you think they are getting a valuable property, much more valuable for the timber than for the minerals, and that that is their interest in it. Is that what you believe?

Mr. McARDLE. I said that our protest was based on the fact that, in the opinion of our mineral examiner and in the opinion of the Bureau of Land Management mineral examiner, the requirements of the mining law had not been met.

Senator MALONE. Well, then, in my question a while ago I thought I cleared that up, that they did spend the money and had advice from mining engineers that it was well spent in the search for minerals, and that, when you talk about a prudent man digging, a prudent man, if he has the money, digs where his engineer tells him if he has confidence in that engineer. You understand that?

Mr. McARDLE. Yes.

Senator MALONE. I want to say another thing to you. I am interested in prospectors who are not prudent men. If a prospector never located anything except what a prudent man will spend his money on, 99 percent of the mines we now have would never have been discovered. Do you have any knowledge along that line?

Mr. McARDLE. That may be true, Senator.

Senator MALONE. It is true. I give you that for what it is worth.

A prospector is a man who is convinced and feels that, when he locates a mining claim and has a discovery, whether it runs 1 percent or one-tenth of 1 percent, that if he keeps digging he is going to find a mine, and if he finds it it belongs to him. That is the reason that we have jealously protected this prospector's rights, that when he walks over these mountains and public lands, all he has to do when he makes a discovery which he thinks is a discovery, whether at the moment it assays or not, if it is on a mineralized zone and a geologic formation with promise of mineral, he can stick up his stake and file his application with the county clerk and put up his money to comply with the law, and it belongs to him. You are familiar with that?

Mr. McARDLE. Senator, I think it was read into the testimony when you were not here that while a claim is in claim status he can do all the work on it he wants. Nobody is going to protest and nobody can protest unless some other one, not the Government, finds that he does not do the \$100 worth of assessment work. We are talking now about when he goes to patent.

Senator MALONE. I had not quite finished.

Mr. McARDLE. Pardon me, sir.

Senator MALONE. Then when he does the \$500 worth of work on the development of this discovery, regardless of whether it is a commercial claim at the moment or not, if he has a mineral surveyor survey this claim, that complies with all the Federal and State laws, and if he pays the fees necessary and pays \$5 an acre for the land, it goes to patent; is that right?

Mr. McARDLE. That is correct.

Senator MALONE. And you yourself would not protest, according to your previous testimony, if the work is done to develop this mineralized zone?

Mr. McARDLE. I believe I brought out in my testimony yesterday, Senator, that by joint order of the Secretary of Agriculture and Secretary of the Interior that dates back to 1915, the Bureau of Land Management notifies us of any applications for patent on national-forest land, and that is how we got into this picture.

Senator MALONE. Well, I think that is a very good understanding and I think you should work together in that manner. Is there anything in the law that requires it?

Mr. McARDLE. That requires that?

Senator MALONE. Yes.

Mr. McARDLE. Not to my knowledge in the 1872 mining laws; no.

Senator MALONE. Is there anything in any mining law that requires it?

Mr. McARDLE. So far as I know, nothing requires it nor prohibits it.

Senator MALONE. I am glad that you are doing it. I think it shows a very fine cooperative spirit between the Secretary of the Interior and the Secretary of Agriculture, but it would not affect a mining patent; would it?

Mr. McARDLE. In what way?

Senator MALONE. It would not affect it at all, whether you were notified or not. Maybe you might get mad at each other; it still would not affect a mining patent?"

Mr. McARDLE. No; it would not.

Senator MALONE. Well, now, what was this timber worth in 1897 when they first started to locate this claim? Did it have great value then?

Mr. McARDLE. I would say it had very little value.

Senator MALONE. Did not that situation obtain up until the early 1930's when they were selling timber for taxes up in that country and in various other parts of the country out there? Were there not times when the timber was worth very little?

Mr. McARDLE. Yes.

Senator MALONE. What I say is true; that they were bidding in timberland for taxes and very slight payments on other categories, and people just did not have the money and there was no sale for timber. Is that about right?

Mr. McARDLE. That is about right.

Senator MALONE. 1936 was the last time they located?

Mr. McARDLE. That is right.

Senator MALONE. Well, would it seem to you that they had their eye on this timber from 1897 to 1936, or would it seem that these people had their eye on the minerals?

Mr. McARDLE. Senator, that calls for an expression of opinion as to what was in someone's mind, and I do not know.

Senator MALONE. I hope that you stay with that from now on, because I have been reading in the papers a lot of statements and I did not start reading them until I attended this first hearing. You are credited with an awful lot of statements to the contrary.

Mr. McARDLE. I can only refer you to the record.

Senator MALONE. That is what I am going to refer to from now on; that you do not know anything about that; that it would only be conjecture and you do not want to enter that field at all and you do not believe, and I will ask this further question, that it should have anything to do with patenting the claim anyhow.



Mr. McARDLE. I am not sure I understand that question.

Senator MALONE. I will say it again. We are talking about the law and patents of claims.

Under the law, would it have anything to do with a legitimate issuance of a patent by the Secretary of the Interior if the patent law were otherwise complied with?

You do not understand it yet? I will give it to you again.

Regardless of what is on top of the ground, if all of the patent law has been complied with, first the location and next the work of the discovery and everything complied with, does anything located on top of the ground have anything to do legally with the patenting of a mining claim?

Mr. McARDLE. I can't answer your question because it goes to interpretation of the mining law, on which previously we both agreed there was a large body of court decisions.

Senator MALONE. I did not agree with that and you did not agree with it, either. Let me say this again.

You are a very clever witness and you are getting better as we go along, but I would rather you would be frank with me because we are going to be here a while, at least 2 or 3 years, as I told you.

If a man goes out and locates a claim and does the work, and all the laws, regardless of any decision, are complied with in the application for patent, can the Secretary of the Interior take into consideration in the issuance of this patent whether or not there is something on top of the ground that has a value?

Mr. McARDLE. I believe it has been interpreted that he may, but that question should be directed to the Secretary of the Interior.

Senator MALONE. Well, it was, and he granted the patent.

Now I am going to ask your attorney that question.

You are a lawyer now? Your name is Mynatt?

Mr. MYNATT. Mynatt.

Senator MALONE. And you work for the Department of Agriculture?

Mr. MYNATT. Yes, sir.

Senator MALONE. You heard the question. You may answer it.

Mr. MYNATT. Senator Malone, before I answer that question I would like to make this explanation.

Senator MALONE. Make the explanation afterwards.

Mr. MYNATT. Then I cannot answer that question.

Senator MALONE. All right. Go ahead.

Representative HOFFMAN. Mr. Chairman.

Senator MALONE. That is all right.

Representative HOFFMAN. Will the Senator yield for one question?

Senator MALONE. Let me finish and then you take over.

Representative HOFFMAN. Pardon me.

Senator MALONE. You fellows have plenty of time. You have been here for 10 days.

Mr. MYNATT. Senator Malone, we realize that the practice of law with respect to the mining laws is a highly specialized field. For that reason, for a period of 25 or 30 years the authority to handle these claims has been lodged in our field attorneys in the West. We have men in each of those areas who we feel are qualified in that specialized field of law.

I do not claim, sir, to be qualified in that field, and I have tried to limit my statements here to those things that occurred in Washington. That, sir, is the way we have worked for many years.

Senator MALONE. If you cover this Washington area, you have your hands full. I have only been here for 10 years and they have less common horsesense here than any place I have ever been.

I will then ask you one more question at least.

Is the Department of Agriculture in fact charged with any responsibility whatever in the issuance of the patent on a mining claim?

Mr. MYNATT. By law, no, sir. No, sir; we are not. The answer is definitely "No."

Senator MALONE. Well, that is very good. I guess the rest of your answer would not make much difference anyway because the Secretary of the Interior, in your opinion, is charged with the full responsibility of issuance of patents on mining claims.

Mr. MYNATT. Yes, sir; the Secretary of the Interior is charged by statute specifically with that authority.

Senator MALONE. Now, then, if he finds as a fact that all of the rules, regulations, and laws that are indicated in the mining law are complied with in his judgment, and he issues a patent, in the absence of fraud who can question his decision?

Mr. MYNATT. I don't know of anyone. We have no authority. There is no appeal. He is the final authority.

When this decision of January 6, 1954, was issued, it was issued by the person who had the responsibility for making that decision.

Senator MALONE. Now I have got news for you. I do not think it is news for you.

There has been an attack on the mining laws of this country for 23 years. This is the 24th year. The 1872 act did result in turning the prospector loose so that he was absolute boss of his mining claim if he complied with the law; when he had done enough work in the regular manner and proved it before the Secretary of the Interior and secured a patent, he could do anything with it that he wanted.

That law has resulted in major mining developments on public lands over the period since 1872. Any time you clip the prospector's wings, any time you clip his independence, after complying with the law, by putting him under someone in Washington who, by his own admission, would have to say that he sits on that question and reads the rules and regulations and does his mining right here in Washington, it is the beginning of the end for the mining industry in the United States of America on public lands.

Now, there is a continual attack, and this is the 24th year of attack. Last year the attack was made. I opposed it as long as I conveniently could in committee, and then on the floor. Now there will be another amendment offered this year after the public is entirely sold that we are stealing timber under this mining law and that there must be an amendment to the law to allow someone in Washington to determine whether this claim is more valuable for something on top of it than underneath it, and the projectors of this legislation hope that the public will force its passage.

Then, if not this year, very soon thereafter there will be a bill introduced to put it under a leasing act to repeal entirely the location act. That is the final objective of the bureaus in Washington, to get this little old prospecting miner under their thumb so that he will

have to dig where they tell him or get off the claim. When that time comes, that is the end of mining as you and I know it on public lands in America.

I thank you both very much because you have both denied that you have any knowledge at all that this was not valuable enough as a mineral to patent it. The rest is a matter of law and I will be here when the Secretary of the Interior or the Government witnesses come.

I think you have made good witnesses on the record, and I hope that you stay with it in your public statements.

Thank you.

Senator NEUBERGER. I would like to ask a question if I may.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. To begin with, I would like to just say this for the record: So far as I am concerned, whether the replies of the representatives of the Government agencies in this or any other hearing satisfy me or not, I will judge any future policy or personnel of that agency on the merits, regardless of how they answer me in these hearings or any other hearings.

The question was raised, Dr. McArdle, about the value of the timber in 1897, and you agreed that the value was trifling or negligible; is that correct?

Mr. McARDLE. I think that would be common knowledge, Senator.

Senator NEUBERGER. And you also agreed that the value of the timber was still relatively low in 1935 and 1936; is that correct?

Mr. McARDLE. I agreed to that yesterday and I think again today.

Senator NEUBERGER. Is it not a fact that the company did not seek patent until 1948?

Mr. McARDLE. The application for the patent was made in 1948; yes, sir.

Senator NEUBERGER. Prior to 1948, then, the company could not have sold the timber commercially; is that correct?

Mr. McARDLE. That's correct.

Senator NEUBERGER. In 1948 had the timber increased substantially in value?

Mr. McARDLE. I judge that you are referring to the price it might have brought on the market.

Senator NEUBERGER. Yes.

Mr. McARDLE. The answer is "Yes."

Senator NEUBERGER. In other words, until patent was applied for in 1948 the company could not have marketed or sold the timber commercially?

Mr. McARDLE. Legally they could not have marketed or sold it; but let's assume that this had been private land and timber there, probably there would have been a market for it. I don't know if I understood you correctly.

Senator NEUBERGER. What I mean is legally. In other words, until the Al Sarena Co. applied for the patent in 1948 and until patent was granted in 1954 the Al Sarena Co. had no legal right to sell that timber commercially?

Mr. McARDLE. Until February 11, 1954, they had no legal right to sell the timber.

Senator NEUBERGER. Do you mean January or February?

Mr. McARDLE. February.

Senator NEUBERGER. And they did not apply for patent until 1948?  
Mr. McARDLE. That's right.

Senator NEUBERGER. I just wanted to clear up that question concerning the value of the timber.

Your original testimony referred to some 200,000 mining claims on national forests; is that correct?

Mr. McARDLE. That's right; yes, sir.

Senator NEUBERGER. To your knowledge as a former field officer in the Forest Service would you say that a good many of those mining claims are operated by "little prospectors on the land"?

Mr. McARDLE. A great many of those that are operated are operated by little prospectors, but many of those 200,000 claims are not operated at all.

Senator NEUBERGER. To your knowledge in your service and tenure with the Forest Service have any of these prospectors, be they little or large, ever been accorded the procedure and treatment which the Al Sarena Co. received?

Mr. McARDLE. Not so far as I know; but, Senator, they were entitled to a full procedure of hearings all along the line.

Senator NEUBERGER. To your knowledge have any of these prospectors—again I repeat the question, and I am just asking to your knowledge—ever received this procedure?

Mr. McARDLE. By that do you mean—

Senator NEUBERGER. The matter would be referred to the Bureau of Mines that there would be a stipulation from the highest level of the Interior Department that there should be agreement between the Bureau of Mines and claimant as to who should make the assay, and so on.

Mr. McARDLE. So far as I know they have not.

Senator NEUBERGER. To your knowledge they have not.

I want to ask several other questions, if I may.

Reference was made to the advisability of undertaking development work, if recommended by engineers, even if there was "very little showing of minerals" or perhaps where there was "a trace." Considering that there are 200,000 claims on national forests involving some 4 million acres of forest land, if patent is to be granted where there is "very little showing of minerals" or "a trace," what do you think might be the result of those 4 million acres?

Mr. McARDLE. Senator, I have no idea.

Senator NEUBERGER. Would you believe that it would be advisable to grant patent on those 200,000 claims on the national forests based on an engineer's recommendation of development work even if there is very little showing of minerals or only a trace of minerals?

Mr. McARDLE. I don't think in the first instance the engineer would recommend that. I think he'd ask for more adequate showing; try to find more adequate showing. If he made such a recommendation to me, that although there was only a trace he thought perhaps the situation was such as to justify granting the patents, I don't believe that I would protest.

Senator NEUBERGER. Reference was made to the expenditures by this company on mining claims in the Rogue River Forest. To your knowledge were those expenditures made on the 8 uncontested claims or on the 15 disputed claims?

Mr. McARDLE. As I understand Mr. Hattan's report, they were made on all 23 claims, but in insufficient amount on 5.

Senator NEUBERGER. I am referring back to the total expenditures which have been made since the claims were first staked out. Do you know in what proportion they were made on the——

Mr. McARDLE. No.

Senator NEUBERGER. Eight uncontested claims and on the 15 disputed claims? I again want to get to a question which to me seems rather important in this whole thing.

In your experience—I asked the question yesterday and I want to repeat it—had this procedure ever before been followed with either a large or small mining claim or operation on the national forests?

Mr. McARDLE. Not so far as I know.

Senator NEUBERGER. That is all I have for the moment.

Senator MALONE. Mr. Chairman, I would like to clear some of this up. Who was it who testified that there were 200,000 mining claims located in the national forests?

Mr. McARDLE. I so testified.

Senator MALONE. Can you testify that 200,000 mining claims are in good standing with the location work done on these claims?

Mr. McARDLE. I didn't make that statement. I made the statement that there were 200,000 claims estimated.

Senator MALONE. Yes. I think you might be right, but I imagine that only a relatively small number have been kept up.

You see, in the history of location mining claims—that is one good thing about it—there have been millions and millions of mining claims located, but if you fail to do your \$100 worth of work you no longer have the claim. Someone else comes in and files or, as a matter of fact, if you just quit doing the work it is not in good standing, and many times a prospector will locate a mining claim thinking he has something and will do \$10 worth of work or \$1,000 worth of work and walk off and leave it because he believes there is nothing to it; is that true?

Mr. McARDLE. That is correct, and so long as that claim is in existence neither can the Government do anything with the land.

Senator MALONE. As long as it is in good standing?

Mr. McARDLE. It is in good standing if located in accordance with law and another claimant can not jump it if the required assessment work has been done. But the Government can't jump it even if the required assessment work has not been done. The law passed this last year changed this somewhat.

Senator MALONE. Cannot the Secretary of the Interior under the mining law clear that up if the work has not been done?

Mr. McARDLE. If there has not been a valid discovery he can under the new law which was passed by the Congress last year.

Senator MALONE. That is the law, is it not?

Mr. McARDLE. That's right.

Senator MALONE. And he can clear it up, so you have nothing to complain about now in that regard?

Mr. McARDLE. Correct.

Senator MALONE. You did not mention those 200,000 mining claims to confuse the issue, did you? You just mentioned them because you have found that number of claims filed with the county clerks of the counties in which this forest land is located?

**Mr. McARDLE.** It was not so testified in my statement yesterday, but those are estimates, as has been testified previously in Congress, based on our own field examinations.

**Senator MALONE.** There are that many claims that have been filed over what period of years in the counties in question?

**Mr. McARDLE.** The national forests have been in existence for 50 years. The mining law has been in existence, as you know, since 1872, so some of those must have been there before these were created national forests.

**Senator MALONE.** This forest land was not created in 1897, then?

**Mr. McARDLE.** The national forests were, some of them.

**Senator MALONE.** Was this established before the located first claims?

**Mr. McARDLE.** The lands of the Rogue River National Forest, within which the mining claims in question were located, were reserved for national forest purposes under presidential proclamation of September 28, 1893.

**Senator MALONE.** I just wanted to clear up that date.

How can they estimate the number of claims that were located in the forests?

**Mr. McARDLE.** Well, there are various ways of knowing that, Senator. As you well know, there are records in the county, which were examined.

**Senator MALONE.** You just ask of each county clerk the number of claims in the counties in the forest reserve areas and the claims that have been filed?

**Mr. McARDLE.** Yes. There are ways of knowing that. Of course, if they are not filed you don't know of their existence, until they are filed.

**Senator MALONE.** No; if they are not filed they are not legal claims.

**Mr. McARDLE.** That is right.

**Senator MALONE.** And if they are filed and the work has not been done, then there is plenty of legislation to clear it up?

**Mr. McARDLE.** There is now, yes.

**Senator MALONE.** Now is when we are operating, is it not?

**Mr. McARDLE.** That's right.

**Senator MALONE.** I will venture a guess that a very small percentage of the 200,00 claims have been kept up to date with current work done on them. I say that for what it is worth because I operate in that country.

**Mr. McARDLE.** We think it is very small, too.

**Senator MALONE.** How small? How many, do you think?

**Mr. McARDLE.** I would want to check my figures on that, but probably not more than a small percent of those within the national forests have ever been carried through to patent. I doubt if more than 10 or 15 percent have ever produced any minerals.

**Senator MALONE.** Do you not believe that 10 or 15 percent are in good standing at the present time?

**Mr. McARDLE.** Yes, I do.

**Senator MALONE.** Then, that would be 20,000 claims, not 200,000.

**Mr. McARDLE.** That is right, but under the law we have to work on all of them, not just the 20,000.

Senator MALONE. All you have to do is apply to the Secretary and let him do the work, is that not right?

Mr. MCARDLE. No; we have a good deal of work to do ourselves, but we can do it by areas of our choosing. We can take a national forest, we can take a county, or we can take a whole State. Then the point that you are talking about can be cleared up once and for all time under the law passed last year.

Senator MALONE. Are you doing that?

Mr. MCARDLE. We are doing that now.

Senator MALONE. That will be very helpful, but I think 10,000 claims might be a very liberal estimate at the present time.

Mr. MCARDLE. We think that very few of these claims are active.

Senator MALONE. I think about half of the 10,000, maybe 5,000, are in good standing, if you really get at it. As a matter of fact, have there not been very few patents issued in the Forest Service over the years?

Mr. MCARDLE. Yes; comparatively few.

Senator MALONE. Do you have the number?

Mr. MCARDLE. I don't have the number with me.

Senator MALONE. Could you get that for the record?

Mr. MCARDLE. I can get that for the record.

Senator MALONE. Will you make it a point to do that today, if you can?

Mr. MCARDLE. We can do that, and I will try to get it in today.

(The information referred to follows:)

The number of mining claims on the national forests which have been patented as of January 1, 1955, is 36,770.

Representative JONAS. Will the Senator yield?

Senator MALONE. Let me get through some of this business here.

Representative JONAS. I would like to ask him if he would not like to include in that how many of those claims the Forest Service protested.

Senator MALONE. I am not interested in that because they only show the protest here because they did not actually think—and his testimony has been very good today—a prudent man would have done this mining.

Your protest is only based on the fact that you believe a prudent man would not have done this mining? That is the substance of your testimony, is it not?

Mr. MCARDLE. That is correct.

Senator MALONE. A prudent man would not have done this mining, would not have expended \$50,000 or \$100,000 or \$200,000, and therefore he should not have patents?

Mr. MCARDLE. That is what I testified.

Senator MALONE. Then you also said that was a matter of judgment under the Secretary of Interior's charge?

Mr. MCARDLE. It is a matter of judgment of whether he will take the recommendation of the experienced mineral examiner, yes, sir; that is what I said.

Senator MALONE. My friend, I know a thousand engineers, maybe 50,000, in the United States and they work for different people. Engineers who know their business do not generally work for the Government for very long, unless they are getting to the point where they are slowed up a little bit.

I am working for the Government for the first time in my life and I am a little older too, but I come here for a purpose and this is one of the purposes, to be where I could do something about this kind of stuff.

However, if you mean what you have said today, that you are only basing a protest because you think a prudent man would not have expended this money and therefore they should not have been issued patents, I think I have earned my money for the day. You did say that, did you not?

Mr. McARDLE. Quite certainly I said it.

Senator MALONE. All right. If a miner then, along with these other 5,000 or 10,000, kept in good standing, without locating one tomorrow, and complied with the law and did \$100,000 worth of work or did \$5,000 worth of work, and has a showing of mineral, and there is discovery, and he applied for a patent, then until Congress itself changes the law the exercise of the power lies exactly where it is, in the Secretary of the Interior? Unless there is improper showing in the issuance of the patent, then the law passed by Congress is satisfied; is that true?

Mr. McARDLE. Until Congress changes it, the authority for administration of the mining laws, as has been testified, rests with the Secretary of the Interior.

Senator MALONE. And as long as Congress does not change that law, the Secretary of Agriculture can protest for any reason he wants to protest, or any other Cabinet officer, or any engineer, or any citizen of the United States?

Mr. McARDLE. That is correct.

Senator MALONE. And he has the discretion to decide whether or not a patent should be granted under the showing made by the mineral surveyor in presenting the request for patent; is that true?

Mr. McARDLE. Yes.

Senator MALONE. Thank you.

Senator SCOTT. Are you ready for the next witness?

Representative HOFFMAN. Do you want to give us a chance over on this side?

Senator SCOTT. Yes, sir. You had it all morning. Go ahead.

Representative HOFFMAN. That is the first I heard of it. I remember distinctly the Senator could only be with us occasionally and for short periods of time. I would like to have him stay.

Senator SCOTT. Go ahead.

Representative HOFFMAN. Now?

Senator SCOTT. Right now.

Representative HOFFMAN. All right. The first thing we had this morning, as I recall, was the distinguished Senator from Oregon calling attention to—was this the article in the Oregon Journal of December 16? Was that the one you were referring to, Senator, please?

Senator NEUBERGER. I was referring to your press release here that you distributed the other day.

Representative HOFFMAN. I thought you were referring to this article in the paper under date of December 16, 1955: "Politics Cried in Timber Hearings." I have looked through all I have. It may be on the back page, but it does not mention my name. This is by Larry Smith. Was that not what you were referring to?



Senator NEUBERGER. I was referring to your press release of January 10. I do not know whether you remember the attacks you make upon people, but you referred to me in that press release on page 3 and that is what I read from.

Representative HOFFMAN. It is the same charge made in this newspaper out there.

Senator NEUBERGER. It is the same charge you made at the timber hearings out in Oregon, which was refuted by the testimony of Mr. Lund and Mr. Stone, which I will be glad to read here also.

Representative HOFFMAN. You mean about this political contribution?

Senator NEUBERGER. That is right.

Representative HOFFMAN. Is that it?

Senator NEUBERGER. That is exactly right.

Representative HOFFMAN. I will ask about that some more then.

Have you read the record on the timber hearings?

Mr. McARDLE. No, we haven't.

Representative HOFFMAN. The ones we held at Redding, Klamath Falls, Roseburg, Medford, and so forth?

Mr. McARDLE. Not yet.

Representative HOFFMAN. And Portland?

Mr. McARDLE. We have just gotten them.

Representative HOFFMAN. On the mining? You are interested in forestry and interested in timber. Why did you not read the testimony of the hearings?

Mr. McARDLE. I intend to read them. We ordered them promptly, but have just received them. I certainly intend to read them, Mr. Hoffman.

Representative HOFFMAN. I hope you do not have as much trouble as the Interior Department did in getting them.

I think I might state, because there is no question on the record, that one of the questions involved was the question of whether there should be large or small sales of timber. Have you taken a position on that?

Mr. McARDLE. No, we have never taken a positive position on that, Mr. Hoffman.

Representative HOFFMAN. I should have also added, if you will pardon me, long-term large sales.

Mr. McARDLE. Yes, that's right. As you know, the bulk of the volume of sales of national forest timber has been with larger sales, long-term sales, because of the cost of opening up the country, but the bulk of the number of sales has been with fairly small sales. It is a question which we know your committee is considering and which we will want to discuss with the committee and with other representatives of the Congress to come to some fairly definite policy on the matter.

Representative HOFFMAN. However, heretofore it has been up to the Forest Service to say whether they sold it in large long-term sales, competitive bids, or whether they sold it on an appraised value, has it not?

Mr. McARDLE. Yes, sir, but all sales of over \$2,000 value are sold to the highest bidder.

Representative HOFFMAN. What has been the policy in the past? Maybe I asked that question before.

Mr. McARDLE. Mr. Hoffman, I did not hear you.

**Representative HOFFMAN.** What has been the policy of your Department with reference to that situation as to whether you should make large long-term sales, competitive bidding, or small negotiated sales?

**Mr. McARDLE.** Our policy has been to make both large and small sales because there are large and small industries, dependent on national forest timber.

**Representative HOFFMAN.** That is to say, there are locations where to get the most for the Government you must make the large long terms and in other places where you can sell to the little fellow?

**Mr. McARDLE.** I would rephrase it slightly by saying there are a great many places on the national forests which heretofore have been undeveloped, roadless hinterland where the only way to sell the timber, would be to make a fairly large sale to a company financially able to participate in building the roads and in logging that timber. It requires a large investment.

**Representative HOFFMAN.** That was one of the issues in these hearings that we have been holding, as to whether there should be, and as I understood it, there was a great deal of opposition to the selling, as Senator Neuberger described it often, to the big fellow to the exclusion of the little fellow. There was some sort of intimation that they were cutting the little fellow out of an opportunity to get the business.

**Mr. McARDLE.** We have tried to do both. Perhaps there is disagreement on the relative proportion of volume which should go to each class, and bear in mind that there are differing opinions as to what is a little fellow. A small one on the Pacific Coast would be a large one in the national forests of the East.

**Representative HOFFMAN.** Then referring to this procedure that was followed by the Secretary in this case and to the taking of the samples by the Bureau of Mines, I understood you to say—you correct me if I am wrong—that the procedure was not irregular, but not customary?

**Mr. McARDLE.** I testified yesterday that the taking of the additional samples under the direction of the Bureau of Mines had not been a customary procedure.

**Representative HOFFMAN.** However, you did not say it was irregular?

**Mr. McARDLE.** I think I said that the Secretary of the Interior had administrative authority to do that if he wanted to.

**Representative HOFFMAN.** Well, do you find any fault with that? Do you think it was improvident or inadvisable for the Secretary when this dispute came up to call upon the Bureau of Mines to take the samples; and if you did tell us why?

**Mr. McARDLE.** I think I would have to answer that by saying that since he has administrative authority to do that sort of thing, that I could hardly say that it's improper, because I don't believe that it is.

**Representative HOFFMAN.** Whether it was customary or not, are you critical of that, that he did it?

**Mr. McARDLE.** I was only asked the question whether it was customary or not.

**Representative HOFFMAN.** However, are you critical of the action of the Secretary in this case, that is, in his assumption of jurisdiction and the use of his discretion?

Mr. McARDLE. No; he had the authority. I am not critical of him.

Representative HOFFMAN. You are not finding any fault then as a member of the Forest Service?

Mr. McARDLE. No; I have not now and have not in the past.

Representative HOFFMAN. You never have at any time?

Mr. McARDLE. That is right.

Representative HOFFMAN. There was not anything unusual about the Secretary overruling the examiner; was there?

Mr. McARDLE. No. That's been done before too.

Representative HOFFMAN. You have had that happen to you, have you not, or you have done it, have you not?

Mr. McARDLE. Well, the answer is "Yes" to both questions.

Representative HOFFMAN. That is to say, sometimes you have overruled the other fellow and sometimes you have been overruled?

Mr. McARDLE. Yes.

Representative HOFFMAN. Which side were you on in the L. & H. timber sale? That is the 75 million feet, the big sale on a long term, on competitive bid?

Mr. McARDLE. And your question is?

Representative HOFFMAN. Which side were you on? Were you overruled or did you overrule somebody?

Mr. McARDLE. I overruled the regional forester. The appeal has been taken to the Secretary and the Secretary has not acted. We are talking about something entirely different now, Mr. Hoffman, than the Al Sarena case.

Representative HOFFMAN. Was that after you had a consultation with Senator Neuberger?

Mr. McARDLE. Which was after?

Representative HOFFMAN. Your decision overruling the regional man.

Mr. McARDLE. In point of time it was, but we did not have a conference, as I testified this morning.

Representative HOFFMAN. No; I understood this morning that the Senator did grant 3, 4, maybe as long as 5 minutes. Was your decision before or after that?

Mr. McARDLE. It was after that in point of time.

Representative HOFFMAN. Understand, Senator, I do not find anything to criticize, if it makes any difference. If it had been my district I would have been there on one side or the other. I know that.

It is not unusual to have Senators or Congressmen come to see you about matters of their constituents?

Mr. McARDLE. I made that point this morning and volunteered the information that many, many Members of Congress make their position as clear as Senator Neuberger made his position clear, that he was not taking sides, that he was introducing a constituent.

Representative HOFFMAN. Yes. My colleague suggests I ask were there two sides to this thing, then?

Mr. McARDLE. At that time I don't know that there were.

Representative HOFFMAN. Who was it who wanted a large sale made on a long term?

Mr. McARDLE. Let's go back and bring it up to date then.

Representative HOFFMAN. Answer that before you go back because I might forget where I was.

Mr. McARDLE. Yes; there were objections to the decisions of the regional forester not to proceed with advertising, making a sale. There were also folks who wanted him to do that.

Representative HOFFMAN. Mr. Netzorg was one of them, was he not? He is a former employee of the Department.

Mr. McARDLE. Of Interior?

Representative HOFFMAN. Yes.

Mr. McARDLE. That's right.

Representative HOFFMAN. He was an attorney out there. He was attorney for the L. & H. Lumber Co.?

Mr. McARDLE. That's correct.

Representative HOFFMAN. And they are the gentlemen who wanted this 75 million feet sold on a competitive-bid basis instead of being broken up?

Mr. McARDLE. That's correct.

Representative HOFFMAN. And the regional forester refused to do it?

Mr. McARDLE. Our regional forester had decided against that on the basis largely that he had insufficient money to prepare the sale, but following that Congress gave us an increase in our timber-sale money and we did have money to make the sale, and my decision to go ahead with preparing the sale and advertising it for a full public competition for bidding was based pretty largely, as I stated in my decision, on the basis of money being made available.

Representative HOFFMAN. Well, the question I asked you was whether Mr. Netzorg wanted it sold in long-term large sale.

Mr. McARDLE. That's correct.

Representative HOFFMAN. Surely. And the regional fellow had decided against it?

Mr. McARDLE. He decided he couldn't offer the timber for sale because he didn't have money to prepare it.

Representative HOFFMAN. Pardon me?

Mr. McARDLE. He didn't have money to make the sale. His money for making timber sales was fully used up.

Representative HOFFMAN. I did not ask you why. I just asked you if he did not decide against Mr. Netzorg.

Mr. McARDLE. He decided against making the sale to anybody.

Representative HOFFMAN. Well, Mr. Netzorg was the fellow who wanted it and the fellow who presented the issue?

Mr. McARDLE. He was one of those involved in——

Representative HOFFMAN. Who was against it, my associate wants to know?

Mr. McARDLE. The community of Bend, Oreg.

Representative HOFFMAN. Pardon me?

Mr. McARDLE. The community of Bend. The city of Bend, Oreg., was principally the group that were objecting to the sale of this timber at this time.

Representative HOFFMAN. Did they not want sales made to smaller folks? I mean smaller quantities of timber.

Mr. McARDLE. No. They were more anxious to reserve this timber for manufacture in Bend.

Representative HOFFMAN. That would help the town.

Mr. McARDLE. Yes.

Representative HOFFMAN. And you in overruling the regional forester ruled that it should be sold on a competitive bid on a long term?

Mr. McARDLE. Five years.

Representative HOFFMAN. You ruled in favor of the big fellow?

Mr. McARDLE. No.

Representative HOFFMAN. Did you not?

Mr. McARDLE. No; I didn't rule in favor of the L. & H. Co. or any company. I simply ruled that the timber would be offered on the open market and sold to the highest bidder.

Representative HOFFMAN. That is right; and L. & H. could bid and the other big companies could bid, but the little fellow could not bid, could he?

Mr. McARDLE. Not the very small ones, but at the same time we were making a large number of sales to small operators.

Representative HOFFMAN. However, when it was decided, and when you overruled the regional man, the effect of your decision was to cut out the smaller operator, was it not, because he would not have money enough to handle it?

Mr. McARDLE. Your question goes to why we favored a big sale?

Representative HOFFMAN. Pardon me?

Mr. McARDLE. Your question goes to why we favored a big sale in that instance?

Representative HOFFMAN. I am asking you if the effect of your ruling was to let the big fellow in to bid competitively, or the big fellows, and to cut out the smaller operators? That is obvious, is it not?

Mr. McARDLE. That's obvious.

Representative HOFFMAN. Surely. Therefore, in this particular case it was the big fellow who got the decision, was it not? I am not finding any fault with the decision. Do not misunderstand me.

Mr. McARDLE. You are correct. The sale, had it been made, would have been a sale for 75 million feet, which is a large sale, for a period of 5 years.

Representative HOFFMAN. And a member of the L. & H. Co., who wanted it sold this way, one of the owners, was the one who contributed the \$1,000 to the Senator's campaign which the Senator promptly returned; is that right?

Mr. McARDLE. I know nothing about that.

Representative HOFFMAN. You did not know about that?

Senator NEUBERGER. Mr. Chairman, I think a few of the facts should go in here, inasmuch as Mr. Hoffman has tried through his press releases, and today, to turn this into an attack upon me. I think a few other facts should be repeated.

Mr. Hoffman was present in Portland when he raised this issue before. Mr. Walter Lund—if I am not mistaken, Walter is his first name—assistant regional forester in charge of timber sales, was in the room. I asked that he return to the witness stand, and these questions were asked of Mr. Lund, and I will read them.

Representative HOFFMAN. What page?

Senator NEUBERGER. Page 2072 (reading):

Senator NEUBERGER. I have some questions. In connection with this proposed Crescent Lake sale which Mr. Hoffman introduced as an issue, Mr. Lund, does it not involve, if I am not mistaken, a species of subalpine timber which, in the past, has not generally been at stake in the normal commercial sales; is that correct?

Mr. LUND. That is right. It involves largely mountain hemlock and Shasta fir, with a minor amount of white pine. It is in an area that heretofore has had no active cutting.

Senator NEUBERGER. This type of timber in the past, or until very recently, or even until now, has not been used commercially to any substantial extent in our State?

Mr. LUND. That is right.

Senator NEUBERGER. Under the proposed terms of this sale, would this timber be sold at competitive bid?

Mr. LUND. Yes, it would.

Senator NEUBERGER. Has there been any request, to your knowledge, under the L and H proposal that there be a negotiated sale or any other extraordinary situation applying to the method at which it would be sold?

Mr. LUND. None at all.

Senator NEUBERGER. In other words, if this timber is sold in the Crescent Lake area, the L and H firm can acquire that timber only if their bid is the highest received by the Forest Service. Is that correct, or is that wrong?

Mr. LUND. That is correct.

Senator NEUBERGER. I repeat that so that it is in the record. The L and H Co. cannot obtain this timber species at Crescent Lake unless the price which they offer to the Forest Service is the highest one you receive at this public sale?

Mr. LUND. That is right.

Senator NEUBERGER. There has never been any suggestion that it be a negotiated sale, to your knowledge?

Mr. LUND. That is right. We have no authority to make it on that basis.

I will not go on and read further, but there are further replies by Mr. Lund in that tenor.

I think that it further should be pointed out—Mr. Hoffman knows about this, but I think it should be pointed out for the record—that a firm known as the L and H firm made a proposal that certain low value timber be harvested in the Crescent Lake area and used for wood chips. The State of Oregon is confronted with a very desperate employment situation and I have a very detailed letter from the United States Treasury Department pointing out that from 1952 to 1954 income-tax collections in Oregon dropped proportionately more than any other State except Wyoming, and I offer that for the record.

(The letter referred to follows:)

UNITED STATES TREASURY DEPARTMENT,  
COMMISSIONER OF INTERNAL REVENUE,  
Washington, D. C., June 23, 1955.

HON. RICHARD L. NEUBERGER,  
United States Senate,

Washington, D. C.

MY DEAR SENATOR: Your letter to Commissioner Andrews, dated June 6, 1955, and referring to the decline in internal revenue collections in the State of Oregon from 1952 to 1954, has been referred to me for reply.

As you know, internal revenue collections on a nationwide basis decreased by 1.7 percent from 1952 to 1954, while collections in Oregon decreased by 15.2 percent. The only State to show a decline proportionately larger than that of Oregon was Wyoming, where collections fell off 16.5 percent. Oregon's decline resulted from the combination of a slight increase in withheld individual income taxes, which comprised almost half of total 1954 collections, and substantial decreases in all other major classes of tax collections. Nonwithheld individual income taxes fell off 20 percent in Oregon as compared with 10 percent for the Nation; corporation income and profits taxes declined by almost one-third in Oregon and only about one-tenth in the country; other internal revenue, consisting of estate, gift, excise and miscellaneous taxes decreased by almost one-fourth in Oregon as compared with only 2 percent nationally.

An examination of number of returns filed in the calendar years 1952, 1953, and 1954, indicates a trend for Oregon fairly consistent with that for the country as a whole in regard to all classes of tax other than employment. Oregon and the Nation as a whole increased in individual income tax and all other income tax returns other than corporations. Decreases occurred in corporation

Representative HOFFMAN. And you in overruling the regional forester ruled that it should be sold on a competitive bid on a long term?

Mr. McARDLE. Five years.

Representative HOFFMAN. You ruled in favor of the big fellow?

Mr. McARDLE. No.

Representative HOFFMAN. Did you not?

Mr. McARDLE. No; I didn't rule in favor of the L. & H. Co. or any company. I simply ruled that the timber would be offered on the open market and sold to the highest bidder.

Representative HOFFMAN. That is right; and L. & H. could bid and the other big companies could bid, but the little fellow could not bid, could he?

Mr. McARDLE. Not the very small ones, but at the same time we were making a large number of sales to small operators.

Representative HOFFMAN. However, when it was decided, and when you overruled the regional man, the effect of your decision was to cut out the smaller operator, was it not, because he would not have money enough to handle it?

Mr. McARDLE. Your question goes to why we favored a big sale?

Representative HOFFMAN. Pardon me?

Mr. McARDLE. Your question goes to why we favored a big sale in that instance?

Representative HOFFMAN. I am asking you if the effect of your ruling was to let the big fellow in to bid competitively, or the big fellows, and to cut out the smaller operators? That is obvious, is it not?

Mr. McARDLE. That's obvious.

Representative HOFFMAN. Surely. Therefore, in this particular case it was the big fellow who got the decision, was it not? I am not finding any fault with the decision. Do not misunderstand me.

Mr. McARDLE. You are correct. The sale, had it been made, would have been a sale for 75 million feet, which is a large sale, for a period of 5 years.

Representative HOFFMAN. And a member of the L. & H. Co., who wanted it sold this way, one of the owners, was the one who contributed the \$1,000 to the Senator's campaign which the Senator promptly returned; is that right?

Mr. McARDLE. I know nothing about that.

Representative HOFFMAN. You did not know about that?

Senator NEUBERGER. Mr. Chairman, I think a few of the facts should go in here, inasmuch as Mr. Hoffman has tried through his press releases, and today, to turn this into an attack upon me. I think a few other facts should be repeated.

Mr. Hoffman was present in Portland when he raised this issue before. Mr. Walter Lund—if I am not mistaken, Walter is his first name—assistant regional forester in charge of timber sales, was in the room. I asked that he return to the witness stand, and these questions were asked of Mr. Lund, and I will read them.

Representative HOFFMAN. What page?

Senator NEUBERGER. Page 2072 (reading):

Senator NEUBERGER. I have some questions. In connection with this proposed Crescent Lake sale which Mr. Hoffman introduced as an issue, Mr. Lund, does it not involve, if I am not mistaken, a species of subalpine timber which, in the past, has not generally been at stake in the normal commercial sales; is that correct?

Mr. LUND. That is right. It involves largely mountain hemlock and Shasta fir, with a minor amount of white pine. It is in an area that heretofore has had no active cutting.

Senator NEUBERGER. This type of timber in the past, or until very recently, or even until now, has not been used commercially to any substantial extent in our State?

Mr. LUND. That is right.

Senator NEUBERGER. Under the proposed terms of this sale, would this timber be sold at competitive bid?

Mr. LUND. Yes, it would.

Senator NEUBERGER. Has there been any request, to your knowledge, under the L and H proposal that there be a negotiated sale or any other extraordinary situation applying to the method at which it would be sold?

Mr. LUND. None at all.

Senator NEUBERGER. In other words, if this timber is sold in the Crescent Lake area, the L and H firm can acquire that timber only if their bid is the highest received by the Forest Service. Is that correct, or is that wrong?

Mr. LUND. That is correct.

Senator NEUBERGER. I repeat that so that it is in the record. The L and H Co. cannot obtain this timber species at Crescent Lake unless the price which they offer to the Forest Service is the highest one you receive at this public sale?

Mr. LUND. That is right.

Senator NEUBERGER. There has never been any suggestion that it be a negotiated sale, to your knowledge?

Mr. LUND. That is right. We have no authority to make it on that basis.

I will not go on and read further, but there are further replies by Mr. Lund in that tenor.

I think that it further should be pointed out—Mr. Hoffman knows about this, but I think it should be pointed out for the record—that a firm known as the L and H firm made a proposal that certain low value timber be harvested in the Crescent Lake area and used for wood chips. The State of Oregon is confronted with a very desperate employment situation and I have a very detailed letter from the United States Treasury Department pointing out that from 1952 to 1954 income-tax collections in Oregon dropped proportionately more than any other State except Wyoming, and I offer that for the record.

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COMMISSIONER OF INTERNAL REVENUE,  
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HON. RICHARD L. NEUBERGER,  
United States Senate,  
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As you know, internal revenue collections on a nationwide basis decreased by 1.7 percent from 1952 to 1954, while collections in Oregon decreased by 15.2 percent. The only State to show a decline proportionately larger than that of Oregon was Wyoming, where collections fell off 16.5 percent. Oregon's decline resulted from the combination of a slight increase in withheld individual income taxes, which comprised almost half of total 1954 collections, and substantial decreases in all other major classes of tax collections. Withheld individual income taxes fell off 20 percent in Oregon as compared with 10 percent for the Nation; corporation income and profits taxes declined by almost one-third in Oregon and only about one-tenth in the country; other internal revenue, consisting of estate, gift, excise and miscellaneous taxes decreased by almost one-fourth in Oregon as compared with only 2 percent nationally.

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and excise tax returns. The decrease in excise tax returns is largely attributable to the change in filing requirements from a monthly to a quarterly basis. In the case of employment tax returns, Oregon departed significantly from the national trend. Nationwide employment tax returns increased slightly from 1952 to 1954; in Oregon, however, such returns fell off by more than 5 percent.

We have no knowledge of the specific factors, economic or other, which are responsible for the decline in Oregon collections from 1952 to 1954. We have, however, examined our collections data trend with references to other economic indexes: namely, population and income payments data. Census Bureau estimates of population by States as of July 1, 1952, and July 1, 1953, indicate an increase of 1.6 percent in the Nation's population, while Oregon was 1 of only 8 States which suffered a slight decline in population. The August 1954 issue of the Department of Commerce publication *Survey of Current Business* provides analyses of income payments nationally and by States for the 1952 and 1953 years. These indicate that total income payments in the United States and in the Far West region, which includes Oregon, rose by 6 percent from 1952 to 1953, with the largest percentage increase, 11 percent nationally and 10 percent regionally, occurring in manufacturing payrolls, which account for more than one-fourth of total income payments. Total income payments in Oregon, however, rose only by 1 percent, while manufacturing payrolls showed no increase. In fact, Oregon's trend failed to keep pace with the national trend and the Far West regional trend as respects Government income payments, trade and service income, manufacturing payrolls, and construction payrolls.

There is no direct relationship between income payments made to individuals and income tax collections for a specific calendar year, since collections in a given year are in part attributable to current year income and in part attributable to prior years' income. The quantitative impact of the changes in income payments from 1952 to 1953 on internal revenue collections cannot be measured, but the depressed trend of Oregon payments as compared with those for the Nation as a whole appears to support the sharp decline in Oregon's collections as compared with the more moderate national decline.

I realize that this information does not provide the detailed reasons for the decline in Oregon but I hope it will be of value to you in appraising the situation.

Very truly yours,

E. H. VAUGHN,  
*Acting Assistant Commissioner.*

Senator NEUBERGER. I was aware of the fact that the Oregon Water Resources Committee, a State agency of our Republican State government had been prepared to report to the legislature in January 1955, the detailed material along this line from pages 74 to 76 recommending that the lumber industry in Oregon could take up the slack in employment due to a decline of saw timber mainly if they brought about an increase in the use of low value subalpine timber. The L and H Co. has three principal stockholders. Two of them were active supporters of mine in the 1954 campaign. The other stockholder was an active supporter of my opponent and in fact made a very bitter attack upon me at a meeting of lumbermen in October of 1954, at Roseburg.

After this criticism had been made of the proposed sale by Mr. Hoffman and by one ex-Republican member of the Oregon Legislature, it became a matter of controversy in the State of Oregon.

I was invited by the Oregon Journal, a newspaper which did not support me in the campaign, but which supported my opponent, to submit a guest editorial setting forth the reasons why I favored the L and H sale at Crescent Lake. I thought it would be in the public interest. That appeared December 31, 1955, and I submit that for the record.

(The editorial referred to follows:)

[From the Oregon Daily Journal]

**'SCRUB' TIMBER USE CAN BOLSTER OREGON PAYROLLS**

(By Richard L. Neuberger, United States Senator from Oregon)

Treasury Department reports show that, in recent years, Oregon has experienced one of the biggest drops in Federal tax collections of all the States. Between 1952 and 1954, while manufacturing payrolls rose nearly 10 percent in the Far West regionally, those in Oregon did not rise at all. Furthermore, during almost 3 weeks of congressional hearings on timber policies this fall, I listened to spokesmen for many Oregon communities warning of economic calamity unless new sources of supply can be tapped for lumber mills.

That is why I favor the sales proposed by the Roseburg L and H mill of subalpine timber species in the Crescent Lake area and by the Johns-Manville Co. of "scrub" lodgepole pine in the Klamath Falls region. These species are so-called low-value trees not before considered merchantable in our State. The sales would be competitive and open to all comers. They would be held under standard forest service rules. I cannot quite go along with a Journal editorial of December 23 that the Crescent Lake sale would have an adverse impact on any community.

It is true that certain political leaders from Bend have been loudly complaining. Yet I must agree with James P. Rogers, attorney for a number of prominent lumber companies, who told a Department of Agriculture hearing that Bend mills "might well band together to buy in this sale and themselves establish the mill required to develop these timber types."

As I wrote to the Chief of the Forest Service on July 18, it makes no difference to me which Oregon town or mill is the successful bidder. That is in the lap of destiny. But, as a Senator, I expect to use my limited influence to prevent any clique or faction from acting as dog-in-the-manger to thwart use of a new timber supply which might add payrolls to the State that suffered a 15.2 percent drop in Federal tax collections from 1952 to 1954, as compared with a national decline of a mere 1.7 percent.

In January the Oregon Water Resources Committee reported to the legislature that the pulp industry in the State "can be increased many fold through a more intensive use of our forests by utilizing species and trees too small for saw-log production. We are close to the time when it will be profitable to use this material. It is conservative to suggest that the pulp and paper industry could be increased five times without competing with saw-log production."

Such facts tend to refute completely the bitter and politically motivated objections to the proposed sales of low-value scrub timber.

In his decision supporting the Crescent Lake sale, Dr. Richard E. McArdle, present Chief of the Forest Service, made this crucial point: "The regional forester and the Washington office staff agree that economic utilization of the extensive timber resource of the so-called 'subalpine' type in Oregon and Washington is highly desirable as a means of increasing the allowable annual cut from the national forests of the Pacific Northwest."

Best of all, this can be done, in the opinion of a man as dedicated to conservation as Dr. McArdle, without imperiling watershed or recreational values. The State fish and game authorities also assented to the Crescent Lake project.

I believe that public, competitive sales of subalpine fir and lodgepole pine can help to bolster Oregon's economy at a time of crisis. Selfish objections, premised on partisan politics and alarm over healthy competition, should not be permitted to block the way.

**Senator NEUBERGER.** Following its appearance I received a letter from Mr. James P. Rogers, a leading lumber attorney who was a very active supporter of my opponent in the 1954 campaign, and a very prominent member of the Republican Party.

I am going to submit this letter for the record. It is very short, and I will read it:

**DEAR SENATOR NEUBERGER:** Although you may not see this, I simply wanted to say that I had read with much interest your guest editorial in the Saturday, December 31, Oregon Journal and thought it stated a sound position excellently.

I can't think what there is in McArdle's record, or the record of the Forest Service generally, which would justify anyone's suggestion that this proposal was not passed on in the light of good forestry, or yours to suggest that you would support unsound conservation principles.

In short, it appears to me that this is one argument with you and the Forest Service which the boys should never have started and that your guest editorial well stated the case which is really here involved.

With kindest personal regards, I remain

Very truly yours,

JIM ROGERS.

The implication was made in the press release put out by Mr. Hoffman that this sale was just for one company. On December 23, 1955, I received a letter from the regional forester in the Pacific Northwest, Mr. J. Herbert Stone. I wrote and asked him—I am sorry I do not have a copy of my request here—very briefly when I was out in Oregon if other companies than the L and H. Co. were interested or had been informed of this sale.

I am going to read his letter for the record:

DEAR SENATOR NEUBERGER: Your letter of December 23 is received and I thank you for the clipping which was enclosed.

Insofar as we have been able to ascertain, a number of other operators are interested in the proposed Windigo Pass sale—

I want to state that that is the same as the Crescent Lake sale—

but we have no sure means of determining just how many or what steps some of them may have taken to obtain specific data on the timber. We do know that at least one other party has been definitely interested since the sale was first proposed. A Mr. Jim Healy of Bend, Oreg., and associates expressed a specific interest in the sale from the beginning. Their proposal, in event they were the successful bidders, is to install a log chipping plant in the vicinity of Uml, some 10 miles south of Crescent Lake. \* \* \*

I will not read all of this, but it goes into detail as to how the operation would be technically.

Then I will go on and read further. I will submit the whole letter for the record.

Representative HOFFMAN. I just wonder how you broke into my witness and my time.

Senator NEUBERGER. Because you are making an attack upon me and you made it in the press release when you made a false statement that this was a sale to one company, and I feel as a member of this committee I am entitled to put the full facts on the record.

Representative HOFFMAN. I am not kicking at all. When you say it is a false statement, that is a matter of opinion.

Senator NEUBERGER. Would you rather go ahead?

Representative HOFFMAN. Go ahead. I would rather see you put in your defense.

Senator NEUBERGER. No defense is necessary.

Representative HOFFMAN. It seems to be an explanation. You dragged it in this morning.

I want to make one correction. I guess—my associate called my attention to it—I was in error. It was Senator Morse who returned the thousand-dollar-campaign contribution to one of these outfits, not you. I do not know whether you returned it or you did not. I am ignorant on that subject.

Senator NEUBERGER. I will also put in some facts of my campaign contributions.

Representative HOFFMAN. I will also put in the record these other newspaper articles.

Representative CHUDOFF. I am glad about one thing, Mr. Hoffman, that you went along with our committee, because now you are a champion of the little fellow and I hope when we have new good legislation you will be fighting for the little fellow.

Representative HOFFMAN. You were the champion of the little fellow and that was the issue out there. I just defend anybody, big or little.

Representative CHUDOFF. You are becoming a champion of the little man, too.

Representative HOFFMAN. Let's you and I apologize to the Senator and let him go ahead.

Senator NEUBERGER. I will resume reading the regional forester letter. I will skip some material about the technicalities of the operation.

\* \* \* It is also our understanding that Brooks Scanlon, Inc., of Bend, Oreg., and Gilchrist Timber Co., of Crescent, Oreg., have expressed a definite interest and that their foresters have examined the sale area but we do not know how detailed such examination may have been. In addition, Mr. E. T. Cobb, Albany, Oreg., who is connected with a mill at Chiloquin, Oreg., has made inquiry regarding the sale and expressed a definite interest in it but so far as we know has not yet examined the sale area.

Small sample sales of approximately 100,000 board-feet have been made to L. & H. Lumber Co., and to Diamond Lake Lumber Co., although the latter joined in the protest against making the major sale. Last September the Umpqua Forest issued a preliminary prospectus on the sale, copies of which were sent to 14 operators in the general area, including all of those named above. A number of the other operators receiving this notice have expressed some interest but so far as we know have not yet made any examination of the sale area.

Judging from present indications, it would be our guess that, should it be decided to offer the sale, more than one bid will be received.

That is signed J. Herbert Stone, regional forester.  
(The letter referred to follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
PACIFIC NORTHWEST REGION,  
*Portland, Oreg., December 28, 1955.*

Sales: Umpqua, Windigo Pass.

Hon. RICHARD L. NEUBERGER,

*United States Senator, Portland 5, Oreg.*

DEAR SENATOR NEUBERGER: Your letter of December 23 is received and I thank you for the clipping which was enclosed.

Insofar as we have been able to ascertain, a number of other operators are interested in the proposed Windigo Pass sale but we have no sure means of determining just how many or what steps some of them may have taken to obtain specific data on the timber. We do know that at least one other party has been definitely interested since the sale was first proposed. A Mr. Jim Healy of Bend, Oreg., and associates expressed a specific interest in the sale from the beginning. Their proposal, in event they were the successful bidders, is to install a log chipping plant in the vicinity of Umli, some 10 miles south of Crescent Lake. Most of the timber especially suited to production of high quality chips such as the mountain hemlock and true firs would be converted into chips at this plant and the sawlogs of other species sold to existing mills. They have been advised that such a proposal would result in a degree of utilization acceptable to the Forest Service and it is our understanding that their foresters have made a rather detailed examination of the proposed sale area.

It is also our understanding that Brooks Scanlon, Inc., of Bend, Oreg., and Gilchrist Timber Co., of Crescent, Oreg., have expressed a definite interest and that their foresters have examined the sale area but we do not know how detailed

such examination may have been. In addition, Mr. E. T. Cobb, Albany, Oreg., who is connected with a mill at Chiloquin, Oreg., has made inquiry regarding the sale and expressed a definite interest in it but so far as we know has not yet examined the sale area.

Small sample sales of approximately 100,000 board feet have been made to L. & H. Lumber Co. and to Diamond Lake Lumber Co. although the latter joined in the protest against making the major sale.

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Judging from present indications, it would be our guess that, should it be decided to offer the sale, more than one bid will be received.

Sincerely,

J. HERBERT STONE, *Regional Forester.*

Senator NEUBERGER. I think it is significant to point this out: If Mr. Hoffman wishes to make it the stand of his party that they are opposed to these sales of subalpine timber in our State I think it is significant to point out that there is widespread public opinion in our State in favor of such competitive sales if they can be accomplished consistent with the conservation practices of the United States Forest Service.

I think it also should be on the record—I think Dr. McArdle will bear me out on this if I am not mistaken—that the Johns-Manville Co. has made a request for a sale of similar low-value timber, but in far greater quantity than that suggested in the proposed Crescent Lake sale.

Is that correct or is that wrong?

Mr. McARDLE. That is correct.

Senator NEUBERGER. And that whether or not this low-value timber will be brought into production in Oregon also involves other proposed sales in addition to the one at Crescent Lake; is that correct?

Representative HOFFMAN. Now you are taking over the witness. I thought you were just making a statement on your own behalf.

Senator NEUBERGER. I am asking him if I am correct in saying that there have been other proposed sales of this low-value timber.

Representative HOFFMAN. I do not think there is any question about it.

Senator NEUBERGER. I am just putting it on the record.

Representative HOFFMAN. May I correct you this way, if I may, Senator? You said something about my speaking for the party. Bless your heart, I never did speak for the party. I am just down at the tail end of the outfit. I am only speaking for myself and I have enough trouble doing that and making it understood.

What I was talking about and what I was trying to show was, as Mr. Chudoff said over there, that you gentlemen were all for the little fellow in these hearings we held out there. You were the champions of the little boy. For example, the miner and his dog. You remember he brought in a picture of the miner's dog and said what treatment he got and then compared that with the treatment that the mining company got, this Al Sarena Co., and you laid the foundation for this thing up in Portland.

All I was trying to show was that in this particular case—and he was trying to show, too, all of the counsel anyway, although I will not say anything about Senator Scott as I do not know what he was

trying to do—counsel was trying to show that it is a very unusual procedure for the Secretary to do what he did, and I say that to the witness. That has run all through these cases.

Mr. McARDLE, I have no opinion and do not know a thing about the wisdom or lack of wisdom in the decision that you made. What I was trying to show was that in this particular case these champions of the little fellow switched and they got behind Mr. Netzorg and Mr. Buchanan out there, who made this great to-do about the miner. I am just trying to show their inconsistency, that is all, and also, incidentally, if you got campaign funds, Senator, from the big fellow, maybe I am just envious.

Senator NEUBERGER. Doctor, may I ask you about the standards of the lumber industry in Oregon? Would you regard the L. & H. Co. a big company or a small company?

Mr. McARDLE. Not a large company; no, sir.

Senator NEUBERGER. Just to make this record clear, I would like to ask you again, was it ever suggested that this be anything but a competitive sale open to any bidder?

Mr. McARDLE. Not to my knowledge.

Senator NEUBERGER. Was there anything extraordinary, unusual, or irregular or abnormal in any way about the proposal for this sale of timber at Crescent Lake?

Mr. McARDLE. The answer to the question is "No," but I want to make one further statement on it: That in this particular instance we would not want to sell it in such a way that full utilization of this rather badly decadent timber could not be obtained. We would like to see full utilization, and that can best be obtained with some such proposal as this particular company was making of converting it to chips. If it was simply sawed into logs, it would be a great deal of waste. The country would be left rather desolate and the decadent timber all jackstrawed up, a bad fire hazard. We were after some kind of operation that would result in as complete as possible utilization, and ordinarily we do not attempt to specify what the timber should be manufactured into, and we probably would not here, but we wanted to sell the timber in such a way that complete utilization would have to be made. We did take that extra precaution in this instance.

Senator NEUBERGER. However, it would be a sale under competitive conditions and any bona fide lumber operator could bid on it?

Mr. McARDLE. Completely; no different whatever from the other 27,000 sales we make every year.

Senator NEUBERGER. It would be no different from the other 27,000 sales?

Mr. McARDLE. Not at all.

Senator NEUBERGER. Thank you very much.

Representative HOFFMAN. Now I go back. However, in this particular case, did I understand you to say that there were some objectives that you had in mind, that is, that this particular company could better utilize the timber because of certain manufacturing facilities?

Mr. McARDLE. No, Mr. Hoffman. This is high-altitude timber. It is badly decadent. It is rotting. It is a forest, so to speak, that is running downhill. It is not gaining any growth.

Representative HOFFMAN. Something like the Smith River?

Mr. McARDLE. No. It is far more decadent than anything you may have seen on Smith River. If this timber is merely sawed into boards and the operator leaves the material which won't make a good board, then he leaves most of the tree in the woods. We were trying to avoid that and to see if we couldn't get an operation which would use more of the timber—

Representative HOFFMAN. Practically everything, if I may interrupt you? That is what you were trying to do?

Mr. McARDLE. That's right; good utilization.

Representative HOFFMAN. The most complete utilization out of it; is that not right?

Mr. McARDLE. This was one of the first times we had been approached by anyone who wanted to do more than turn it into boards.

Representative HOFFMAN. Do not misunderstand me. I am not objecting to that. I did not know anything about timber when I went out there, but I did learn that there were sections of timber where only a large company could utilize it; that is, they would get more out of it through byproducts and all that. As you said a moment ago, it has been customary over some time, anyway, a long period of time, to just try to sell lumber. That is it, is it not, and what you have been trying to do is to get the utmost out of the timber so in some cases you should to the big fellows—it was best to put it up to competitive bidding—and in some cases the little fellow could use it; is that not it?

Mr. McARDLE. That's correct, but the more determining factor usually is the financial ability of an operator to construct the necessary roads, which may cost as much as \$50,000 or more.

Mr. HOFFMAN. Now we have it; and many times the little fellow could not build the roads to get it out if you gave it to him.

Mr. McARDLE. I must go on so that the record will be clear on this. The cost of building a road is not stood by the purchaser of the timber. The cost of building the road is paid for by the Government, whether it pays for it in cash or pays for it in timber. The price of the timber is reduced by the cost of the development of roads made by the purchaser.

Representative HOFFMAN. Yes, but they take the cost of the road, as I understand it, out of the timber; do they not?

Mr. McARDLE. That is correct. The Government takes it out.

Representative HOFFMAN. And when you told me yesterday that on an adjoining section up here there was spent \$400,000 in building roads to get into it and get it out, what you meant was that cost would come out of the timber?

Mr. McARDLE. That meant that the Government would sell it for less money than it would otherwise.

Representative HOFFMAN. How much was this 75 million feet worth?

Mr. McARDLE. I don't know.

Representative HOFFMAN. Just an estimate.

Mr. McARDLE. We made no appraisal.

Representative HOFFMAN. What was the bid?

Mr. McARDLE. There hasn't been any bid.

Representative HOFFMAN. Pardon me.

Mr. McARDLE. It hasn't been advertised.

Representative HOFFMAN. You have not gotten around to that yet?

Mr. McARDLE. We have made no appraisal yet, haven't offered it

for sale, haven't advertised it for sale, and that's the status it is in now.

Representative HOFFMAN. All you decided was to sell it in a big piece and on a long term?

Mr. McARDLE. What we got was an expressed interest in buying the timber if we offered it for sale. We got it from this company and from some half dozen other companies.

Representative HOFFMAN. And you have no idea as to the value?

Mr. McARDLE. We haven't made that survey yet.

Representative HOFFMAN. I say you have no idea at all now.

Mr. McARDLE. No; I have none now.

Representative HOFFMAN. Were you ever on the Al Sarena claims yourself?

Mr. McARDLE. I have never been there. The closest I have been to Al Sarena has been the community of Trail, which is about 20 miles south of there, and the community of Prospect—

Representative HOFFMAN. The nearest you have ever been to the timber on the Al Sarena land was 20 miles?

Mr. McARDLE. That's correct.

Representative HOFFMAN. So your testimony here is based upon the testimony which was taken at Portland?

Mr. McARDLE. Yes.

Representative HOFFMAN. And then the other testimony that you have given, about whether there was mineralization or not—did you express an opinion about that, whether there was or was not?

Mr. McARDLE. I have tried not to express an opinion on that, but to always say it was the opinion expressed by these two competent mineral examiners.

Representative HOFFMAN. You mean Hattan and Sanborn?

Mr. McARDLE. Yes. If I have expressed any personal opinion as to the mineralization, that was an error; and I don't think I have.

Senator SCOTT. Mr. Hoffman, will you yield just a minute?

Representative HOFFMAN. I have just one more question right now. The opposition to this big sale was by the citizens of Bend?

Mr. McARDLE. That's correct.

Senator NEUBERGER. Mr. Chairman, just as a matter of personal privilege, because Mr. Hoffman has attempted to divert the issue by raising the question of campaign contributions to my senatorial campaign in 1954, I should just like to put one very brief sentence on the record.

My office does not have the complete files which were sent to the secretary of state of Oregon under the law on campaign expenditures, but one of the people on my staff did check the New York Times and found that the New York Times for April 8, 1955, in a column by Mr. Arthur Krock, of the New York Times, included the following sentence, and I would just like this sentence to be a part of the record. This is the sentence in Mr. Krock's story:

Senator Guy Cordon, defeated by Richard L. Neuberger, was the beneficiary of \$141,284.01 paid out by 30 committees and 4 individuals, and for Neuberger the spending of \$87,652.64 was reported.

Senator SCOTT. The committee will meet at 2 o'clock and will try to not hold you too long, if you can be here promptly so we can get started.

Representative HOFFMAN. In this same room?



Mr. McARDLE. No. It is far more decadent than anything you may have seen on Smith River. If this timber is merely sawed into boards and the operator leaves the material which won't make a good board, then he leaves most of the tree in the woods. We were trying to avoid that and to see if we couldn't get an operation which would use more of the timber——

Representative HOFFMAN. Practically everything, if I may interrupt you? That is what you were trying to do?

Mr. McARDLE. That's right; good utilization.

Representative HOFFMAN. The most complete utilization out of it; is that not right?

Mr. McARDLE. This was one of the first times we had been approached by anyone who wanted to do more than turn it into boards.

Representative HOFFMAN. Do not misunderstand me. I am not objecting to that. I did not know anything about timber when I went out there, but I did learn that there were sections of timber where only a large company could utilize it; that is, they would get more out of it through byproducts and all that. As you said a moment ago, it has been customary over some time, anyway, a long period of time, to just try to sell lumber. That is it, is it not, and what you have been trying to do is to get the utmost out of the timber so in some cases you should to the big fellows—it was best to put it up to competitive bidding—and in some cases the little fellow could use it; is that not it?

Mr. McARDLE. That's correct, but the more determining factor usually is the financial ability of an operator to construct the necessary roads, which may cost as much as \$50,000 or more.

Mr. HOFFMAN. Now we have it; and many times the little fellow could not build the roads to get it out if you gave it to him.

Mr. McARDLE. I must go on so that the record will be clear on this. The cost of building a road is not stood by the purchaser of the timber. The cost of building the road is paid for by the Government, whether it pays for it in cash or pays for it in timber. The price of the timber is reduced by the cost of the development of roads made by the purchaser.

Representative HOFFMAN. Yes, but they take the cost of the road, as I understand it, out of the timber; do they not?

Mr. McARDLE. That is correct. The Government takes it out.

Representative HOFFMAN. And when you told me yesterday that on an adjoining section up here there was spent \$400,000 in building roads to get into it and get it out, what you meant was that cost would come out of the timber?

Mr. McARDLE. That meant that the Government would sell it for less money than it would otherwise.

Representative HOFFMAN. How much was this 75 million feet worth?

Mr. McARDLE. I don't know.

Representative HOFFMAN. Just an estimate.

Mr. McARDLE. We made no appraisal.

Representative HOFFMAN. What was the bid?

Mr. McARDLE. There hasn't been any bid.

Representative HOFFMAN. Pardon me.

Mr. McARDLE. It hasn't been advertised.

Representative HOFFMAN. You have not gotten around to that yet?

Mr. McARDLE. We have made no appraisal yet, haven't offered it

for sale, haven't advertised it for sale, and that's the status it is in now.

Representative HOFFMAN. All you decided was to sell it in a big piece and on a long term?

Mr. McARDLE. What we got was an expressed interest in buying the timber if we offered it for sale. We got it from this company and from some half dozen other companies.

Representative HOFFMAN. And you have no idea as to the value?

Mr. McARDLE. We haven't made that survey yet.

Representative HOFFMAN. I say you have no idea at all now.

Mr. McARDLE. No; I have none now.

Representative HOFFMAN. Were you ever on the Al Sarena claims yourself?

Mr. McARDLE. I have never been there. The closest I have been to Al Sarena has been the community of Trail, which is about 20 miles south of there, and the community of Prospect—

Representative HOFFMAN. The nearest you have ever been to the timber on the Al Sarena land was 20 miles?

Mr. McARDLE. That's correct.

Representative HOFFMAN. So your testimony here is based upon the testimony which was taken at Portland?

Mr. McARDLE. Yes.

Representative HOFFMAN. And then the other testimony that you have given, about whether there was mineralization or not—did you express an opinion about that, whether there was or was not?

Mr. McARDLE. I have tried not to express an opinion on that, but to always say it was the opinion expressed by these two competent mineral examiners.

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Senator SCOTT. The committee will meet at 2 o'clock and will try to not hold you too long, if you can be here promptly so we can get started.

Representative HOFFMAN. In this same room?

Senator SCOTT. This same room at 2 o'clock.

(Whereupon, at 12:20 p. m., a recess was taken until 2 p. m. this same day.)

#### AFTERNOON SESSION

Senator SCOTT. The committee will please come to order.

Mr. COBURN. Mr. Chairman, may I offer a document for the record?

Senator SCOTT. Yes.

Mr. COBURN. Mr. Chairman, this is a letter dated May 17, 1955, from the Department of Agriculture to Senator James E. Murray as chairman of the Committee on Interior and Insular Affairs, and it is in the nature of a report on S. 1713, which is the so-called multiple-use bill that Congress passed last year. The report contains some very valuable information regarding the number of mining claims and included acreage by States in the national forests as of January 1, 1955, and a table which shows the estimated number of unpatented mining claims on the national forests as of January 1, 1952, and the number of patented mining claims on the national forests as of that same date.

I think it would be a valuable part of the record. It is all factual and not at all controversial, Mr. Chairman.

Senator SCOTT. Without objection, it will be in the record.

(The report referred to follows:)

DEPARTMENT OF AGRICULTURE,  
Washington, D. C., May 17, 1955.

HON. JAMES E. MURRAY,

*Chairman, Committee on Interior, and Insular Affairs,  
United States Senate.*

DEAR SENATOR MURRAY: Reference is made to your request of April 20 for a report on S. 1713, a bill to amend the act of July 31, 1947 (61 Stat. 681), and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes.

We strongly recommend early enactment of S. 1713 with one clarifying amendment as subsequently described.

S. 1713 is identical to House bills 5561, 5563, 5572, 5595, 5742, and almost identical to H. R. 5577.

This bill would apply to all lands of the United States subject to the general mining laws. Its major provisions are:

(1) Common varieties of sand, stone, gravel, pumice, pumicite, and cinders would be removed from the purview of the United States mining laws and made subject to disposal only under the provisions of the Materials Act of July 31, 1947 (61 Stat. 681), by the Secretary of Agriculture for lands under his jurisdiction and by the Secretary of the Interior for other public lands of the United States.

(2) Mining claims located after enactment of the bill could not, prior to patent, be used for other than mining purposes without authorization from the United States, and such locations would be subject to the right of the United States to manage and dispose of the vegetative surface resources, to manage other surface resources thereof (except minerals subject to the mining laws), and to use so much of the surface as necessary for such purposes or for access to adjacent land; provided that any use of the surface by the United States, its permittees or licensees, could not endanger or materially interfere with mining uses. Mining claimants could not use surface resources subject to management and disposal by the United States except to the extent required for mining purposes, and any timber cut for such purposes, except for clearance, must be in accordance with sound principles of forest management.

(3) Under a procedure similar to that provided in Public Law 585 of the 83d Congress, the Secretary of the Interior shall, at the request of the Federal department having the responsibility for administering the surface of lands of the United States, initiate action for a determination of surface rights as to a given area. Under this procedure, a holder of a claim located prior to enactment of this bill could assert and establish his rights in the lands covered by his claim, and such claim would be unaffected by the proceedings. If such a claimant fails

to establish his rights, or fails to assert his rights, or if he voluntarily waives his rights to the surface, he will be in the same position as a holder of a claim located after enactment of this bill. The procedure does not affect the right of a claimant to apply for patent, and if patent is granted he would acquire the same title as he would under the existing law.

We believe S. 1713, if enacted, would go far toward correcting some of the very difficult problems confronting this Department in its administration of those national forests and title III Bankhead-Jones lands subject to the general mining laws of the United States. We also believe that for the first time an area of agreement has been reached on this problem between the administrators of public lands under the jurisdiction of both the Departments of Interior and Agriculture, representatives of the mining industry, and conservation groups.

The Department of Agriculture desires to encourage legitimate prospecting and effective utilization and development of mineral resources of the national forests and title III lands. We would not favor legislation which would interfere with such development of minerals nor work hardship on the bona fide prospector or miner. We also recognize that the mining industry does not condone the use of mining claims on the public lands for other than mining purposes.

However, on the national forests the mining laws are sometimes used to obtain claim or title to valuable timber, summer home sites, or lands blocking access to Government timber and to water needed in the grazing use of the national forests.

As of January 1, 1952, there were 36,600 mining patents on the national forests, covering 918,500 acres. Only about 15 percent of these mining patents have been or are commercially successful mines. As of the same date, there were approximately 84,000 claims, covering 2.2 million acres. Only 2 percent of these claims were producing minerals in commercial quantities and probably not more than 40 percent could be considered valid under the requirements of the mining laws. Yet, on these national-forest claims, there was tied up over 8 billion feet of commercial sawtimber, valued at about \$100 million which the Government could not sell without consent of the claimant. In other words, national-forest timber exceeding in quantity and value that cut from all national forests in any one year is tied up on mining claims and cannot be sold by the Government. The two tables attached to this report supply these basic statistics by States.

The effect of this situation is increased costs of administration, obstruction of orderly management and competitive sale of timber, and obtaining high-value, publicly owned surface resources by a few individuals at nominal cost.

In the last 3 years there has been a tremendous increase in the number of mining claims on the national forests, principally as the result of prospecting for uranium and other fissionable materials. For example, as of January 1, 1955, it is estimated that there were 166,000 claims on the national forests, covering nearly 4 million acres or about a 100-percent increase in the past 3 years. At the rate claims are currently being filed, we estimate that by the end of this calendar year there will be about 225,000 mining claims on the national forests. It is also estimated conservatively that there are now over 10 billion board feet of timber tied up on national-forest mining claims, having a current stumpage value of \$112 million.

Following is an estimate of the number of claims and included acreage by States in the national forests as of January 1, 1955:

State	Thousand claims	1955 claims as multiple of 1952 claims	Thousand acres	1955 acreage as multiple of 1952 acreage
Arizona.....	34.3	6.9	684	6.2
California.....	21.0	1.1	602	1.0
Colorado.....	16.7	1.8	375	1.5
Idaho.....	18.4	1.2	408	1.2
Montana.....	14.6	2.1	282	2.1
Nevada.....	5.2	1.8	108	2.3
New Mexico.....	8.7	3.7	223	2.8
Oregon.....	6.7	.9	215	.8
South Dakota.....	4.8	1.9	103	2.0
Utah.....	28.4	3.6	583	3.2
Washington.....	5.3	1.8	94	1.3
Wyoming.....	2.1	2.5	78	2.4
Total.....	166.2	2.0	3,755	1.7

The number of claims is "snowballing" so fast that the situation on the national forests is rapidly getting out of hand. The above summary, for example, shows that there are nearly 7 times as many mining claims in Arizona as 3 years ago, and nearly 4 times as many in New Mexico and Utah. The increase has been large in other States, too. Equitable corrective action, as would be provided by S. 1713, is urgently needed. It is needed quickly because new claims are being filed at the rate of about 5,000 per month.

We suggest the following be added after the word "except" in line 22, page 3:

"that revenues from the lands described in the act of August 28, 1937 (50 Stat. 874) and the act of June 24, 1954 (68 Stat. 270) shall be disposed of in accordance with the provisions of such acts, and except"

The purpose of this amendment is to make it clear that revenues from O. & C. lands under the administration of the Department of the Interior and lands administered by the Department of Agriculture under the 1954 act will be placed in the O. & C. fund.

To effectively implement the provisions of S. 1713, particularly those of section 5, it is estimated that about \$750,000 to \$1 million would be needed annually by this Department for roughly a 10-year period, after which costs would drop to a relatively small amount. After claims located prior to enactment of the bill had been processed in accord with section 5, costs relating to this bill would be limited primarily to costs of issuing permits for disposal of materials under the Materials Act. Such costs would be offset in whole or in part by revenues from such permits.

In summary, this Department recommends enactment of S. 1713 since it will do much to solve the serious problems presented by mining claims in the management of public lands and resources. It will correct deficiencies in the mining laws and prevent many of the abuses by other than bona fide miners, but it will not obstruct or interfere with bona fide mineral prospecting, mining, and development. The Department is anxious to see these measures taken and strongly endorses the bill. However, S. 1713 does not include all of the changes in the mining laws which would be desirable from a good public land management standpoint and some problems would remain with respect to mining on the national forests and title III lands that this bill would not correct.

The Bureau of the Budget advises that, from the standpoint of the program of the President, there is no objection to the submission of this report.

Sincerely yours,

EZRA T. BENSON.

*Estimated number of unpatented mining claims on the national forests (as of Jan. 1, 1952)*

State	Number of claims	Acres	Estimated percent which are producing minerals in commercial quantities	Estimated percent considered valid under the mining laws	Timber on claims	
					Volume (thousand feet, board measure)	1951 value
Arizona	5,000	95,400	9.0	22	70,000	\$700.00
California	19,640	582,700	.8	30	3,460,000	50,177.00
Colorado	9,450	256,000	1.0	37	80,000	368.00
Idaho	15,840	355,100	4.3	42	1,170,000	8,427.00
Montana	6,860	132,600	1.7	46	85,000	40.00
Nevada	2,910	50,700	2.0	60		
New Mexico	2,350	81,700	3.0	24	225,000	2,000.00
Oregon	7,780	267,300	1.8	55	2,301,000	36,807.00
South Dakota	2,600	52,500	4.5	30	81,000	342.00
Utah	7,810	185,300	2.0	50	7,000	60.00
Washington	2,920	71,700	2.2	52	751,000	4,110.00
Wyoming	860	32,900	.6	55	36,000	47.00
Total	84,050	2,163,900	2.0	40	8,266,000	100,527.00

*Patented mining claims on the national forests (as of Jan. 1, 1952)*

State	Number of claims	Acreage	Estimated percent which are or have ever been commercial mining operation
Arizona.....	1, 110	53, 370	5
California.....	3, 098	134, 807	14½
Colorado.....	17, 000	300, 000	12
Idaho.....	3, 203	80, 802	28
Montana.....	5, 124	116, 575	17½
Nevada.....	675	12, 205	50
New Mexico.....	706	24, 498	16
Oregon.....	1, 370	26, 634	22
South Dakota.....	1, 000	74, 000	7
Utah.....	1, 359	57, 210	10
Washington.....	1, 184	20, 738	8
Wyoming.....	761	17, 687	1½
Total.....	36, 560	918, 526	14¾

Senator SCOTT. Mr. Holderer, will you please come forward.

Congressman HOFFMAN, will you please swear the witness?

Representative HOFFMAN. Yes, but are you through with Mr. McArdle?

Senator SCOTT. We dismissed him a while ago.

Representative HOFFMAN. What? Why, I am sorry, Mr. Chairman, but I had not finished with Mr. McArdle.

Senator SCOTT. We can get him back if you want him.

Representative HOFFMAN. Do you solemnly swear that the testimony which you shall give here in the hearing before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOLDERER. I do.

Representative HOFFMAN. Why do you have me swear him?

Senator SCOTT. We will try to adjourn at 3 o'clock today, and not later than 4 o'clock, for the information of those present. Then we will come back in session at 2 o'clock next Tuesday. I am not sure of the place of meeting at this time. Those interested will be kept posted on that by the committee.

Mr. REDWINE. Senator, I have just been informed that we can have the caucus room, room 318, on Tuesday. That is definite.

Senator SCOTT. We will have the meeting in room 318 of this building next Tuesday at 2 o'clock.

Representative JONAS. Mr. Chairman, before we proceed, I came in late. Were you talking about Mr. McArdle? I had a couple of questions to ask him.

Senator SCOTT. We dismissed him at lunch time, thinking he was through. We are trying to get these meetings adjourned.

Representative JONAS. I did not know that he was not returning at 2 o'clock.

Senator SCOTT. We dismissed him. We can have him back at a later date if you want.

Representative JONAS. How about Tuesday? I had several questions I wanted to ask him. I never asked him a single question. I asked the lawyer a few questions.

Mr. REDWINE. Mr. Chairman, for the information of the committee, Mr. Clarence Davis has been in touch with the chief clerk of the committee trying to arrange his personal schedule to fit in with our scheduling here, and we have already told Mr. Clarence Davis that he is tentatively scheduled for 2 o'clock on Tuesday. We can change that, however, if the members wish to have Mr. McArdle back at that time.

Senator SCOTT. Would you like to have him at that time, Congressman?

Representative JONAS. No, sir; just any time. If I had known that he was going to be dismissed, I would have asked him the questions before we recessed for lunch.

Representative HOFFMAN. Let us clear it up. I would like to have the stenographer read the last thing that happened before we adjourned. I understood that Mr. McArdle was to be back at 2 o'clock.

Senator SCOTT. We will get him back.

Representative HOFFMAN. All right.

Mr. REDWINE. Mr. Holderer, will you state your name and position?

**TESTIMONY OF GEORGE B. HOLDERER, STAFF ENGINEER, SUBCOMMITTEE ON MINERALS, MATERIALS, AND FUELS OF THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS**

Mr. HOLDERER. George B. Holderer. I am the staff engineer of the Subcommittee on Minerals, Materials, and Fuels of the Senate Interior and Insular Affairs Committee.

Mr. REDWINE. For how long have you held that position, Mr. Holderer?

Mr. HOLDERER. Three years.

Mr. REDWINE. Prior to that time will you give us your history, professional or otherwise, sir?

Mr. HOLDERER. Prior to that time I was the Chief of the Ferro Alloys Division in the DMPA.

Mr. REDWINE. What is that agency?

Mr. HOLDERER. Defense Materials Production Agency. It was the successor to the DMA, which was Defense Minerals Administration, which was located in the Department of the Interior.

I have been a consulting engineer a good part of my life. I have been connected with almost every phase of mining over a period of more than 50 years, beginning with my high-school summer days. I am a graduate mining engineer from the School of Mines at the University of Columbia.

Mr. REDWINE. In your work with the DMPA, just what function did you perform, Mr. Holderer?

Mr. HOLDERER. There was a vast number of applications for assistance of various types to stimulate the mining industry of this country when we got into the Korean war in 1951, and after DMPA was formed, which was September or later in the year 1951 or 1952—I forget the exact date—I went over to DMPA as Chief of the Ferro Alloys Division, and that Division covered tungsten, manganese, and chromite.

Many millions' of dollars' worth of applications passed over my desk for loans, production loans, assistance in exploration, and various phases of research and metallurgical work.

Mr. REDWINE. And those loan applications would be accompanied by engineering reports, assay reports, and matters of that kind?

Mr. HOLDERER. That is correct. We demanded all the information that it was possible to get or that the applicant could supply.

Mr. REDWINE. Then it was your duty to analyze all this technical data that was submitted and determine whether or not the Federal Government should grant a loan?

Mr. HOLDERER. That is true.

Mr. REDWINE. Did you have any connection with the War Production Board earlier, Mr. Holderer?

Mr. HOLDERER. I was an assistant to the Director of the Copper Division of the War Production Board.

Mr. REDWINE. What were your duties there, Mr. Holderer?

Mr. HOLDERER. I had no routine duty as assistant to the Director. Our job was to stimulate the copper production of the country, and every day brought new problems. It was a case of using the long-distance telephone. If that wasn't enough, I would hop on the first plane and go out to interview the responsible officials to see what could be done to spur their production.

Mr. REDWINE. Mr. Holderer, in your experience over the years, you are experienced in mining, milling, and so forth; are you not?

Mr. HOLDERER. I have been connected with all phases of mining.

Mr. REDWINE. Mr. Holderer, in the last few days, did Chairman Murray, of the Interior Committee, direct you to make a study of certain files?

Mr. HOLDERER. I will read from his instructions:

The chairman would like you to drop anything you may be working on and study the technical side of the Al Sarena case from the RFC files, mining reports, or any other data available that Mr. Redwine will put at your disposal. Condense the material into a short report on the property, with particular emphasis upon the economics of the mine.

Mr. REDWINE. You have performed that assignment?

Mr. HOLDERER. I have.

Mr. REDWINE. Before we go into the report that you have made on that, Mr. Holderer, may I direct your attention to the RFC file and a report contained therein signed "D. Ford McCormick." Do you have that before you?

Mr. HOLDERER. I think this is it.

Mr. REDWINE. Mr. Holderer, is that report a part of a loan application?

Mr. HOLDERER. The RFC file that I have before me is the application that was submitted to the RFC requesting a loan of \$51,000. The request for a loan was made on January 23, 1940, and this is the application.

Mr. REDWINE. Covering the 23 claims that are involved in this dispute?

Mr. HOLDERER. That is correct.

Mr. REDWINE. And you have before you as a part of that application a report signed "D. Ford McCormick"?

Mr. HOLDERER. That is right.

Mr. REDWINE. Would you refer to that part of his report where he discusses the timber on that property?

Mr. HOLDERER. The company lists?



Mr. REDWINE. In his report, please, Mr. Holderer, the McCormick report, will you read the paragraph relating to the amount of timber on those claims as set forth by Mr. McCormick?

Mr. HOLDERER. I am quoting:

It is estimated that there are 20 million feet of excellent fir and pine timber on the claim.

Mr. REDWINE. Will you now refer to that portion of the report which the company designated as a pro forma balance sheet?

Mr. HOLDERER. The company submitted a pro forma balance sheet on January 23, 1940. They submitted a list of their assets.

Mr. REDWINE. Will you read out their assets as listed by them?

Mr. HOLDERER (reading):

Cash, \$903; accounts receivable due from smelter, approximately \$2,250; mining claims, approximately 400 acres in 23 claims, \$80,000; timber resources, approximately 20 million feet of timber on said claims, \$80,000; ore blocked out, 27,595 tons at \$260,070.

Representative JONAS. Read that last one again, please.

Mr. HOLDERER (reading):

Ore blocked out, 27,595 ton at \$260,070.

Then their capital assets are given as:

Machinery and tools, old, \$26,205; new machinery and tools, \$10,659; mill construction, \$10,316.50; mine development, \$54,286.07—

to a total of \$101,467.07, less depreciation reserves of \$3,420.

Mr. REDWINE. That is all right, Mr. Holderer.

Mr. HOLDERER. That gives a total of \$521,270.07 as their assets.

Mr. REDWINE. While we are at it, let us give the liabilities, also. That is very short.

Mr. HOLDERER. "Liabilities, contracts payable, due on 10 mining claims, \$35,000 less credit due, \$4,000." That is a total of \$31,900. And the capital stock, 10,000 shares, no par value listed, at \$489,370.07.

Mr. REDWINE. Mr. Holderer, can you tell the committee as to the mining claims valued at \$80,000; does that indicate, from your experience in reading such applications, the value that they place on the mining claims without the timber and without any machinery?

Mr. HOLDERER. That is the way it is stated in their pro forma report. They put down a figure of \$80,000 for the mining claims, \$80,000 for the timber.

Mr. REDWINE. Mr. Holderer, you are familiar with the mining laws, are you not, and how you go about patenting mining claims?

Mr. HOLDERER. That is true.

Representative HOFFMAN. I understood he asked if he was familiar with both.

Mr. HOLDERER. The mining law.

Representative HOFFMAN. And you said you were?

Mr. HOLDERER. I did.

Mr. REDWINE. Mr. Holderer, is it not true that this company back in 1940 was claiming that it, as a part of its assets, had \$80,000 worth of timber to which it had no more title than a snowman?

Mr. HOLDERER. That is the figure they put down in their pro forma balance sheet.

Mr. REDWINE. But the land had not gone to patent?

Mr. HOLDERER. That is correct.

Mr. REDWINE. The timber was not theirs?

Mr. HOLDERER. I would say it was not.

Mr. REDWINE. Yet they were claiming as an asset \$80,000 worth of timber?

Mr. HOLDERER. That is right.

Mr. REDWINE. And they said it had 20 million feet on it?

Mr. HOLDERER. That is correct.

Representative JONAS. May I ask Mr. Redwine something?

I do not believe the witness has said who made that application. Will you let that be established?

Mr. REDWINE. I am going into that, if I may, right now.

Now, in your examination of these RFC files, applications for loans, I believe that you find there that the Al Sarena Mines, Inc., filed an application in 1936, was it not?

Mr. HOLDERER. I think it was 1936. I believe so, sir.

Mr. REDWINE. For \$19,642, I believe that was, was it not?

Mr. HOLDERER. That is correct.

Mr. REDWINE. Then in 1940, this application from which you are reading now was filed by Al Sarena Corp., was it not?

Mr. HOLDERER. I would have to check that to get that exactly. It was filed by Cecil R. Haden, president, Al Sarena Corp.

Mr. REDWINE. And attached to that application is a copy of the lease agreement between Al Sarena Mines, Inc., and Al Sarena Corp., is it not?

Mr. HOLDERER. That is correct.

Mr. REDWINE. The report that we are talking about as to the 20 million board-feet of timber was signed D. Ford McCormick, was it not?

Mr. HOLDERER. That is right.

Mr. REDWINE. Now, going back to this pro forma balance sheet, Mr. Holderer, as to this ore blocked out, \$260,070 worth, will you discuss that?

Read your report on this and discuss that fully, please.

Representative JONAS. Do we have copies of the report?

Mr. REDWINE. We have only one copy. I will have some made.

Representative HOFFMAN. Is that the report to Senator Murray?

Mr. REDWINE. Yes, sir.

Representative HOFFMAN. Mr. Chairman, I want to object on the record to the receipt of this report because it is clearly a matter of hearsay.

As I understand the situation, the witness does not contend that he has any personal knowledge. He is basing his report upon the documents which he finds in the file and, of course, the only question here as a matter of law is whether a reasonably prudent man would have proceeded under this showing to attempt to mine the claim.

Mr. REDWINE. Mr. Chairman.

Representative HOFFMAN. Unless he is an expert and qualified on that.

Mr. REDWINE. Mr. Chairman, Mr. Holderer has testified that for several years in Government service it was his duty to analyze such documents as he has analyzed here and to this in answer to a directive given to him by Senator Murray, chairman of the committee. He is certainly qualified as being competent, having had a great deal of experience in Government service in doing this same thing.

Representative HOFFMAN. Mr. Chairman, I can anticipate the ruling, but I want to put on the record that counsel's statements would prove that it is hearsay and would not be received in any court.

Mr. REDWINE. Mr. Chairman, let me say this: That this man's hearsay, if that is what you want to call it, his analysis of such reports as this determined whether the Government during the war years loaned millions of dollars or turned down applications for loans when the application itself showed that it did not deserve a loan, that it did not offer sufficient security to the Government to make a loan.

Representative CHUDOFF. Is that the application by the Al Sarena Mining Co. for an RFC loan from the RFC?

Mr. REDWINE. Yes, sir.

Representative CHUDOFF. That certain statements were attached and certain questions, and there is a paragraph at the end of the application making it a criminal Federal offense to make false statements?

Mr. REDWINE. Yes, sir.

Representative CHUDOFF. This witness is a former employee of the RFC?

Mr. REDWINE. No, sir; but he did this very same kind of work in the DMA and War Production Board throughout the war. He has qualified as an expert.

Representative CHUDOFF. He is an expert in mineral analysis?

Mr. REDWINE. Yes, sir.

Representative JONAS. However, the record shows, Mr. Chudoff, that this application was not filed by the claimants to the patent but by a different corporation.

Representative CHUDOFF. Actually, it was filed by a corporation from which the Al Sarena Mining Co. succeeded in buying the assets of the other corporation.

Representative JONAS. It was a different corporation from the Al Sarena Mines, Inc., the applicants for the patent.

Representative CHUDOFF. But it covered the same geographical territory and everything else, and anything alleged as to the value of the ore in that application would cover the value of the ore in the Al Sarena Corp.

Mr. REDWINE. Mr. Chairman, I would like to suggest that this has nothing to do with the qualifications of this witness as an expert to analyze and interpret this loan application.

Representative HOFFMAN. Mr. Chairman, I do not mind helping counsel out.

Why do you not ask him, assuming those facts to be true, and get his opinion?

Senator NEUBERGER. Mr. Chairman, speaking of hearsay, I think it ought to be noted for the record that we have had testimony that the Interior Department officially granted final patent to these lands based on a telephone call from a subordinate Government employee.

Representative JONAS. We have not had that testimony and will not have it until Mr. Davis gets on the stand.

Senator NEUBERGER. I think Mr. Appling testified.

Representative JONAS. He testified to a conversation, but we do not yet know whether that was the basis on which the decision was made.

Senator NEUBERGER. We will have Mr. Davis on Tuesday, I believe the chairman said.

Mr. REDWINE. Will you read your report first and then go into the matter?

Mr. HOLDERER. You wish me to read the part having to do with the sampling, or the entire report?

Mr. REDWINE. The entire report, please.

Mr. HOLDERER (reading):

The opinions expressed in this report are based on information obtained from the hearings on this case in Portland, Oreg., November 25, 1955, Washington, D. C., January 10, 1956, and information supplied by the company to the Reconstruction Finance Corporation when an application for a loan was made on January 23, 1940. The loan was denied by RFC.

In the company's application to the RFC, there was a section on sampling which was signed by George P. Sopp. The following statements are taken from this section of the application, and I quote:

"Sampling, as carried on at Al Sarena Mine since the beginning of February, has been greatly hampered by inaccessible drifts, caved stopes, and weak timbered ground.

"Large samples could not be taken without a considerable outlay for equipment.

"No sampling on the vein could be done between these two levels, No. 1 and No. 2 tunnel levels, and therefore too much reliance should not be placed on the value obtained for this block, No. 2 block, of ore. The number of samples taken on this block is small compared to the size of the block.

"Approximately 250 feet of the drift in No. 1 tunnel is inaccessible. Values obtained in previous sampling were used. The writer knows nothing of the method used in taking these previous samples and cannot answer for their accuracy.

"Valuation of an ore body based on such a small number of samples cannot be considered as extremely accurate especially when these samples are small.

"To get a more accurate value for the ore on the vein, it would be necessary to sample stopes and drifts now inaccessible, to do either some surface work or intersect and drift on the vein from No. 5 tunnel. Larger samples taken at closer intervals would give greater accuracy."

My own opinion follows:

Reserves—From the above statements quoted from Mr. Sopp's report, no reliance can be placed upon the company's estimate of 24,917 tons of ore reserves valued at \$232,600. A good deal of work has been done on the property, but much of it in barren ground.

Reference is made to the possibility of this being a very large low-grade deposit which could be mined cheaply. In fact, a reference is made to the Alaska-Juneau mine, but no diamond or churn drilling was ever done on the property. Not by the wildest stretch of imagination could a deposit of this character with narrow veins be compared to property like Alaska-Juneau, which for many years paid dividends on ore averaging a lot less than \$1 per ton, but it must be remembered that 10,000 tons a day were mined.

All of the great copper mines in this country in Arizona, New Mexico, Montana and Nevada are mining ore where recovery is less than 1 percent of copper per ton. In the case of Kennecott's property at Bingham Canyon, 100,000 tons per day are mined with a recovery of about 0.75 percent per ton, and at the other mines many thousands of tons are mined per day.

In the attached pages there are figures taken from assay sheets which are exhibits in the hearings. It is my opinion that from the information available, it would be most difficult for this property to produce 200 tons a day at most, and even 100 tons a day would be difficult because of the small working faces.

In the report to the RFC an operating cost of \$3 per ton is given. Mine labor is quoted at \$4.50 per shift with other labor at comparable amount. Many items in figuring the cost are omitted, indicating a complete unfamiliarity with the mining operation.

The cost of mine labor in the Coeur d'Alene mining district of Idaho, which is the nearest mining district of good size to this property, for the past 3 years has been \$15.94 per shift, to which must be added \$1.88 per shift for nonwage payments; such as compensation, insurance, social security, vacation pay, et cetera, bringing the total pay to almost \$18.

Production in small mines varies from  $1\frac{1}{2}$  to  $2\frac{1}{2}$  tons per shift per man for the overall total of men employed. An average would be 2 tons per man-shift. Thus it can be seen that for labor alone the charge would be a minimum of \$9 per ton, and in mine operations generally labor can be considered to be 45 percent of the total cost of mining, which brings the total cost of mining not far from \$16 or \$17 per ton. Another \$5 per ton would be a fair figure for milling cost and there is still no provision for amortization, taxes, and numerous other overhead expenses.

It is my opinion that a property of this kind could not be operated profitably with values at less than \$20 per ton. The property certainly could not be operated now at a profit, nor do I believe that it could ever have been operated at a profit, even in the days when labor was said to be \$4.70 per shift, which it has not been for many years.

Mr. REDWINE. Will you stop at that point?

Representative HOFFMAN. May we have a copy of that?

Mr. REDWINE. We are having it prepared right now.

Representative HOFFMAN. I think we should have copies so that we could be prepared to look them over before the witness is excused.

Senator SCOTT. He is getting copies for you.

Representative HOFFMAN. I know that, but it is after the witness is on the stand and has testified. What opportunity do I have to prepare to question the witness?

I do not know what the Senate rule is, but under the rule of the House, we should have that at least 24 hours before the witness takes the stand. That has been the procedure all along, to deny us any look at what is to come before the committee, and I want to protest. It is not fair to us.

Representative CHUDOFF. Mr. Hoffman, so that there is no wrong impression by anybody listening or by members of the press, I do not have a copy either and have not seen a copy.

Representative HOFFMAN. That has not a single thing to do with the rule.

Representative CHUDOFF. I understand, but I do not want you to insinuate that, as chairman of the House subcommittee, I have a copy and you do not. Sometimes you have copies when we do not.

Representative HOFFMAN. When you were in the Virgin Islands there, I got a copy of something through the chairman or the general counsel.

Representative CHUDOFF. We try to give you every copy of every thing we have.

Representative HOFFMAN. Yes, I want to compliment you on every occasion.

Senator SCOTT. As far as I know, the chairman did not know there was such copy available.

Mr. REDWINE. Mr. Holderer, let us go back to something that is copied except in the RFC report. Will you discuss this ore body for us while we are waiting for these copies of your report?

Mr. HOLDERER. From the information given, there are probably four veins, all of them of extremely narrow width.

Mr. REDWINE. What do you mean by extremely narrow width, Mr. Holderer?

Mr. HOLDERER. Two feet, and it would be impossible to mine a reasonable tonnage on a vein as narrow as that without getting a great deal of waste rock which would still further cut the value of the ore per ton. So that disposes of the idea that this is a gigantic body that might be mined on a huge scale.

Mr. REDWINE. It has very narrow veins?

Mr. HOLDERER. Very narrow veins. They would have to really be put to it to secure 100 tons a day, day in and day out, and month in and month out.

Representative JONAS. Mr. Chairman, would you have him identify the document from which he gets that information so that I can see it later?

Mr. REDWINE. Will you do that, Mr. Holderer?

Mr. HOLDERER. The part that I just finished reading is——

Representative JONAS. I mean the part upon which you base this comment that there were only veins of a very narrow width.

Mr. REDWINE. It is mentioned in both the Sopp and McCormick reports; is that right?

Mr. HOLDERER. Yes, sir.

Mr. COBURN. May I interject a question, sir?

Has anyone told you what to put in that report, or has anyone coached you?

Mr. HOLDERER. I have taken my instructions from the letter that I received from the chairman of the committee.

Mr. COBURN. Has anyone discussed the nature of your report, what you were going to say?

Mr. HOLDERER. No. The opinion I am giving is my own opinion, uninfluenced by conversations with anyone else.

Mr. COBURN. Thank you.

Mr. REDWINE. And all from Government records and the transcript of the Portland hearing which reported the Hattan and Sanborn testimony?

Mr. HOLDERER. I only looked at two transcripts, the one from Portland, and the one from Washington on January 10. I did not read those transcripts. All that I took out of them was the information from the assay sheets. That is all that I took from those two transcripts.

Senator SCOTT. Did you show this report or discuss it with anyone before you came up here?

Mr. HOLDERER. No; I did not. I gave a copy of the report to Mr. Redwine as I came up.

Representative JONAS. Mr. Chairman, may I ask him a question before we get away from that point?

Senator SCOTT. Yes.

Representative JONAS. Do the comments you have just made about the veins and their width, and so forth, apply to the eight uncontested claims, the ones that the Forest Service admits are sufficiently mineralized?

Mr. HOLDERER. After looking at the assay sheets, I concluded that they were so completely bad that any further examination of the problem was useless.

Representative JONAS. What do you mean?

Mr. HOLDERER. If the assays are no good, then the whole thing is not good as far as an opinion is concerned.

Representative JONAS. So the opinion you now express that the property was absolutely without any economic value as a mine would apply to the eight claims that the Forest Service agreed to?

Mr. HOLDERER. It would apply to everything that was supposed to be mineralized.

Representative JONAS. Thank you, sir.

Representative HOFFMAN. May I ask him this question, in view of what you said: Will you repeat what you said—that if the assays were not good, then what happened?

Mr. HOLDERER. If the assays were no good, any further discussion of the problem as to its economic value would be entirely useless.

Representative HOFFMAN. And your opinion would be useless?

Mr. HOLDERER. Absolutely.

Mr. REDWINE. Mr. Holderer, will you go on with the report that you have submitted, taking up what you have prepared in respect to assays and going slowly when you get to that point where you identify what set of assays you are talking about?

Mr. HOLDERER. As a start, there were 12 assay sheets, containing 142 assays. This is a little résumé that does not appear on the typed copies. I made it up afterward.

There was 1 assay that went \$7.70 for the total gold and silver: 1 at \$4.85; 1 at \$3.70; 1 at \$2.25; 1 at \$2.20; and all the others were under \$2. A great many of them were simply "trace" or "zero." That is a quick rundown on the entire lot.

Now, taking the sheets separately, on page 51 in the Portland transcript, or the sheet that is given as opposite page 51, there are 23 assays, and those were given to the Annes Engineering Co., Grants Pass, and there is no date on the assay report. It was presented by Elton M. Hattan.

Page 58, assay report of Abbot A. Hanks, August 10, 1949. There were 29 assays presented by Hanks.

Now, this batch of assays is similar to the one that was handed to the Annes Co. for assaying. They are practically identical:

Gold, 1 assay ran \$3.32; 2 ran at 17 cents; 1 at 35 cents; 2 at 70 cents; 1 at "zero"; 1 at \$6.65; and 1 at \$7.70; and the balance were "trace."

Silver, 1 assay at 34 cents; 1 at 5 cents; 1 at \$1.64; 1 at 27 cents; and the balance were "zero" or "trace."

Page 109, report of R. N. Appling, Jr., dated January 2, 1954. This is the same set that was submitted to A. W. Williams Inspection Co., which appears on page 294 of the Washington transcript:

Gold, 1 assay ran \$4.20; 1 at \$3.50; 1 at \$2.80; 5 at \$2.10; 1 at \$2.45; and 1 at 70 cents; and 18 ran between \$1.05 and \$1.75.

There were 24 silver assays, which ran between 5 cents and 65 cents per ton.

Total values, 1 assay at \$4.85 per ton; 1 at \$3.95; and the balance ran between 79 cents and \$2.85.

Now, this comes to page 263 from the Washington transcript, January 10, reports from the A. W. Williams Inspection Co., dated November 18, 1949, 15 assays:

One ran \$2.25 per ton, gold and silver. The balance were between 90 cents and \$1.86. Ten are "zero."

Page 267 of the Washington transcript, and these are assays from the Williams Co.:

September 27, 1949, 7 assays, the highest of which was \$1.86.

Page 278, October 14, 1949, 8 assays, 6 of which ran "trace" or "zero." One ran 98 cents; 1 ran \$2.20, total value.

Page 281, Washington transcript, 13 assays. The highest was \$1.84 and 5 were only "trace."

Page 285, one was "zero."

Page 290, October 7, 1953, 18 assays: 7 assays were "zero"; 6 were "trace"; 5 were \$1.80; and 1 was 5 cents.

Page 291, October 9, 1953, 10 assays: 1 assay was "zero"; 1 was "trace"; and 8 were \$1.80.

Page 292, October 14, 1953, 4 assays, 2 of which were "zero" and 2 were \$3.70.

Page 294, November 4, 1953, six assays: 1 assay was \$1.14; 1, \$1.06; 1 at 53 cents; 2 at 18 cents, and 1 at 27 cents.

Page 294, October 29, 1953, three assays, all of which were "zero." Rarely have I seen as poor a batch of assays as that.

Mr. REDWINE. Mr. Holderer, in looking over your recap of all the assays that have come into the record, I find 1 here of \$6.65 and 1 of \$7.70, and no other over \$5. Now, the most favorable set of assays, the set of assays showing the greatest values, is the assays of the A. W. Williams Co., 28 of them upon which this decision was rendered; is that correct?

Mr. HOLDERER. I don't know on what the decision was rendered. There was one here.

Mr. REDWINE. Well, the ones that show in the Appling report. Let us reword that.

Mr. HOLDERER. Yes; there was 1 that had \$7.70.

Mr. REDWINE. The \$7.70 was not in the Appling report, was it?

Mr. HOLDERER. In the Hanks.

Mr. REDWINE. Going to the Appling report, the assays that showed in there, of all the sets of assays that you have seen, the highest values are in that Williams Inspection Co. report that shows in the Appling report; is that correct?

Mr. HOLDERER. That is correct.

Mr. REDWINE. And none of those exceed what?

Mr. HOLDERER. \$4.20 was high in that batch.

Mr. REDWINE. Correct me if I am wrong in this. Yet you testified a few minutes ago that, from your examination of the engineers' report on this property and all that, you could not possibly operate this mine with values of less than \$20; is that correct?

Mr. HOLDERER. That is correct.

Mr. REDWINE. Mr. Coburn, would you like to ask some questions at this time?

Mr. COBURN. No, sir.

Mr. REDWINE. Mr. Holderer, I would like to ask you a hypothetical question. No; I do not believe I will.

Mr. HOLDERER. I might add that, after having summarized these assays, I made no further attempt to discuss the economics of the mine because there are none.

Mr. REDWINE. There are just no economics there?

Mr. HOLDERER. The economics is zero.

Mr. REDWINE. That is all I have of this witness, Mr. Chairman.

Representative HOFFMAN. May I ask a few questions?

Senator SCOTT. Yes.

Representative HOFFMAN. You said you were a member of the War Production Board. Over what period?

Mr. HOLDERER. Practically throughout, from 1942 to late 1945; about 3 years.



Representative HOFFMAN. Do you ever remember being before the Howard Smith special committee as a witness?

Mr. HOLDERER. I never did appear as a witness.

Representative HOFFMAN. You never did appear?

Mr. HOLDERER. No.

Representative HOFFMAN. With the War Labor Board members?

Mr. HOLDERER. No.

Representative HOFFMAN. To testify?

Mr. HOLDERER. I was in the Copper Division. We never appeared before any committee; or at least I did not.

Representative HOFFMAN. As you recall?

Mr. HOLDERER. I recall that I did not.

Representative HOFFMAN. You are an expert, as I understand it?

Mr. HOLDERER. I am a mining engineer. When you say an expert, an expert of what?

Representative HOFFMAN. That is what I was wondering.

Mr. HOLDERER. I am an expert on mines and mining.

Representative HOFFMAN. You are here to testify that the reasonably prudent man would not invest any money in this thing?

Mr. HOLDERER. That is right.

Representative HOFFMAN. Did you ever operate a mine?

Mr. HOLDERER. I have.

Representative HOFFMAN. Where?

Mr. HOLDERER. Practically in every part of the Western Hemisphere.

Representative HOFFMAN. It was a mine that you owned yourself?

Mr. HOLDERER. I have owned 1 or 2.

Representative HOFFMAN. Well, did you make or lose on them.

Mr. HOLDERER. On one I lost.

Representative HOFFMAN. Were you reasonably prudent when you went into that one?

Mr. HOLDERER. I was reasonably prudent when I started.

Representative HOFFMAN. You thought you were when you went in.

Mr. HOLDERER. When I went in. As soon as I started losing, I called it quits and got out.

Representative HOFFMAN. You have owned two mines, as I understand it; is that right?

Mr. HOLDERER. That is right.

Representative HOFFMAN. And you made money on the other one?

Mr. HOLDERER. A little.

Representative HOFFMAN. What percentage on your investment, let us say?

Mr. HOLDERER. Oh, probably 20 or 30 percent.

Representative HOFFMAN. Over what period; a year?

Mr. HOLDERER. A couple of years.

Representative HOFFMAN. So that in each year you think you made 20 or 30 percent on it?

Mr. HOLDERER. That is right.

Representative HOFFMAN. Then what happened?

Mr. HOLDERER. Well, the ore body played out and that was the end of it.

Representative HOFFMAN. What were the net results? How much did you put in and how much did you get out? Did you balance your budget, in other words?

Mr. HOLDERER. Scarcely, when I took into consideration the value of my time.

Representative HOFFMAN. So you were not a reasonably prudent man on that one, were you?

Mr. HOLDERER. No. That is right.

Representative HOFFMAN. Did you have a patent on those mining claims?

Mr. HOLDERER. I did on one batch, on the batch that I lost money on. In the other, I was in a partnership.

Representative HOFFMAN. Somebody in the Department then made a mistake in letting you have a patent, did they not?

Mr. HOLDERER. As to that, I wouldn't say. I don't know.

Representative HOFFMAN. Mr. Redwine asked you about this timber. It seems that somebody made an application to the RFC and said the timber was worth \$80,000.

I noticed that you noticed in the testimony that Mr. Leavengood said it was worth \$77,000 at a certain time. The company only had \$3,000 more than he did. That is about right?

Mr. HOLDERER. The only figure I have is the figure given in this application to the RFC.

Representative HOFFMAN. That was \$80,000?

Mr. HOLDERER. That was \$80,000.

Representative HOFFMAN. And there being \$80,000 on there, did you consider in passing on the validity or the desirability of the RFC making the loan that the company was claiming that it had \$80,000 worth of timber?

Mr. HOLDERER. They claimed that as one of their assets.

Representative HOFFMAN. Was it not?

Mr. HOLDERER. They had no ownership to that timber until the patent was granted.

Representative HOFFMAN. But did you not have a right to use any and all of it, every last board foot of it if they use it in their mining operations?

Mr. HOLDERER. That is true. They could use that timber at any time.

Representative HOFFMAN. But you are still critical of their putting that in.

Mr. HOLDERER. As an asset.

Representative HOFFMAN. It was a potential asset. It was there on the ground and they had a right to use it, did they not, if they needed it in the mining?

Mr. HOLDERER. There is a difference between an asset and a potential asset.

Representative HOFFMAN. Oh. I was just thinking of that paragraph on page 15 of Hattan's report:

While the Forest Service has no accurate cruise of the timber embraced within the area of all the claims, the Oregon Mine Handbook, page 197, states that approximately 12 million board feet of timber is estimated to be available and on the mining claim. If the mine is developed as contemplated, a large amount of timber will be necessary. In fact, it might well be to the advantage of the company to set up a sawmill on the property and produce the timber which will be needed in such a large scale operation.

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While the Forest Service has no accurate cruise of the timber embraced within the area of all the claims, the Oregon Mine Handbook, page 197, states that approximately 12 million board feet of timber is estimated to be available and on the mining claim. If the mine is developed as contemplated, a large amount of timber will be necessary. In fact, it might well be to the advantage of the company to set up a sawmill on the property and produce the timber which will be needed in such a large scale operation.

There is, of course, nothing to prevent the company after they get a patent cutting all of it.

It would not have been unusual if they had tried to cut the timber and used it in opening the mine, would it?

Mr. HOLDERER. Well, there obviously was no prospect of ever mining the property for mineral wealth.

Representative HOFFMAN. How do you know what the McDonalds had?

Mr. HOLDERER. There was nothing on that property that was—

Representative HOFFMAN. Any good?

Mr. HOLDERER. That was minable at a profit.

Representative HOFFMAN. That is what you think. That is your opinion as an expert.

Mr. HOLDERER. Based on the information at my disposal.

Representative HOFFMAN. That is what?

Mr. HOLDERER. Their application to the RFC.

Representative HOFFMAN. Based on that, but do you know anything about the taking of the samples?

Mr. HOLDERER. I have no knowledge of the competency or the personal integrity of anyone who did any sampling.

Representative HOFFMAN. Or how they were taken?

Mr. HOLDERER. Or how they were taken.

Representative HOFFMAN. Or whether or not they were protected.

Mr. HOLDERER. That is right.

Representative HOFFMAN. And if they were not properly taken and were not properly protected, your opinion does not amount to anything? Did you not so testify?

Mr. HOLDERER. Wait a minute. My opinion is based on the assay sheets that were at my disposal.

Representative HOFFMAN. And the question is: If the samples were not properly taken, if the assay was not properly conducted, your opinion does not amount to anything?

Mr. HOLDERER. If the assay sheets themselves were worth nothing.

Representative HOFFMAN. Just answer my question. You are an expert. Come on.

Mr. HOLDERER. If the assay sheets are worth nothing, consequently my opinion would be expressed as the whole thing as worth nothing.

Representative HOFFMAN. Would it make any difference in your opinion as an expert mining engineer if the samples were not protected and guarded all the time?

Mr. HOLDERER. If they were not protected and guarded properly, I would say the assays would be highly susceptible to suspicion.

Representative HOFFMAN. You would not use the conclusion to base an opinion on unless the record showed that the sample was properly protected by the man who took it, or somebody in between, until it got to the assay office, would you?

Mr. HOLDERER. I certainly would not render a favorable opinion. I would ask to be excused from rendering any opinion if I had reason to believe that the assays had been tampered with.

Representative HOFFMAN. Well, the same would hold true unless it appeared affirmatively that the sample had been properly guarded, would it not?

Mr. HOLDERER. I know nothing about how the samples were taken or how they were guarded.

Representative HOFFMAN. Sure, and you do not know anything about the competence of the fellow who made the assay, do you?

Mr. HOLDERER. My information——

Representative HOFFMAN. Wait a minute. Answer that question.

Mr. HOLDERER. I know nothing about the competence of anyone who took them, but in Mr. Sopp's report, he questions that very thing.

Representative HOFFMAN. What you do is accept the conclusions that have been given to you there where you were asked to render an opinion.

Mr. HOLDERER. My conclusions are based on the application of the company who applied for a loan.

Representative HOFFMAN. Wait a minute. You also brought in the samples and the assays. Your opinion is also based on that, is it not?

Mr. HOLDERER. They give some of those, too, yes.

Representative HOFFMAN. Yes.

Mr. HOLDERER. It goes without saying that, when an applicant is asking for a loan, he is putting his best foot forward. He is not going to say anything that might be derogatory toward his request.

Representative HOFFMAN. And, as I understand your testimony, if everything in the application was true, it still would not work out as a mine?

Mr. HOLDERER. That is my opinion.

Representative HOFFMAN. And it is also your opinion as an expert that if everything that was claimed by these assays were true, even the most favorable, that would not work out as a mine?

Mr. HOLDERER. That is my opinion.

Representative HOFFMAN. Yes. Now, you said you were familiar with the mining law. Where is the provision in the mining law or in the regulations of the Department governing the granting of patents on mines that requires any percentage of mineral of any kind in order to justify a patent?

Now, I am asking about the statute, or in the regulation?

Mr. HOLDERER. I cannot point to any statute that I know of.

Representative HOFFMAN. There is no statutory requirement anywhere which calls for any degree of mineralization before patent is granted, is there?

Mr. HOLDERER. Not that I know of.

Representative HOFFMAN. And there is no regulation of the Department that calls for a specified degree of mineralization, is there?

Mr. HOLDERER. Not that I know of.

Representative HOFFMAN. And the only place that we ever find anything about this judgment of the ordinarily prudent individual being satisfied before he puts his money into it comes from decisions of the courts; does it?

Mr. HOLDERER. So far as I know.

Representative HOFFMAN. That is where that comes in?

Mr. HOLDERER. So far as I know.

Representative HOFFMAN. That is where that comes in. That is some court law that has been written.

You never were on this property?

Mr. HOLDERER. I have never seen it.

Representative HOFFMAN. This is a repetition. All you are going by is——

Mr. HOLDERER. The information in the RFC application.

Mr. REDWINE. Mr. Holderer, the RFC did turn the applications down, this same data that you have referred to?

Mr. HOLDERER. They denied the application.

Representative HOFFMAN. They turned down a good many applications and made some bad loans, too; did they not?

Mr. HOLDERER. On the average I would say their batting average was very high for accepting good ones.

Representative HOFFMAN. Do you know what I asked you?

Mr. HOLDERER. You said they turned down a good many.

Representative HOFFMAN. Did you answer it?

Mr. HOLDERER. They did turn down a good many, yes.

Representative HOFFMAN. And some of them were good, or don't you know?

Mr. HOLDERER. I don't know. I never worked for the RFC.

Representative HOFFMAN. They had certain groups like Kaiser. They gave him a lot of money; did they not?

Mr. HOLDERER. I don't know what they gave him. I have no knowledge of that.

Representative HOFFMAN. You have no knowledge of the Kaiser application?

Mr. HOLDERER. I never worked for the RFC so I cannot answer that.

Representative HOFFMAN. You never worked for the RFC?

Mr. HOLDERER. No.

Representative HOFFMAN. You are just taking their file. I see. What is the standard for granting an RFC loan as to mineralization? Is there any?

Mr. HOLDERER. I don't know. Their loans, one of the requirements was that loans were to be limited to critical minerals, and gold and silver are not critical minerals.

Representative HOFFMAN. At that time?

Mr. HOLDERER. That is right.

Representative HOFFMAN. So you did not take any gold and silver into consideration. That did not count, did it, as to whether a loan should be granted?

Mr. HOLDERER. That is true.

Representative HOFFMAN. So we can throw out everything about gold and silver. What did that leave you; anything?

Mr. HOLDERER. They didn't have any other values of any consequence.

Representative HOFFMAN. Of any consequence. Then, if you were permitted to and felt like expressing an opinion, you would say that the McDonalds were just throwing their money down a rathole?

Mr. HOLDERER. I would say just that, yes.

Representative HOFFMAN. I think that is all I have.

Senator SCOTT. Are there any questions?

Representative JONAS. Yes, sir. Mr. Chairman, I would like to ask the Chair whether it would be possible to have this witness return next week for examination. He has based his testimony on what he says are two reports in this file that I have just now begun to read while he was testifying. I was trying to read and listen at the same time. That makes it pretty difficult to try to understand.

I find in this Sopp report a lot of information that, as a layman, I would say does not bear out his characterization of this mine as

having no value, but I would not be prepared to examine him without going through it and making a little study of the Sopp report.

The same thing is true of the McCormick report. He said he based his answers to the questions on the McCormick report attached to this application.

I understand that Mr. McCormick is in the room. I do not know that. I have never met the gentleman, but I have heard that he is here today and, if he is here, I would most respectfully make the suggestion that we allow him to come up and testify with respect to this report that he made and of which the witness has said that, upon his analysis, he finds that it does not justify a finding that this is much of a mine.

I do not mean that I am trying to tell the committee how to run its business, but obviously I could not examine this witness about the Sopp report or the McCormick report or any other data in this file without having at least an hour or two to take a look at it.

Senator SCOTT. I would suggest this:

If you need an hour or two to look at it, that we not call Mr. McCormick this afternoon. We can get him back here in enough time.

Representative JONAS. I was thinking that you have an hour to run yet and Mr. McCormick is a long way from home. That is just a suggestion of mine. I thought that we might use this hour to let him say what he has to say about what this gentleman says about his report.

Mr. REDWINE. Mr. Chairman.

Senator SCOTT. Mr. Redwine may finish his questioning.

Mr. REDWINE. Mr. Chairman, may I say that when Mr. McCormick takes the stand, his testimony is probably going to take several hours. This is just one phase of the matters that he will be called upon to testify to.

Representative HOFFMAN. Now, Mr. Chairman, that is all right. Mr. McCormick sits back here. He is disputing some of these things, not your testimony but what was in the report of the RFC. He says he has been sitting here since a week ago Monday. He came in from Oregon at the committee's request. I was out there and I know about that, too.

It seems to me, Mr. Chairman, that in all fairness some of these people that are accused of making false reports or not taking samples correctly or not regarding their samples as what was intimated ought to have a chance to answer.

Senator SCOTT. They will.

Representative HOFFMAN. Should they be kept here?

Senator SCOTT. They certainly will be kept here.

Mr. REDWINE. May I explain?

Mr. McCormick was asked if he wanted to testify in Portland. He did and he testified in Portland.

Prior to the opening of the meetings in Washington, he was notified that these hearings would be held in Washington and that, if he desired to testify, he would be permitted to do so. He is not here at the request of the committee.

Representative CHUDOFF. Not only that, but I think that, in all fairness to the witness, if we want to be fair he ought to have an opportunity to hear everything that is being testified so that he



can answer everything at one time rather than make piecemeal answers.

We would never have orderly procedure if we let a witness answer a question and then tell the fellow who disagrees to come up and disagree and then ask the witness another question.

In every orderly procedure, in every court of the Nation, the first man finishes his case and then the defendant presents his case and the complainant has a chance to rebut, and then the defendant has a chance for surrebuttal.

Mr. JONAS. I think all through Springfield, Mo., and Denver, Colo., and Idaho Falls, Idaho, this happened.

Representative JONAS. I have the old-fashioned idea that a man under charge ought to be permitted to answer.

Representative HOFFMAN. This is the situation.

Senator SCOTT. Let the witness go ahead.

Representative HOFFMAN. This witness has testified as an expert, using statements allegedly made by Mr. McCormick, who sits here in the room and wants to answer.

Senator SCOTT. Let him make the statements that he has to make.

Representative HOFFMAN. The witness is finished, as I understand it.

Would you not like to hear what Mr. McCormick has to say about it? He is the fellow who took the samples.

Mr. HOLDERER. That is up to the chairman, sir.

Representative HOFFMAN. You would like to hear it, would you not?

Representative JONAS. I do not think so.

Senator SCOTT. Senator Neuberger?

Senator NEUBERGER. Mr. Holderer.

Representative HOFFMAN. This is a hit-and-run. I never knew of a third degree that had anything on this one.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Mr. Holderer, you were asked if samples were not properly taken and protected and the assay not properly conducted, what would be the value of the samples? I think you were asked that question; were you not?

Mr. HOLDERER. The value of them would be zero.

Senator NEUBERGER. That could apply to any sample?

Mr. HOLDERER. That could apply to any sample, any time, any place.

Senator NEUBERGER. Could it apply to the samples in the area on which final patent was granted in this case?

Mr. HOLDERER. It might.

Senator NEUBERGER. I want to ask you one thing about the timber estimates included in that application for the RFC loan. The figure, I believe, was 20 million board feet of timber; is that correct?

Mr. HOLDERER. That is right.

Senator NEUBERGER. Would it be possible to use 20 million board feet of timber in the operation of a mine?

Mr. HOLDERER. Not in that mine.

Senator NEUBERGER. Twenty million board feet of timber is a lot of timber; is it not?

Mr. HOLDERER. It is a lot of timber.

Senator NEUBERGER. Do you believe that 20 million board feet of timber was listed in that application at a value of \$80,000? I believe it was 1940. Was that the date?

Mr. HOLDERER. They give \$80,000 as the value of the timber in their pro forma balance sheet.

Senator NEUBERGER. For what year was that?

Mr. HOLDERER. When they made the application, in 1940.

Senator NEUBERGER. To continue my question, do you believe, Mr. Holderer, that there was any reason to list 20 million board feet of timber for any other reason except for its commercial value as commercial timber on a lumber company?

Mr. HOLDERER. I can't say as to that.

Senator NEUBERGER. I could not hear you.

Mr. HOLDERER. I can't say as to that. They wanted to make their balance sheet look as good as possible. That is quite obvious.

Senator NEUBERGER. But you do not believe that it would be possible to use 20 million board feet of timber in the operation of a mine?

Mr. HOLDERER. I cannot conceive of that much timber being used at that mine.

Senator NEUBERGER. Thank you very much.

Representative HOFFMAN. I have one more question, if I may.

You will at least concede that they were acting in good faith, were they not, if they put that much money in, and it is just a hole in the ground?

Mr. HOLDERER. I don't know whether they acted in good faith or not.

Representative HOFFMAN. Or whether they lacked judgment of any kind?

Mr. HOLDERER. I would say that they lacked judgment.

Representative HOFFMAN. Of any kind?

Mr. HOLDERER. Of any kind.

Representative HOFFMAN. If everybody proceeded on this theory, we would never develop anything.

Mr. HOLDERER. A lot of mines would not be developed.

Representative HOFFMAN. And a lot of oil wells would not be discovered.

Mr. HOLDERER. I will grant you that.

Representative HOFFMAN. There would be a lot of dry holes all over.

Mr. HOLDERER. That is right.

Representative JONAS. Has he finished, sir?

Senator SCOTT. Go ahead, sir.

Representative JONAS. I do not think that I can go into those two reports, but I have a question or two, if you wish to continue with him.

Mr. Holderer, I invite your attention to this RFC file. One of the documents in it was the letter from John E. Morton, Chief of the Mining Section of the RFC, dated March 14, 1940. In that letter he says, and I quote:

Undoubtedly you realize there has been considerable amount of money spent on prospecting this property and as yet there is very little ore developed. The applications contain some general statements that the property offers development possibilities, but there are also statements that considerably more work has to be done to prove this. It clearly looks to us that any work done now would

be of a prospecting nature with the hope of finding ore, a purpose for which development loans are not made.

Now, that was the basis of the denial of the application, was it not, that the RFC was not in the business of lending money for development purposes and that a fully developed mine ready for operation had to be offered as security?

Mr. HOLDERER. No; I would not say that that was the basis for their denial. They put the basis for their denial finally on the grounds that the gold and silver were not critical metals.

Representative JONAS. Gold and silver were not critical?

Mr. HOLDERER. Yes.

Representative JONAS. And most of the minerals alleged to exist out there were gold and silver?

Mr. HOLDERER. Well, that is the alleged value of the property.

Mr. REDWINE. Pardon me, Congressman. I am aware of the fact that you have not looked through the file, Congressman. Let me ask the witness a question to bring out a point there; will you please?

Representative JONAS. Go ahead.

Mr. REDWINE. Is it not true that the files here also show that there was an additional application for a \$20,000 loan that was not a development loan, and it was also denied by the RFC?

Mr. HOLDERER. That is right.

Representative JONAS. Does that appear here?

Mr. HOLDERER. Yes, sir.

Representative JONAS. What was the basis of that denial?

Mr. HOLDERER. I don't remember the exact wording. It should be in there.

Representative JONAS. In hurriedly glancing through this file, I saw in somebody's letter to somebody a statement that the report of Mr. McCormick which you examined was based upon an examination or investigation of this property several years prior to the filing of this application. I believe it was in 1937.

Mr. HOLDERER. Well, I quote from Mr. Sopp's section in the application dealing with the sampling.

Representative JONAS. I asked you if you do not recall a letter here with reference to this claim which indicates that Mr. McCormick's investigation and his report were based on an examination of this property in 1937.

Mr. HOLDERER. I have seen that, but I don't recall the wording.

Representative JONAS. And at that time this ore had not been outlined?

Mr. HOLDERER. Explored.

Representative JONAS. No; you used the words "blocked out."

Mr. HOLDERER. Yes.

Representative JONAS. Is that true?

Mr. HOLDERER. I don't know. I would have to refer to the letter. I was concerned mainly with the results of the sampling as given on the sample sheets from the assayers.

Representative JONAS. I will ask you to turn to this report of Mr. McCormick, and it is dated July 15, 1937; is it not?

Mr. HOLDERER. That is right.

Representative JONAS. Now, what is this exhibit attached to it? What does he mean when he says "Al Sarena Mine No. 1, 40 feet from portal, 5 feet width cut." What does that mean?

Mr. HOLDERER. That is the width of the vein at which the sample was taken, and those were the gold and silver values and the total values.

Representative JONAS. I ask you to run along that list and tell the committee if that report of Mr. McCormick's does not show that the width of the veins range from 5 feet through 10 feet up to 20 feet. Some of them go as high as 50 feet. Others are 30 feet, and the lowest in width is 5 feet, and you have testified that you gained the information from that report that the width of the veins never exceeded 2 feet.

Mr. HOLDERER. The information shows also that the workings were closed. I know nothing about this information here.

Representative JONAS. Well, you testified that you based the information you were giving the committee this afternoon on an examination of the McCormick report.

Mr. HOLDERER. No; not the McCormick report.

Representative JONAS. The McCormick report and the Sopp report.

Representative HOFFMAN. Yes; he did.

Mr. HOLDERER. I based my information on the assay sheets which were signed by the assayers. As to this information, I have no knowledge as to how accurate this is whatsoever.

Representative HOFFMAN. It is in the file.

Mr. HOLDERER. I did not take this in consideration.

Mr. REDWINE. I think we have the wrong thing, Congressman. That is not the width of the vein. It does not purport to be the width of the vein.

Representative JONAS. He just testified that it is the width of the vein. I asked him.

Mr. HOLDERER. It is the width of the cut. It may or may not be the vein. I do not know.

Representative JONAS. For the record, the table to which I invite the attention of the witness has a number of columns. The column on the left says "sample number." The second column is "location." The third column is "width cut." The next column is—

Mr. HOLDERER. Silver and then gold.

Representative JONAS. The next column is "gold" and then there is "total."

Mr. HOLDERER. Yes.

Representative JONAS. Yes.

Under the column "width cut," the figures would indicate that the vein ranges from 5 feet to 50 feet; does it not?

Mr. HOLDERER. According to this report. I have no knowledge as to how accurate it is.

Representative JONAS. I misunderstood you, then, if I understood you to say earlier this afternoon, in response to Mr. Redwine's question, that among things upon which you based your report, one of those things was the McCormick report which is attached to this file?

Representative HOFFMAN. That is right.

Mr. HOLDERER. I based my information on the general information given in the application to the RFC.

Representative JONAS. Including the McCormick report?

Mr. HOLDERER. No; because I had no knowledge. According to Mr. Sopp's report, these working places as shown on this report are inaccessible and consequently—

Representative JONAS. You mean the Sopp report says that?

Mr. HOLDERER. Yes.

Representative JONAS. May I invite your attention here to——

Mr. HOLDERER. It says:

Approximately 240 feet of the drifts is inaccessible. Values obtained in previous samples were used. Writer knows nothing of the method used in taking these previous samples and cannot answer for their accuracy.

Representative JONAS. When was the Sopp report made? What was its date?

Mr. HOLDERER. Part of it is here.

Representative JONAS. But it is not dated.

Mr. HOLDERER. It is not dated.

Representative JONAS. May 19, 1939. Would that be the date?

Mr. HOLDERER. Well, it says "submitted."

Representative JONAS. It says:

The property covered by this report is known as the Al Sarena Mine, previously known as the Buzzard Mine—

and it is dated May 19, 1939?

Mr. HOLDERER. Yes.

Representative JONAS. In this report Mr. Sopp states that:

Practically the total production of the Al Sarena Mine has been from one vein.

Mr. HOLDERER. Yes.

Representative JONAS. So at that time he was considering only one vein; is that not true?

Mr. HOLDERER. Apparently.

Representative JONAS (reading):

The vein has a strike of north 45 degrees west, and it's practically vertical.

He made this further statement, and I quote:

No definite conclusions can be drawn concerning the variation in the width of the vein, the depth, until more of the vein is exposed on the upper workings.

Where in there does he say the vein is only 2½ feet in the Sopp report?

Mr. HOLDERER. I have seen it in here somewhere. The average width of the vein is about 2½ feet.

Representative JONAS (reading):

However, there is considerable variation of width.

Did he not also state in this report that whereas he only examined one vein there were various outcroppings and other places and offshoots from this vein?

Mr. HOLDERER. And it is on these outcroppings that many of the samples were taken that were sent to Williams and also the Abbot Hanks Co.:

The inside workings were in such condition \* \* \*

Representative JONAS. I am not prepared to examine you on that, because I have not had a chance to see it, but I say the report, as I glance at it, from Mr. Sopp is not as conclusive or is not as adverse as your analysis of it would indicate.

Mr. HOLDERER. Well, I am simply quoting from them when I say "To get a more accurate value for the ore in the vein it would be necessary to sample stocks and drifts now inaccessible."

Representative JONAS. On account of the weather?

Mr. HOLDERER. No; because they were caved or in such bad condition:

Do either some surface work or intersect the drift on the vein. Larger samples taken at closer intervals would give greater accuracy.

He casts considerable doubt on the old sampling.

Representative JONAS. I think you have already testified as to this.

Do you include the eight uncontested claims in your adverse report? You think they were incorrectly granted?

Mr. HOLDERER. I have not taken into consideration the location of the samples. I am looking at the values given on the sample sheets.

Representative JONAS. You mean the overall picture?

Mr. HOLDERER. The overall picture.

Representative JONAS. You are looking at it as a mine, a mass of ground.

Mr. HOLDERER. I am looking at the 12 sample sheets that I had at my disposal. I am looking at those as a whole.

Representative JONAS. Not as individual claims?

Mr. HOLDERER. And not applying them to individual claims. There is not a single sample sheet of the 12 that merits further consideration, in my opinion.

Representative JONAS. You have referred to the other application of the claimant. We have been talking this afternoon so far about the application of the other corporation, the Al Sarena Corp., which was a Delaware corporation, with headquarters in Texas; but the Al Sarena Mines, Inc., the claimant in this hearing, is an Oregon corporation entirely separate and apart.

There was a lease arrangement between the two, and that document is in the file and you examined it. You stated to Mr. Redwine that there is some evidence in this record of another application for \$20,000 made by the claimant.

Will you please turn to those papers and get me the letter denying that application?

Mr. HOLDERER. I have not been concerned with the legal incorporation.

Representative JONAS. I am just talking about the \$20,000 application.

Mr. HOLDERER. I have seen it here.

Representative JONAS. You do not recall what the basis of that denial was, or was it the same as in the other case, that gold and silver were not critical materials?

Mr. HOLDERER. They failed to get one loan, so they tried to work it another way.

Representative JONAS. Which application was filed first?

Mr. HOLDERER. I would have to look at the papers here to get those dates.

Representative JONAS. You would not want the record to show that you contend that these two applicants for loans were identical, would you? You said they tried one way and failed and then tried another way.

Mr. HOLDERER. The principals are probably the same, or nearly identical.

Representative JONAS. May I invite your attention to the lease in here from Al Sarena Mines, Inc., to the Al Sarena Corp., which shows

that the principals have no identity whatever, and list the owners of the stock, and none of the McDonalds are interested in the Al Sarena Corp., but the stockholders are Cecil R. Raden, Laura B. Haden, and Edwin E. Lund.

Mr. HOLDERER. That may well be, but the property is the same.

Representative JONAS. Why are you so interested in this matter that you would try to leave the impression with the committee that the two corporations are identical, or that the principals are the same, when you have nothing to base that on?

Mr. HOLDERER. It is because the applications pertain to the same property.

Representative JONAS. But they were filed by different corporations, by different stockholders, were they not?

Mr. HOLDERER. My only concern is with the virtue of the property, and the property is the same. What different paths may have been taken to request loans, that is beside the point. I am concerned only with the merits of the property.

Representative CHUDOFF. Could I ask a question?

What is the consideration for that lease? Is there any consideration for it? Is it \$1?

Representative JONAS. It starts out and the name of the corporation is Al Sarena Corp. Its principal office is in the State of Delaware. The nature and so forth is given. That is the certificate of incorporation. That is not the lease.

Representative CHUDOFF. There ought to be some rental if there is going to be a lease.

Representative JONAS. There is a copy of the lease here.

Representative HOFFMAN. Just an inquiry. Who is presiding over this committee now?

Representative CHUDOFF (presiding). I am.

Representative HOFFMAN. We lost our Senators.

Representative JONAS. The lease in the files shows that it was executed on the blank day of blank, 19 blank, between Al Sarena Mines, Inc., an Oregon corporation, to the Al Sarena Corp., a Delaware corporation, and it apparently is a royalty lease with \$500 recited as money consideration.

There is a rubber-stamp legend on the lease indicating that the post office address of the Al Sarena Corp. is 2192, Houston, Tex.

Representative CHUDOFF. I wonder if you will look at that document closely and, from what I understand, the Al Sarena Mining Co. was a corporation, and there was either another corporation or individuals.

Who signed the lease for the Al Sarena Mining Co. and who signed the lease for the other corporation?

Representative JONAS. It is right here. The lease shows that it was signed for Al Sarena Mines, Inc., by H. P. McDonald, president, and H. P. McDonald, Jr., secretary, and for Al Sarena Corp. by Cecil R. Haden, president, and Edwin E. Lund, secretary. That is the 20th day of October 1939.

Mr. REDWINE. Mr. Chairman, we have become confused here, I believe, by a couple of loan applications. As a matter of fact, there are three loan applications here. Two of them are for a development loan and one was an operating loan. We have gotten all confused on this thing.

Let me read into the record, if I may, at this time.

Representative CHUDOFF. Mr. Redwine, while you are straightening out the confusion, I would like to know which company made an application for an RFC loan? They must have been incorporated in different States, because certainly no secretary of state would have issued a charter to companies having such close names.

There is an Al Sarena Mining Co., Inc., and there is the Al Sarena Corp.

Representative JONAS. The Texas corporation made the application for \$51,000, about which we have been talking.

There was a lease—

Representative CHUDOFF. The lease had a 5-percent rental on gross receipts for mine operations. If there was not any mining operations, they could not get rental.

Mr. REDWINE. Mr. Chairman, if I may, the file shows that in 1937, Al Sarena Mines, Inc., that is the McDonalds—

Representative CHUDOFF. In what State was that incorporated?

Mr. REDWINE. Incorporated in Oregon. They applied to the RFC for a loan of \$19,642. That loan was never granted and, at the request of the company according to the files, the company requested RFC to hold it in abeyance until they could work out some things. They were going to get some more money.

It went on until 1940 and the Texas group incorporated in Delaware the Al Sarena Corp. That corporation then filed an application for a loan of \$20,000. They first filed for \$51,000. They did not get anywhere with it.

They then filed an application for \$20,000. They did not get anywhere with that.

There were 3 applications filed, 1 by the Al Sarena Mines, Inc., and 2 by the Al Sarena Corp.

Representative CHUDOFF. One by Al Sarena, Inc., and 2 by the Al Sarena Corp.?

Mr. REDWINE. Yes, sir.

Representative CHUDOFF. One for \$50,000?

Mr. REDWINE. Yes, sir. Here is a letter signed by John E. Norton, Chief of the Mining Section, RFC, dated March 14, 1940, and I will read from the second paragraph. It is addressed to Mr. Haden, president of the Al Sarena Corp.:

We have again carefully studied all the data submitted with the applications—

in the plural—

of the Al Sarena Corp. and, based upon these data, it is clearly our opinion that the project does not offer sufficient security for a general mining loan nor do we believe that through the expenditure of a development loan—

that would be the \$20,000—

there would be developed a sufficient quantity of ore of a sufficient value to pay a profit upon mining operations, as required by the act. We wish to advise you that we have given very careful consideration to each report submitted and have not confined our attention to any particular one.

Representative HOFFMAN. Will you add something else for me, Mr. Redwine?

Mr. REDWINE. Yes.

Representative HOFFMAN. One of these loans was applied for in 1937 and had just drifted along without being pressed until 1943 when the file was closed? That is all there was to it?



Mr. REDWINE. That is correct, sir. I think that Mr. Haden, of the Al Sarena Corp., of Houston, Tex., who has been interviewed by the staff, should be called as a witness to testify as to the relationship between his family and the McDonald family, Mr. Chairman.

Representative HOFFMAN. Before you get to that, are you through with this witness?

Mr. Chairman, pardon me. I would like to ask this witness a question before he is dismissed.

Senator NEUBERGER. I think we ought to settle this matter first one at a time. It is agreeable with me. I am just acting chairman in Senator Scott's necessary absence and it is agreeable with me that Mr. Haden be called.

Representative JONAS. Do you propose to bring him all the way from Houston?

Mr. REDWINE. I don't know.

Representative CHUDOFF. I do not suppose we would go all the way to Houston.

Representative JONAS. If you are just asking him whether there is any relationship, maybe we can write him a letter.

Representative CHUDOFF. I have a lot of questions to ask him, now that these corporations came up, that I did not know about. I think I have at least 20 questions to ask him.

Representative JONAS. I would not object—it would not matter if I did—but I do not see now that any relationship between Haden and McDonald would have anything to do with this hearing.

Representative CHUDOFF. You may be right, but I will not know until I ask him.

Representative HOFFMAN. I am in favor of calling everybody except somebody who knows something about it, like the McDonalds and Mr. McCormick.

Senator NEUBERGER. It is my understanding that they will have an opportunity to—

Representative HOFFMAN. If they do not perish by the wayside.

Senator NEUBERGER. I think you will remember that Mr. McCormick had a very extended opportunity to appear before the committee in Portland. He bitterly criticized the committee and the staff. No effort was made to interfere with him. He had his say. He will be given an opportunity again.

Representative HOFFMAN. But never an opportunity to answer what this witness has said nor an opportunity to answer what is in that file.

Representative CHUDOFF. I will see that he gets the opportunity to answer anything this man says.

Representative HOFFMAN. Approximately what month?

Representative CHUDOFF. I do not know. I want to say this to you: If the Republican Members of the United States Senate take 30 minutes by using the starting question and making a speech for 25 minutes we are never going to get through.

Representative HOFFMAN. If you are criticizing me, I agree with you.

Representative CHUDOFF. I am not criticizing you.

Representative HOFFMAN. I want to ask a question.

What is your present occupation, or profession, or avocation?

Mr. HOLDERER. I am a staff engineer on the Subcommittee of Minerals, Materials, and Fuels, subcommittee of the Senate——

Representative HOFFMAN. On the staff?

Mr. HOLDERER. I am the staff engineer.

Representative HOFFMAN. Who else is on this staff with you?

Mr. HOLDERER. I am the only engineer.

Representative HOFFMAN. I asked you who else is on the staff with you.

Mr. HOLDERER. On the staff of the full committee there are a number of others: Mr. Redwine, Mr. Nelson. Those are the other two in the particular room in which I work.

Representative HOFFMAN. So you and Mr. Nelson are working on this together?

Mr. HOLDERER. No. I have never discussed it with Mr. Nelson.

Representative HOFFMAN. No, but Senator Murray asked you to come in and make this report as an expert, and Mr. Redwine is directing the activities of the committee and doing the questioning. You are doing the answering. There is that connection at least; is there not?

Mr. HOLDERER. I happen to be the staff engineer. Mr. Redwine is also——

Representative HOFFMAN. And you happen to be the expert witness.

Mr. HOLDERER. And I happen to be the only mining engineer on the committee. Mr. Redwine is also a member of the committee.

Representative HOFFMAN. And you are thoroughly convinced—and apparently he is—that there is no ground there that might be mined with profit?

Mr. HOLDERER. That is correct.

Representative HOFFMAN. All right. I am glad you agree.

Mr. HOLDERER. That is my opinion; period.

Representative HOFFMAN. And never was on the property?

Mr. HOLDERER. As I have stated before, my opinion is based on the information which I have available.

Representative HOFFMAN. And you never saw any samples from it?

Mr. HOLDERER. I've seen the sample sheets.

Representative HOFFMAN. Are you a lawyer, too?

Mr. HOLDERER. No.

Representative HOFFMAN. Just an engineer?

Mr. HOLDERER. That's all; just a plain engineer.

Representative HOFFMAN. That is all I have.

Representative JONAS. May I ask him a question, please?

Representative HOFFMAN. That is all I have, except to compliment you on the way you two work together.

Mr. HOLDERER. I have endeavored to give plain and straightforward answers.

Representative HOFFMAN. That I am not questioning. I have heard experts before and I admire them and know we are dependent upon them.

Representative JONAS. You said that you looked at the certificate of assay from the Williams Co. That is the Williams Co. assay report?

Mr. HOLDERER. I saw a copy of the Williams certificate, but I don't know what the Secretary based his decision on.

Representative HOFFMAN. Do you ever remember being before the Howard Smith special committee as a witness?

Mr. HOLDERER. I never did appear as a witness.

Representative HOFFMAN. You never did appear?

Mr. HOLDERER. No.

Representative HOFFMAN. With the War Labor Board members?

Mr. HOLDERER. No.

Representative HOFFMAN. To testify?

Mr. HOLDERER. I was in the Copper Division. We never appeared before any committee; or at least I did not.

Representative HOFFMAN. As you recall?

Mr. HOLDERER. I recall that I did not.

Representative HOFFMAN. You are an expert, as I understand it?

Mr. HOLDERER. I am a mining engineer. When you say an expert, an expert of what?

Representative HOFFMAN. That is what I was wondering.

Mr. HOLDERER. I am an expert on mines and mining.

Representative HOFFMAN. You are here to testify that the reasonably prudent man would not invest any money in this thing?

Mr. HOLDERER. That is right.

Representative HOFFMAN. Did you ever operate a mine?

Mr. HOLDERER. I have.

Representative HOFFMAN. Where?

Mr. HOLDERER. Practically in every part of the Western Hemisphere.

Representative HOFFMAN. It was a mine that you owned yourself?

Mr. HOLDERER. I have owned 1 or 2.

Representative HOFFMAN. Well, did you make or lose on them.

Mr. HOLDERER. On one I lost.

Representative HOFFMAN. Were you reasonably prudent when you went into that one?

Mr. HOLDERER. I was reasonably prudent when I started.

Representative HOFFMAN. You thought you were when you went in.

Mr. HOLDERER. When I went in. As soon as I started losing, I called it quits and got out.

Representative HOFFMAN. You have owned two mines, as I understand it; is that right?

Mr. HOLDERER. That is right.

Representative HOFFMAN. And you made money on the other one?

Mr. HOLDERER. A little.

Representative HOFFMAN. What percentage on your investment, let us say?

Mr. HOLDERER. Oh, probably 20 or 30 percent.

Representative HOFFMAN. Over what period; a year?

Mr. HOLDERER. A couple of years.

Representative HOFFMAN. So that in each year you think you made 20 or 30 percent on it?

Mr. HOLDERER. That is right.

Representative HOFFMAN. Then what happened?

Mr. HOLDERER. Well, the ore body played out and that was the end of it.

Representative HOFFMAN. What were the net results? How much did you put in and how much did you get out? Did you balance your budget, in other words?

Mr. HOLDERER. Scarcely, when I took into consideration the value of my time.

Representative HOFFMAN. So you were not a reasonably prudent man on that one, were you?

Mr. HOLDERER. No. That is right.

Representative HOFFMAN. Did you have a patent on those mining claims?

Mr. HOLDERER. I did on one batch, on the batch that I lost money on. In the other, I was in a partnership.

Representative HOFFMAN. Somebody in the Department then made a mistake in letting you have a patent, did they not?

Mr. HOLDERER. As to that, I wouldn't say. I don't know.

Representative HOFFMAN. Mr. Redwine asked you about this timber. It seems that somebody made an application to the RFC and said the timber was worth \$80,000.

I noticed that you noticed in the testimony that Mr. Leavengood said it was worth \$77,000 at a certain time. The company only had \$3,000 more than he did. That is about right?

Mr. HOLDERER. The only figure I have is the figure given in this application to the RFC.

Representative HOFFMAN. That was \$80,000?

Mr. HOLDERER. That was \$80,000.

Representative HOFFMAN. And there being \$80,000 on there, did you consider in passing on the validity or the desirability of the RFC making the loan that the company was claiming that it had \$80,000 worth of timber?

Mr. HOLDERER. They claimed that as one of their assets.

Representative HOFFMAN. Was it not?

Mr. HOLDERER. They had no ownership to that timber until the patent was granted.

Representative HOFFMAN. But did you not have a right to use any and all of it, every last board foot of it if they use it in their mining operations?

Mr. HOLDERER. That is true. They could use that timber at any time.

Representative HOFFMAN. But you are still critical of their putting that in.

Mr. HOLDERER. As an asset.

Representative HOFFMAN. It was a potential asset. It was there on the ground and they had a right to use it, did they not, if they needed it in the mining?

Mr. HOLDERER. There is a difference between an asset and a potential asset.

Representative HOFFMAN. Oh. I was just thinking of that paragraph on page 15 of Hattan's report:

While the Forest Service has no accurate cruise of the timber embraced within the area of all the claims, the Oregon Mine Handbook, page 197, states that approximately 12 million board feet of timber is estimated to be available and on the mining claim. If the mine is developed as contemplated, a large amount of timber will be necessary. In fact, it might well be to the advantage of the company to set up a sawmill on the property and produce the timber which will be needed in such a large scale operation.

There is, of course, nothing to prevent the company after they get a patent cutting all of it.

Mr. REDWINE. In his report, please, Mr. Holderer, the McCormick report, will you read the paragraph relating to the amount of timber on those claims as set forth by Mr. McCormick?

Mr. HOLDERER. I am quoting:

It is estimated that there are 20 million feet of excellent fir and pine timber on the claim.

Mr. REDWINE. Will you now refer to that portion of the report which the company designated as a pro forma balance sheet?

Mr. HOLDERER. The company submitted a pro forma balance sheet on January 23, 1940. They submitted a list of their assets.

Mr. REDWINE. Will you read out their assets as listed by them?

Mr. HOLDERER (reading):

Cash, \$903; accounts receivable due from smelter, approximately \$2,250; mining claims, approximately 400 acres in 23 claims, \$80,000; timber resources, approximately 20 million feet of timber on said claims, \$80,000; ore blocked out, 27,595 tons at \$260,070.

Representative JONAS. Read that last one again, please.

Mr. HOLDERER (reading):

Ore blocked out, 27,595 ton at \$260,070.

Then their capital assets are given as:

Machinery and tools, old, \$26,205; new machinery and tools, \$10,659; mill construction, \$10,316.50; mine development, \$54,286.07—

to a total of \$101,467.07, less depreciation reserves of \$3,420.

Mr. REDWINE. That is all right, Mr. Holderer.

Mr. HOLDERER. That gives a total of \$521,270.07 as their assets.

Mr. REDWINE. While we are at it, let us give the liabilities, also. That is very short.

Mr. HOLDERER. "Liabilities, contracts payable, due on 10 mining claims, \$35,000 less credit due, \$4,000." That is a total of \$31,900. And the capital stock, 10,000 shares, no par value listed, at \$489,370.07.

Mr. REDWINE. Mr. Holderer, can you tell the committee as to the mining claims valued at \$80,000; does that indicate, from your experience in reading such applications, the value that they place on the mining claims without the timber and without any machinery?

Mr. HOLDERER. That is the way it is stated in their pro forma report. They put down a figure of \$80,000 for the mining claims, \$80,000 for the timber.

Mr. REDWINE. Mr. Holderer, you are familiar with the mining laws, are you not, and how you go about patenting mining claims?

Mr. HOLDERER. That is true.

Representative HOFFMAN. I understood he asked if he was familiar with both.

Mr. HOLDERER. The mining law.

Representative HOFFMAN. And you said you were?

Mr. HOLDERER. I did.

Mr. REDWINE. Mr. Holderer, is it not true that this company back in 1940 was claiming that it, as a part of its assets, had \$80,000 worth of timber to which it had no more title than a snowman?

Mr. HOLDERER. That is the figure they put down in their pro forma balance sheet.

Mr. REDWINE. But the land had not gone to patent?

Mr. HOLDERER. That is correct.

Mr. REDWINE. The timber was not theirs?

Mr. HOLDERER. I would say it was not.

Mr. REDWINE. Yet they were claiming as an asset \$80,000 worth of timber?

Mr. HOLDERER. That is right.

Mr. REDWINE. And they said it had 20 million feet on it?

Mr. HOLDERER. That is correct.

Representative JONAS. May I ask Mr. Redwine something?

I do not believe the witness has said who made that application.

Will you let that be established?

Mr. REDWINE. I am going into that, if I may, right now.

Now, in your examination of these RFC files, applications for loans, I believe that you find there that the Al Sarena Mines, Inc., filed an application in 1936, was it not?

Mr. HOLDERER. I think it was 1936. I believe so, sir.

Mr. REDWINE. For \$19,642, I believe that was, was it not?

Mr. HOLDERER. That is correct.

Mr. REDWINE. Then in 1940, this application from which you are reading now was filed by Al Sarena Corp., was it not?

Mr. HOLDERER. I would have to check that to get that exactly. It was filed by Cecil R. Haden, president, Al Sarena Corp.

Mr. REDWINE. And attached to that application is a copy of the lease agreement between Al Sarena Mines, Inc., and Al Sarena Corp., is it not?

Mr. HOLDERER. That is correct.

Mr. REDWINE. The report that we are talking about as to the 20 million board-feet of timber was signed D. Ford McCormick, was it not?

Mr. HOLDERER. That is right.

Mr. REDWINE. Now, going back to this pro forma balance sheet, Mr. Holderer, as to this ore blocked out, \$260,070 worth, will you discuss that?

Read your report on this and discuss that fully, please.

Representative JONAS. Do we have copies of the report?

Mr. REDWINE. We have only one copy. I will have some made.

Representative HOFFMAN. Is that the report to Senator Murray?

Mr. REDWINE. Yes, sir.

Representative HOFFMAN. Mr. Chairman, I want to object on the record to the receipt of this report because it is clearly a matter of hearsay.

As I understand the situation, the witness does not contend that he has any personal knowledge. He is basing his report upon the documents which he finds in the file and, of course, the only question here as a matter of law is whether a reasonably prudent man would have proceeded under this showing to attempt to mine the claim.

Mr. REDWINE. Mr. Chairman.

Representative HOFFMAN. Unless he is an expert and qualified on that.

Mr. REDWINE. Mr. Chairman, Mr. Holderer has testified that for several years in Government service it was his duty to analyze such documents as he has analyzed here and to this in answer to a directive given to him by Senator Murray, chairman of the committee. He is certainly qualified as being competent, having had a great deal of experience in Government service in doing this same thing.

Representative HOFFMAN. Mr. Chairman, I can anticipate the ruling, but I want to put on the record that counsel's statements would prove that it is hearsay and would not be received in any court.

Mr. REDWINE. Mr. Chairman, let me say this: That this man's hearsay, if that is what you want to call it, his analysis of such reports as this determined whether the Government during the war years loaned millions of dollars or turned down applications for loans when the application itself showed that it did not deserve a loan, that it did not offer sufficient security to the Government to make a loan.

Representative CHUDOFF. Is that the application by the Al Sarena Mining Co. for an RFC loan from the RFC?

Mr. REDWINE. Yes, sir.

Representative CHUDOFF. That certain statements were attached and certain questions, and there is a paragraph at the end of the application making it a criminal Federal offense to make false statements?

Mr. REDWINE. Yes, sir.

Representative CHUDOFF. This witness is a former employee of the RFC?

Mr. REDWINE. No, sir; but he did this very same kind of work in the DMA and War Production Board throughout the war. He has qualified as an expert.

Representative CHUDOFF. He is an expert in mineral analysis?

Mr. REDWINE. Yes, sir.

Representative JONAS. However, the record shows, Mr. Chudoff, that this application was not filed by the claimants to the patent but by a different corporation.

Representative CHUDOFF. Actually, it was filed by a corporation from which the Al Sarena Mining Co. succeeded in buying the assets of the other corporation.

Representative JONAS. It was a different corporation from the Al Sarena Mines, Inc., the applicants for the patent.

Representative CHUDOFF. But it covered the same geographical territory and everything else, and anything alleged as to the value of the ore in that application would cover the value of the ore in the Al Sarena Corp.

Mr. REDWINE. Mr. Chairman, I would like to suggest that this has nothing to do with the qualifications of this witness as an expert to analyze and interpret this loan application.

Representative HOFFMAN. Mr. Chairman, I do not mind helping counsel out.

Why do you not ask him, assuming those facts to be true, and get his opinion?

Senator NEUBERGER. Mr. Chairman, speaking of hearsay, I think it ought to be noted for the record that we have had testimony that the Interior Department officially granted final patent to these lands based on a telephone call from a subordinate Government employee.

Representative JONAS. We have not had that testimony and will not have it until Mr. Davis gets on the stand.

Senator NEUBERGER. I think Mr. Appling testified.

Representative JONAS. He testified to a conversation, but we do not yet know whether that was the basis on which the decision was made.

Senator NEUBERGER. We will have Mr. Davis on Tuesday, I believe the chairman said.

Mr. REDWINE. Will you read your report first and then go into the matter?

Mr. HOLDERER. You wish me to read the part having to do with the sampling, or the entire report?

Mr. REDWINE. The entire report, please.

Mr. HOLDERER (reading):

The opinions expressed in this report are based on information obtained from the hearings on this case in Portland, Oreg., November 25, 1955, Washington, D. C., January 10, 1956, and information supplied by the company to the Reconstruction Finance Corporation when an application for a loan was made on January 23, 1940. The loan was denied by RFC.

In the company's application to the RFC, there was a section on sampling which was signed by George P. Sopp. The following statements are taken from this section of the application, and I quote:

"Sampling, as carried on at Al Sarena Mine since the beginning of February, has been greatly hampered by inaccessible drifts, caved stopes, and weak timbered ground.

"Large samples could not be taken without a considerable outlay for equipment.

"No sampling on the vein could be done between these two levels, No. 1 and No. 2 tunnel levels, and therefore too much reliance should not be placed on the value obtained for this block, No. 2 block, of ore. The number of samples taken on this block is small compared to the size of the block.

"Approximately 250 feet of the drift in No. 1 tunnel is inaccessible. Values obtained in previous sampling were used. The writer knows nothing of the method used in taking these previous samples and cannot answer for their accuracy.

"Valuation of an ore body based on such a small number of samples cannot be considered as extremely accurate especially when these samples are small.

"To get a more accurate value for the ore on the vein, it would be necessary to sample stopes and drifts now inaccessible, to do either some surface work or intersect and drift on the vein from No. 3 tunnel. Larger samples taken at closer intervals would give greater accuracy."

My own opinion follows:

Reserves—From the above statements quoted from Mr. Sopp's report, no reliance can be placed upon the company's estimate of 24,917 tons of ore reserves valued at \$232,000. A good deal of work has been done on the property, but much of it in barren ground.

Reference is made to the possibility of this being a very large low-grade deposit which could be mined cheaply. In fact, a reference is made to the Alaska-Juneau mine, but no diamond or churn drilling was ever done on the property. Not by the wildest stretch of imagination could a deposit of this character with narrow veins be compared to property like Alaska-Juneau, which for many years paid dividends on ore averaging a lot less than \$1 per ton, but it must be remembered that 10,000 tons a day were mined.

All of the great copper mines in this country in Arizona, New Mexico, Montana and Nevada are mining ore where recovery is less than 1 percent of copper per ton. In the case of Kennecott's property at Bingham Canyon, 100,000 tons per day are mined with a recovery of about 0.75 percent per ton, and at the other mines many thousands of tons are mined per day.

In the attached pages there are figures taken from assay sheets which are exhibits in the hearings. It is my opinion that from the information available, it would be most difficult for this property to produce 200 tons a day at most, and even 100 tons a day would be difficult because of the small working faces.

In the report to the RFC an operating cost of \$3 per ton is given. Mine labor is quoted at \$4.50 per shift with other labor at comparable amount. Many items in figuring the cost are omitted, indicating a complete unfamiliarity with the mining operation.

The cost of mine labor in the Coeur d'Alene mining district of Idaho, which is the nearest mining district of good size to this property, for the past 3 years has been \$15.94 per shift, to which must be added \$1.88 per shift for nonwage payments; such as compensation, insurance, social security, vacation pay, et cetera, bringing the total pay to almost \$18.



Production in small mines varies from  $1\frac{1}{2}$  to  $2\frac{1}{2}$  tons per shift per man for the overall total of men employed. An average would be 2 tons per man-shift. Thus it can be seen that for labor alone the charge would be a minimum of \$9 per ton, and in mine operations generally labor can be considered to be 45 percent of the total cost of mining, which brings the total cost of mining not far from \$16 or \$17 per ton. Another \$5 per ton would be a fair figure for milling cost and there is still no provision for amortization, taxes, and numerous other overhead expenses.

It is my opinion that a property of this kind could not be operated profitably with values at less than \$20 per ton. The property certainly could not be operated now at a profit, nor do I believe that it could ever have been operated at a profit, even in the days when labor was said to be \$4.70 per shift, which it has not been for many years.

Mr. REDWINE. Will you stop at that point?

Representative HOFFMAN. May we have a copy of that?

Mr. REDWINE. We are having it prepared right now.

Representative HOFFMAN. I think we should have copies so that we could be prepared to look them over before the witness is excused.

Senator SCOTT. He is getting copies for you.

Representative HOFFMAN. I know that, but it is after the witness is on the stand and has testified. What opportunity do I have to prepare to question the witness?

I do not know what the Senate rule is, but under the rule of the House, we should have that at least 24 hours before the witness takes the stand. That has been the procedure all along, to deny us any look at what is to come before the committee, and I want to protest. It is not fair to us.

Representative CHUDOFF. Mr. Hoffman, so that there is no wrong impression by anybody listening or by members of the press, I do not have a copy either and have not seen a copy.

Representative HOFFMAN. That has not a single thing to do with the rule.

Representative CHUDOFF. I understand, but I do not want you to insinuate that, as chairman of the House subcommittee, I have a copy and you do not. Sometimes you have copies when we do not.

Representative HOFFMAN. When you were in the Virgin Islands there, I got a copy of something through the chairman or the general counsel.

Representative CHUDOFF. We try to give you every copy of everything we have.

Representative HOFFMAN. Yes, I want to compliment you on every occasion.

Senator SCOTT. As far as I know, the chairman did not know that there was such copy available.

Mr. REDWINE. Mr. Holderer, let us go back to something that is not copied except in the RFC report. Will you discuss this ore body for us while we are waiting for these copies of your report?

Mr. HOLDERER. From the information given, there are probably four veins, all of them of extremely narrow width.

Mr. REDWINE. What do you mean by extremely narrow width, Mr. Holderer?

Mr. HOLDERER. Two feet, and it would be impossible to mine any reasonable tonnage on a vein as narrow as that without getting a great deal of waste rock which would still further cut the value of the ore per ton. So that disposes of the idea that this is a gigantic body that might be mined on a huge scale.

Mr. REDWINE. It has very narrow veins?

Mr. HOLDERER. Very narrow veins. They would have to really be put to it to secure 100 tons a day, day in and day out, and month in and month out.

Representative JONAS. Mr. Chairman, would you have him identify the document from which he gets that information so that I can see it later?

Mr. REDWINE. Will you do that, Mr. Holderer?

Mr. HOLDERER. The part that I just finished reading is—

Representative JONAS. I mean the part upon which you base this comment that there were only veins of a very narrow width.

Mr. REDWINE. It is mentioned in both the Sopp and McCormick reports; is that right?

Mr. HOLDERER. Yes, sir.

Mr. CORNUM. May I interject a question, sir?

Has anyone told you what to put in that report, or has anyone coached you?

Mr. HOLDERER. I have taken my instructions from the letter that I received from the chairman of the committee.

Mr. CORNUM. Has anyone discussed the nature of your report, what you were going to say?

Mr. HOLDERER. No. The opinion I am giving is my own opinion, uninfluenced by conversations with anyone else.

Mr. CORNUM. Thank you.

Mr. REDWINE. And all from Government records and the transcript of the Portland hearing which reported the Hattan and Sanborn testimony?

Mr. HOLDERER. I only looked at two transcripts, the one from Portland, and the one from Washington on January 10. I did not read those transcripts. All that I took out of them was the information from the assay sheets. That is all that I took from those two transcripts.

Senator SCOTT. Did you show this report or discuss it with anyone before you came up here?

Mr. HOLDERER. No; I did not. I gave a copy of the report to Mr. Redwine as I came up.

Representative JONAS. Mr. Chairman, may I ask him a question before we get away from that point?

Senator SCOTT. Yes.

Representative JONAS. Do the comments you have just made about the veins and their width, and so forth, apply to the eight uncontested claims, the ones that the Forest Service admits are sufficiently mineralized?

Mr. HOLDERER. After looking at the assay sheets, I concluded that they were so completely bad that any further examination of the problem was useless.

Representative JONAS. What do you mean?

Mr. HOLDERER. If the assays are no good, then the whole thing is not good as far as an opinion is concerned.

Representative JONAS. So the opinion you now express that the property was absolutely without any economic value as a mine would apply to the eight claims that the Forest Service agreed to?

Mr. HOLDERER. It would apply to everything that was supposed to be mineralized.

Representative JONAS. Thank you, sir.

Representative HOFFMAN. May I ask him this question, in view of what you said: Will you repeat what you said—that if the assays were not good, then what happened?

Mr. HOLDERER. If the assays were no good, any further discussion of the problem as to its economic value would be entirely useless.

Representative HOFFMAN. And your opinion would be useless?

Mr. HOLDERER. Absolutely.

Mr. REDWINE. Mr. Holderer, will you go on with the report that you have submitted, taking up what you have prepared in respect to assays and going slowly when you get to that point where you identify what set of assays you are talking about?

Mr. HOLDERER. As a start, there were 12 assay sheets, containing 142 assays. This is a little résumé that does not appear on the typed copies. I made it up afterward.

There was 1 assay that went \$7.70 for the total gold and silver: 1 at \$4.85; 1 at \$3.70; 1 at \$2.25; 1 at \$2.20; and all the others were under \$2. A great many of them were simply "trace" or "zero." That is a quick rundown on the entire lot.

Now, taking the sheets separately, on page 51 in the Portland transcript, or the sheet that is given as opposite page 51, there are 23 assays, and those were given to the Annes Engineering Co., Grants Pass, and there is no date on the assay report. It was presented by Elton M. Hattan.

Page 58, assay report of Abbot A. Hanks, August 10, 1949. There were 29 assays presented by Hanks.

Now, this batch of assays is similar to the one that was handed to the Annes Co. for assaying. They are practically identical:

Gold, 1 assay ran \$3.32; 2 ran at 17 cents; 1 at 35 cents; 2 at 70 cents; 1 at "zero"; 1 at \$6.65; and 1 at \$7.70; and the balance were "trace."

Silver, 1 assay at 34 cents; 1 at 5 cents; 1 at \$1.64; 1 at 27 cents; and the balance were "zero" or "trace."

Page 109, report of R. N. Appling, Jr., dated January 2, 1954. This is the same set that was submitted to A. W. Williams Inspection Co., which appears on page 294 of the Washington transcript:

Gold, 1 assay ran \$4.20; 1 at \$3.50; 1 at \$2.80; 5 at \$2.10; 1 at \$2.45; and 1 at 70 cents; and 18 ran between \$1.05 and \$1.75.

There were 24 silver assays, which ran between 5 cents and 65 cents per ton.

Total values, 1 assay at \$4.85 per ton; 1 at \$3.95; and the balance ran between 79 cents and \$2.85.

Now, this comes to page 263 from the Washington transcript, January 10, reports from the A. W. Williams Inspection Co., dated November 18, 1949, 15 assays:

One ran \$2.25 per ton, gold and silver. The balance were between 90 cents and \$1.86. Ten are "zero."

Page 267 of the Washington transcript, and these are assays from the Williams Co.:

September 27, 1949, 7 assays, the highest of which was \$1.86.

Page 278, October 14, 1949, 8 assays, 6 of which ran "trace" or "zero." One ran 98 cents; 1 ran \$2.20, total value.

Page 281, Washington transcript, 13 assays. The highest was \$1.84 and 5 were only "trace."

Page 285, one was "zero."

Page 290, October 7, 1953, 18 assays: 7 assays were "zero"; 6 were "trace"; 5 were \$1.80; and 1 was 5 cents.

Page 291, October 9, 1953, 10 assays: 1 assay was "zero"; 1 was "trace"; and 8 were \$1.80.

Page 292, October 14, 1953, 4 assays, 2 of which were "zero" and 2 were \$3.70.

Page 294, November 4, 1953, six assays: 1 assay was \$1.14; 1, \$1.06; 1 at 53 cents; 2 at 18 cents, and 1 at 27 cents.

Page 294, October 29, 1953, three assays, all of which were "zero."

Rarely have I seen as poor a batch of assays as that.

Mr. REDWINE. Mr. Holderer, in looking over your recap of all the assays that have come into the record, I find 1 here of \$6.65 and 1 of \$7.70, and no other over \$5. Now, the most favorable set of assays, the set of assays showing the greatest values, is the assays of the A. W. Williams Co., 28 of them upon which this decision was rendered; is that correct?

Mr. HOLDERER. I don't know on what the decision was rendered. There was one here.

Mr. REDWINE. Well, the ones that show in the Appling report. Let us reword that.

Mr. HOLDERER. Yes; there was 1 that had \$7.70.

Mr. REDWINE. The \$7.70 was not in the Appling report, was it?

Mr. HOLDERER. In the Hanks.

Mr. REDWINE. Going to the Appling report, the assays that showed in there, of all the sets of assays that you have seen, the highest values are in that Williams Inspection Co. report that shows in the Appling report; is that correct?

Mr. HOLDERER. That is correct.

Mr. REDWINE. And none of those exceed what?

Mr. HOLDERER. \$4.20 was high in that batch.

Mr. REDWINE. Correct me if I am wrong in this. Yet you testified a few minutes ago that, from your examination of the engineers' report on this property and all that, you could not possibly operate this mine with values of less than \$20; is that correct?

Mr. HOLDERER. That is correct.

Mr. REDWINE. Mr. Coburn, would you like to ask some questions at this time?

Mr. COBURN. No, sir.

Mr. REDWINE. Mr. Holderer, I would like to ask you a hypothetical question. No; I do not believe I will.

Mr. HOLDERER. I might add that, after having summarized these assays, I made no further attempt to discuss the economics of the mine because there are none.

Mr. REDWINE. There are just no economics there?

Mr. HOLDERER. The economics is zero.

Mr. REDWINE. That is all I have of this witness, Mr. Chairman.

Representative HOFFMAN. May I ask a few questions?

Senator SCOTT. Yes.

Representative HOFFMAN. You said you were a member of the War Production Board. Over what period?

Mr. HOLDERER. Practically throughout, from 1942 to late 1945; about 3 years.

Representative HOFFMAN. Do you ever remember being before the Howard Smith special committee as a witness?

Mr. HOLDERER. I never did appear as a witness.

Representative HOFFMAN. You never did appear?

Mr. HOLDERER. No.

Representative HOFFMAN. With the War Labor Board members?

Mr. HOLDERER. No.

Representative HOFFMAN. To testify?

Mr. HOLDERER. I was in the Copper Division. We never appeared before any committee; or at least I did not.

Representative HOFFMAN. As you recall?

Mr. HOLDERER. I recall that I did not.

Representative HOFFMAN. You are an expert, as I understand it?

Mr. HOLDERER. I am a mining engineer. When you say an expert, an expert of what?

Representative HOFFMAN. That is what I was wondering.

Mr. HOLDERER. I am an expert on mines and mining.

Representative HOFFMAN. You are here to testify that the reasonably prudent man would not invest any money in this thing?

Mr. HOLDERER. That is right.

Representative HOFFMAN. Did you ever operate a mine?

Mr. HOLDERER. I have.

Representative HOFFMAN. Where?

Mr. HOLDERER. Practically in every part of the Western Hemisphere.

Representative HOFFMAN. It was a mine that you owned yourself?

Mr. HOLDERER. I have owned 1 or 2.

Representative HOFFMAN. Well, did you make or lose on them.

Mr. HOLDERER. On one I lost.

Representative HOFFMAN. Were you reasonably prudent when you went into that one?

Mr. HOLDERER. I was reasonably prudent when I started.

Representative HOFFMAN. You thought you were when you went in.

Mr. HOLDERER. When I went in. As soon as I started losing, I called it quits and got out.

Representative HOFFMAN. You have owned two mines, as I understand it; is that right?

Mr. HOLDERER. That is right.

Representative HOFFMAN. And you made money on the other one?

Mr. HOLDERER. A little.

Representative HOFFMAN. What percentage on your investment, let us say?

Mr. HOLDERER. Oh, probably 20 or 30 percent.

Representative HOFFMAN. Over what period; a year?

Mr. HOLDERER. A couple of years.

Representative HOFFMAN. So that in each year you think you made 20 or 30 percent on it?

Mr. HOLDERER. That is right.

Representative HOFFMAN. Then what happened?

Mr. HOLDERER. Well, the ore body played out and that was the end of it.

Representative HOFFMAN. What were the net results? How much did you put in and how much did you get out? Did you balance your budget, in other words?

Mr. HOLDERER. Scarcely, when I took into consideration the value of my time.

Representative HOFFMAN. So you were not a reasonably prudent man on that one, were you?

Mr. HOLDERER. No. That is right.

Representative HOFFMAN. Did you have a patent on those mining claims?

Mr. HOLDERER. I did on one batch, on the batch that I lost money on. In the other, I was in a partnership.

Representative HOFFMAN. Somebody in the Department then made a mistake in letting you have a patent, did they not?

Mr. HOLDERER. As to that, I wouldn't say. I don't know.

Representative HOFFMAN. Mr. Redwine asked you about this timber. It seems that somebody made an application to the RFC and said the timber was worth \$80,000.

I noticed that you noticed in the testimony that Mr. Leavengood said it was worth \$77,000 at a certain time. The company only had \$3,000 more than he did. That is about right?

Mr. HOLDERER. The only figure I have is the figure given in this application to the RFC.

Representative HOFFMAN. That was \$80,000?

Mr. HOLDERER. That was \$80,000.

Representative HOFFMAN. And there being \$80,000 on there, did you consider in passing on the validity or the desirability of the RFC making the loan that the company was claiming that it had \$80,000 worth of timber?

Mr. HOLDERER. They claimed that as one of their assets.

Representative HOFFMAN. Was it not?

Mr. HOLDERER. They had no ownership to that timber until the patent was granted.

Representative HOFFMAN. But did you not have a right to use any and all of it, every last board foot of it if they use it in their mining operations?

Mr. HOLDERER. That is true. They could use that timber at any time.

Representative HOFFMAN. But you are still critical of their putting that in.

Mr. HOLDERER. As an asset.

Representative HOFFMAN. It was a potential asset. It was there on the ground and they had a right to use it, did they not, if they needed it in the mining?

Mr. HOLDERER. There is a difference between an asset and a potential asset.

Representative HOFFMAN. Oh. I was just thinking of that paragraph on page 15 of Hattan's report:

While the Forest Service has no accurate cruise of the timber embraced within the area of all the claims, the Oregon Mine Handbook, page 197, states that approximately 12 million board feet of timber is estimated to be available and on the mining claim. If the mine is developed as contemplated, a large amount of timber will be necessary. In fact, it might well be to the advantage of the company to set up a sawmill on the property and produce the timber which will be needed in such a large scale operation.

There is, of course, nothing to prevent the company after they get a patent cutting all of it.

It would not have been unusual if they had tried to cut the timber and used it in opening the mine, would it?

Mr. HOLDERER. Well, there obviously was no prospect of ever mining the property for mineral wealth.

Representative HOFFMAN. How do you know what the McDonalds had?

Mr. HOLDERER. There was nothing on that property that was—

Representative HOFFMAN. Any good?

Mr. HOLDERER. That was minable at a profit.

Representative HOFFMAN. That is what you think. That is your opinion as an expert.

Mr. HOLDERER. Based on the information at my disposal.

Representative HOFFMAN. That is what?

Mr. HOLDERER. Their application to the RFC.

Representative HOFFMAN. Based on that, but do you know anything about the taking of the samples?

Mr. HOLDERER. I have no knowledge of the competency or the personal integrity of anyone who did any sampling.

Representative HOFFMAN. Or how they were taken?

Mr. HOLDERER. Or how they were taken.

Representative HOFFMAN. Or whether or not they were protected.

Mr. HOLDERER. That is right.

Representative HOFFMAN. And if they were not properly taken and were not properly protected, your opinion does not amount to anything? Did you not so testify?

Mr. HOLDERER. Wait a minute. My opinion is based on the assay sheets that were at my disposal.

Representative HOFFMAN. And the question is: If the samples were not properly taken, if the assay was not properly conducted, your opinion does not amount to anything?

Mr. HOLDERER. If the assay sheets themselves were worth nothing.

Representative HOFFMAN. Just answer my question. You are an expert. Come on.

Mr. HOLDERER. If the assay sheets are worth nothing, consequently my opinion would be expressed as the whole thing as worth nothing.

Representative HOFFMAN. Would it make any difference in your opinion as an expert mining engineer if the samples were not protected and guarded all the time?

Mr. HOLDERER. If they were not protected and guarded properly. I would say the assays would be highly susceptible to suspicion.

Representative HOFFMAN. You would not use the conclusion to base an opinion on unless the record showed that the sample was properly protected by the man who took it, or somebody in between, until it got to the assay office, would you?

Mr. HOLDERER. I certainly would not render a favorable opinion. I would ask to be excused from rendering any opinion if I had reason to believe that the assays had been tampered with.

Representative HOFFMAN. Well, the same would hold true unless it appeared affirmatively that the sample had been properly guarded, would it not?

Mr. HOLDERER. I know nothing about how the samples were taken or how they were guarded.

Representative HOFFMAN. Sure, and you do not know anything about the competence of the fellow who made the assay, do you?

Mr. HOLDERER. My information: —

Representative HOFFMAN. Wait a minute. Answer that question.

Mr. HOLDERER. I know nothing about the competence of anyone who took them, but in Mr. Sopp's report, he questions that very thing.

Representative HOFFMAN. What you do is accept the conclusions that have been given to you there where you were asked to render an opinion.

Mr. HOLDERER. My conclusions are based on the application of the company who applied for a loan.

Representative HOFFMAN. Wait a minute. You also brought in the samples and the assays. Your opinion is also based on that, is it not?

Mr. HOLDERER. They give some of those, too, yes.

Representative HOFFMAN. Yes.

Mr. HOLDERER. It goes without saying that, when an applicant is asking for a loan, he is putting his best foot forward. He is not going to say anything that might be derogatory toward his request.

Representative HOFFMAN. And, as I understand your testimony, if everything in the application was true, it still would not work out as a mine?

Mr. HOLDERER. That is my opinion.

Representative HOFFMAN. And it is also your opinion as an expert that if everything that was claimed by these assays were true, even the most favorable, that would not work out as a mine?

Mr. HOLDERER. That is my opinion.

Representative HOFFMAN. Yes. Now, you said you were familiar with the mining law. Where is the provision in the mining law or in the regulations of the Department governing the granting of patents on mines that requires any percentage of mineral of any kind in order to justify a patent?

Now, I am asking about the statute, or in the regulation?

Mr. HOLDERER. I cannot point to any statute that I know of.

Representative HOFFMAN. There is no statutory requirement anywhere which calls for any degree of mineralization before patent is granted, is there?

Mr. HOLDERER. Not that I know of.

Representative HOFFMAN. And there is no regulation of the Department that calls for a specified degree of mineralization, is there?

Mr. HOLDERER. Not that I know of.

Representative HOFFMAN. And the only place that we ever find anything about this judgment of the ordinarily prudent individual being satisfied before he puts his money into it comes from decisions of the courts; does it?

Mr. HOLDERER. So far as I know.

Representative HOFFMAN. That is where that comes in?

Mr. HOLDERER. So far as I know.

Representative HOFFMAN. That is where that comes in. That is some court law that has been written.

You never were on this property?

Mr. HOLDERER. I have never seen it.

Representative HOFFMAN. This is a repetition. All you are going by is—

Mr. HOLDERER. The information in the RFC application.



Mr. REDWINE. Mr. Holderer, the RFC did turn the applications down, this same data that you have referred to?

Mr. HOLDERER. They denied the application.

Representative HOFFMAN. They turned down a good many applications and made some bad loans, too; did they not?

Mr. HOLDERER. On the average I would say their batting average was very high for accepting good ones.

Representative HOFFMAN. Do you know what I asked you?

Mr. HOLDERER. You said they turned down a good many.

Representative HOFFMAN. Did you answer it?

Mr. HOLDERER. They did turn down a good many, yes.

Representative HOFFMAN. And some of them were good, or don't you know?

Mr. HOLDERER. I don't know. I never worked for the RFC.

Representative HOFFMAN. They had certain groups like Kaiser. They gave him a lot of money; did they not?

Mr. HOLDERER. I don't know what they gave him. I have no knowledge of that.

Representative HOFFMAN. You have no knowledge of the Kaiser application?

Mr. HOLDERER. I never worked for the RFC so I cannot answer that.

Representative HOFFMAN. You never worked for the RFC?

Mr. HOLDERER. No.

Representative HOFFMAN. You are just taking their file. I see. What is the standard for granting an RFC loan as to mineralization? Is there any?

Mr. HOLDERER. I don't know. Their loans, one of the requirements was that loans were to be limited to critical minerals, and gold and silver are not critical minerals.

Representative HOFFMAN. At that time?

Mr. HOLDERER. That is right.

Representative HOFFMAN. So you did not take any gold and silver into consideration. That did not count, did it, as to whether a loan should be granted?

Mr. HOLDERER. That is true.

Representative HOFFMAN. So we can throw out everything about gold and silver. What did that leave you; anything?

Mr. HOLDERER. They didn't have any other values of any consequence.

Representative HOFFMAN. Of any consequence. Then, if you were permitted to and felt like expressing an opinion, you would say that the McDonalds were just throwing their money down a rathole?

Mr. HOLDERER. I would say just that, yes.

Representative HOFFMAN. I think that is all I have.

Senator SCOTT. Are they any questions?

Representative JONAS. Yes, sir. Mr. Chairman, I would like to ask the Chair whether it would be possible to have this witness return next week for examination. He has based his testimony on what he says are two reports in this file that I have just now begun to read while he was testifying. I was trying to read and listen at the same time. That makes it pretty difficult to try to understand.

I find in this Sopp report a lot of information that, as a layman, I would say does not bear out his characterization of this mine as

having no value, but I would not be prepared to examine him without going through it and making a little study of the Sopp report.

The same thing is true of the McCormick report. He said he based his answers to the questions on the McCormick report attached to this application.

I understand that Mr. McCormick is in the room. I do not know that. I have never met the gentleman, but I have heard that he is here today and, if he is here, I would most respectfully make the suggestion that we allow him to come up and testify with respect to this report that he made and of which the witness has said that, upon his analysis, he finds that it does not justify a finding that this is much of a mine.

I do not mean that I am trying to tell the committee how to run its business, but obviously I could not examine this witness about the Sopp report or the McCormick report or any other data in this file without having at least an hour or two to take a look at it.

Senator SCOTT. I would suggest this:

If you need an hour or two to look at it, that we not call Mr. McCormick this afternoon. We can get him back here in enough time.

Representative JONAS. I was thinking that you have an hour to run yet and Mr. McCormick is a long way from home. That is just a suggestion of mine. I thought that we might use this hour to let him say what he has to say about what this gentleman says about his report.

Mr. REDWINE. Mr. Chairman.

Senator SCOTT. Mr. Redwine may finish his questioning.

Mr. REDWINE. Mr. Chairman, may I say that when Mr. McCormick takes the stand, his testimony is probably going to take several hours. This is just one phase of the matters that he will be called upon to testify to.

Representative HOFFMAN. Now, Mr. Chairman, that is all right. Mr. McCormick sits back here. He is disputing some of these things, not your testimony but what was in the report of the RFC. He says he has been sitting here since a week ago Monday. He came in from Oregon at the committee's request. I was out there and I know about that, too.

It seems to me, Mr. Chairman, that in all fairness some of these people that are accused of making false reports or not taking samples correctly or not regarding their samples as what was intimated ought to have a chance to answer.

Senator SCOTT. They will.

Representative HOFFMAN. Should they be kept here?

Senator SCOTT. They certainly will be kept here.

Mr. REDWINE. May I explain?

Mr. McCormick was asked if he wanted to testify in Portland. He did and he testified in Portland.

Prior to the opening of the meetings in Washington, he was notified that these hearings would be held in Washington and that, if he desired to testify, he would be permitted to do so. He is not here at the request of the committee.

Representative CHUDOFF. Not only that, but I think that, in all fairness to the witness, if we want to be fair he ought to have an opportunity to hear everything that is being testified so that he

can answer everything at one time rather than make piecemeal answers.

We would never have orderly procedure if we let a witness answer a question and then tell the fellow who disagrees to come up and disagree and then ask the witness another question.

In every orderly procedure, in every court of the Nation, the first man finishes his case and then the defendant presents his case and the complainant has a chance to rebut, and then the defendant has a chance for surrebuttal.

Mr. JONAS. I think all through Springfield, Mo., and Denver, Colo., and Idaho Falls, Idaho, this happened.

Representative JONAS. I have the old-fashioned idea that a man under charge ought to be permitted to answer.

Representative HOFFMAN. This is the situation.

Senator SCOTT. Let the witness go ahead.

Representative HOFFMAN. This witness has testified as an expert, using statements allegedly made by Mr. McCormick, who sits here in the room and wants to answer.

Senator SCOTT. Let him make the statements that he has to make.

Representative HOFFMAN. The witness is finished, as I understand it.

Would you not like to hear what Mr. McCormick has to say about it? He is the fellow who took the samples.

Mr. HOLDERER. That is up to the chairman, sir.

Representative HOFFMAN. You would like to hear it, would you not?

Representative JONAS. I do not think so.

Senator SCOTT. Senator Neuberger?

Senator NEUBERGER. Mr. Holderer:

Representative HOFFMAN. This is a hit-and-run. I never knew of a third degree that had anything on this one.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Mr. Holderer, you were asked if samples were not properly taken and protected and the assay not properly conducted, what would be the value of the samples? I think you were asked that question; were you not?

Mr. HOLDERER. The value of them would be zero.

Senator NEUBERGER. That could apply to any sample?

Mr. HOLDERER. That could apply to any sample, any time, any place.

Senator NEUBERGER. Could it apply to the samples in the area on which final patent was granted in this case?

Mr. HOLDERER. It might.

Senator NEUBERGER. I want to ask you one thing about the timber estimates included in that application for the RFC loan. The figure, I believe, was 20 million board feet of timber; is that correct?

Mr. HOLDERER. That is right.

Senator NEUBERGER. Would it be possible to use 20 million board feet of timber in the operation of a mine?

Mr. HOLDERER. Not in that mine.

Senator NEUBERGER. Twenty million board feet of timber is a lot of timber; is it not?

Mr. HOLDERER. It is a lot of timber.

SENATOR NEUBERGER. Do you believe that 20 million board feet of timber was listed in that application at a value of \$80,000? I believe it was 1940. Was that the date?

MR. HOLDERER. They give \$80,000 as the value of the timber in their pro forma balance sheet.

SENATOR NEUBERGER. For what year was that?

MR. HOLDERER. When they made the application, in 1940.

SENATOR NEUBERGER. To continue my question, do you believe, Mr. Holderer, that there was any reason to list 20 million board feet of timber for any other reason except for its commercial value as commercial timber on a lumber company?

MR. HOLDERER. I can't say as to that.

SENATOR NEUBERGER. I could not hear you.

MR. HOLDERER. I can't say as to that. They wanted to make their balance sheet look as good as possible. That is quite obvious.

SENATOR NEUBERGER. But you do not believe that it would be possible to use 20 million board feet of timber in the operation of a mine?

MR. HOLDERER. I cannot conceive of that much timber being used at that mine.

SENATOR NEUBERGER. Thank you very much.

REPRESENTATIVE HOFFMAN. I have one more question, if I may.

You will at least concede that they were acting in good faith, were they not, if they put that much money in, and it is just a hole in the ground?

MR. HOLDERER. I don't know whether they acted in good faith or not.

REPRESENTATIVE HOFFMAN. Or whether they lacked judgment of any kind?

MR. HOLDERER. I would say that they lacked judgment.

REPRESENTATIVE HOFFMAN. Of any kind?

MR. HOLDERER. Of any kind.

REPRESENTATIVE HOFFMAN. If everybody proceeded on this theory, we would never develop anything.

MR. HOLDERER. A lot of mines would not be developed.

REPRESENTATIVE HOFFMAN. And a lot of oil wells would not be discovered.

MR. HOLDERER. I will grant you that.

REPRESENTATIVE HOFFMAN. There would be a lot of dry holes all over.

MR. HOLDERER. That is right.

REPRESENTATIVE JONAS. Has he finished, sir?

SENATOR SCOTT. Go ahead, sir.

REPRESENTATIVE JONAS. I do not think that I can go into those two reports, but I have a question or two, if you wish to continue with him.

MR. HOLDERER. I invite your attention to this RFC file. One of the documents in it was the letter from John E. Morton, Chief of the Mining Section of the RFC, dated March 14, 1940. In that letter he says, and I quote:

Undoubtedly you realize there has been considerable amount of money spent on prospecting this property and as yet there is very little ore developed. The applications contain some general statements that the property offers development possibilities, but there are also statements that considerably more work has to be done to prove this. It clearly looks to us that any work done now would

be of a prospecting nature with the hope of finding ore, a purpose for which development loans are not made.

Now, that was the basis of the denial of the application, was it not, that the RFC was not in the business of lending money for development purposes and that a fully developed mine ready for operation had to be offered as security?

Mr. HOLDERER. No; I would not say that that was the basis for their denial. They put the basis for their denial finally on the grounds that the gold and silver were not critical metals.

Representative JONAS. Gold and silver were not critical?

Mr. HOLDERER. Yes.

Representative JONAS. And most of the minerals alleged to exist out there were gold and silver?

Mr. HOLDERER. Well, that is the alleged value of the property.

Mr. REDWINE. Pardon me, Congressman. I am aware of the fact that you have not looked through the file, Congressman. Let me ask the witness a question to bring out a point there; will you please?

Representative JONAS. Go ahead.

Mr. REDWINE. Is it not true that the files here also show that there was an additional application for a \$20,000 loan that was not a development loan, and it was also denied by the RFC?

Mr. HOLDERER. That is right.

Representative JONAS. Does that appear here?

Mr. HOLDERER. Yes, sir.

Representative JONAS. What was the basis of that denial?

Mr. HOLDERER. I don't remember the exact wording. It should be in there.

Representative JONAS. In hurriedly glancing through this file. I saw in somebody's letter to somebody a statement that the report of Mr. McCormick which you examined was based upon an examination or investigation of this property several years prior to the filing of this application. I believe it was in 1937.

Mr. HOLDERER. Well, I quote from Mr. Sopp's section in the application dealing with the sampling.

Representative JONAS. I asked you if you do not recall a letter here with reference to this claim which indicates that Mr. McCormick's investigation and his report were based on an examination of this property in 1937.

Mr. HOLDERER. I have seen that, but I don't recall the wording.

Representative JONAS. And at that time this ore had not been outlined?

Mr. HOLDERER. Explored.

Representative JONAS. No; you used the words "blocked out."

Mr. HOLDERER. Yes.

Representative JONAS. Is that true?

Mr. HOLDERER. I don't know. I would have to refer to the letter. I was concerned mainly with the results of the sampling as given on the sample sheets from the assayers.

Representative JONAS. I will ask you to turn to this report of Mr. McCormick, and it is dated July 15, 1937; is it not?

Mr. HOLDERER. That is right.

Representative JONAS. Now, what is this exhibit attached to it? What does he mean when he says "Al Sarena Mine No. 1, 40 feet from portal, 5 feet width cut." What does that mean?

Mr. HOLDERER. That is the width of the vein at which the sample was taken, and those were the gold and silver values and the total values.

Representative JONAS. I ask you to run along that list and tell the committee if that report of Mr. McCormick's does not show that the width of the veins range from 5 feet through 10 feet up to 20 feet. Some of them go as high as 50 feet. Others are 30 feet, and the lowest in width is 5 feet, and you have testified that you gained the information from that report that the width of the veins never exceeded 2 feet.

Mr. HOLDERER. The information shows also that the workings were closed. I know nothing about this information here.

Representative JONAS. Well, you testified that you based the information you were giving the committee this afternoon on an examination of the McCormick report.

Mr. HOLDERER. No; not the McCormick report.

Representative JONAS. The McCormick report and the Sopp report.

Representative HOFFMAN. Yes; he did.

Mr. HOLDERER. I based my information on the assay sheets which were signed by the assayers. As to this information, I have no knowledge as to how accurate this is whatsoever.

Representative HOFFMAN. It is in the file.

Mr. HOLDERER. I did not take this in consideration.

Mr. REDWINE. I think we have the wrong thing, Congressman. That is not the width of the vein. It does not purport to be the width of the vein.

Representative JONAS. He just testified that it is the width of the vein. I asked him.

Mr. HOLDERER. It is the width of the cut. It may or may not be the vein. I do not know.

Representative JONAS. For the record, the table to which I invite the attention of the witness has a number of columns. The column on the left says "sample number." The second column is "location." The third column is "width cut." The next column is —

Mr. HOLDERER. Silver and then gold.

Representative JONAS. The next column is "gold" and then there is "total."

Mr. HOLDERER. Yes.

Representative JONAS. Yes.

Under the column "width cut," the figures would indicate that the vein ranges from 5 feet to 50 feet; does it not?

Mr. HOLDERER. According to this report. I have no knowledge as to how accurate it is.

Representative JONAS. I misunderstood you, then, if I understood you to say earlier this afternoon, in response to Mr. Redwine's question, that among things upon which you based your report, one of those things was the McCormick report which is attached to this file?

Representative HOFFMAN. That is right.

Mr. HOLDERER. I based my information on the general information given in the application to the RFC.

Representative JONAS. Including the McCormick report?

Mr. HOLDERER. No; because I had no knowledge. According to Mr. Sopp's report, these working places as shown on this report are inaccessible and consequently —

Representative JONAS. You mean the Sopp report says that?

Mr. HOLDERER. Yes.

Representative JONAS. May I invite your attention here to—

Mr. HOLDERER. It says:

Approximately 240 feet of the drifts is inaccessible. Values obtained in previous samples were used. Writer knows nothing of the method used in taking these previous samples and cannot answer for their accuracy.

Representative JONAS. When was the Sopp report made? What was its date?

Mr. HOLDERER. Part of it is here.

Representative JONAS. But it is not dated.

Mr. HOLDERER. It is not dated.

Representative JONAS. May 19, 1939. Would that be the date?

Mr. HOLDERER. Well, it says "submitted."

Representative JONAS. It says:

The property covered by this report is known as the Al Sarena Mine, previously known as the Buzzard Mine—

and it is dated May 19, 1939?

Mr. HOLDERER. Yes.

Representative JONAS. In this report Mr. Sopp states that:

Practically the total production of the Al Sarena Mine has been from one vein.

Mr. HOLDERER. Yes.

Representative JONAS. So at that time he was considering only one vein; is that not true?

Mr. HOLDERER. Apparently.

Representative JONAS (reading):

The vein has a strike of north 45 degrees west, and it's practically vertical.

He made this further statement, and I quote:

No definite conclusions can be drawn concerning the variation in the width of the vein, the depth, until more of the vein is exposed on the upper workings.

Where in there does he say the vein is only 2½ feet in the Sopp report?

Mr. HOLDERER. I have seen it in here somewhere. The average width of the vein is about 2½ feet.

Representative JONAS (reading):

However, there is considerable variation of width.

Did he not also state in this report that whereas he only examined one vein there were various outcroppings and other places and off-shoots from this vein?

Mr. HOLDERER. And it is on these outcroppings that many of the samples were taken that were sent to Williams and also the Abbott Hanks Co.:

The inside workings were in such condition \* \* \*

Representative JONAS. I am not prepared to examine you on that, because I have not had a chance to see it, but I say the report, as I glance at it, from Mr. Sopp is not as conclusive or is not as adverse as your analysis of it would indicate.

Mr. HOLDERER. Well, I am simply quoting from them when I say "To get a more accurate value for the ore in the vein it would be necessary to sample stocks and drifts now inaccessible."

Representative JONAS. On account of the weather?

Mr. HOLDERER. No; because they were caved or in such bad condition.

Do either some surface work or intersect the drift on the vein. Larger samples taken at closer intervals would give greater accuracy.

He casts considerable doubt on the old sampling.

Representative JONAS. I think you have already testified as to this.

Do you include the eight uncontested claims in your adverse report? You think they were incorrectly granted?

Mr. HOLDERER. I have not taken into consideration the location of the samples. I am looking at the values given on the sample sheets.

Representative JONAS. You mean the overall picture?

Mr. HOLDERER. The overall picture.

Representative JONAS. You are looking at it as a mine, a mass of ground.

Mr. HOLDERER. I am looking at the 12 sample sheets that I had at my disposal. I am looking at those as a whole.

Representative JONAS. Not as individual claims?

Mr. HOLDERER. And not applying them to individual claims. There is not a single sample sheet of the 12 that merits further consideration, in my opinion.

Representative JONAS. You have referred to the other application of the claimant. We have been talking this afternoon so far about the application of the other corporation, the Al Sarena Corp., which was a Delaware corporation, with headquarters in Texas; but the Al Sarena Mines, Inc., the claimant in this hearing, is an Oregon corporation entirely separate and apart.

There was a lease arrangement between the two, and that document is in the file and you examined it. You stated to Mr. Redwine that there is some evidence in this record of another application for \$20,000 made by the claimant.

Will you please turn to those papers and get me the letter denying that application?

Mr. HOLDERER. I have not been concerned with the legal incorporation.

Representative JONAS. I am just talking about the \$20,000 application.

Mr. HOLDERER. I have seen it here.

Representative JONAS. You do not recall what the basis of that denial was, or was it the same as in the other case, that gold and silver were not critical materials?

Mr. HOLDERER. They failed to get one loan, so they tried to work it another way.

Representative JONAS. Which application was filed first?

Mr. HOLDERER. I would have to look at the papers here to get those dates.

Representative JONAS. You would not want the record to show that you contend that these two applicants for loans were identical, would you? You said they tried one way and failed and then tried another way.

Mr. HOLDERER. The principals are probably the same, or nearly identical.

Representative JONAS. May I invite your attention to the lease in here from Al Sarena Mines, Inc., to the Al Sarena Corp., which shows



that the principals have no identity whatever, and list the owners of the stock, and none of the McDonalds are interested in the Al Sarena Corp., but the stockholders are Cecil R. Raden, Laura B. Haden, and Edwin E. Lund.

Mr. HOLDERER. That may well be, but the property is the same.

Representative JONAS. Why are you so interested in this matter that you would try to leave the impression with the committee that the two corporations are identical, or that the principals are the same, when you have nothing to base that on?

Mr. HOLDERER. It is because the applications pertain to the same property.

Representative JONAS. But they were filed by different corporations, by different stockholders, were they not?

Mr. HOLDERER. My only concern is with the virtue of the property, and the property is the same. What different paths may have been taken to request loans, that is beside the point. I am concerned only with the merits of the property.

Representative CHUDOFF. Could I ask a question?

What is the consideration for that lease? Is there any consideration for it? Is it \$1?

Representative JONAS. It starts out and the name of the corporation is Al Sarena Corp. Its principal office is in the State of Delaware. The nature and so forth is given. That is the certificate of incorporation. That is not the lease.

Representative CHUDOFF. There ought to be some rental if there is going to be a lease.

Representative JONAS. There is a copy of the lease here.

Representative HOFFMAN. Just an inquiry. Who is presiding over this committee now?

Representative CHUDOFF (presiding). I am.

Representative HOFFMAN. We lost our Senators.

Representative JONAS. The lease in the files shows that it was executed on the blank day of blank, 19 blank, between Al Sarena Mines, Inc., an Oregon corporation, to the Al Sarena Corp., a Delaware corporation, and it apparently is a royalty lease with \$500 recited as money consideration.

There is a rubber-stamp legend on the lease indicating that the post office address of the Al Sarena Corp. is 2192, Houston, Tex.

Representative CHUDOFF. I wonder if you will look at that document closely and, from what I understand, the Al Sarena Mining Co. was a corporation, and there was either another corporation or individuals.

Who signed the lease for the Al Sarena Mining Co. and who signed the lease for the other corporation?

Representative JONAS. It is right here. The lease shows that it was signed for Al Sarena Mines, Inc., by H. P. McDonald, president, and H. P. McDonald, Jr., secretary, and for Al Sarena Corp. by Cecil R. Haden, president, and Edwin E. Lund, secretary. That is the 20th day of October 1939.

Mr. REDWINE. Mr. Chairman, we have become confused here. I believe, by a couple of loan applications. As a matter of fact, there are three loan applications here. Two of them are for a development loan and one was an operating loan. We have gotten all confused on this thing.

Let me read into the record, if I may, at this time.

Representative CHUDOFF. Mr. Redwine, while you are straightening out the confusion, I would like to know which company made an application for an RFC loan? They must have been incorporated in different States, because certainly no secretary of state would have issued a charter to companies having such close names.

There is an Al Sarena Mining Co., Inc., and there is the Al Sarena Corp.

Representative JONAS. The Texas corporation made the application for \$51,000, about which we have been talking.

There was a lease—

Representative CHUDOFF. The lease had a 5-percent rental on gross receipts for mine operations. If there was not any mining operations, they could not get rental.

Mr. REDWINE. Mr. Chairman, if I may, the file shows that in 1937, Al Sarena Mines, Inc., that is the McDonalds—

Representative CHUDOFF. In what State was that incorporated?

Mr. REDWINE. Incorporated in Oregon. They applied to the RFC for a loan of \$19,642. That loan was never granted and, at the request of the company according to the files, the company requested RFC to hold it in abeyance until they could work out some things. They were going to get some more money.

It went on until 1940 and the Texas group incorporated in Delaware the Al Sarena Corp. That corporation then filed an application for a loan of \$20,000. They first filed for \$51,000. They did not get anywhere with it.

They then filed an application for \$20,000. They did not get anywhere with that.

There were 3 applications filed, 1 by the Al Sarena Mines, Inc., and 2 by the Al Sarena Corp.

Representative CHUDOFF. One by Al Sarena, Inc., and 2 by the Al Sarena Corp.?

Mr. REDWINE. Yes, sir.

Representative CHUDOFF. One for \$50,000?

Mr. REDWINE. Yes, sir. Here is a letter signed by John E. Norton, Chief of the Mining Section, RFC, dated March 14, 1940, and I will read from the second paragraph. It is addressed to Mr. Haden, president of the Al Sarena Corp.:

We have again carefully studied all the data submitted with the applications—

in the plural—

of the Al Sarena Corp. and, based upon these data, it is clearly our opinion that the project does not offer sufficient security for a general mining loan nor do we believe that through the expenditure of a development loan—

that would be the \$20,000—

there would be developed a sufficient quantity of ore of a sufficient value to pay a profit upon mining operations, as required by the act. We wish to advise you that we have given very careful consideration to each report submitted and have not confined our attention to any particular one.

Representative HOFFMAN. Will you add something else for me, Mr. Redwine?

Mr. REDWINE. Yes.

Representative HOFFMAN. One of these loans was applied for in 1937 and had just drifted along without being pressed until 1943 when the file was closed? That is all there was to it?

Mr. REDWINE. That is correct, sir. I think that Mr. Haden, of the Al Sarena Corp., of Houston, Tex., who has been interviewed by the staff, should be called as a witness to testify as to the relationship between his family and the McDonald family, Mr. Chairman.

Representative HOFFMAN. Before you get to that, are you through with this witness?

Mr. Chairman, pardon me. I would like to ask this witness a question before he is dismissed.

Senator NEUBERGER. I think we ought to settle this matter first one at a time. It is agreeable with me. I am just acting chairman in Senator Scott's necessary absence and it is agreeable with me that Mr. Haden be called.

Representative JONAS. Do you propose to bring him all the way from Houston?

Mr. REDWINE. I don't know.

Representative CHUDOFF. I do not suppose we would go all the way to Houston.

Representative JONAS. If you are just asking him whether there is any relationship, maybe we can write him a letter.

Representative CHUDOFF. I have a lot of questions to ask him, now that these corporations came up, that I did not know about. I think I have at least 20 questions to ask him.

Representative JONAS. I would not object—it would not matter if I did—but I do not see now that any relationship between Haden and McDonald would have anything to do with this hearing.

Representative CHUDOFF. You may be right, but I will not know until I ask him.

Representative HOFFMAN. I am in favor of calling everybody except somebody who knows something about it, like the McDonalds and Mr. McCormick.

Senator NEUBERGER. It is my understanding that they will have an opportunity to—

Representative HOFFMAN. If they do not perish by the wayside.

Senator NEUBERGER. I think you will remember that Mr. McCormick had a very extended opportunity to appear before the committee in Portland. He bitterly criticized the committee and the staff. No effort was made to interfere with him. He had his say. He will be given an opportunity again.

Representative HOFFMAN. But never an opportunity to answer what this witness has said nor an opportunity to answer what is in that file.

Representative CHUDOFF. I will see that he gets the opportunity to answer anything this man says.

Representative HOFFMAN. Approximately what month?

Representative CHUDOFF. I do not know. I want to say this to you: If the Republican Members of the United States Senate take 30 minutes by using the starting question and making a speech for 25 minutes we are never going to get through.

Representative HOFFMAN. If you are criticizing me, I agree with you.

Representative CHUDOFF. I am not criticizing you.

Representative HOFFMAN. I want to ask a question.

What is your present occupation, or profession, or avocation?

Mr. HOLDERER. I am a staff engineer on the Subcommittee of Minerals, Materials, and Fuels, subcommittee of the Senate——

Representative HOFFMAN. On the staff?

Mr. HOLDERER. I am the staff engineer.

Representative HOFFMAN. Who else is on this staff with you?

Mr. HOLDERER. I am the only engineer.

Representative HOFFMAN. I asked you who else is on the staff with you.

Mr. HOLDERER. On the staff of the full committee there are a number of others; Mr. Redwine, Mr. Nelson. Those are the other two in the particular room in which I work.

Representative HOFFMAN. So you and Mr. Nelson are working on this together?

Mr. HOLDERER. No. I have never discussed it with Mr. Nelson.

Representative HOFFMAN. No, but Senator Murray asked you to come in and make this report as an expert, and Mr. Redwine is directing the activities of the committee and doing the questioning. You are doing the answering. There is that connection at least; is there not?

Mr. HOLDERER. I happen to be the staff engineer. Mr. Redwine is also——

Representative HOFFMAN. And you happen to be the expert witness.

Mr. HOLDERER. And I happen to be the only mining engineer on the committee. Mr. Redwine is also a member of the committee.

Representative HOFFMAN. And you are thoroughly convinced—and apparently he is—that there is no ground there that might be mined with profit?

Mr. HOLDERER. That is correct.

Representative HOFFMAN. All right. I am glad you agree.

Mr. HOLDERER. That is my opinion; period.

Representative HOFFMAN. And never was on the property?

Mr. HOLDERER. As I have stated before, my opinion is based on the information which I have available.

Representative HOFFMAN. And you never saw any samples from it?

Mr. HOLDERER. I've seen the sample sheets.

Representative HOFFMAN. Are you a lawyer, too?

Mr. HOLDERER. No.

Representative HOFFMAN. Just an engineer?

Mr. HOLDERER. That's all; just a plain engineer.

Representative HOFFMAN. That is all I have.

Representative JONAS. May I ask him a question, please?

Representative HOFFMAN. That is all I have, except to compliment you on the way you two work together.

Mr. HOLDERER. I have endeavored to give plain and straightforward answers.

Representative HOFFMAN. That I am not questioning. I have heard experts before and I admire them and know we are dependent upon them.

Representative JONAS. You said that you looked at the certificate of assay from the Williams Co. That is the Williams Co. assay report?

Mr. HOLDERER. I saw a copy of the Williams certificate, but I don't know what the Secretary based his decision on.

Representative JONAS. All right. Is it true that that assay report showed that gold and silver were found in the samples ranging in value from 90 cents to \$4.85 a ton?

Mr. HOLDERER. The vast majority of them were under \$2.

Representative JONAS. Yes. I said the range. I think the average works out to about two dollars and something per ton.

Mr. HOLDERER. The average would be much less than that because there are a great many zeroes and a great many traces and a great many under \$1, so the average would not be anywhere near \$2.

Representative JONAS. How many samples were there?

Mr. HOLDERER. There were 142 assays.

Representative JONAS. In the A. W. Williams report? There were only 38.

Mr. HOLDERER. I am not saying in the Williams report; 142 assays total.

Representative JONAS. Mr. Witness, I am sure you must have understood my question. I asked you if you examined the certificate of the report from the Williams Co. of the final assay which it made in 1953 sometime in November or December.

Mr. HOLDERER. The assays of the 142 assays—

Representative JONAS. There were not but 38, according to Mr. McDaniel's testimony before this committee; the man who did the assaying.

Mr. REDWINE. There were only 28.

Representative JONAS. Twenty-eight.

Mr. HOLDERER. I have copies of the Williams assay sheets which show—

Representative JONAS. We have that in the record, do we not: a certified copy of one of the certificates? That is what I want to ask him about. He has it mixed up with 142. Do you have the 28?

Mr. HOLDERER. Twenty-eight, dated January 2, 1954, Williams inspection.

Representative JONAS. They range from \$4.20—

Mr. HOLDERER. \$4.20 down to \$1.05.

Representative JONAS. Down to \$1.05?

Mr. HOLDERER. Yes.

Representative JONAS. That is gold and silver. Are you telling the committee that an assay showing gold and silver which would average around \$2 per ton would not constitute an economic and profitable mining operation?

Mr. HOLDERER. No; absolutely not; not with labor at \$18 a shift.

Representative JONAS. There is some record before this committee indicating that the Juneau mine, I think, operated on less than 50 cents a ton.

Mr. HOLDERER. No; they operated at about 90 to 95 cents a ton and they mined 10,000 tons a day. Not by the wildest stretch of the imagination—

Representative JONAS. Is your statement to us that this would not be economic, even if it goes above \$2 per ton, based on the amount they propose to mine? What if they stepped up that amount?

Mr. HOLDERER. They would never get up to 100 tons, to say nothing of several thousand tons a day. It would be a physical impossibility.

Representative JONAS. Why is that?

Mr. HOLDERER. Because of the size. They have demonstrated nothing that would indicate the ore body was big enough for that.

Representative JONAS. If I came to you without your examining the ore body or knowing anything about it other than that I produced a sample or an assay report showing that I had a mine, the sample showing gold and silver with the value there around \$2 per ton, would you say that I should forget about that and not pursue it at all?

Mr. HOLDERER. I would say that the next step would be exploration work to show the limits of the ore body. They have not done that.

Representative JONAS. That would be enough gold and silver content within itself if there was sufficient ore there to make an economic mine?

Mr. HOLDERER. I would say at today's wages and prices it would be highly controversial as to whether even \$2 would be enough or not.

Representative JONAS. You commented on the Bingham copper mine out of Salt Lake City, and I think the copper content there is about 10 percent; is it not?

Mr. HOLDERER. Oh, heavens, no.

Representative JONAS. One percent?

Mr. HOLDERER. Their recovery is three-quarters of 1 percent. That would be 15 pounds of copper recoverable per ton. Copper is now selling in this country at 45 cents and they probably have a floor contract with the Government to deliver as much as they could for 24½ cents, for the stockpile, so at 45 cents, 15 pounds times 45 is considerably more than \$2.

Mr. REDWINE. What would be the millhead on that; if I may interrupt?

Representative JONAS. I want to get the facts.

Mr. REDWINE. What would be the millhead?

Mr. HOLDERER. The millhead would be about 9 cents, about nine-tenths of 1 percent copper. That would be the run of mine.

Mr. REDWINE. In dollars what would it figure out?

Mr. HOLDERER. One percent is 20 pounds; so the nine-tenths would be 18 pounds.

Mr. REDWINE. Eighteen pounds at what price per pound?

Mr. HOLDERER. At 45 cents. That's the present price of copper.

Mr. REDWINE. What does that come to?

Mr. HOLDERER. If it was 18 it would be \$9.

Mr. REDWINE. Per ton?

Mr. HOLDERER. Per ton.

Mr. REDWINE. What did you say, Mr. Holderer, that the mine cost alone would be? What would it be on a property of this size?

Mr. HOLDERER. The mine cost alone would probably be \$9 per ton with wages at \$18, and the production would only be about 2 tons per man, so that a man getting \$18 could only produce about 2 tons.

Mr. REDWINE. With a value of what? Strike an average on the Williams assays. What would that amount to? Can you strike an average on that, or have you done it?

Representative JONAS. \$2.06 Senator Goldwater said, I think.

Mr. HOLDERER. You cannot take a straight arithmetical average. A number of other factors go into this. I haven't averaged these.

Mr. REDWINE. I think we have been following Senator Goldwater's computation of \$2.06.

Mr. HOLDERER. Call it \$2.

Mr. REDWINE. Assuming that you would have \$2.06 against a \$9 ton mining cost, even using the highest assay figures that have been presented——

Mr. HOLDERER. Which is \$7.70 on these assay sheets.

Mr. REDWINE. However, I mean the highest group altogether has been the Williams Co.

Mr. HOLDERER. Yes.

Mr. REDWINE. Against a mining cost of \$9 per ton?

Mr. HOLDERER. That is only a starter. You have your milling cost. You have, oh, a whole string of other costs. I would say that \$20 would be the minimum value that could be extracted profitably.

Representative JONAS. Where did you get your figures of \$18 a day?

Mr. HOLDERER. I have taken those from the figures that I have on the Coeur d'Alene mining area in Idaho, which is not too far away, and——

Representative JONAS. That is an established mine, is it?

Mr. HOLDERER. It is an area.

Representative JONAS. Is it a unionized mine?

Mr. HOLDERER. The figures I have given are averages for a number of mines, big and small.

Representative JONAS. You do not know whether the same situation would prevail at this location or not, do you?

Mr. HOLDERER. Well, the wages would be the same. They are standard. The miners belong to a union and the union demands that regardless of the size of the mine the miners get the standard wage. The miner does not work at a mine simply because the scenery is nice or the food is good. He is working there to get the standard wage, which is presently about \$18.

Representative JONAS. Do you know anything about the facts in any other cases in which patents have been granted in the last 8 or 10 years?

Mr. HOLDERER. I have not followed that; no.

Representative JONAS. Have you examined any of those cases to see whether patents have been granted on that sort of showing?

Mr. HOLDERER. I have had no occasion to get into the patent end of any of these applications.

Representative JONAS. You do not know, then, whether it would be proper or reasonable to expect that a patent would be granted on an assay that would show, say, \$2 per ton of gold and silver?

Mr. HOLDERER. I have no knowledge of any of the patent routine. It's been a great many years——

Representative JONAS. You mean to say that, in your opinion and in your judgment based on your experience, you do not think the mine can be profitably operated?

Mr. HOLDERER. Based on the assay sheets that I have had before me, I would say "No."

Representative JONAS. Would it change your opinion any if you knew that they had taken from \$40,000 to \$50,000 in gold and silver out of that mine?

Mr. HOLDERER. I have had no information to that effect.

Representative JONAS. You did not know that?

Representative HOFFMAN. That is not what you asked him. You asked him would it change his opinion if he knew.

Representative JONAS. Would that change your opinion?

Mr. HOLDERER. Not necessarily; no, because they might have just hit a small body and a car or two and it would be gone. I don't know. I don't know under what circumstances that might have been extracted.

Representative JONAS. However, it would not change your opinion that this would not be a good place to start mining?

Mr. HOLDERER. No; no, it would not. A great many mines have produced a very small amount of rich ore and then that was the end of it.

If that had continued, if they had continued extracting \$30 or \$40, or a thousand dollars, if that had continued they wouldn't be in the predicament that they are in now. They would have had a mine. They obviously were wise enough not to put any more money into it, to pursue that.

Representative JONAS. It is possible that they ran out of money.

Mr. HOLDERER. And it's also possible, it's highly likely, that it ran out of ore.

Representative JONAS. This is of no importance to the committee, but I think we are just killing time until 4 o'clock. I happen to have a mine in my home county. It is alleged to be a tin mine, and for as long as I can remember it has been the subject of exploration and been prospected by any number of mining corporations who have come there and spent thousands of dollars digging and exploring and trying to determine whether that mine would be a profitable one to operate. Nobody ever mined there commercially until very recently. The latest concern has obtained a long-term lease from the owners of this property. They have spent between \$100,000 and \$125,000 exploring the possibility that this might be a mine from which they would take lithium, and the report around my home is that they propose to build a big mill there. I would say everybody who has ever touched that mine up until now, and there have been scores of individuals and corporations that acquired leases on this property, lost every dollar they put in.

Another concern comes along and finds something else there and they propose to invest a million or so dollars in a concentrating plant and mining equipment.

Would you say that you know enough about the situation out in this particular mine from reading these reports to say that would not be possible out there?

Mr. HOLDERER. There is no indication that other minerals of value have been found; I'll put it that way.

Representative JONAS. You mean there is no indication in the RFC report?

Mr. HOLDERER. In any information I have.

Representative JONAS. You have not examined any data, or any documents, or any material of a date more current than 1940; have you?

Mr. HOLDERER. That is correct.

Representative JONAS. That is, 15 years ago.

Mr. HOLDERER. That is correct.

Representative JONAS. What the situation is since 1940 you have no way of knowing?

Mr. HOLDERER. I would question very greatly if they had spent any money since that time.



Representative JONAS. Why would you do that? What reason do you have for doing that?

Mr. HOLDERER. Because if they had found anything they would have made mention of it. We would have heard of it in the hearings.

Representative JONAS. They have not been on the witness stand. How do you know what they are going to say?

Mr. HOLDERER. If they had found anything of value they would have showed it on the assay sheets.

Representative JONAS. I am asking these questions to try and make up my own mind whether you are entirely disinterested or whether you have some fixed convictions on this subject and that you are not entirely objective in your testimony.

Senator NEUBERGER. I wonder if the Chair might ask a few questions before we close?

Representative JONAS. Yes, sir.

Mr. HOLDERER. I would like to give one more sentence. I want to clarify your last statement. I have a fixed conviction to this extent: that if the assays that are available are no good, I would pay no further attention to the property. That is my fixed conviction.

Representative JONAS. I beg the Senator's pardon.

Senator NEUBERGER. I would just like to ask several questions.

To your knowledge when was the last time that any mining operation was carried on at this property?

Mr. HOLDERER. I have no knowledge of the property other than what is shown in this RFC report, which is 1940.

Senator NEUBERGER. You do not know the last date of any mining activities carried on?

Mr. HOLDERER. Because I have not read the transcripts.

Senator NEUBERGER. I see.

You do not know whether any mining operation has been carried on since the patent was granted?

Mr. HOLDERER. No.

Senator NEUBERGER. The point was made that you had not had experience in mining patent work. Was that correct or not?

Mr. HOLDERER. I didn't get that.

Senator NEUBERGER. It is a little difficult to hear in this room.

I believe a point was made in a question by the Congressman from North Carolina that you had not had previous experience on mining patent work. Is that correct or not?

Mr. HOLDERER. That is right. We had no occasion to do that in the War Production Board, or in the DMA, or DMPA.

Senator NEUBERGER. You know—or perhaps you have not been here—that others who have testified who have been much more directly involved in the case than you are, also testified they have had no experience in mining patent work.

Mr. HOLDERER. And we had lawyers who attended to the legalities of the applications.

Senator NEUBERGER. I am going to say that we are about to recess for today and I would like to make an announcement of quite a substantial change in our plans, the committee plans, and explain the reasons why.

As you know, Under Secretary Davis was scheduled to appear before the committee next Tuesday. The distinguished Senator from Nebraska, Senator Curtis, in whose State Mr. Davis is an official resident.

came to us a few minutes ago and said that Under Secretary Davis had a most important speaking engagement in St. Louis before the United States Chamber of Commerce, I believe, and requested as a matter of courtesy that we reschedule the time when Mr. Davis would appear, so the committee will now be in recess.

I beg your pardon. Mr. Hoffman, will you place what you want in the record now?

Representative HOFFMAN. Yes.

I would like to have this included with the other statements as to the law. In the report in 1950 by the examiner—I think it was Mr. Rice—he referred to section 598 of Ricketts American Mining Law. I want to also offer in addition to that section, section 601 and section 603. I would like to have that printed with the other law.

Representative CHUDOFF. Is that a current volume or current edition? Is that a current law?

Representative HOFFMAN. Oh, that is the latest.

Representative CHUDOFF. I know they changed the law a couple of times.

Mr. COBURN. Could I ask the witness a question?

Senator NEUBERGER. Yes.

First, I had better complete this announcement as to when we will recess to.

After we recess in a few minutes we will meet again on Thursday, January 26, at 10 a. m., when Under Secretary of the Interior Davis will be the first witness.

I regret to say that I am informed by counsel that quarters where we will meet have not yet been arranged, but that information will be available through the Senate Interior Committee.

Again I want to repeat, so members of the press and other interested parties will know, we will meet again on Thursday, January 26, at 10 a. m., when Under Secretary Davis will appear, and we deferred that at his request.

Do you have a question?

Mr. COBURN. A brief question, and I think it will take a brief answer.

Mr. Holderer, as a mining engineer and also as one who is familiar with the mining laws, is there anything in the mining laws that would have prevented the Al Sarena people from mining this property had there been valuable ores there prior to the time they got patent?

Mr. HOLDERER. I do not think so.

Mr. COBURN. You do not think so?

Mr. HOLDERER. No.

Mr. COBURN. Could they have sold that ore?

Mr. HOLDERER. They could have sold that ore.

Mr. COBURN. And they could have used such trees as were on the property in their mining operation?

Mr. HOLDERER. That is my belief.

Senator NEUBERGER. We stand in recess until next Thursday at 10 a. m.

(Whereupon, at 3:55 p. m., the hearing was recessed until 10 a. m., Thursday, January 26, 1956.)



## AL SARENA CASE

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THURSDAY, JANUARY 26, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION OF THE  
SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS;  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 10 a. m., in the caucus room, Senate Office Building, Washington, D. C., Hon. W. Kerr Scott (chairman of the Senate subcommittee) presiding.

Present: Senators W. Kerr Scott (N. C.); Richard L. Neuberger (Oreg.), and George W. Malone (Nev.).

Also present: Senators Henry C. Dworshak (Idaho); Thomas H. Kuchel (Calif.); Frank A. Barrett (Wyo.), and Barry Goldwater (Ariz.).

Present: Representatives Robert E. Jones (Ala.); Clare E. Hoffman (Mich.), and Charles Raper Jonas (N. C.).

Senator SCOTT. The meeting will please come to order.

Mr. Davis, due to the high position that you hold, the chairman will not ask that you be sworn in as we have the others unless the members of the committee insist upon it. So will you just have a seat, please, sir? We are glad to have you here today and I assume you have a written statement which you would like to read at this time. If so, I am asking both the staff and all members of the committee to refrain from interrupting you for any questions until you have finished reading it, after which, Mr. Coburn, Chief Counsel for the Senate Interior and Insular Affairs Committee, will initiate the question-and-answer period.

At this time it will be helpful if you will permit staff members to start their examination of the memorandums and records you were requested in my letter of January 24 to bring with you.

Senator BARRETT. Mr. Chairman, I am not a member of this subcommittee, but in all my experience around here for the past 14 years it has been left to the discretion of the witness whether or not he would prefer to be interrupted when he is making a statement for questions and answers. Unless there is some great objection by the committee I would urge that that practice be followed at this time.

Senator SCOTT. It does not make any difference.

**STATEMENT OF HON. CLARENCE A. DAVIS, UNDER SECRETARY OF  
THE DEPARTMENT OF THE INTERIOR**

Mr. DAVIS. Mr. Chairman, my preference is to make this statement without enough interruptions to break the continuity of it, which I think you will recognize as desirable.

Senator BARRETT. Do I understand the witness would prefer not to be interrupted, or would he permit interruptions?

Mr. DAVIS. I think, Senator Barrett, I should prefer to not be interrupted until I have completed the statement.

Mr. Chairman and gentlemen of the subcommittees, I am glad at last to have the privilege of appearing before you to testify to the facts with relation to these claims of Al Sarena Mines, Inc.

These claims and the problems they presented were left pending by the preceding administration. They constituted a matter which had been going through the various levels of bureaucracy of the Department of the Interior for more than 5 years, before I ever heard of them.

I should next point out to you that the matters here involved are not matters of discretion or of political action, but are matters of law and evidence. For that reason, for a very great many years the authority to decide appeals with relation to public lands has been vested in the Solicitor of the Department. His opinions on these matters are final. They are not reviewed by the Secretary unless the Secretary specifically requests it, and they are not in ordinary course ever presented to the Secretary at all. I should like to make clear, therefore, that Secretary McKay has had no part in this sequence of events, and aside from 1 or 2 mentions of it in staff conference he was totally uninformed of any of these events until after the opinion in the case was rendered.

I came into this Department on February 17, 1953, after having been engaged in the practice of law in Nebraska for 37 years, during which time I had been attorney general of the State, counsel to my State in many interstate matters, and counsel to all of the judges of the supreme court of my State, and many other legal connections with which I shall not tire you.

Immediately after taking over the office, I asked the staff for a general briefing of the matters which were pending in the office and of its general duties. At that time I discovered that there were 278 land appeals cases pending in the Solicitor's office, of which the Al Sarena Mines was just another case so far as I knew.

I was informed by the staff that there were several of these backlog cases which had not been handled which were considered "troublesome" and some of which were characterized as "headaches" and had been left for my handling. I was advised that the Al Sarena case was in that category.

On March 8, 1953, our records indicate that Mr. Garber, administrative assistant to Congressman Ellsworth, called me. I did not talk on the call and have no idea what it was about. On March 20, 1953, during my absence from the city, Mr. Garber called and talked to my secretary, requesting an appointment for some of Congressman Ellsworth's constituents. Pursuant to that call, I first met the two brothers McDonald March 30, 1953, when they came into the Solicitor's office. I then learned for the first time that Al Sarena mines were located in southern Oregon; that one of these men lived in Oregon and

the other in Alabama; and that they had been having trouble with reference to some mining claims.

The McDonalds asked the privilege of telling me all about their pending case, and since I had never heard of it before, I told them to go ahead.

They probably talked for an hour and recited a very long list of things which they claimed as grievances against the Interior Department and its long delay in the granting of their patents.

As well as I can remember, in substance, they told me:

That they had a group of 23 mining claims, 10 of which had been filed on as early as 1897, and all of them prior to 1939; that for a long period of years they had been hoping to develop these claims into a profitable mine; that their father was a physician in Mobile, Ala.; that one of the brothers lived in Mobile but that the other brother had lived for years on this mining property.

They told me there was invested, they estimated, nearly \$200,000 in the development of this mining property; that they had well over a mile of tunnels in the mountain; that they had constructed a 100-ton-a-day mill; that they had bunkhouses, an assay lab, a mess hall, tool sheds, had built access roads, et cetera; that they had had dozens of assays made on the claims, some of which showed a high mineral content.

Then they recited a long history of their treatment by the Bureau of Land Management; that they had applied for a patent to the claims in 1948, and despite the lapse of 5 years, still had not received a final decision. They outlined as best a layman could a very long administrative process through which the appeal had gone in the Bureau of Land Management and the Department.

They told of filing their applications for patent and of paying the \$5 an acre standard fee, which is historic in connection with the patenting of such lands. They had with them, I believe, a copy of the final receipt of the land office issued in 1949, showing that all payments had been made. They complained that the land had been transferred by the Federal Government to the tax rolls of the State of Oregon listed in their name, and that taxes were accumulating on it and they were threatened with foreclosure under the Oregon tax laws.

They attacked most bitterly the procedures of the Bureau of Land Management. They described in great detail the hearing on their patent application which had been held in Oregon. They insisted that they had not been given a fair hearing. They insisted that the Department was prejudiced against the granting of mining claims. They insisted that the Bureau of Management had put the Forest Service up to objecting to their claims; that the mineral examiner of the Bureau of Land Management was in collaboration with the Forest Service to help defeat their claims.

They told me the hearing in the Bureau had broken up in dispute and they had walked out; that the hearing examiner had taken the testimony of the Forest Service in their absence without their cross-examination; and they complained that the record before me as Solicitor was incomplete, did not contain much of the evidence which they had filed in the Bureau in Portland; contained only one side of the evidence; and that many of the assays which they had tendered were not in the record.

They told me that they had received the advice of a half-dozen mining engineers, State geologists and other persons familiar with mining, at the time they acquired the claims and from time to time thereafter. They named several persons in that connection who were unknown to me but some of whose opinions now constitute a part of the file, and that all of these mining engineers had indicated they had a mineral deposit which could be developed into a valuable mining property.

They told me that Congressman Frank Boykin of their home city of Mobile, Ala., had interceded in their behalf, and that because of the delay which they felt they were getting, they had started a suit in Alabama to compel the Secretary to deliver to them the patents for which they had applied. That suit had been pending for a year and a half undisposed of. They told me that until some disposition of their appeal to the Department was made, their hands were tied: that if they were granted patents, they hoped to develop a sizable mining operation on the property, but that they could not finance any such operation while their patents were under contest.

They claimed they had tendered several assay reports to the Bureau in Portland which showed paying minerals on the claims, and that many of these assays were not included in the files on which I, as Solicitor, was supposed to pass judgment.

If true, these were serious accusations which I think would cause anyone to examine the records to see if they were true.

At that stage I did make enough of an examination of the file to discover that the assays which they claimed they had filed were not present in the Solicitor's Office; that the evidence in the Solicitor's file consisted largely of testimony by the Bureau of Land Management and the Forest Service; and that all of the evidence which claimants said they had produced was not in the file.

I discovered that the claims had been registered, 10 of them in 1897; that there seemed to be little question there were minerals in more than paying quantities on at least some of their claims, and I discovered that the reports in the files made reference repeatedly to the widely diffused mass of mineral-bearing material which constituted the area on which the claims were located.

It was perfectly obvious to any lawyer that the evidence of the claimants was not in the file, and that on the state of the record as it then existed, judgment on the claimants' evidence could not be made.

I think it is fundamental to both the judicial and administrative process that both sides are entitled to be heard, and that the evidence of both sides is entitled to be considered before final judgment is rendered.

The McDonalds had with them carbons and photostatic copies of numerous assays which they insisted I should take and consider as evidence in connection with their appeal. I told them that I was in the position comparable to a supreme court, and that I could not accept evidence at that stage of the proceedings, although they were welcome to leave their assays if they wished.

They had also prepared a long document of some 28 pages, listing the chronology of events and many of their complaints. It was a document, of course, prepared entirely from their viewpoint, but it contained many points which, if true, I regarded as serious. It is

exhibit No. 63 as the files of the Department have been indexed, and it has been available to the staff of your subcommittees.

At the conclusion of that interview, I told these people that I would try to expedite a determination of their case; that I knew nothing about it except what they had told me; but that I did feel somebody ought to decide and settle any matter which had been pending for 5 years.

As soon as I could find time, I undertook to make an investigation of the files of the case to ascertain the accuracy of the representations which had been made to me. About that time, Mr. J. Reuel Armstrong, a lawyer from Rawlins, Wyo., joined the Department and I referred the files to him for further examination.

Thereafter, from time to time, the matter of the Al Sarena case and what we might do to dispose of it was discussed between us.

The mining laws: I think it should be made clear at this point what the mining laws provide. Under the mining laws which had not been changed since 1872 until last year, a miner who stakes out his claim on public lands and files on it, spends \$500 in the development of it, and proves that he has a valid discovery of minerals, is entitled to a patent.

Mr. Chairman, it is just that simple. There is no reference to timber in the mining laws; whether there is much, little, or no timber makes no difference whatever as a matter of law.

All of the mining business of the West has been established under that law. Throughout the years there have been literally thousands of mining claims gone to patent without the slightest regard to the timber on the land. As a matter of fact, it is not until very recent years that the timber attained sufficient value to be very material. In 1897, at the time the earlier of these claims were filed on, I am told they were cutting down timber in Oregon to get rid of it so the land could be used as farms; that in the 1930's there were hundreds of tax foreclosures on timber in Oregon; and the timber was sold for \$2 to \$5 an acre.

Whatever may be said of the situation in 1956, it would seem clear that at the time these mining claims were filed on, the timber was of little value, but the impression that has been conveyed to the public is that these people filed on these claims merely to get the timber.

I should point out to you that there was a substantial period of years prior to 1953 in which the timber values were continually rising but there was no amendment of the mining laws.

The area: The area in which these claims are located is what the miners call a widely diffused mineralized mass. There are no special rich veins which can be located with certainty. There is gold, some silver, some lead, some zinc, and other minerals widely diffused on the claims. To work such a mine requires the handling of large amounts of material, but in the opinion of the many mining engineers consulted the claims were well worth developing.

The files will verify the fact that there are over a mile of tunnels on this property; that there is a 100-ton-a-day mill; that there are bunkhouses, an assay lab, a messhall, tool sheds, access roads, et cetera. The mine has produced throughout its history some 30 to 40 thousand dollars of gold. A pilot operation sometime in the early 1940's, some lead and zinc was produced in minor quantities. In 1943 the mine was closed, allegedly because of the shortage of labor and materials.



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In this period of 50 years before 1948 we are told there were literally hundreds of assays made on various parts of these claims. They must have been reasonably hopeful or no one would have been foolish enough to continue to put money in the mine.

In this connection your attention should be called to a report of the Geological Survey entitled "Geological Survey Bulletin 893" published in the year 1930. On page 131 and following of that report is a description of this mine, then known as the Buzzard area, giving the history of various mining operations in connection with which it was pointed out that at that time:

The mine workings consist of 3,334 feet of drifts and crosscuts, 1,000 feet of raises and winzes, and 75 feet of open cuts and trenches.

The minerals on the land are described generally, and I shall not take your time to read into the record the description given by the Geological Survey. I should also point out that immediately preceding the description to which I have referred, is plate No. 22, which is a sketch of levels of the Buzzard Mine, Jackson County, Oreg., to show to someone more familiar with mining than I am the approximate layout in 1930.

I have, personally no idea of the cost or the value of these improvements. I am dependent entirely upon the estimates of mining engineers and others, but it seems to be generally considered that there is somewhere from \$150,000 to \$250,000 of improvements on these various McDonald claims.

The files indicate the following sequence of events:

The patent applications: On October 1, 1948, the McDonalds filed applications for patents on all of their 23 claims.

Eight of these claims were not contested by the administration at that time. These claims have on them the same general type of timber that is on the others. They admittedly have a mineralized gold value that would justify their development, and they have been commonly accepted as valid claims by all parties to this controversy from the very beginning.

I think this is somewhat important, for it demonstrates that there are minerals on this mountain and in the immediate vicinity of these 15 claims which are under dispute, since all of the 23 claims are adjacent to each other.

It is also interesting to note that among the claims not contested by the preceding administration were the last two claims which were not even filed upon until 1939, and yet admittedly have an adequate mineralization.

It has seemed to me that this substantiates the reports of all the mining engineers that the minerals on these claims are widely diffused throughout the whole area, and it is probably impossible for anyone to draw a distinct line around the mineralized area until actual development takes place.

October 1, 1948, the regional forester's office was officially notified by the mining company of the filing of patent application.

October 4, 1948, an affidavit of possessory right was filed by the claimants with the Bureau of Land Management.

October 25, 1948, the land office issued an official receipt for the filing fee of the patent application.

December 7, 1948, the Forest Service was officially notified by the Bureau of Land Management of the pending patent applications.

January 13, 1949, final proofs were filed by the claimants with the land office.

On February 8, 1949, exhibit 71, the claimants were advised by the Bureau of Land Management that the purchase money due was \$2,375, at the rate of \$5 per acre or fraction thereof, and they were advised that upon the receipt of a properly executed application to purchase, and the required amount of money, the papers would be examined with the idea of issuing final certificates.

February 10, 1949, exhibit 75, the company filed an application to purchase all of the claims.

February 17, 1949, exhibit 74, the Bureau of Land Management issued its official receipt for the entire price of the property in the amount of \$2,375.

I have read much about the \$5-per-acre price at which this land was sold. Please let me emphasize that this price is fixed by law, that the Interior Department has nothing to do with fixing it, and in any event was the amount billed and the sum paid in 1949 and receipted for under the previous administration.

March 17, 1949, exhibit 51, the regional forester advised the Bureau of Land Management as follows:

Thank to Mr. Hattan, my attention has been called to the fact that I neglected to ask you to withhold action on this application until the Forest Service has had an opportunity to have these mining claims examined. Mr. Hattan is planning to examine these claims for us as soon as weather conditions will permit. Until his report is received we will appreciate it if action can be withheld in accordance with the provisions of regulation 44LD360.

This is directed to your attention for the reason that Mr. Hattan was an employee of the Bureau of Land Management and not of the Forest Service; that the Forest Service had been notified 3 months before of the filing of these claims, and apparently had done nothing about it.

Your attention is directed to the fact that one of the complaints of the McDonalds at all times has been that the Bureau of Land Management asked the Forest Service to intervene in this proceeding; that the proceeding was before the Bureau of Land Management; that the Forest Service used a Bureau of Land Management employee to make an examination for the Forest Service, while at the same time the Bureau of Land Management was undertaking to judge the validity of the claims.

In this connection your attention is directed to a photostatic copy attached to this statement of a letter from Mr. F. W. Libbey, director of the Oregon State Department of Geology and Mineral Industries, dated June 9, 1953, and addressed to the Honorable Harris Ellsworth, the last two paragraphs of which are as follows. The entire statement is available:

Although I hold no brief for people who locate mining claims for the purpose of obtaining timber, I believe that Bureau of Land Management people have set up roadblocks in the way of legitimate mining-claim applications for patent whenever there is timber on the claims, and have been making their own rules concerning the legal definitions under the mining laws.

It seems to be fairly well established that both the Bureau of Land Management and the Forest Service will battle to the last ditch the patenting of mining claims which contain merchantable-timber irrespective of the mineral values on the claims.

April 6, 1949, the Bureau of Land Management issued its Register's Final Clearance of Mineral Entry, stating, however, on the certificate:

Patent will be withheld by the Bureau of Land Management pending a report by the regional administrator, region 10, upon the bona fides of the claim.

April 14, 1949, exhibit 75, claimants were advised by Mr. Leonard B. Netzorg, of the Bureau of Land Management, that—

the Forest Service requested this office on December 15, 1948, to make a field examination and report on the mineral application because it does not have employed a qualified mineral examiner.

It will be noted that the date stated in this letter, December 15, 1948, does not conform to the date of the letter of the Forest Service just quoted, March 17, 1949, exhibit 51.

About this same date the Bureau of Land Management caused all 23 of the claims to be transferred to the tax rolls of Jackson County, Oreg., and listed on the county tax rolls for taxation in the name of Al Sarena Mines, Inc. Subsequent thereto, there is a tax receipt in the file showing that the mining company paid 1950-51 taxes in the amount of \$413.29; exhibit 80.

February 10, 1950, exhibit 50, the Bureau of Land Management, Washington, ordered adverse proceedings against allowing the claim on the ground that there was no adequate proof of mineralization or of necessary improvements. The Bureau of Land Management knew at the time that the claims were in a national forest.

March 14, 1950, a month later, exhibit 49, the Bureau of Land Management reversed its position and ordered the adverse proceedings vacated on the ground that such proceedings, if any, should be brought by the Forest Service.

April 13, 1950, the United States Forest Service filed notice of protest against 15 of the 23 claims, based on charges that the lands were not mineral and that proper amounts had not been spent for their development, and asking the claims be declared null and void.

April 25, 1950, notice of this contest was sent to Al Sarena by registered mail.

May 22, 1950, Al Sarena filed an answer denying the Forest Service's charges, demanding a patent.

June 6, 1950, Congressman Frank W. Boykin, of Alabama, wrote to the Secretary, exhibit 47, urging prompt investigation on behalf of Mr. McDonald who "is a close friend of mine and my constituent."

August 9, 1950, exhibit 46, memorandum to files by Mastin G. White, then Solicitor, Department of the Interior, stating that McDonald had asked for a speedy hearing; that he had promised a speedy hearing, and a teletype would be sent to the manager of the land office in Portland fixing an early date for the hearing in this proceeding.

August 9, 1950, Director Clawson of the Bureau of Land Management ordered the land office manager in Portland to hold an early hearing in the Al Sarena case.

August 15, 1950, this was answered by a telegram objecting to an early hearing.

August 17, 1950, Director Clawson sent a telegram to the regional administrator of the Bureau in Portland, stating:

Upon request of Congressman Boykin, Solicitor White assured him that a hearing on this case would be held prior to September 23 in order to spare the company serious financial loss. Under the circumstances a hearing prior to this date is essential. Please arrange for it.

On the following day the land office manager sent to Washington for file.

September 13, 1950, a hearing was held on the claims before the Bureau of Land Management, Portland. A transcript of the hearing is in the files. At the hearing the attorney for Al Sarena filed demurrers and insisted they be ruled on before proceeding with the hearing. He contended he had an agreement with Mastin White, Solicitor, that the matter would be heard according to the rules of the Federal courts rather than the rules of the Department, and when the examiner refused to proceed in that manner, a scene ensued in which the Al Sarena attorney and prospective witnesses quit the hearing and refused to attend. Any such agreement is explicitly denied by Solicitor White, exhibit 77, but was still insisted upon by Al Sarena counsel.

October 2, 1950, Pierce M. Rice, manager of the Portland office, who had heard the case, sent his views to the Director of the Bureau of Land Management, Washington, with only a recommendation instead of a decision, stating that because of demeanor of counsel for the mining company, an orderly hearing had not been held, but he was submitting the case with only a recommendation that the claims be denied. In his findings, however, he states a summary of the evidence of the Forest Service by Mr. Robert G. Leavengood, timber management assistant:

He estimated that the present merchantable timber to have a value of approximately \$77,000 and, if cut, there would remain a 25-percent stand of 3- to 14-inch growing stock.

November 2, 1950, exhibit 84, Associate Director Zimmerman, Bureau of Land Management, sent a letter to Congressman Boykin advising him that Solicitor White had requested that the decision in the case be expedited. The matter is under immediate consideration and it is hoped that the decision will be out in a very short time.

November 24, 1950, exhibit 52, the Washington office sent the case back to the Portland office with directions to make a decision.

December 14, 1950, exhibit 34, the Portland office rendered a decision sustaining the Forest Service.

April 27, 1951, exhibit 51, the Assistant Director, William Zimmerman, of the Bureau of Land Management, sustained the decision of the Portland office.

The matter was appealed to the Solicitor on June 1, 1951, exhibit 27, and so far as the record discloses, no action was taken from that date for the following 20 months prior to the time I assumed office in February 1953.

The Alabama suit: July 31, 1951, the company started suit in the Federal district court in Alabama against Oscar Chapman, Secretary of the Interior, to compel delivery of the patents, exhibit 70. Since neither the claims nor the land nor the Secretary were in Alabama, it would be clearly apparent that there was no jurisdiction in the court. Interior referred the matter to the Justice Department to defend on August 24, 1951. Justice filed a motion for summary judgment, exhibit 68.

September 12, 1951, exhibit 67, Justice filed a motion to quash the proceeding. It would seem that if these motions had been called up

in court at any time the Alabama suit would have been dismissed and the way cleared for departmental action, but, in fact, this suit was used as an excuse by the Department to keep from passing on these claims.

An example is an undated memo in the files which you may identify as exhibit 65, photostat attached, which says:

We will keep this "on ice" until after the final disposition of the Alabama case.

(Signed) M. G. W.

It was initialed.

The missing records: After the violent protests from the McDonalds that they have been shabbily treated, that much of their own evidence was not of record, and that a lot of evidence which have been filed had not been sent to Washington, I caused inquiry to be made of the Portland office as to whether there were additional papers and documents in that office which had not been sent forward, and some documents were forwarded.

These may have well been omitted from the record because of the confusion that arose at the hearing and because they had been tendered at other times, or because of the admitted confusion or reluctance of the manager of the Portland office to pass upon the question.

The fact that the record was not complete is, I believe, substantiated by exhibit No. 90, a letter from Solicitor Mastin G. White, dated August 3, 1951, addressed to Al Sarena Mines—there is a carbon on the file—which says:

It appears upon the basis of your letter dated June 23, 1951, as supplemented by information received from the manager of the land office to the effect that the reporter failed to obtain a complete transcript of the earlier portion of the proceedings at the hearing on September 13, 1950, that if you desire a further opportunity to submit evidence bearing on the question whether valuable mineral deposits have been discovered on the claims involved in your appeal (A-26248), it would be appropriate to remand the case for a supplemental hearing with respect to that issue \* \* \*

The statement so frequently made in the press and perhaps in your record to the effect that these claims had been denied by the previous Secretary of the Interior is not supported in any manner by any document of any kind in the record. On the contrary, there is a letter dated September 27, 1952, purported to be from George F. Rock, attorney in Denver, which says:

DEAR OSCAR: You will recall that I mentioned a matter pending in your office when you were in Denver. The case is that of the Al Sarena Mines, Inc., of Trail, Oreg., and is pending in the Solicitor's Office.

I will appreciate it very much if you will make inquiry into this matter at your first opportunity and let me know if anything can be done toward arriving at an amicable settlement.

With very best personal wishes, I am,

Sincerely yours,

(Signed) GEORGE

In reply to that letter, there is a carbon copy of a letter Secretary Chapman wrote as follows, on October 9, 1952:

DEAR GEORGE: In compliance with the request contained in your letter of September 27 to me, I have inquired regarding the status of the appeal of Al Sarena Mines, Inc., which is pending in the Office of the Solicitor.

The appeal (A-26248) is from a decision of the Assistant Director of the Bureau of Land Management, who held for cancellation mineral entry Oregon 095 insofar as that entry embraces 15 lode mining claims situated within the Rogue River National Forest in Oregon.

After the receipt of the appeal by the Solicitor, and while it was under consideration, the corporation instituted in the United States District Court for the Southern District of Alabama a suit against the United States and the Secretary of the Interior. As the suit involves the same subject matter as the appeal in the administrative proceeding, further consideration of the appeal has been postponed until after the final disposition of the litigation. The suit is still pending.

Sincerely yours,

(Signed) OSCAR,  
*Secretary of the Interior.*

From other letters it is apparent that at least as late as November 22, 1952, Secretary Chapman had not passed on the case and had not even considered it, and there are no records to the contrary, so far as the files disclosed.

The procedure adopted: In view of the substantial delays and the muddled state of the record in this case, I was frankly puzzled to know what to do with it.

It seemed to me that there were three possible alternatives.

The first and most obvious alternative was to send the matter back to the Bureau of Land Management in Portland to start all over with another hearing.

At first that seemed to me to be the thing to do. I seriously considered it, but in view of the fact that 5 years had then elapsed during which this matter had been dragging along; in view of the accusations of collusion that the McDonalds were making against the Bureau of Land Management and the Forest Service; in view of the fact that the first hearing had broken up in confusion; in view of the fact that much of the evidence of the claimants either intentionally or unintentionally did not appear in the record which was sent to Washington; and in view of the fact that the hearing officer had been reluctant to render a decision; the record of the entire affair was not such as to inspire complete confidence in me of any speedy determination of the matter, and it seemed to me a certainty that to remand the claims to the same field office which made the original record would be a vain act.

The same suspicions and hostile attitudes would be present and this course would simply defer any final disposition of the case another period of years. If there was merit in the claims, the claimants were entitled to a determination of the controversy so that they could finance operations if they wished and pay the taxes which were accumulating. If there was no merit, they should be told.

For these reasons it seemed to me that the alternative of sending the case back to Land Management was not a desirable alternative.

The second alternative was to somehow get the matter into court and let the court decide it. This was discussed in detail but proved to be legally impractical. If the claims were sustained, of course nobody would appeal. If the claims were denied, then it seemed clear that the Solicitor's finding of lack of minerals would be conclusive on the court; and since that was the sole point involved, the company could get no complete review in the courts, even though an adverse ruling were given.

The third alternative seemed to be to get some independent assay of the minerals, if any, on these claims from some disinterested agency that was not a party to any of the previous controversy. I felt that I was in a situation quite comparable to that of a court in a case



where four doctors say the defendant is sane and should be executed and four other equally distinguished doctors say that he is insane and ought to go free.

Under those circumstances the procedure is quite common that the court may call in disinterested experts of its own choosing, hear their testimony and rely on it if it is believed reliable.

The question was who could be chosen as an impartial medium to secure new assays and get the facts straight. Under those circumstances and after staff discussion in Interior, as well as discussion with other lawyers on the Solicitor's staff, I made up my mind that the thing to do was to submit the problem to the Bureau of Mines to secure new assays which would be dependable and beyond dispute.

On June 4, 1953, I discussed the matter with Assistant Secretary Felix Wormser, in charge of the Bureau of Mines, and received some recommendations from him as to 1 or 2 prominent mining engineers whose advice might be dependable.

Meantime, I had discussed the matter with Congressman Ellsworth on June 1, 1953. I told the Congressman that I was much disturbed as to who was believable in connection with the mineral content of these claims. As I recall, I told him that it would be very helpful to me and I would have much more confidence in the situation if he would get for me the opinion of 3 or 4 mining engineers who knew something about the property and who would give their opinion as to whether it was a sincere mining effort.

Pursuant to that suggestion and apparently on June 4, 1953, Congressman Ellsworth wrote to four mining engineers who had previously examined the property. A copy of his letter to them, as he forwarded it to me, is shown as Exhibit 12a in a photostat attached to this statement.

On June 24, 1953, Mr. Ellsworth submitted to me the originals of the responses to his letters of inquiry. His transmittal letter is shown as Exhibit 12, a photostat attached to this statement. The first response is by Alan Kissock & Co., 70 Pine Street, New York, Exhibit 13, photostat attached, in which Mr. Kissock stated that:

There is, however, absolutely no question but that there is on the Al Sarena claims a tremendous mineralized area and in my opinion it is definitely a valid mineral discovery under the mining laws \* \* \*

I therefore suggested to the owners that they should patent their ground and I understand they have sincerely complied with all the necessary requirements to do so. In my opinion this application for patent very definitely merits favorable consideration.

Very truly yours,

(Signed) ALAN KISSOCK

The second letter is from G. Cleveland Taylor, a mining engineer of long experience, then living in Sacramento, and a registered professional engineer of that State, shown as exhibit 14, photostat attached. Mr. Taylor had been quite familiar with the mine as the registered mineral surveyor who had examined the claims. He stated:

I surveyed the claims for patent, spending some 2 to 3 months on the ground, covering the area quite thoroughly, both on the surface and underground.

My conclusion was that a patent should be granted to the applicants. This has been for many years what might well be termed a legitimate mining operation \* \* \*.

The present owners, who acquired the rights of the original locators, have always regarded the mine as a broad-zone and have predicated their activities on that theory \* \* \*.

Of course a great deal of systematic drilling or other additional development work is necessary to actually prove a large low-grade ore deposit, but there appears to be sufficient widespread mineralization to prompt a prudent man to carry out such development.

The third letter is from Mr. D. Ford McCormick, who I believe has already appeared before your subcommittee and whose credentials, I understand, are as high as any mining engineer in that region, shown as exhibit 15, photostat attached.

Mr. McCormick was, of course, employed as a consultant by the McDonalds, which quite naturally subjects him to the allegation of prejudice. Among other things, Mr. McCormick says:

Yes, I would say that the Al Sarena, Inc., group of claims has an excellent chance of developing into a large low-grade operation if a well-planned development and exploration program is carried out at the time when circumstances are right for a profitable operation if the property proves out.

The next opinion is from Col. J. E. Morrison, a registered mining engineer of the State of Oregon, then in the United States Army, as I understand it. His letter is attached as photostat exhibit 16a. Among other things, he said:

There is a fairly large area of porphyry on Elk Creek which has been subjected to one or more periods of mineralization. Gold, silver, and other metals have been deposited along the cracks, crevices, faults, and where the formation was porous enough for the mineralizing solutions to penetrate. I have sampled and seen the assays of over a thousand samples from this mineralized area. Like all mineralized areas, the values do not run uniform throughout. Samples from the more mineralized areas will run as high as \$10 or more per ton. The low assays are obtained from the hard porphyry, which the mineralizing solutions had not penetrated. The Al Sarena people have studied this area and consolidated it into a group of claims. All 23 claims, as I remember them, show evidence of this mineralization and do carry gold and silver values.

This property has been examined by a number of reputable mining engineers. Based upon the findings and recommendations of these engineers, the owner's have spent thousands of dollars and also their time in developing the property into its present state. There are a number of large, low grade properties in North America that have made a success of the operation on lower values than those indicated at the Al Sarena. The 90-day test run proved to me it could be made a successful operation. To declare a portion of this group of claims to be nonmineral, in my mind, would be a gross injustice to the owners who have spent so much time and money in developing the property.

Again apologizing for the delay in answering your letter.

Sincerely yours,

J. E. MORRISON,  
*Mining Engineer,*  
*Oregon Registry No. 1901.*

Mr. Chairman, I have quoted these opinion of mining men in order that you might know that before taking any action on this matter I had secured what I felt was at least enough evidence to justify my regarding the patent application as having been made in good faith.

These 4 engineers, 1 from New York, 1 from Eagle Point, Oreg., from Sacramento, Calif., and from the Army, wrote these letters, apparently with no consultation between themselves, and while they had all, from time to time, taken a look at this property, there is no evidence that they were receiving any compensation at the time, with the possible exception of Mr. McCormick, or had any interest in the matter beyond that which any professional engineer might have.

Therefore, on September 3, 1953, I sent a memorandum to the Bureau of Mines and letters to the Al Sarena Mines, Inc., and Mr. McCormick, as their engineer, assigning the task, and, as I believed, fixing responsibility.

The letter to the Al Sarena Mines, exhibit 33-2, is as follows:

AL SARENA MINES, INC.,

*Trail, Oreg.*

GENTLEMEN: Pursuant to my conversation with Mr. Garber, the following modus operandi is acceptable to me in acquiring further evidence of a valid discovery on your contested claims:

1. I should like N. E. Volin, a mineral expert from the Bureau of Mines in Spokane, to accompany Mr. D. Ford McCormick when samples are obtained for assaying purposes. In the event Mr. Volin is unable to take the assignment, he will designate one or more substitutes from the Bureau of Mines who will be available.

2. The two men may arrange the time and place of meeting to suit their convenience. They should meet as promptly as possible, however.

3. Accurate record should be kept of the location from whence each sample is taken.

4. Samples should be taken from each of the following claims: Henry Applegate, J. W. Merritt, Rainboe, Sulphide, Della McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb, J. D. McKinnon, Manganese Claim, Staples, Arroyo Verde, Alabama, and LaJolla.

You may take as many samples of whatever weight from each claim as you desire.

5. The samples should be retained in the possession of Mr. McCormick and the Government representative until shipped or delivered to a qualified assayer who is acceptable to both men.

6. The assay report should be labeled so that they are easily identified to the claims from which they are procured and the reports sent to me promptly.

7. Mr. McCormick's salary and expense and the assaying costs will have to be borne by you. The Government will bear only the expense of its representative.

Very truly yours,

CLARENCE A. DAVIS,  
*Solicitor.*

A copy of this letter was sent to the Bureau of Mines along with a memorandum, exhibit 33-3, which is as follows:

#### MEMORANDUM

To: Director, Bureau of Mines.

From: The Solicitor.

Subject: Al Sarena Mines, Inc.

Enclosed please find a copy of a memorandum which I have sent to the above subject, and a copy of my letter to Mr. McCormick. They are self-explanatory.

In view of the fact that the company did not introduce evidence of discovery at the hearing for patent, it is my desire to give them this opportunity to make their showing. I am aware of the peculiar nature of the area that they say is mineralized and want to approve patent for them if the assays afford us the well-established legal basis therefor. All people concerned should, therefore, cooperate in obtaining samples and assays upon which no doubts will be harbored by anybody. The decision on the application for patent should be considerably easier after we have the new assays.

Mr. Armstrong of my office has talked to you and Mr. Miller concerning this matter and has been told that Mr. Volin at Spokane should be available to represent the Government when the assay samples are taken. I would appreciate your cooperation in sending him the suggested procedure and instruction to contact Mr. McCormick at Eagle Point, Oreg. My principal concern is to have a qualified Government representative present to see that the assay samples are fairly taken from each claim and then delivered to a competent assayer.

CLARENCE A. DAVIS,  
*Solicitor.*

The letter to Mr. D. Ford McCormick on the same date, exhibit 33-1, is as follows:

Mr. D. FORD McCORMICK,  
Route 1, Box 125, Eagle Point, Oreg.

DEAR MR. McCORMICK: As you know, the Al Sarena patent application has been appealed to the Secretary of the Interior. The application, to this point, has been rejected on the ground that the company has not produced satisfactory evidence of a valid discovery on certain of the claims.

In an effort to determine the matter fairly, I have agreed with Congressman Ellsworth, who has interceded on behalf of the company, to ask you and Mr. Volin of the Bureau of Mines, or his substitute, to procure personally, sufficient samples of the deposits on each claim to afford adequate assays on which the Secretary can base his decision on the validity of the discoveries.

I am enclosing herewith a copy of the procedure which I have suggested for you and Mr. Volin to follow. I have also asked Mr. Volin to contact you promptly so that you can arrange the time and place of meeting, convenient to both of you.

Sincerely yours,

CLARENCE A. DAVIS, *Solicitor.*

This procedure of referring matters from one bureau of the Interior Department to another is actually very common. The Interior Department has several highly specialized bureaus of a technical and scientific nature which rank alongside any similar organizations in the country. The Geological Survey, the Bureau of Mines, the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, all have the benefit of years of accumulated experience in certain technical fields.

It has been a common practice for many years when matters arise within the field of one of these agencies regarding which another agency has expert knowledge to refer it to the second agency. This has been done whenever the Secretary feels uncertain of the position of a particular bureau.

Proposed projects of the Bureau of Reclamation, for instance, have been submitted to the Geological Survey or the Fish and Wildlife Service for their appraisal of the situation. Projects of the Bureau of Indian Affairs are frequently submitted to these other bureaus for their advice and guidance. From time to time various Secretaries of the Interior have even set up special groups to advise in the solution of difficult problems.

I am informed of one instance in which this very question of the amount of mineralization on mining claims was referred to the Geological Survey, in the leading case of *United States v. Cameron*, involving mining claims on the Bright Angel Trail in the Grand Canyon. In that case the Secretary referred the matter to the Geological Survey, and I am informed, determined to follow the report of that agency, and was affirmed by the Supreme Court of the United States.

This practice is common wherever the Secretary has felt that a bureau was overoptimistic in its plans, overzealous in its conduct, or where he felt the need of independent advice from one of the other agencies.

As a matter of fact, in the last 2 years the Department has set up an entirely new organization in the Office of the Secretary, called the Technical Review Staff, for the specific purpose of reviewing proposed bureau actions and decisions and advising the Secretary regarding them.

This case was not only a difficult one, but was one in which, in my opinion, the record was not dependable.

The problem involved was to take new mineral samples, dependable samples, on these claims and to have them accurately and honestly assayed. I think it will be conceded that if assays showed adequate mineralization, these people were entitled to their patent under the mining law.

The United States Bureau of Mines is a great technical organization. Out of it for many years have come the finest developments in the field of mineralogy that this country, and the world, have seen. I had then, and I have now complete confidence in the integrity of the Bureau of Mines, and if I may say so frankly, I regret the numerous aspersions that have been cast upon what I consider to be loyal and faithful career employees of that Bureau.

If the Bureau of Mines cannot be trusted to take mineral samples and have them properly assayed and report on them, then I wonder what agency can be trusted with an assignment of this character.

It is, incidentally, a little unfair to attempt to attribute to Secretary McKay in the first year he was in office all of the claimed errors of a Bureau which was completely built and staffed by the preceding administration.

I should also like to point out to you that the personnel of this Bureau had not been in any manner changed by the present administration; that all of these people, so far as I know, had been employed for many years as career people in the Bureau.

Having submitted the matter in the manner that I have outlined, there is nothing that I can add of my own knowledge with reference to what was said or done until after the assays were completed. I should point out to you, however, that the taking of these assays, their preparation and their shipment, as I understand from your record, was all done directly by the Bureau of Mines and the mining engineer consultant of the applicants.

I shall have to leave to the mining people the explanations of how this was done and what they did. I can only point out to you that from the time that I issued the instructions September 3, 1953, until after the assays had been completed and the reports returned, neither I nor any other official of the Department of the Interior outside of the Bureau of Mines, so far as I know, had anything whatever to do with the taking, shipment or assaying of those samples. I relied upon the procedure adopted by the mining engineers.

The reports of the assays: When the assays were completed, as your records already show, duplicate originals were sent to the Bureau of Mines and to the claimants.

The claimants, upon receipt of their copies of the assays, either brought or mailed, and I would have no way of knowing which, a set of the assays to Washington. On December 22, 1953, Mr. Garler, Congressman Ellsworth's assistant, telephoned to make an appointment for me to see the McDonalds, which according to our records I did on the morning of December 24, 1953. The assays do not bear a filing stamp of the Interior Department because they had been hand carried and were delivered in person to me, and only matters received through the Solicitor's docket room bear the incoming stamp. I, in turn, handed them over to Mr. J. Reuel Armstrong, the attorney working on the case.

They appeared to be duplicate originals of the assays. They were on the stationery of the assay company, and the transmittal letter was attached.

Mr. Armstrong worked over them at some length. Each assay number was checked against the corresponding claim from which it had been taken. Photostats of them, bearing his notations, are attached.

On December 29, 1953, Mr. Armstrong came to my office, advised me that a check of the assays had verified what I had been told was the result, and we discussed what should be done about the claims. We were both in my office discussing the matter. We had not received the other set of assays which had gone to the Bureau of Mines, and I suggested to Mr. Armstrong that we call Mr. Appling of the Bureau of Mines in Oregon to find out whether he had one of the sets of the assays and how the situation looked to him.

The call was placed in my name. I am happy that your committee asked for confirmation of that call and that we produced not only the telephone slip showing the call but the operator who placed the call and made the slip originally, the clerk who has had the slip in custody since that time, and further verification by the Department's telephone bill. We showed to you the originals, and we supplied photostatic copies for your record.

Both Mr. Armstrong and I talked at some length—the telephone slip shows 18 minutes—to Mr. Appling. You have heard Mr. Appling's testimony. He went over the substance of his report with us on the telephone and verified the authenticity of the duplicate assays in our possession.

I especially questioned him about the whole matter, the methods of taking the samples, about how carefully they had been guarded against any possible tampering, about how they had been shipped, where to, and asked him why the assay house had been chosen in Mobile. Finally, I asked him as a mining engineer who had been all over the property for several days whether, in his opinion, a man would be justified in developing the property. He stated that in his opinion the property was good enough to well warrant further development.

Mr. Appling has already explained to you why these samples which he took had been sent to Mobile. My instructions to the Bureau of Mines were to select an assay house that was mutually acceptable to the Bureau and to the mining engineer of the claimants. A choice of that nature, by the agreement of parties, is a very common practice, and in this particular case seemed particularly appropriate, in view of the friction and disagreement that there had been between the Bureau of Land Management, the Forest Service, and the claimants.

Mr. Appling advised me that before sending the samples to the Williams Co. in Mobile, the Bureau of Mines had wished to verify the standing of the Williams Co.; that they had called the Bureau of Mines office in Nashville, Tenn., regarding the integrity of the Williams Co.; that the Bureau of Mines office in Tennessee had called the State geologist's office of Alabama which had informed them that the Williams Co. was well known and a reputable assay house. They had also checked the fact that the Williams Co. was on the list of the Department of Commerce as a recognized assay house. These facts, of course, are in Mr. Appling's report. They were also given to me on the telephone and seemed to me at that time adequate evidence of

the integrity of the Williams Co., even though it was the home city of the claimants.

I felt justified in relying upon the same evidence of reliability on which the Bureau of Mines felt justified in relying.

In this conversation Mr. Appling had gone over his entire report in connection with this matter. I asked him to send a copy promptly to me. As I recall, he told me that the copy which he had finished was not very well typewritten and he wished to have it retyped before mailing it in. At any rate, I was given to understand that it would arrive through Bureau channels in due course.

I wish at this point to make very clear that I had before me all of the information and all of the evidence in this case, the assays and the information in the report, verified by Mr. Appling, of the Bureau of Mines.

The opinion: Having this information, the only thing remaining to be done was the preparation of an opinion on the evidence before me.

Before I came into the Department, a draft of opinion had been prepared, I am told, by staff members of the Solicitor's Office, based on the record as it then existed, in which, as I have pointed out, some evidence of the claimants was missing.

There is no record, however, that that preliminary draft opinion was ever considered by the previous Solicitor or signed by him. It did, however, contain a statement of the facts and a discussion of all of the procedural points and irregularities of procedure which appear in the record. These were appropriate to any opinion and comprise the first 12 pages of the opinion in the case.

The only point left to be determined was the question of whether there were adequate minerals on the claims. That, of course, from a legal standpoint was the only question seriously involved. Whether the timber was valuable or not valuable; whether the McDonalds were wise people or foolish people, are points that are not material. If there was a discovery of minerals on these claims, the McDonalds were entitled to patents under the mining law. That was the only point left to cover in the opinion. It depended upon the acceptance of the validity of the assays and the report from the Bureau of Mines which appeared to show adequate mineralization.

In acceptance of that fact, Mr. Armstrong prepared the last 21 1/2 pages of the opinion. The language was modified somewhat by me, and the opinion released on January 6, 1954.

At the time it did not occur to me to have been in any manner more expeditious than the occasion warranted. If the assays were accepted as authentic, that terminated the controversy.

I might also add, although perhaps it is petty detail, that these voluminous files that you see before you do not make a record which is easy to work on intermittently. I can well understand why Mr. Armstrong, after examining these assays and having gone back over this complicated record, felt that he knew as much about it as he would ever know and wished to complete the opinion and put the matter behind him instead of holding it for another period of time and going through it all over again. I think perhaps I shared that feeling.

You must not forget that there had been a constant complaint about delay and a constant pressure for action on this matter through the whole 5-year period that it had been pending. I have intentionally quoted repeatedly from the files to show that under both the pre-

ceding administration and my own there had been pleas to expedite action on the matter, and numerous directives to hasten action had been issued.

The record in the files shows a line of correspondence from Congressman Boykin, of Alabama, highly endorsing the McDonald family and repeatedly asserting that they were being abused and were being damaged by delay and urging that prompt action was necessary. These letters of the Congressman are all photostated and attached to this statement.

In addition to these letters there are numerous other departmental orders and communications, all urging expeditious handling of this matter. There are also several other letters from Congressman Ellsworth, which also are photostated and attached to this statement, directed toward urging some kind of a termination of this controversy and avoiding further continued delays.

In order that the record in that connection may be complete and convenient to you, I should tell you that our records indicate that during the time from February 17, 1953, when I came into office, until this decision was rendered, there were four telephone calls from Mr. Ellsworth's office to me on which I talked to either Mr. Ellsworth or to Mr. Garber, the general substance of which was a plea to expedite this decision. These telephone conversations occurred on April 22, May 4, May 5, and June 25, 1953, and in addition to that I talked to Mr. Ellsworth on June 1 and August 4 in my office.

These calls and telephone conversations were similar to the dozens of other calls which the Solicitor's office received from numerous Members of the Senate and the House when they have matters pending for constituents before the Department.

Mr. Chairman, the language has been used that there was some kind of "high level interference" in this case. I am a little puzzled as to what is meant by that term. I have placed before you very completely the evidence with relation to the various Members of Congress. If you mean by that term interference by Members of Congress, you may judge of it by the record before you.

If you mean by "interference" that the Secretary has overruled the decisions of one of the numerous bureaus, then I must protest the use of the language.

The Secretary of the Interior, and by delegation in this case, the Solicitor, is the final judge of the decisions of the Department. All of the actions of this vast army of 50,000 people employed by the Interior Department can be appealed ultimately to the Secretary for decision.

The system is quite comparable in structure to our judicial system. In both there are numerous decisions made in the field or in the trial court. They may be appealed to bureau chiefs or to circuit courts, and may be appealed to the Secretary or the Supreme Court. If the Supreme Court reverses one of the trial courts, is that "high level interference"? Let me point out to you that when one criticizes a decision of the Secretary merely because it does not follow the decisions of the lower bureaus, one is really criticizing the American system of appeals.

To say that the Secretary should not reverse field decisions or decisions of the bureaus is simply to argue that the decisions of field offices or bureaus should be final, and that we should have a govern-



ment by bureaucracy without interference from the elected executive branch. I hope it was not meant to imply that I am in error merely because I reverse the decision of some bureau. If so, then there is no need for a Solicitor, there is no need for Assistant Secretaries, and there is little need for a Secretary himself.

And let me, as a relative newcomer to the Federal Government, point out to you some startling things that occur by reason of the type of thinking which says that no one should interfere with bureau decisions.

Not long after I came into the Interior Department, I had occasion to review a decision of the field officer of one of our bureaus. I was discussing it with the bureau chief, and it seemed to me the decision was wrong. He was inclined to agree with me, and I ask him what he would do. He said in substance, "I will have to sustain the boys in the field because if I don't sustain them, they will not sustain me."

Such a statement, of course, amounts to saying that an appeal is useless and, that the decisions of bureaucracy should be final. It amounts to a complete abdication of the right of appeal and of the right of elected officials to interfere with the decisions of permanent employees who comprise the bureaus.

I regret the necessity of pointing these things out in this statement, but the implication has been made in the press extensively that merely because a decision was rendered which did not agree with the decision in the field, the top decision was necessarily in error.

There is also running through this case, and certainly through the newspaper comments upon it, a broad conflict of economic ideology.

The wise use of our great national forests is a program supported by all of us. However meritorious that objective, I trust you will agree that we should never distort the law in order to attain it. I have already set forth in this statement a letter from the Director of the Department of Geology and Mineral Industries of the State of Oregon, in which the Bureau of Land Management and the Forest Service are believed to be unsympathetic to the allowance of mining claims. The Department of the Interior for several years, I would suspect, has been equally unsympathetic.

I have already stated the law governing the approval of mining claims, as enunciated by the Supreme Court. It is to the effect that if the miner has filed on these claims, made improvements, and discovered minerals in such quantities to justify him in further exploration and development, the claims should be patented.

It is not required that the mine should be fully developed or should have established a history of profitable operation. Neither is the timber on mining claims material to the allowance of the claim.

That is the way the mining industry was built, and the maintenance of a healthy mining industry is just as essential to the economic well-being of the United States as is the maintenance of other basic industries. For several years the Government has actually been engaged in a program of encouraging mineral prospecting and development.

Much of the economy of the Western States has been based upon mining. The results of mining operations are always speculative, since it is never possible to state with certainty the value of the minerals under the ground.

The patenting of mining claims over the years, therefore, has gone forward by the thousands, based only upon a discovery and the hope

that a profitable venture can be developed. This must be remembered in any consideration of mining problems.

Nevertheless a few years ago the Department of the Interior attempted to inject into the mining laws a standard of discovery which required profitable operation and a showing that the mineral deposits had the greater comparative value than other uses. This is not the standard set up by law.

The Department has the authority to open and close areas to mining locations. When lands are opened they are subject to the mining law as it exists. When they are closed no one can even stake a claim on them.

To allow mining claims to be located and then to judge them on standards other than those set up by the Congress and the Supreme Court is administrative legislation.

If we are to adopt the philosophy that any department of Government is to be vested with such vast powers, then it should be done by an act of the Congress and not by administrative decision.

The timber values: I am reluctant to discuss the timber values, because I must reemphasize at all times that the value of timber on mining claims is not material; that the Congress has never passed legislation which denies mining claims merely because there is timber on them; but there has been comment in the press and I believe from some of the members of your subcommittees to the effect that these claims constitute a timber grab. Let me point out:

1. At the time these claims were filed on as mining claims, there can be no dispute that similar timber could have been purchased in Oregon for as low as \$2 and \$3 an acre. The fact that all the claims were staked between 1897 and 1939 would demonstrate conclusively that at least in the beginning there could have been no thought of any profits out of the timber.

2. The only testimony in the record at the time I passed on the case was the testimony of Mr. G. Robert Leavengood of the United States Forest Service, who has been employed by that agency as a timber management assistant and whose duties were the preparation of timber sales in that district. His testimony is:

We have the two values, the over-story and merchantable timber which could be harvested, incidentally \* \* \* the appraisal on that, using the roads and cutting the timber which the Forest Service would normally cut, leaving perhaps 25 percent standing as growing stock, the value of the timber which we would cut now runs about \$77,000 on the contested claims.

Admittedly, timber has increased in value since this record was made up in 1950, but I have difficulty in believing that it has increased as fantastically as some of the figures which have been so freely used.

3. If the mine has been developed, even without the issuance of any patent, the timber would have been available for the purpose of timbering the mine if underground workings were pursued and would have been largely lost to the Government. Even Mr. Hatton, who examined this property for both the Bureau of Land Management and the Forest Service, in his report said that large amounts of timber would necessarily be used in any underground mining operation, and he further said:

Of the mining methods mentioned above, the central mass, being a low-grade proposition with suitable topography, could probably best be mined by the block-caving method. In any event, this method is the cheapest yet devised for large-scale mining of low-grade deposits.

Such methods, it seems to me, would be destructive of any sustained timber yield. I cite these merely as things to be considered in connection with the charge so freely made that this is only a timber-mining proposition.

In conclusion, Mr. Chairman, I should like to say to you that I am a lawyer. This whole controversy is not now and never been anything more to me than another lawsuit between contending parties.

The problems involved are legal and are not political.

I heard the case in the same mental attitude as any appellate court would hear a case on appeal, trying, from a confused record, to ascertain the truth.

I regret that others have chosen to try this case in the newspapers and to try it on issues which in large part are quite immaterial to the actual problems involved. The Department has been subjected to long weeks of criticism, and I am very grateful for the opportunity, at last, of laying before you all of the facts and circumstances.

Thank you, Mr. Chairman, and now may I make before closing—we have here the files relating to this matter as they have been developed through the years. I would like to mention for the record all of these files have been available to the staff of your committee for many, many months in the past. They have been taken out of our office to the committee room, carried back and forth, and have been of complete access to your staff, members of your committee, at all times.

Thank you very much, sir. I do appreciate at last being called and having an opportunity to lay, if I may say, the other side of this story before your committee.

(The following accompanied Mr. Davis' statement:)

STATE OF OREGON,  
DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES,  
Portland, June 9, 1953.

HON. HARRIS ELLSWORTH,  
House Office Building, Washington, D. C.

DEAR MR. ELLSWORTH: This is in reply to your letter dated June 4 concerned with the patent application of the Al Sarena Mines, Inc., in Jackson County.

I am sorry that I cannot give you an opinion and answers to your questions based on a personal examination of the property. However, some members of our staff visited the property in the early 1940's and I also have had some up-to-date information from Mr. D. Ford McCormick, consulting engineer at Eagle Point. I have confidence in Mr. McCormick's opinion and judgment, even though he has, I understand, done consulting work for the owner of the Al Sarena mine.

Based on information given me by Mr. McCormick, I would feel that there is a possibility of a large low-grade disseminated ore body containing probably gold, silver, lead, and zinc. It appears that the rocks of the area, consisting of volcanic breccias, rhyolite, and andesite, are altered and bleached, and Mr. McCormick states that he sampled over a considerable area on the surface by digging surface pits and found mineralization disseminated in sufficient amounts to warrant the opinion that a large low-grade deposit might be developed. You will, of course, understand that proving the occurrence of a large deposit is a very expensive proceeding since everything about the ore body should be known, including size and quality, before plans may be made safely for the design of the proper kind of treatment plant. That is the reason why only large experienced and well-financed companies are able to develop the large low-grade mineral deposits.

Going back to your question regarding valid mineral discovery under the mining laws, I feel that because of the underground evidence of economic mineralization as described in our reports and the report in the United States Geological Survey Bulletin 893, *Metalliferous Mineral Deposits of the Cascade Range, Oregon*, as well as the record of production, there could be no valid question

raised against the legality of mineral discovery of the claims upon which the minerals have been developed. I assume from your question regarding a large disseminated deposit that the Bureau of Land Management has questioned the sufficiency of mineral discovery on claims included in the patent application which do not have economic minerals exposed in the underground workings. It seems to me in this case, also assuming that Mr. McCormick's statement is accurate, the claims on which pits were dug, and gold, silver, lead, and zinc values found, would certainly qualify as legal locations under the mining laws.

Although I hold no brief for people who locate mining claims for the purpose of obtaining timber, I believe that Bureau of Land Management people have set up roadblocks in the way of legitimate mining-claim applications for patent whenever there is timber on the claims, and have been making their own rules concerning the legal definitions under the mining laws.

It seems to be fairly well established that both the Bureau of Land Management and the Forest Service will battle to the last ditch the patenting of mining claims which contain merchantable timber irrespective of the mineral values on the claims.

Sincerely yours,

F. W. LIBBEY, *Director.*

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., June 24, 1953.

Hon. CLARENCE DAVIS,  
*Solicitor, Department of the Interior,*  
*Washington, D. C.*

DEAR MR. DAVIS: As agreed upon at the time of our last discussions in reference to the Al Serena Mines, Inc., case, Oregon 0665, I have made inquiry of sources as nearly unbiased in their judgment as I could find and at the same time having some substantial mining and engineering knowledge on which some objective opinion might be based.

I am transmitting herewith originals of four responses to my letters of inquiry. Also a copy of the text of the letters directed to each of these parties. An inquiry was directed to a former director of the State department of geology, who is now a colonel in the Air Force. I discover that he is on leave and my letter apparently had not caught up with him.

Three of the parties are professional engineers of high standing in their profession and whose integrity I do not believe can be questioned. Mr. McCormick is a registered professional engineer and is on the Oregon State Board of Engineer Examiners. Mr. Kissock, in particular, is one of the country's outstanding experts in the mining field, listed in Who's Who, with more than 30 years' experience in responsible capacities as engineer and metallurgist and for more than 10 years engaged in mining consultant work.

This inquiry on my part satisfies me that there is no reasonable question as to the bona fide nature of the mineral discovery and compliance with the mining laws by the applicant for patent. I thought you would like to have these statements for consideration and comparison with any reports received as a result of the check which you expressed the desire to have made through reliable sources.

With cordial regards,

Sincerely yours,

HARRIS ELLSWORTH.

JUNE 4, 1953.

It is my understanding that you have some familiarity with the Al Serena Mines, Inc., development in Jackson County, Ore. It would be helpful to me if you would give me your objective estimate of the merit of this operation.

The history of this property since the initial claims were staked in 1897 or 1898 is rather familiar to me, as well as the developments in the last few years following the application for patent on the 23 claims in the broad-zone boundaries.

I am particularly interested in any observations you may care to make as to valid mineral discovery under the mining law, and any opinions or observations you might have as to the potential development of a large-scale low-grade mining operation.

Also, I shall welcome any other comments which might be helpful to me in appraising the merit of the application for patent. Such information and comment as you may be able to give me at your early convenience will be greatly appreciated.

Sincerely yours,

HARRIS ELLSWORTH.

ALAN KISSOCK & Co.,  
New York, N. Y., June 15, 1953.

HON. HARRIS ELLSWORTH,  
House of Representatives,  
Washington, D. C.

DEAR MR. ELLSWORTH: I am pleased to acknowledge your letter of June 4 relative to the Al Sarena Mines, Inc., development in Jackson County, Oreg., and, as requested, I am glad to tell you what I can regarding this project.

The Al Sarena was brought to the attention of Alan Kissock & Co. by Mr. H. P. McDonald and his two sons, H. P. McDonald, Jr., and Charles McDonald. I visited and made a preliminary examination of the property in October 1945, to determine if it might be of interest to us. Briefly the results of my investigation were as follows:

Mineralization occurs in what appears to be a roughly circular "chimney" of rhyolite which is more or less surrounded by andesite. The mineralization is unusually widespread and assuming it to be actually circular it is safe to say that the diameter of the "chimney" is fully 3,600 feet. Within this area it is difficult to find a single piece of rhyolite which does not at least show some pyrite or oxidation products thereof.

I do not have my notes before me, nor do I recall the amount of exploratory surface and underground work that has been done. I do know, however, that this is quite extensive and since all the claims are contiguous the cost of this alone is ample to cover the work performance requirement of the whole group. There are, in addition, a number of camp buildings and a rather complete mill for concentration and cyanidation of the ore.

A mineralized area of this extent would require a thorough investigation to properly evaluate its possibilities. It was obviously too big an undertaking for us to consider, so that I limited my examination to more or less general observations. I did, however, take a number of samples to determine what might be expected of some of the then available rhyolite exposures.

Tunnel No. 1, and laterals therefrom, crosscuts and exposes at some depth a considerable area of the rhyolite and confirms the extensive mineralization evident at the surface. This tunnel level had been carefully channel sampled (cuts were 4 inches wide by 2 inches deep and from 4 to 6 feet in length from faces, floor, backs, and walls) by a Mr. George Sopp. My underground sampling was confined to "spot" samples, taken at 3-foot intervals along the walls, over several hundred feet of tunnel No. 1 and its laterals. In all, I took some 30 tunnel samples and a number of surface samples, which were assayed by Abbot A. Hanks, Inc., of San Francisco, Calif. Although definitely low grade, these samples all showed pyrite and, with few exceptions, at least some value in gold, silver, lead, and zinc. Many of my "spot" samples were taken at the same points as those channeled by Mr. Sopp. Fortunately his sample pulps had been saved and my assays of these pulps checked quite closely with my "spot" sampling of comparable areas.

As stated, our company was not in position to undertake anything of this grade and magnitude. There is, however, absolutely no question but that there is on the Al Sarena claims a tremendous mineralized area and in my opinion it is definitely a valid mineral discovery under the mining laws. My recommendation to the owners was that from their own standpoint, or any interested and capable party, the property warranted a careful geological and probably geophysical study which, if favorable, should be followed by an exploratory drilling program. There could well be localized concentrations within that mineralized area and although the whole, from what is now evident, may not be considered of immediate economic value, nevertheless, it is to just such large low-grade occurrences that we must look for our future supplies of minerals.

I therefore suggested to the owners that they should patent their ground and I understand they have sincerely complied with all the necessary requirements to do so. In my opinion this application for patent very definitely merits favorable consideration.

Very truly yours,

ALAN KISSOCK.

G. CLEVELAND TAYLOR,  
Sacramento, Calif., June 10, 1953.

HON. HARRIS ELLSWORTH,  
House of Representatives,  
Washington, D. C.

DEAR MR. ELLSWORTH: Your letter of June 4 regarding the Al Serena Mines in Jackson County, Oreg., has been duly received and I shall be glad to comply with your request.

I surveyed the claims for patent, spending some 2 to 3 months on the ground, covering the area quite thoroughly, both on the surface and underground.

My conclusion was that a patent should be granted to the applicants. This has been for many years what might well be termed a legitimate mining operation. The owners have apparently carried out a policy over the years which was believed to be in accord with the existing laws for acquiring mineral land. Much surface and underground work has been done in good faith; many times that required for patent.

The present owners, who have acquired the rights of the original locaters, have always regarded the mine as a broad zone and have predicated their activities on that theory. A pilot mill was built and mill tests are reported to have been made on material broken in numerous crosscuts driven back into the shear zone and away from the fissure which had been mined in the early work.

I observed the large shear zone, or broad zone, in many places, but my work did not call for any sampling. Little of the sulphide minerals appear in the shear zone at the surface as it has been oxidized. In some of the shallow surface tunnels, however, galena and other economic base minerals are plainly visible.

Of course a great deal of systematic drilling or other additional development work is necessary to actually prove a large low-grade ore deposit, but there appears to be sufficient widespread mineralization to prompt a prudent man to carry out such development.

Large low-grade mines are made by development, and as the exact location of the ore is not known until drilling or other development work has been done, the operator would not now be prudent unless he had title to an area sufficient to protect the ore bodies expected.

If additional information is desired I shall gladly cooperate.

Yours faithfully,

G. CLEVELAND TAYLOR.

EAGLE POINT, OREG., June 15, 1953.

MR. HARRIS ELLSWORTH,  
Representative, Fourth District, Oregon,  
Washington, D. C.

DEAR SIR: Your letter of June 4 was received upon my return from a trip South. It pleases me to note your interest in our mining industry in Oregon, as well as in our United States of America. If incentive is not entirely snuffed out we may see some important developments in several areas when the time is ripe.

I did some work at Al Sarena Mines, Inc., when the pilot plant was in operation. Gold, silver, lead, and zinc concentrates were made from the more concentrated mineralizations in the Buzzard Mine to demonstrate the grade of marketable minerals and the feasibility of such an operation. Samples were taken at that time over a wide area on a number of claims and these showed that values seemed to be disseminated over a considerable area in the district, indicating the potential of a large, low-grade deposit. Many assays were made of samples taken from pits, across exposed faces in open cuts, and in creek bottom as well as cliff wall exposures of the country rock. Since that time I understand that considerably more work has been done by the Al Sarena Mines, Inc., on their claims in this area. It was, and is, my opinion that further exploration work be done, possibly by drilling followed by tunneling, shaft sinking, and open cuts made where the most and best information can be secured at the least cost to

further prove the indicated values already exposed. This is an expensive and a time-consuming operation. It often requires years of exploration and development work to reach an operating stage for volume production. I need not cite the many such instances that have occurred in our neighboring States of Arizona, California, Nevada, Idaho, and right recently in our own Oregon where we now have, at long last, the development of the nickel deposit at Riddle (which was known about for so many years but just now coming into production), or Yerrington in Nevada; or the laterite and kaolin-sand deposits in the Ione, Calif., district where the groups of claims or ownership of mineralized areas has been kept more or less intact for many years so that the large low-grade deposits can be handled as a unit rather than going through the tedious and often impracticable process of trying to organize many claim owners (some of whom become greedy or impossible to deal with and spoil the whole scheme of development) so that a working plan can be carried out and a property developed and put into production. Yes, I would say that the Al Sarena, Inc., group of claims has an excellent chance of developing into a large low-grade operation if a well-planned development and exploration program is carried out at the time when circumstances are right for a profitable operation if the property proves out.

While writing you, I wish to state that I agree with you regarding the regrettable procedure stooped to by some unscrupulous individuals denouncing claims under false pretenses to try and obtain timber lands or recreation locations, as commented on by you in the article published in the Medford Mail Tribune of June 11, 1953, under the heading, "Bill Would Require Mine Stakers To Develop a Mine," copy of which is attached. There should be some way to prevent this fraud, but to pass a law placing a time limit or even fixed added amounts of exploration or development of mineralized areas seems to me to be unfair to the prospector and discoverer of minerals on Federal lands. The prospector is not usually a rich man, he often risks his whole life in the search of minerals and spends his lifetime under rugged conditions, not always rewarded by riches, then if he does make a discovery, to pass a law depriving him of the fruits of a lifetime because he cannot spend a fortune on "developing a mine" as suggested by the heading, seems rather near-sighted legislation to me, and certainly will discourage, rather than encourage, the already fast disappearing prospector to spend his days searching the faraway and often more or less inaccessible places. In our part of the country, just now, the rancher, the sheepherder, the lumber interests, fishermen, etc., seem to be agitating the passing of laws for their special benefits that would hurt the mining industry in the long run. Still the fact remains, as is stated in your article, and I quote, "The problem is to take away the nuisance but leave the incentive." So it is with our patent benefits. Worthy projects should be encouraged wherever valid mineral discovery such as would warrant a reasonably prudent man in developing and extracting the minerals from the deposit, as might well be the case at Al Sarena.

Yours very truly,

D. FORD MCCORMICK

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., July 16, 1953

HON. CLARENCE DAVIS,  
*Solicitor, Department of Interior,*  
*Washington, D. C.*

DEAR MR. DAVIS: In further reference to the Al Sarena Mines, Inc., case, Oregon 0665, I am attaching herewith the original of the letter received from Col. J. E. Morrison in response to my letter of some weeks ago, the text of which has been transmitted to you with other responses from mining experts.

Colonel Morrison was formerly with the Oregon State Department of Geology and Mineral Industries and is a registered mining engineer in the State of Oregon. For some years he has been serving with the United States Air Force. Colonel Morrison was on leave at the time I wrote him and did not have the opportunity to reply to my letter until his return to his base, thus accounting for the delay in his reply.

Colonel Morrison's comments concur with those of the other individuals previously submitted, indicating valid mineral discovery on the claims covering the patent application.

Sincerely yours,

HARRIS ELLSWORTH

AERONAUTICAL CHART AND INFORMATION CENTER,  
St. Louis, Mo., July 10, 1953.

HON. HARRIS ELLSWORTH,

*House of Representatives, Washington, D. C.*

DEAR MR. ELLSWORTH: Your letter regarding the Al Sarena Mines, Inc., was waiting for me when I returned from leave. Since then I have been trying to locate what information I have on this mine but without avail. Therefore, I am going to have to depend strictly upon my memory.

I first became acquainted with the property in the summer of 1937 as the mining engineer in charge of the Grants Pass office for the Department of Geology and Mineral Industries, State of Oregon. During 1938 and up to November 1939, I visited the property at least a dozen times, looking over the geologic formations, sampling and sizing the property up as to a possible large, low-grade operation. In November 1940, I was placed in charge of a 90-day test run to determine if a 125-ton plant could pay its way on the more mineralized portion of the area.

There is a fairly large area of porphyry on Elk Creek which has been subjected to one or more periods of mineralization. Gold, silver, and other metals have been deposited along the cracks, crevices, faults, and where the formation was porous enough for the mineralizing solutions to penetrate. I have sampled and seen the assays of over a thousand samples from this mineralized area. Like all mineralized areas, the values do not run uniform throughout. Samples from the more mineralized areas will run as high as \$10 or more per ton. The low assays are obtained from the hard porphyry, which the mineralizing solutions had not penetrated. The Al Sarena people have studied this area and consolidated it into a group of claims. All 23 claims, as I remember them, show evidence of this mineralization and do carry gold and silver values.

This property has been examined by a number of reputable mining engineers. Based upon the findings and recommendations of these engineers, the owners have spent thousands of dollars and also their time in developing the property into its present state. There are a number of large, low-grade properties in North America that have made a success of the operation on lower values than those indicated at the Al Sarena. The 90-day test run proved to me it could be made a successful operation. To declare a portion of this group of claims to be nonmineral, in my mind, would be a gross injustice to the owners who have spent so much time and money in developing the property.

Again apologizing for the delay in answering your letter.

Sincerely yours,

J. E. MORRISON,  
*Mining Engineer, Oregon Registry No. 1901.*

#### PUBLIC LANDS:

We will keep this "on ice" until after the final disposition of the Alabama case.

M. G. W.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., June 21, 1951.

HON. MASTIN G. WHITE,

*Solicitor, United States Department of the Interior,  
Washington 25, D. C.*

MY DEAR MASTIN: Thanks for your letter of June 19, 1951, acknowledging receipt of my letter of June 13, to the appeal (A-26248) of Al Sarena Mines, Inc.

First, I wanted to tell you how much I appreciate the time and all of the information that you gave to my dear friends and constituents, Messrs. Herbert and Charles McDonald, who were in to see you on June 15, and presented oral argument in support of the appeal. I note you will give careful consideration to it, and when a decision is reached, you will send me a copy.

Now, Mastin, I think I have thought of this more than anybody, maybe, with the exception of the stockholders that have spent so much money out there. I just don't believe that all of you have so terribly much to do really and truly understand this proposition. There are stockholders in many States, the



finest men in this country, that believe in this proposition. They have been spending money out there for many, many long years. They have built roads, not only through the property that they own, but through the Interior Department's property.

Herbert McDonald, one of the men that held the good conference with you, has been out there for 16 long years. His father has, along with his friends, over a quarter of a million cash dollars in this proposition. They already have a 100 acres of land there. They only want the adjoining 340 acres of land there. I know that there are a lot of people trying to get 36,000 square miles. They don't want that. I went down to see Mr. Wyatt and spent an hour with him and told him that they did not want the timber—I am talking about the Al Sarena Mines, Inc. They only wanted enough of the timber to develop the mines, and they would be glad to sign a letter or a contract to this effect, but it seems to me that they have bought and paid for their patent, and it also seems to me, regardless of what the Interior Department thinks about this, that they would be mighty glad to see this great company, and these fine, good Americans, try and develop this. Sometime, one group of us know something that the others don't. Anyhow, I think they have a right to spend their money if they want to. We have hundreds and hundreds of thousands of acres out there, and it certainly won't hurt to give these people a chance to see if they can't develop it. Please read my letter close.

Now, these fine young men, Herbert and Charles McDonald, helped me write that letter to you, of course. Read it carefully. Why not give them a chance? Let them have this, say for 10 years, and then if they don't develop it by that time, then turn it back. You have everything to gain and nothing to lose. Look at the valuable materials that they would develop that we need just at this time, and that country needs developing so terribly bad. These are honest people.

I wish you could have seen some of the letters that were sent to Senator Ke-fauver, some of the letters that were sent to Senator O'Mahoney, some of the letters that were sent to about 21 other Senators, and over 100 of the Congressmen. I asked them not to present these letters yet, but just wait, because I know we can work it out, regardless of if it hasn't been handled just according to Hoyle, and if they did make some mistakes out at the hearing, all we want is commonsense. They have bought and paid for a patent and they have their receipt. They only want a chance to develop this mine. They don't want the timber—only what they will need in the development of the mine, which of course, they would have to have, and they will deed the timber back. Now, why not try and let's give them this. It is costing them a lot of money to make trips here. One of these young men came all the way from Chicago, and the other from Mobile, over 1,100 miles away from here. They are spending their time and their money, 16 long years. They have gotten nothing out of it, but they believe, and they have the finances to go ahead and try and start one of the finest developments out there, that they think will do everything that I told you in that letter, that they would do.

So, why no let's let this go on. It is such a small matter. With the hundreds on hundreds of thousands of acres of land out there, and they are only asking for a small amount of 300 acres out there, wild, undeveloped land, and I understand that many people say it is no good. Well, they do. Herbert McDonald has just returned from taking a special course, and he and Charles McDonald are two of the finest young men I know. Charles has the finest record in the Navy that I have ever read. They are all just fine, good, true, great Americans, that have lived within just a few blocks of me all of their lives, right in Mobile, Ala.

As above stated, they have good stockholders that have their hard-earned money in this proposition, and let's give them a chance to get it out. There is no telling what they will do out there. We have everything to gain and nothing to lose. It certainly can't hurt the Interior Department—it certainly can't hurt the Government—it certainly can't hurt the State, and it will only hurt the men that own this property and the stockholders that are willing to put up their money and see if they can't develop what they think is a great proposition. I think we should encourage them and get behind them and help them in every way we can. They are not getting a Government loan to do this—they are using their own money.

I shall deeply appreciate your looking at this, just in a good old Texas or Alabama practical way, and if there are any little technicalities let's knock them out of the way, and go on and try and start something.

I wish we could get some of the products that they say they can manufacture out there, in Mobile, Ala., now. They need them there very, very bad and all over this country.

I do appreciate all of the time that you have given me, and we have talked so many times about it, and I do appreciate the long conference you gave my friends, Messrs. Herbert and Charles McDonald. I hope that we can do something on this, and please, on receipt of this letter, just give me a ring, and I will run over there and talk to you, or we will talk on the phone, and let's try and finish it up and get it started.

Thanks a million and let me know when and where I can help, and with every good wish to you and yours, now and always, I am

Sincerely your friend,

FRANK W. BOYKIN, *Member of Congress.*

P. S.—If you want me to, I can bring a dozen of the finest Senators in this world, all Westerners and Southerners and Northerners, too, and about a hundred Congressmen over there, who believe in this, just as I do. Please try and help us. I will consider it a personal favor.

Since dictating this letter to you, and I did it before daylight, on the old dictaphone, down here, I have just received a letter from Dr. McDonald, the father of the two young men that you know, telling me that the buildings there have burned down. That makes no difference, they are willing to have some more put up and get new machinery. I am asking the FBI to look into it, as it looks like their buildings were set on fire. I don't know anything about that, but I do hope we can get this other matter straight.

Thanks again.

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., June 13, 1951.

Mr. MASTIN WHITE,

*Acting Assistant Secretary of the Interior,  
Department of the Interior, Washington 25, D. C.*

MY DEAR MR. SECRETARY: When we talked on the phone the other day, you told me my people from Mobile did not put their evidence on. I believe, after talking to my people, who are here now, that you overlooked the following facts:

1. The patent application itself, based upon the results of 4 months' work by your own Interior Department appointed expert, Mr. Taylor, and upon the findings of about a half a dozen outstanding experts, filed under oath, perfected by final proofs accepted by the Portland office is legal evidence which was refiled and resubmitted in evidence for the record in the original answer, complete with assays of ore from the claims.

2. Further and additional evidence was submitted to you for your consideration in your office last year in the form of additional assays, etc., which had been taken at the direction of the Bureau of Land Management for the record. This was filed for the official report, and consequently for the record, and should be in your hands.

3. There was an agreement between counsel authorizing the substitution of standard court civil rules of procedure. These people relied completely on that agreement and took an appeal from the rulings on the demurrers and motions only, in open hearing. This legally closed the hearing and made anything introduced after that time by either side completely inadmissible.

4. Since anything in the way of opposing evidence in the hearing is inadmissible, under the agreement, the only evidence in the record which is legal is the evidence refiled and resubmitted in the original answer—all in favor of the company—and unrefuted. The Forestry Service has, therefore, failed to prove any charges.

5. You will recall that the Department accepted an appeal based upon the rules of evidence and the rules of practice as obtain in Federal and State courts and sent the matter upon appeal without a decision. You will also recall that the written notice of appeal recited clearly that the appeal on demurrers and motions only was taken under such rules.

6. Your department accepted their final proofs, kept them an ample time, demanded the money, accepted the money, gave them a final purchase receipt reciting that the money was in payment for specific lands, reciting them, and issued a final certificate, but did not issue the patent.

finest men in this country, that believe in this proposition. They have been spending money out there for many, many long years. They have built roads, not only through the property that they own, but through the Interior Department's property.

Herbert McDonald, one of the men that held the good conference with you, has been out there for 16 long years. His father has, along with his friends, over a quarter of a million cash dollars in this proposition. They already have a 160 acres of land there. They only want the adjoining 340 acres of land there. I know that there are a lot of people trying to get 36,000 square miles. They don't want that. I went down to see Mr. Wyatt and spent an hour with him and told him that they did not want the timber—I am talking about the Al Sarena Mines, Inc. They only wanted enough of the timber to develop the mines, and they would be glad to sign a letter or a contract to this effect, but it seems to me that they have bought and paid for their patent, and it also seems to me, regardless of what the Interior Department thinks about this, that they would be mighty glad to see this great company, and these fine, good Americans, try and develop this. Sometime, one group of us know something that the others don't. Anyhow, I think they have a right to spend their money if they want to. We have hundreds and hundreds of thousands of acres out there, and it certainly won't hurt to give these people a chance to see if they can't develop it. Please read my letter close.

Now, these fine young men, Herbert and Charles McDonald, helped me write that letter to you, of course. Read it carefully. Why not give them a chance? Let them have this, say for 10 years, and then if they don't develop it by that time, then turn it back. You have everything to gain and nothing to loss. Look at the valuable materials that they would develop that we need just at this time, and that country needs developing so terribly bad. These are honest people.

I wish you could have seen some of the letters that were sent to Senator Ke-fauver, some of the letters that were sent to Senator O'Mahoney, some of the letters that were sent to about 21 other Senators, and over 100 of the Congressmen. I asked them not to present these letters yet, but just wait, because I know we can work it out, regardless of if it hasn't been handled just according to Hoyle, and if they did make some mistakes out at the hearing, all we want is commonsense. They have bought and paid for a patent and they have their receipt. They only want a chance to develop this mine. They don't want the timber—only what they will need in the development of the mine, which of course, they would have to have, and they will deed the timber back. Now, why not try and let's give them this. It is costing them a lot of money to make trips here. One of these young men came all the way from Chicago, and the other from Mobile, over 1,100 miles away from here. They are spending their time and their money, 16 long years. They have gotten nothing out of it, but they believe, and they have the finances to go ahead and try and start one of the finest developments out there, that they think will do everything that I told you in that letter, that they would do.

So, why no let's let this go on. It is such a small matter. With the hundreds on hundreds of thousands of acres of land out there, and they are only asking for a small amount of 300 acres out there, wild, undeveloped land, and I understand that many people say it is no good. Well, they do. Herbert McDonald has just returned from taking a special course, and he and Charles McDonald are two of the finest young men I know. Charles has the finest record in the Navy that I have ever read. They are all just fine, good, true, great Americans, that have lived within just a few blocks of me all of their lives, right in Mobile, Ala.

As above stated, they have good stockholders that have their hard-earned money in this proposition, and let's give them a chance to get it out. There is no telling what they will do out there. We have everything to gain and nothing to lose. It certainly can't hurt the Interior Department—it certainly can't hurt the Government—it certainly can't hurt the State, and it will only hurt the men that own this property and the stockholders that are willing to put up their money and see if they can't develop what they think is a great proposition. I think we should encourage them and get behind them and help them in every way we can. They are not getting a Government loan to do this—they are using their own money.

I shall deeply appreciate your looking at this, just in a good old Texas or Alabama practical way, and if there are any little technicalities let's knock them out of the way, and go on and try and start something.

I wish we could get some of the products that they say they can manufacture out there, in Mobile, Ala., now. They need them there very, very bad and all over this country.

I do appreciate all of the time that you have given me, and we have talked so many times about it, and I do appreciate the long conference you gave my friends, Messrs. Herbert and Charles McDonald. I hope that we can do something on this, and please, on receipt of this letter, just give me a ring, and I will run over there and talk to you, or we will talk on the phone, and let's try and finish it up and get it started.

Thanks a million and let me know when and where I can help, and with every good wish to you and yours, now and always, I am

Sincerely your friend,

FRANK W. BOYKIN, *Member of Congress.*

P. 8.—If you want me to, I can bring a dozen of the finest Senators in this world, all Westerners and Southerners and Northerners, too, and about a hundred Congressmen over there, who believe in this, just as I do. Please try and help us. I will consider it a personal favor.

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Thanks again.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., June 13, 1951.

Mr. MARTIN WHITE,

*Acting Assistant Secretary of the Interior,*

*Department of the Interior, Washington 25, D. C.*

MY DEAR MR. SECRETARY: When we talked on the phone the other day, you told me my people from Mobile did not put their evidence on. I believe, after talking to my people, who are here now, that you overlooked the following facts:

1. The patent application itself, based upon the results of 4 months' work by your own Interior Department appointed expert, Mr. Taylor, and upon the findings of about a half a dozen outstanding experts, filed under oath, perfected by final proofs accepted by the Portland office is legal evidence which was refuted and resubmitted in evidence for the record in the original answer, complete with assays of ore from the claims.

2. Further and additional evidence was submitted to you for your consideration in your office last year in the form of additional assays, etc., which had been taken at the direction of the Bureau of Land Management for the record. This was filed for the official report, and consequently for the record, and should be in your hands.

3. There was an agreement between counsel authorizing the substitution of standard court civil rules of procedure. These people relied completely on that agreement and took an appeal from the rulings on the demurrers and motions only, in open hearing. This legally closed the hearing and made anything introduced after that time by either side completely inadmissible.

4. Since anything in the way of opposing evidence in the hearing is inadmissible, under the agreement, the only evidence in the record which is legal is the evidence refuted and resubmitted in the original answer—all in favor of the company—and unrefuted. The Forestry Service has, therefore, failed to prove any charges.

5. You will recall that the Department accepted an appeal based upon the rules of evidence and the rules of practice as obtain in Federal and State courts and sent the matter upon appeal without a decision. You will also recall that the written notice of appeal recited clearly that the appeal on demurrers and motions only was taken under such rules.

6. Your department accepted their final proofs, kept them an ample time, demanded the money, accepted the money, gave them a final purchase receipt reciting that the money was in payment for specific lands, reciting them, and issued a final certificate, but did not issue the patent.

7. The only way the so-called field examination was made was by the use of false and misleading statements over the signature of the Acting Regional Administrator of the Bureau of Land Management, falsely alleging that the Forest Service had complied with its regulations for making such request during the publication period, December 15, 1948. This is the manner in which the Bureau of Land Management obtained its original jurisdiction, as the regulations prohibit ordinarily, the Bureau of Land Management from making field examinations on its own motion in the national forest. Therefore, the only question before you is the question of demurrers and motions as appealed.

After studying all of the above facts, I wish you would give me a ring and I would like to bring my friends and constituents, Messrs. Herbert and Charles McDonald, over there and talk this over with you. For your information, we have heard a lot about people locating some 3,600 square miles of alleged placer ground within about 20 miles of the property of Al Sarena Mines, Inc. It is the feeling of some of the western delegations that a precedent is being sought by the Forest Service in the denial of patent to a legitimate mining company on its property so that such precedent may be cited to illegitimate claimants to discourage such applications on the part of such illegitimate claimants.

My friends and constituents have been operating 16 long years and the property, itself, is of record in the production and development for 54 years.

I called the attention of the McDonald brothers to what the forestry people had to say, and they say they are not interested in timber and that they will be glad for the Interior Department or the Forestry Department to have the timber on the disputed land, with the exception of the timber needed for mining operations. This certainly shows that my folks are not trying to get timber, but that they are ready, able, and willing to go on and develop a real mining proposition that we need so badly. In addition, the defense picture has taken on an entirely new aspect in regard to this property. The matter of iron pyrite, which the property contains in large quantities, has previously been considered commercial only for the gold and silver chemically combined with the pyrite. However, the pyrite in the new scheme of critical materials has become a very valuable byproduct. In the plans relating to the production and development of this property, there is also a potential production of pyrite sufficient to yield 4,912,128 pounds of sulphuric acid in the leanest areas, and 49,121,280 pounds of sulphuric acid a month in the richer areas. This being the basic defense chemical and in view of the shortage impending in raw materials for its production, it is most worthy of consideration, both for the benefit of right and justice and for the benefit of the United States. The private capital necessary for the significant defense production already planned is available contingent upon actual ownership of the property, which of course, means a patent.

With this time and the fact that they have paid for their patent and having a receipt, it does seem, regardless of how you think it has been handled, to be to the Interior Department's interest to get this great piece of property developed. The Al Sarena Mines have built roads and spent hundreds of thousands of dollars on the development of their property. So, I do hope that you will take a close look at this again and see if we cannot issue this permanent patent and go on to work.

With kind personal regards and thanking you for anything you can do to help us out on this matter, I am

Sincerely your friend,

FRANK W. BOYKIN, M. C.

MARCH 19, 1951.

MR. W. O. MACMAHON,

408 First National Bank Building,  
Mobile, Ala.:

Talked at length to our friend Mastin White after my talk with you this morning. He had already asked Mr. Clawson to rush his decision all he could. He does not know how soon this will be, but will keep us fully posted. Warm regards.

FRANK W. BOYKIN, M. C.

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C. September 29, 1950.

HON. FRANK W. BOYKIN,  
*House of Representatives*

MY DEAR MR. BOYKIN: This is in response to your telephone request to me for the status of a mineral contest involving Al Sarena Mines, Inc. (Oregon 0665).

The Bureau of Land Management advises me that the manager of the district land office at Portland has not completed his action in the matter.

Sincerely yours,

HARRY M. EDELSTEIN, *Assistant Solicitor.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., October 25, 1950.

NOTE TO DIRECTOR CLAWSON, BUREAU OF LAND MANAGEMENT:

On October 24 I received a long-distance telephone call from Representative Boykin at Mobile, Ala. The purpose of his call was to request that the decision on the appeal of Al Sarena Mines, Inc., be expedited. I explained that the appeal is presently pending before you for a determination. Mr. Boykin thereupon asked that I pass his request on to you.

MASTIN G. WHITE, *Solicitor.*

A. W. WILLIAMS INSPECTION CO.,  
*Mobile, Ala., December 17, 1953.*

AL SARENA MINES, INC.,  
408 First National Bank Building,  
*Mobile, Ala.*

GENTLEMEN: Forwarded herewith are four reports covering the assay of samples Al Sarena 1 through 28 submitted by Mr. D. Ford McCormick.

We regret that it has been impossible to complete and report upon this work sooner. We have been seriously hampered here by the absence of key personnel from the office and by the pressure of unexpected emergency assignments.

We sincerely hope that the delay has not operated to inconvenience you.

Yours very truly,

A. W. WILLIAMS INSPECTION CO.  
MORRIS MILLER.

PORTLAND, OREG., September 28, 1950.

JAMES A. LANIGAN,  
*Assistant Chief Counsel:*

RETEL 28 mineral contest *Forest Service v. Al Sarena Mines, Inc.*, Oregon 0665. Claimants tracked Goldy to his California vacation. He referred them here. At conference here afternoon September 8 with me they said they had employed no counsel and volunteered assertion of willingness surrender all timber on claims to Forest Service. Located proper Forest Service personnel for them but they made no effort at contact.

Hearing commenced morning September 13. Clear indication MacMahon en route here at same time claimants were asserting they had no counsel. On opening hearing MacMahon and claimants appeared with boxes of exhibits and own wire recorder. MacMahon launched general attack on proceedings and orally advanced formalistic motions respecting propriety of proceedings and apparently questioning jurisdiction. These motions set forth in written answer filed by company responding to notice of contest. Manager overruled motions and MacMahon refused to proceed, stating that he had personal agreement with solicitor that (1) departmental rules of practice and procedure would not be applicable to this case, (2) that rules of civil procedure for district courts would apply, and (3) that if preliminary motions were overrule appeal would immediately be in order and further proceedings on merits

would be postponed until final determination of such appeal. He added that any testimony produced by other parties at proceeding on 13th would be violation of such agreement and he would attack as such.

MacMahon thereupon gathered exhibits, wire recorder, and departed with company representatives.

Forest Service proceeded to introduce testimony.

MacMahon returned following day; filed formal appeal from rulings on motions. Appeal states Al Sarena introduced no evidence because manager's obvious bias indicated results would be adverse regardless of testimony.

For lack of money proceedings transcribed by land-office stenographer. MacMahon's rapid speech, shouting, and boisterous conduct precluded accurate transcript while he was present. When appeal filed, Rice requested copy MacMahon's wire transcription. MacMahon refused.

Rice expects transcript to be completed, Forest Service brief to be filed, and recommended decision to be forwarded with record to Director in about 10 days.

In view claimants' conduct suggest utter caution talking with them or relying on any representations they make. MacMahon's personal conduct in hearing may raise question propriety his continued admission to practice before Department.

See Director's teletype August 9 (AD-FF), my teletype August 15, and Director's response.

LEONARD B. NETZORG.

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UNITED STATES SENATE,  
COMMITTEE ON FINANCE,  
October 21, 1950.

Dr. MARION CLAWSON,  
Director, Bureau of Land Management,  
Department of the Interior, Washington, D. C.

DEAR DR. CLAWSON: Senator Millikin has had correspondence with Mr. Pierre M. Rice, Manager of the Land Office at Portland, Oreg., regarding mineral entry Oregon 0665, contest No. 38. In a letter just received from Mr. Rice he states that a hearing on the contest was held September 13, 1950, and on October 2, 1950, the record and recommendations were forwarded to your office for consideration.

The applicant is anxious to get final clearance of this patent. It will be appreciated if you will advise Senator Millikin whether it may be possible to expedite action by your office.

Very truly yours,

RHODA M. ARNOLD, *Secretary*

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UNITED STATES SENATE,  
COMMITTEE ON FINANCE,  
November 8, 1950.

Mr. H. P. McDONALD,  
President, Al Sarena Mines, Inc.,  
Mobile, Ala.

DEAR MR. McDONALD: With reference to your letter to Senator Millikin of November 4, 1950 regarding Mineral Entry Oregon 0665, on which the Senator has had correspondence with Mr. McDonald of Empire, Colo.

I have talked again with officials at the Bureau of Land Management who stated that they had completed their review of the Portland manager's decision and had sent their recommendations to the legal division for further review before the case goes to the Secretary of the Interior.

The only information I could get from the Bureau was the statement that the regional manager had denied the mineral entry as to those claims which the Forest Service protested but had recommended patenting the other claims. They said that under an order of the Secretary they were not at liberty to report what the Bureau has recommended prior to clearance through the Secretary's office because of the chance that any recommendation of the Bureau might be reversed by the Department's lawyers or by the Secretary.

The Bureau officials mentioned that this case has some difficult aspects and that the questions involved are covered by a 7-page proposed decision which they have drawn up and turned over to the Department's lawyers. They have promised to follow it through these final steps and do what they can to expedite

the decision, but I was unable to get any commitment as to when it may be released. We will continue our follow-up on this and let you know when we get a further report.

I note from your letter you had the impression that a copy of the recommendations of Regional Manager Pierce M. Rice was furnished to this office. However, the copy to which Mr. Rice referred was a carbon copy of his letter of October 17, 1950, to Senator Millikin, the original of which I forwarded to you. The departments follow this practice of enclosing an extra copy of letters to Members of Congress so that one may be sent on to the constituent concerned.

Sincerely yours,

RHODA M. ARNOLD, *Secretary.*

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., April 15, 1953.

Mr. CLARENCE DAVIS,  
*Solicitor, Department of Interior,*  
*Washington 25, D. C.*

DEAR MR. DAVIS: This letter is being written pursuant to the agreement reached with you following the conference with Mr. Charles R. McDonald, Mr. Herbert McDonald, and Mr. Garber of my office relating to the patent application of the Al Sarena Mines, Inc., pending on appeal before the Department. The case is identified as Oregon Mineral Entry 0665.

As you suggested, the Messrs. McDonald on return to Mobile, Ala., made request to the United States District Court for an extension of 60 days from the date of April 6 on which the case had been set down for action. The court saw fit to grant only 30 days, which materially shortens the time during which a possible review on the merits might be made by you or some person of your selection. It is not impossible that the court might grant additional time on proper request by either the Government or the plaintiffs, and if such additional time is desired I am sure the plaintiffs in the case will be glad to cooperate in any way they possibly can.

Enclosed you will find papers which digest the substance of the rather extended file which the Department holds on this case. The following are enclosed:

1. A digest record of proceedings on the patent application.
2. The substance of testimony which would have been given by expert witnesses concerning the Al Sarena Mines, Inc. claims, plus an indication of the grounds for impeaching the testimony of the Forest Service.
3. Data on samples from the claims filed for record.
4. A record of proceedings in contest in Portland, Oreg.
5. A photostat copy with comments on the protest of the Forest Service, showing pages 1 and 4 of the protest.

The record in this case seems to indicate that the file might properly be reviewed in either of two manners: First, on the basis of the record as shown from the time of the filing of the patent application October 1, 1948 until April 6, 1949 when the final certificate of mineral entry was granted. The Forest Service was notified of the filing for patent at the time application was made and was officially notified later by the Department of Interior but took none of the actions required under regulation within the time specified in such regulations. Second, on the basis of the entire record including that mentioned previously; and beginning with the untimely protest filed by the Forest Service, the subsequent vacation of protest, and the events resulting from the further protest by the Forest Service including the hearing at Portland, Oreg. It would appear proper that the pending appeal might be granted for the patent issuance wherein the record indicates at any point the full compliance with the requirements of law on the part of the applicants.

The record will show that part of these claims dated from 1898 and that the last claims located were taken up in the year 1935. A gross expenditure of more than \$200,000 has been put into the development and the immediately family of the principal owners of the corporation personally put approximately 100 man-years into the developments of the claims. The mines were given a quota for the production of materials during World War II and met this obligation. The deposit is a low-grade deposit with a massive ore body which will require very substantial expenditure for equipment to make it a successful large-scale producer. The delays which have occurred have meant severe losses to the claim owners who have been ready, willing, and able to go ahead with a large-scale commercial operation.



If there are questions which arise in the course of the consideration of the appeal in this case, Mr. Charles McDonald is available on very short notice to come to Washington, D. C., to assist in any way possible to supplement the record if that will aid in reaching an early decision. From material already in my files, I may be able to give information on some questions and will be glad to cooperate otherwise in any way I can to facilitate early administrative action on the appeal.

Your attention is appreciated and I shall be grateful to be kept informed of any developments.

Sincerely yours,

HARRIS ELLSWORTH.

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., August 27, 1953.

Mr. CLARENCE DAVIS,  
*Solicitor, Department of Interior,*  
*Washington, D. C.*

DEAR MR. DAVIS: As you undoubtedly are informed by this time, the applicant in the Al Sarena Mines, Inc., case (Oregon 0665) is proceeding in accordance with arrangements discussed with Congressman Ellsworth on August 4, as a basis for possible settlement of the question at issue, namely, mineralization on the contested claims.

Inasmuch as this arrangement will require possibly a month of actual examining time, this will run beyond the period covered by the present continuance in connection with the pending case before the United States District Court at Mobile, Ala.

Since the last continuance was granted on request of the applicant, it is suggested that the Government request the continuance necessary to cover the required period to complete the present steps being taken at the suggestion of the Government and which can form the basis of a final settlement of the issues involved.

Your attention and cooperation in this matter are appreciated.

Sincerely yours,

H. S. GARBER, *Secretary.*

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UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., January 14, 1954.

Hon. HARRIS ELLSWORTH,  
*House of Representatives.*  
(Attention: Mr. H. S. Garber.)

MY DEAR MR. ELLSWORTH: In view of the interest which you have shown in this case, I enclose two copies of the decision of this Department in the case of *United States v. Al Sarena Mines, Inc.*, A-26248.

Sincerely yours,

CLARENCE A. DAVIS, *Solicitor.*

Senator SCOTT. Thank you, Mr. Davis, and we appreciate your testimony this morning.

We wanted to turn this over to Mr. Coburn, the chief counsel, but in deference to Mr. Barrett, who has sickness in his family that I happen to know about myself, I will let him make an observation. Then I will go back to Mr. Coburn.

Senator BARRETT. Mr. Chairman, I appreciate that. I do not care to ask any questions, because I know that the counsel and the committee intend to do that, but I would like to make a very brief statement before I leave.

Mr. Chairman, at the outset let me commend the witness for that splendid documentation and presentation of the facts as well as the statement of the law applicable to this controversy.

Mr. Chairman, as you know, I practiced law in Wyoming for 37 years and a great deal of my practice involved mining law on the public domain of our State. I can say to you, sir, that in my humble opinion you have completely blown out of the water these so-called charges made against you. There has not been a scintilla of evidence presented in all these voluminous hearings which reflect in the slightest on your integrity or on your legal findings in the handling of this case.

As the chief legal officer of the Department you had no other recourse but to follow the law. No official of the Government, and certainly not the highest legal officer of a great department of our Government, should be criticized for following the law. That is the American way. That is government by law. We do not want a government by men here in America.

I was interested in your comment that these people deposited \$5 an acre when they filed their application for patent. Everybody is required to do that. That has been on the books for 50 years. If there is something wrong about that law Congress should change it, not any department of Government.

I think it is basic that when a mining claimant has complied with the provisions of the mining law the Interior Department and its Solicitor have no choice but to grant patents. You are bound to obey the law. As I see it, that is precisely what you did and in my book you are to be commended for following the law and not to be criticized.

If the high legal officers of our Government fail to observe the law themselves, then we are in a bad way in this country.

I noticed your statement, Mr. Secretary, about the fact that you had not been able to come to this committee for quite some time and that you wanted to testify, and I want to say something here now and I want to make it mighty plain that I am not critical of any member of this committee, certainly not the Senate members of this subcommittee, but I believe a lot of people are unhappy about the manner in which these so-called hearings have been conducted over the past 6 months.

I note in your statement, Mr. Secretary, that you said—and I quote :

I am glad at last to have the privilege of appearing before this committee.

You may have noticed some newspaper accounts of a meeting of our Interior Committee a few days ago. Since the press did get a garbled report of that hearing I want to say here and now that I am free to tell you that this Legislative Oversight Function Subcommittee of our Interior Committee and its actions were the subject matter of considerable discussion in our committee.

I think it is only fair to say that our Interior Committee decided that after this hearing is concluded and that after all of the facts are brought to the attention of the people of America, this Legislative Oversight Function Subcommittee will stand abolished and washed up.

And so, Mr. Secretary, if you are displeased with the manner in which this committee has held hearings all over this country weeks after weeks during the past 6 months without giving you the courtesy of a hearing, you can rest assured that there are many others that feel precisely as you did. So after all these charges are heard and completely disproved, as I think your statement does, I can say to you

that this subcommittee of the Interior Committee is as dead as a door nail.

Mr. Chairman, I certainly do not want my statements here to be misconstrued as being critical of anybody. I think I am just unhappy at the way the hearing has been held for a long period and I want to thank you again for the opportunity of saying a word or two at this time.

Thank you, Mr. Chairman.

Senator SCOTT. Mr. Coburn.

Senator MALONE. Mr. Chairman?

Senator SCOTT. Mr. Coburn will be next.

Senator MALONE. I am going to take issue with you there, Mr. Chairman, and if you want to overrule me you may.

I have to go to the Senate floor and I would like to question briefly the Solicitor. I have never heard before of a Senator being denied the questioning of a witness and having the witness turned over to an attorney that most of us do not even know.

Senator SCOTT. Just go ahead, then.

Senator MALONE. I will.

Mr. Solicitor, I have listened with a great deal of interest to your testimony and statement, and I would like to ask you a couple of questions, the first being: Is it your best judgment—and I take it from your statement that it is—that with the mineral surveyor's report and your own check of the work following your investigation of the mineral surveyor's work that under the law the patent is justified, the patent that you issued.

Mr. DAVIS. Yes; certainly, Senator.

Senator MALONE. Is it a fact that under the law in your judgment the Secretary of the Interior is responsible for the decision?

Mr. DAVIS. Yes, sir; the Secretary of the Interior is responsible for the decision in the sense that as the head of the executive department he is responsible for all the things under him.

Senator MALONE. Whenever there is any matter of judgment to be exercised, under the law the Secretary of the Interior is responsible for that judgment?

Mr. DAVIS. I think that is right, legally. I think I should point out that as a practical matter, of course, as you know, Senator, there are thousands of decisions made by these 50,000 people who work in the Interior that the Secretary never hears of, but if you are talking about legal responsibility, of course, the chain runs right up to the Cabinet officer.

Senator MALONE. I will ask you a further question in that regard: Whenever there is a question of the accuracy of a decision in what you termed a while ago a section of the Bureau, and it becomes controversial the Secretary generally does hear of it?

Mr. DAVIS. That is right frequently. I wouldn't say every time.

Senator MALONE. And the Secretary charges you as Solicitor for the interpretation of the law and questions of this kind?

Mr. DAVIS. That is right.

Senator MALONE. And it is your opinion that through the interpretation of the mining law, the patent law, the conditions as outlined by the mineral surveyor—a letter from this mineral surveyor is a part of the record, I believe.

Mr. DAVIS. That is right.

Senator MALONE. After you have studied his report and made a check of your own, which you have described, in the field, that the patent is justified?

Mr. DAVIS. That's right.

Senator MALONE. What is the law in regard to a profitable operation? Is it necessary in a matter of a patent to prove a profitable operation?

Mr. DAVIS. No, it is not in my opinion, Senator.

Senator MALONE. As a matter of fact, a profitable operation often depends on laws passed by Congress that affect a mine, is it not?

Mr. DAVIS. That is right, and a profitable operation can depend on world economics, the state of the market, and a hundred and one things.

Senator MALONE. This happens to be gold and silver with some lead and zinc. The gold and silver mining, as is well known, was stopped during World War II, was it not, through an Executive order?

Mr. DAVIS. I believe so.

Senator MALONE. What was that Executive order?

Mr. DAVIS. You would know much more than I about that, Senator. I am not in the mining business. I am a lawyer.

Senator MALONE. You may supply that for the record if you will. I will ask you that question and you can supply it for the record as to what was the number, well known at the time, that stopped gold mining on the theory that the gold miners would all go to work on other critical materials. This Executive order was issued—I remember full well as I was acting consultant to the Senate Military Affairs Committee during the war on critical materials—on the theory, and many of us disputed it at that time, that it would work out, that the gold miners would then proceed to lead and zinc, and tungsten mining and other critical materials.

Of course, most of us in the mining country knew that would not happen, but nevertheless it was issued, they said, with that thought in mind.

The second thing, then, that kept the mines closed down, practically all the gold mines in the country except that very profitable one in the Dakotas, and unless they had some other values, was inflation?

Mr. DAVIS. That is right.

Senator MALONE. Are you familiar with the general inflation that affected the feasibility of many operations in the last few years?

Mr. DAVIS. I certainly am. I am familiar with the fixation of the price of gold, the cost of living, and the price of everything. Of course, we are all, Senator.

Senator MALONE. And the cost of labor, and the cost of mining has gone up more than the increase in the price of gold in the last few years, is that not right?

Mr. DAVIS. Yes.

Senator MALONE. So that would again make a mining operation that might be considered profitable after the first raise in the price of gold; that is to say, after it was raised in 1934. Further in the 1934 Trade Agreement Act where the President was given the right to lower tariffs, import fees, or duties, whatever you call them, and then in 1947 transferred that right to the Geneva, where 35 nations at present—and we are only one—are sitting around a board and determining how low our tariffs and duties should go; that very act in itself

made infeasible many mining operations in this country in addition to gold and silver; that is, lead zinc, tungsten, manganese, and other metals. Are you familiar with that effect?

Mr. DAVIS. In general.

Senator MALONE. So then, if it were necessary to prove a profitable operation you would first have to take into consideration what Congress might do in this regard and, second, no two companies are the same in efficiency. You would have to examine efficiencies of the company and all. There are many failures in mining and the same property is taken up later and mined efficiently by other companies: is that not true?

Mr. DAVIS. I think so.

Senator MALONE. Then we have our laboratory work continually going on. There is a laboratory experiment now, that is to say the laboratory work has been successful on manganese, low-grade manganese mining, and many of us believe right now the large manganese deposits in Minnesota and in Maine are feasible of mining if the difference in the labor cost between this country and the chief competitive country is added to the domestic price.

Many of us remember when G. C. Jackling came up out of a laboratory with laboratory success that made it possible to mine one-half of 1 percent copper and up to that time it had to be 7 or 8 percent. You remember, in general, all these experiments.

As a result some of the largest copper pits in the world are in Nevada, Arizona, Utah, and Montana. They lay there 50 million years, I suppose, according to geologists, but suddenly this man, G. C. Jackling, came up with this experiment and made it profitable. You are familiar that with the larger mining machinery, as time goes on, and in road building it has made many mining operations feasible that heretofore were not feasible; is that not true?

Mr. DAVIS. That's right.

Senator MALONE. And it still goes on.

Does then, as a matter of fact—and this may be a repetition—the value of the claim for other purposes have anything to do with the issuance of patent for mining purposes?

Mr. DAVIS. Senator, certainly from the standpoint that you are talking now about having to prognosticate that somebody is going to develop a profitable mining venture, no man has ever been wise enough to do that. We know that.

Senator MALONE. Mr. Secretary, you must say for the record there—it fits it so very well—someone said that no one can talk quite so convincingly on the subject as someone entirely unhampered by the facts. When you take a man right out of school, either an engineer or anyone else, and he knows more about mining than he will ever know again; is that not about right?

Mr. DAVIS. It is true in the law business. I don't know how it is in the mining business.

Senator MALONE. It is true in the engineering business, I can testify. Also I can testify if the mining business were left to the bureaus and to the Government engineers we would have very little mining going on.

Mr. Secretary, are you generally familiar—and I know you must be by now, even though you are from the State of Nebraska where

very little mining goes on—with the location act for the location of mining claims?

Mr. DAVIS. Yes; in general.

Senator MALONE. And the fact that if a man has a discovery, or what he thinks is a discovery, and he puts up his stake and files with the county clerk of that county in that State his location within 30 days, or the specified time, and puts up his corners and every year does a hundred dollars' worth of work in that development he can hold that claim. Are you familiar with that law?

Mr. DAVIS. That's right.

Senator MALONE. Do you believe in that type of legislation to encourage a prospector to find minerals?

Mr. DAVIS. Senator, that is what has developed the mining industry in the United States. That is the best answer, I think.

Senator MALONE. It is the best answer.

Mr. DAVIS. Unless you continue to encourage exploration and discovery and not wait until somebody can draw you a blueprint with a surety bond guarantee that you are going to make a profit, you are not going to have any mines.

Senator MALONE. You have already answered the question and of course I have had a running fight with the SEC for years because they think that it must show a profitable operation before you can sell stock and that you are bilking the public if you sell stock before you have it.

As a matter of fact, in the best mining operations in the country, and probably 90 percent of the mines, stock was sold to develop mines from prospects; is that not about right?

Mr. DAVIS. I would think so.

Senator MALONE. And, of course, it is a gamble, as you said. Any time you go underground it is a gamble as to what you are going to find. Inexperienced engineers may think they know what they are going to find, but experienced engineers know that you do not know. What you do is to figure the gamble and tell your client that you believe that he is justified to spend \$500, or a thousand dollars, or \$50,000 to find out what he might find at 100 feet, or 500 feet, or to go into a certain geological formation; and that is how mining is conducted, is it not?

If the SEC could get complete charge and you had to show a profitable operation before you could sell stock, there would be very little mining under that method of operating, would there not?

Mr. DAVIS. There would, under mines where the capital is provided by a public offering of stock, surely.

Senator MALONE. Besides, after you have a profitable operation you probably would not need to sell stock.

Mr. DAVIS. That could be.

Senator MALONE. Do you believe, then, in this location method of locating mining claims that the patent method of gaining ownership to claims is a good one, to clear up the operation so there is no danger finally, if it has enough value, in losing the claims through, maybe, lack of location or for some reason like a Government order stopping gold mining, or inflation stops it, if it is necessary to hold the claims over a period of time and the work has been done with the necessary development? Do you believe in this patent law?

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Mr. DAVIS. Yes; I believe in the patent law.

As I say, we have had it for 75 years at least and while I am certainly not a mining lawyer by long ways, as everybody knows, I also would know that you cannot borrow sound money and sound securities on anything less than ownership where you have simply a flexible claim that might, for any one of a dozen reasons, disappear beneath you.

Senator MALONE. There might be a claim, as there often is, with one location on top of another and an allegation that the work was not done properly and a lawsuit ensues which would stop selling securities?

Mr. DAVIS. Senator, in some of these situations, as you know a great deal better than I, there are overlapping claims sometimes 5 and 6 deep right on the same spot.

Senator MALONE. Mr. Secretary, I have gone into mining operations in mining areas, new mining areas, where very valuable deposits have been discovered, and men deliberately locate claims on top of another, as you say 5 or 6 or 8, or 10 deep, on the possibility that a fraction will be located that was not otherwise located, and sometimes some of the greatest mining lawsuits in the United States have been instituted on fractions where the original locator that located the mineral due to some method of setting his corners had overlooked some small fraction, maybe only a few feet in width or length, but he would have to proceed over this ground and he would either have to buy the man out or the fellow could cause him a lot of trouble.

So the patent law, then, is a very important adjunct to mining, you think?

Mr. DAVIS. Yes.

Senator MALONE. Mr. Secretary, I do not know just how much of this operation you have noticed over the 23 years—it will be 24 this year—but there have been continual claims and reports from Secretaries of the Interior—I hope this one does not make one—asking for a leasing act to supplant the Location Act and the patenting of mining claims.

Have you heard of that movement before?

Mr. DAVIS. In a general way is all. I haven't been close to it at all.

Senator MALONE. It has been very close to some of us from the mining country because once you supplant the location method and the leasing method, then these bureaus that you complained about would be in absolute charge and unless a prospector or a miner would dig where they tell him then he could cancel the lease.

That is the objective, to do the mining right from Washington, and I am on the alert and I think this hearing is to lay a foundation for a further amendment to the Mining Act.

Unfortunately your Department fell for the one last year. I am sorry you did, but somebody from there testified that it should be changed because somebody had abused it. However, many of us think that you have plenty of authority and had it then to stop abuse of the act, but now we look for another amendment to come out of this hearing proposed, perhaps not bold enough to first mention the Leasing Act, but if they get away with another amendment the following year or soon after, the Leasing Act will then appear as the plausible way to handle the public lands in the matter of mining.

Many of us know that large companies generally favor the Leasing Act because they get along pretty well. They have plenty of men to do their work and carry the leases. But a prospector is the kind of man I am interested in, because I think I understand, after 35 or 40 years in the mining country and watching it develop, that you have to have some method so that a man who believes in his work and his own method of locating a discovery can get possession, undisputed possession, of that land—as long as he works that is his—and then he can patent under a set of rules that is not oppressive and he owns the land and can develop it in his own way.

However, once you get a leasing act where the Department of Interior could make its own rules, or Agriculture or whatever bureau they put it in in Washington, the tendency has been—this is the 24th year—to move everything to Washington, so that you do not have to get off those soft cushions up there to do the mining, or the farming, or anything else; and we get a little deeper in the mire every year.

Mr. Secretary, I want to say something else to you, mostly for the record, but I know you are familiar with the talk about the prudent men. The prospectors that have this mining fever are not prudent men. If they were and would not dig except where an ordinary prudent man in the street would dig, about 98 percent of our mines would never have been located or never come about.

I think you are generally familiar with that situation, are you not?

Mr. DAVIS. I am.

Senator MALONE. So the attack on the mining law is the basic thing in my opinion through this hearing and it will come to the surface in a very comparatively short time. I think you are just an incident in this thing and in order to lay the foundation before the public, and to protect this great area of Government land, that this act must be changed, you just happen to be in the way. You happen to be occupying the position where the attack had to be directed and there had to be some method found to do it.

I will join my distinguished colleague, Senator Barrett, of Wyoming. I am a member of this committee. I am also a member of the Mining Subcommittee on Minerals, Materials and Fuels, Economic Subcommittee of the Interior and Insular Affairs which up to this time had handled all such questions, and we did have a very friendly discussion in the committee about whether this committee should be extended or not, and I think the decision was not to extend it.

It had never been called to the attention of the committee that we had plenty of subcommittees to handle public lands. We have the Public Lands Committee, a mining committee, and we have an Indian committee, and I think you will find, Mr. Secretary, that from now on it will be handled by those committees that have some experience in the field in which they cover.

Mr. Chairman, would you pay some attention? Is your name Coburn, doing the talking now?

Mr. COBURN. No, I am Coburn.

Senator MALONE. Who is this fellow here? I would like to talk to the chairman, if it is all right with you.

Mr. Chairman, I appreciate the opportunity to examine this witness and due to work on the floor and other committee work—on the Senate Finance Committee we have been very busy on sugar legislation, and now on social security—it is impossible for us to attend all the hear-

ings, but I do want to attend if there are going to be any more bureau officials called in. Will the Secretary, himself, be called?

Senator SCOTT. That was the decision the other day.

Senator MALONE. I would like to be notified when the Secretary is called so that I might be here, and I thank you very kindly.

Senator SCOTT. We will declare a 5-minute recess, and then we will come right back.

Senator Neuberger is next.

I would like to make this observation: That in the Interior Committee, yesterday, we were censored a little bit for not moving along and getting this job done. I want to hear Senator Neuberger next and then we will go back to Mr. Coburn, the chief counsel. I want to adjourn certainly by 12:30 and meet again at 2 o'clock.

We will declare a 5-minute recess at the moment.

(Whereupon, there was a brief recess.)

Senator SCOTT. The meeting will please come to order.

We will recess at 12:30 and then come back promptly at 2 o'clock.

Senator Neuberger?

Senator NEUBERGER. Mr. Chairman, I would just like to say for the record it is obvious there is only about 10 minutes until we recess for lunch, and the Senator from Wyoming and the Senator from Nevada took approximately 45 minutes so I would like the courtesy of being able to open again when we take up after lunch, which will be what time?

Senator SCOTT. Two o'clock.

Senator NEUBERGER. Thank you very much.

Mr. Davis, it is obvious there will be very little time for questioning before lunch, which is only about 10 minutes. I would just like to ask several questions. In your testimony, Mr. Secretary, you mentioned several times that your role was equivalent to that of a judge in the proceeding. I think you mentioned the term "appellate judge," if I am not mistaken.

On page 23 is a letter signed by you to the Director of the Bureau of Mines. In the letter appears this sentence:

I am aware of the peculiar nature of the area that they say is mineralized and want to approve patent for them if the assays afford us the well-established legal basis therefor.

In view of the fact, Mr. Secretary, that you compared your role to that of an appellate judge, would you not consider it rather strange if an appellate judge hearing a case wrote a letter in which he said he wanted to reach a certain verdict?

Mr. DAVIS. No, I wouldn't consider it strange. Obviously, when you get to reviewing that directive to the Bureau of Mines, I realized long before you did that that sentence stood out and that I would have it thrown at me. I am delighted you throw it at me as the first question.

I want to call to your attention the fact that what I actually sent to the Bureau of Mines was a copy of this letter to Al Sarena and a copy of the letter to Mr. McCormick. I sent a copy of everybody's instructions to everybody else.

I would like to call your attention to the fact that the last sentence in the directive says:

My principal concern is to have a qualified Government representative present to see that the assay samples are fairly taken from each claim and then delivered to a competent assayer.

I think if you read all three of those letters you will very materially deemphasize the particular sentence that you have chosen to read.

Senator NEUBERGER. If the Chief of the Forest Service had written the letter in which he said he wanted to deny patent under certain circumstances, would you consider that an indication of prejudice?

Mr. DAVIS. I would not, Senator, any more than I do consider this one. I think in all fairness you have to read the three documents by which this thing was submitted to the Forest Service. I think if you will read the three of them the repeated emphasis was on getting assays taken out there on the ground about which there could be no question and having them assayed by a competent assayer.

Despite the fact that the wording of it, I realize, is being seized upon, will be seized upon, there is no significance to the sentence. As a matter of fact, the original record here will show that I didn't even write the memorandum.

Senator NEUBERGER. You signed it.

Mr. DAVIS. I signed the memo. That is right. I am not dodging responsibility. I am just pointing out that the actual choice of words is not my own.

Senator NEUBERGER. Inasmuch as you say that this would be seized upon, it is something that you signed, Mr. Secretary, and in your own testimony you have, in substantiation of the course which you followed, jotted just hearsay comments by people who came in and out of your offices about sustaining the boys in the field, so you certainly cannot object if you are asked a question about a letter which you signed.

Mr. DAVIS. I do not object at all. I just want to explain it.

Senator NEUBERGER. Thank you, Mr. Secretary. On pages 25 and 26 you speak very highly about the Bureau of Mines. Before I ask you about that I would like to ask one collateral question. At the top of page 26 you say:

I should also like to point out to you that personnel of this Bureau have not been in any manner changed by the present administration.

I am just asking a question now from memory. Did not the Secretary of the Interior appoint a new Director of Mine Safety and then withdraw the man's name because it was found that he was still on the payroll of a certain large mining company? Am I correct or incorrect about that?

Mr. DAVIS. I think there was some dispute about that nomination, but the man who was appointed, of course, John Forbes, has spent a lifetime with the Bureau of Mines. He retired the other day with very great credit and ceremonies for a magnificent piece of work.

Senator NEUBERGER. I am just informed that the man who was appointed by the Secretary and whose nomination was sent to the Congress was a man named Lyons. He spent a lifetime with the Bureau of Mines.

Mr. DAVIS. I don't know.

Senator NEUBERGER. You made the statement that the personnel of this Bureau has not been in any manner changed by the present administration. I am just asking about that nomination.

Mr. DAVIS. I think that is true.

Senator NEUBERGER. Did not the Secretary appoint him and then withdraw the appointment?

Mr. DAVIS. I think that he may have been nominated, but he was never active.

Senator NEUBERGER. Is it not somewhat misleading—

Mr. DAVIS. I don't think so.

Senator NEUBERGER. Inasmuch as an appointment to a very important position in the Bureau of Mines was withdrawn under fire? Would you then say that no attempt had been made to change the personnel?

Mr. DAVIS. The statement doesn't say that no attempt has been made. The statement says the personnel has not been changed, and I think that's right.

Senator NEUBERGER. Because an appointment made by your Department was withdrawn because of the criticism of the appointment and the facts brought out about the appointment?

Mr. DAVIS. Senator, we are talking here about some people who did some things up and down the line of the Bureau of Mines. Those people have not been changed. They have been there all the time. Whether there were 29 people suggested for 29 other jobs which they never filled, I don't know, and I don't think it's very material to the controversy.

Senator NEUBERGER. Except it's material to your testimony, and you put in the comment; I didn't. You say:

the personnel of this Bureau had not been in any manner changed by the present administration.

Mr. DAVIS. It hasn't been changed.

Senator NEUBERGER. It has not been changed because a very important appointment to a very important position was withdrawn after it had been made; is that not correct?

Mr. DAVIS. Frankly, I don't know that that is true. As I recall it in the newspapers, it may be.

Senator NEUBERGER. You had 3 or 4 paragraphs in which you spoke about the United States Bureau of Mines being a great technical organization, that you have complete confidence in the integrity of the Bureau of Mines, and that you resent the aspersions cast on its employees, and so on.

Mr. DAVIS. That is right.

Senator NEUBERGER. I think that your comments on the Bureau of Mines are very correct. I would like to ask this, Mr. Secretary: In view of your great confidence in the Bureau of Mines why did you not just have the Bureau of Mines conduct this assay? Why did you have Mr. McCormick, the hired employee of the Al Sarena Co., participate in it? Why did you specify that Al Sarena should have to reach agreement as to the firm that did the assaying? Why would you not let the Bureau of Mines just undertake the whole thing and conduct the assay if you have such confidence in them?

Mr. DAVIS. Which one of those 20 questions do you want me to answer first?

Senator NEUBERGER. I would like to ask this question: In view of your complete confidence in the Bureau of Mines why did you not let them undertake the assay?

Mr. DAVIS. I didn't let them undertake the assay for at least a couple of reasons that occur to me. One of them, and the primary one, was because here was a dispute between these people and the Bureau of Land Management.

Maybe I was too much of a lawyer, but my disposition has been through the years and always has been to try to get neutral people to settle controversies. For me to haul off and order the Bureau of Mines to handle this whole thing and make a report would have been a perfectly proper thing. I haven't any doubt of that. However, it also seemed to me that with all the controversy that was raging it was highly desirable that these other people also be given a medium of determining the controversy in which they also had confidence.

The way you do that is to say to these people: "You get together and pick some neutral party to perform this function."

Senator NEUBERGER. Was not the Bureau of Mines a neutral party?

Mr. DAVIS. Yes, I think the Bureau of Mines was a neutral party.

Senator NEUBERGER. Why did you not let them decide it, then?

Mr. DAVIS. Because it just seemed to me that the thing to do was to get some one in whom you had a precommitted expression of confidence in the result.

Senator NEUBERGER. You just said you have confidence in your testimony in the Bureau of Mines.

Mr. DAVIS. That is right; I have.

Senator NEUBERGER. Was not the Bureau of Mines a neutral party?

Mr. DAVIS. I think so, yes.

Senator NEUBERGER. Do you think the Bureau of Mines is any less a neutral party than an assayer in which the Al Sarena Co. had to concur?

Mr. DAVIS. No.

Senator NEUBERGER. You just said that you believed these things should be settled by a neutral party and you have said that you regard the Bureau of Mines as a neutral party, and I certainly would agree with you in that. Why, then, did you not let the neutral party, the Bureau of Mines, decide it instead of an assayer in which the Al Sarena Co. had to concur?

Mr. DAVIS. I did let them decide it in the sense that they had to concur. The assayer chosen had to be one that was acceptable to the Bureau of Mines.

Senator NEUBERGER. And to the Al Sarena Co.?

Mr. DAVIS. That is right.

Senator NEUBERGER. Do you regard that as more neutral than the Bureau of Mines?

Mr. DAVIS. I regard that as a very fair way of settling a controversy of this nature; yes.

Senator NEUBERGER. I still do not think you have explained why you did not let the Bureau of Mines do it. You have a whole section of your testimony praising the Bureau of Mines, which is fine, and yet you still do not explain why you did not let the Bureau of Mines decide whether or not there was mineralization on these mining claims.

Mr. DAVIS. I don't know what there is to explain. I have told you that it seemed to me with all of the accusations of prejudice that were

running through this record the only way in which you could settle that matter fairly to the satisfaction of everybody concerned was to use some assay house which the Bureau of Mines would approve and which these contestants would approve.

Senator NEUBERGER. Was there any allegation of prejudice against the Bureau of Mines?

Mr. DAVIS. No, not so far as I know at all.

Senator NEUBERGER. And yet you did not use the Bureau of Mines to make the assay?

Mr. DAVIS. That is right.

Senator NEUBERGER. And they had a laboratory in Albany, Oreg.

Mr. DAVIS. That is right. I know that now. I am not at all sure I knew that at the time. I just like to point out to you that this all happened within about the first 4 months after I came into Washington and that my knowledge of a lot of these bureaus was a lot less than it is now, and it is not too great yet.

Senator NEUBERGER. You did not know that the Bureau of Mines had a large laboratory, quite an extensive operation, at Albany, Oreg., perhaps 200 or 180 miles from the site of these claims?

Mr. DAVIS. Senator, I wouldn't say that I didn't know it. I just don't remember whether I knew it or not. As a matter of fact, the laboratory at Albany, as I recall, is set up for a lot of other purposes and the aspect of its being a well-known assay house, so to speak. I am not too sure I ever thought of it in that particular connection; but whether I did or not, these people of the Bureau of Mines were at perfect liberty to go about this thing any way they saw fit.

Senator NEUBERGER. They were free to select an assaying company which Al Sarena did not concur in?

Mr. DAVIS. No; obviously not.

Senator NEUBERGER. You said they were free to go about it in any way which they saw fit. Is that statement correct?

Mr. DAVIS. Subject to the terms of the instructions.

Senator NEUBERGER. Subject to your instructions. Is that not a lot different? Will you read Mr. Davis' answer about the Bureau of Mines, please, to answer my question? He said something about the people there being at liberty to go about this in any way they saw fit.

Mr. DAVIS. He doesn't need to read it.

Senator NEUBERGER. That answer was correct?

Mr. DAVIS. Within the confines of the delegation of authority it is correct.

Senator NEUBERGER. That is very different, is it not?

Mr. DAVIS. I suppose that is different; yes.

Senator NEUBERGER. Mr. Volin testified—I do not have it right here and would be glad to have anybody correct me—that if he had not been bound by your instructions he would have selected a different assaying firm. I do not recall the names exactly, but he would have selected some traditional assaying firm used by Federal agencies on the west coast, if I am not mistaken, if he had not been bound by your instructions. So the Bureau of Mines could not proceed as it saw fit unless it conformed to your instructions, is that not correct?

Mr. DAVIS. That is right.

Senator NEUBERGER. I see it is 12:20, and I do not want to go beyond the time you said.

Senator SCOTT. We will adjourn and meet again at 2 o'clock with Senator Neuberger in charge.

(Whereupon, at 12:20 p. m. the hearing was adjourned to reconvene at 2 p. m. the same day.)

## AFTER RECESS

Senator NEUBERGER. The committee will please come to order.

The chairman has asked if we would start in his absence and he will return as soon as some conflicting duties make that possible.

Representative HOFFMAN. Mr. Chairman, before you go into that, may I offer in evidence here three letters which have to do with the efforts of the McDonalds to get speedy action?

One of the issues that was in the case was that the Secretary or that the Solicitor acted too quickly. You will remember the testimony of Mr. Appling and others along that same line. Now this is along that line.

I would like to offer these three letters.

Senator NEUBERGER. May we just see the letters?

I have no objection to the letters being offered in the case.

Representative HOFFMAN. All they show is that the McDonalds were making every effort possible to expedite the matter, and of course that is what the Secretary and the assistant, I assume, were trying to do.

There are no reflections, Mr. Chairman, on anybody. They just show that the McDonalds were doing everything possible to have these patents issued.

Senator NEUBERGER. We will accept the letters as part of the record.

Representative HOFFMAN. Thank you.

(The letters referred to are as follows:)

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
January 10, 1952.

Mr. CHARLES R. McDONALD,  
Project Engineer, Al Sarena Mines, Inc.,  
406 First National Bank Building,  
Mobile, Ala.

DEAR Mr. McDONALD: Thank you for your most complete letter. I am writing to keep you posted on any action with regard to your case. I appreciate your situation and I am keeping in close contact with Senator Sparkman, Senator Hill, and Congressman Boykin in this respect.

I shall keep your records in my file for my use and will make every attempt to secure action in your case.

It was good to talk to you in New Orleans and I hope we may have the opportunity to see one another again. Best wishes for the coming year.

Sincerely,

ESTES KEFAUVER.

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
March 20, 1952.

Mr. CHARLES R. McDONALD,  
Al Sarena Mines, Inc.,  
Project Engineer, Trail, Oreg.

DEAR Mr. McDONALD: I have received your recent letter, and I surely appreciate your many kind comments.

I am in contact with the Department of the Interior with regard to your case, and they have informed me that it is pending termination of litigation.



This litigation has been in progress since February 12, 1952, and the United States Attorney will immediately contact that Department upon decision.

I am sorry that I have nothing more definite to report to you, but you may be assured that I am in touch with the situation, and I will do all possible to assist you.

My best personal regards.

Sincerely,

ESTES KEFAUVER

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
April 17, 1952.

**Mr. CHARLES R. McDONALD,**  
*Project Engineer, Al Sarena Mines, Inc.,  
Trail, Oreg.*

DEAR MR. McDONALD: Your most recent letter has arrived, and since Senator Kefauver is out of the office, I am sorry that I cannot give you a more satisfactory reply.

Senator will probably have an opportunity to look over your file soon, and in that event, you can expect to hear from him at that time.

If you would care to give me any further facts on the situation, I will be happy to help you all I can.

Best regards.

Sincerely,

FRANK BRIZZI,  
*Legislative Assistant to Estes Kefauver, United States Senator.*

# **STATEMENT OF CLARENCE A. DAVIS, UNDER SECRETARY OF THE DEPARTMENT OF THE INTERIOR—Resumed**

Mr. DAVIS. Might I see them to know what they are?

Senator NEUBERGER. Yes.

Mr. Secretary, on page 7 of your testimony you refer to the fact that the timber on these claims was of negligible value in 1897 at the time the earlier claims were filed on, and that it was of negligible value in the 1930's?

Mr. DAVIS. That is right.

Senator NEUBERGER. Is it not correct that the timber was of quite substantial value in 1948 when the company first applied for patent?

Mr. DAVIS. Yes, Senator, it was of substantial value; no question about that, I would think.

Senator NEUBERGER. And that even before they applied for patent, as you brought out, they could do everything they wanted with that timber except sell it commercially; is that not correct?

Mr. DAVIS. Not everything. They could use it in their mining operation.

Senator NEUBERGER. They could not sell it commercially until patent was granted?

Mr. DAVIS. I believe that is correct.

Senator NEUBERGER. They did not apply for patent until the timber had greatly expanded in value?

Mr. DAVIS. I think that is true, yes; that is, timber prices were rising. I would expect, in 1948. I suspect you would come nearer knowing than I would.

Senator NEUBERGER. In your letter of instructions to the Bureau of Mines, Mr. Secretary, you said that the expense and the assaying cost will have to be borne by you, meaning the Al Sarena Co. Why did you include that?

Mr. DAVIS. Because they were the contestants and they were complaining about the entire record and they were the people who were insisting that if independent assays were taken that they would show an adequate mineralization, so it seemed to me the fair thing to do was to require them to pay for it.

Senator NEUBERGER. Was not the Forest Service a contestant, too, in this?

Mr. DAVIS. That is right.

Senator NEUBERGER. Was any of this record ever submitted to the Forest Service for their opinions after it was made? Did you ever submit it to the Forest Service inasmuch as they were a contestant too?

Mr. DAVIS. I do not think we did.

Senator NEUBERGER. Would not that have been the reasonable thing to do?

Mr. DAVIS. I do not think so necessarily. The Forest Service's testimony was in the record. They had already had a full hearing. They had had their lawyers down there and their witnesses down there and they had fixed the value of this timber at \$77,000 in the record.

The thing that we were doing was not continuing a contest between two parties. We were trying to get an independent answer to this question of mineralization.

Senator NEUBERGER. And yet you did not let the Bureau of Mines make the assay? You required that it had to be a firm to which the Al Sarena Co. would agree to?

Mr. DAVIS. That is right, and I think that was a sound decision. The more I think of it, the more I am convinced that it was a sound decision.

Here were these people complaining bitterly that their Government, the Bureau of Land Management and their Government, was not doing the right thing by them. To pick up this thing and hand it to another bureau of the Interior Department, all staffed at the top by the same Secretary, same department of the Government, and say, "Well, this is what we are going to do," it does not seem to me that is a thing which inspires confidence in a person dealing with the Government.

It seems to me it is much better to refer the thing to someone in whom they have some confidence and, therefore, have no further legitimate complaint if the assay turns out unsatisfactory.

Senator NEUBERGER. You were thinking only then of inspiring the confidence of the Al Sarena Co. What about the public?

Mr. DAVIS. I was thinking about inspiring confidence in everybody concerned in this thing, including myself.

Senator NEUBERGER. You have said in earlier testimony that you felt the Bureau of Mines was completely neutral and you have had a substantial portion of your testimony lauding the integrity of the Bureau of Mines, and yet you do not think it would inspire confidence in the Government to turn this matter over to the Bureau of Mines?

Mr. DAVIS. Not necessarily, not necessarily. I may have confidence in the Bureau of Mines, but somebody looking in from the outside who says that this is the Department of the Interior, all they did to me was move it from one bureau to another of their bureaus, does not inspire too much confidence.

Senator NEUBERGER. You referred to the case of the *United States v. Cameron* on page 24:

\* \* \* in the leading case of *United States v. Cameron*, involving mineral claims on the Bright Angel Trail in the Grand Canyon. In that case the Secretary referred the matter to the Geological Survey.

Mr. DAVIS. That is right.

Senator NEUBERGER (continuing):

\* \* \* and was affirmed by the Supreme Court of the United States.

You have cited this as a precedent. Why do you cite as precedent a case in which it was presumably turned over to the geological survey, and yet you say it would not have inspired confidence to have turned it over to the Bureau of Mines?

Mr. DAVIS. I say that because it is simply cited as an example of similar action of other Secretaries in calling upon independent advice from other agencies and other bureaus.

Senator NEUBERGER. But you did not; that is the point I am making. This does not follow that case.

You cited a case which you did not follow. The Bureau of Mines was not free to make the decision, as you say here, that the geological survey could do.

Mr. DAVIS. The Bureau of Mines were perfectly free to supervise the whole thing to their satisfaction, which they did, and they have so testified.

Senator NEUBERGER. I beg to disagree.

Mr. Volin testified that had he not been bound by your instructions, he would have sent these minerals to a far different assayer for testing. If I am not mistaken, Mr. Volin has so testified that the Bureau of Mines was not free as you say.

Representative JONAS. Will the Senator yield?

Senator NEUBERGER. Yes.

Representative JONAS. I do not recall that he testified quite that way. An effort was made to get him to testify to that. I asked him the specific question if he intended that any implications be drawn that he was compelled to abide by any decisions that the Al Sarena people made in making this selection, and he said "No."

He further testified that he did not insist on having these assays made by a house out in the Northwest, that he merely suggested 2 or 3 houses and a countersuggestion was made by the Al Sarena people; and he investigated the house suggested by the Al Sarena people, satisfied himself that it was reputable and qualified, and did not insist on using the Bureau's laboratory or any other assay house in the Northwest.

Senator NEUBERGER. We will check Mr. Volin's testimony.

It is my recollection that Mr. Volin testified that had there not been this instruction from the Under Secretary, then solicitor, that he would have sent it to Abbot Hanks or to the Ennis Laboratories.

We will check and see whether Mr. Volin said that.

Mr. Davis, is it not true that after this case was appealed to the present Secretary of the Interior, you ordered investigation without serving notice of any kind on the United States Forest Service, which was a contestant in the matter?

Mr. DAVIS. I did not order any investigation. What do you mean by that?

Senator NEUBERGER. Well, you ordered a further examination of this case; that was your instruction?

Mr. DAVIS. I made up my mind to make a further examination of it; yes.

Senator NEUBERGER. Did you serve any notice at all on the Forest Service?

Mr. DAVIS. No; I think not.

Senator NEUBERGER. Was not the Forest Service a contestant in this matter until your final granting of patent was handed down?

Mr. DAVIS. I think they might be called a contestant; at least they were in the record as having objected.

Senator NEUBERGER. Do you not think the Forest Service should have been notified inasmuch as they were a contestant?

Mr. DAVIS. I am not at all sure they should have. This is a matter of appointing an independent investigator to investigate and make a report of the facts. I did not feel and do not now that there was any necessity for notifying the Forest Service.

Senator NEUBERGER. Do you believe that an assay house in which one of the claimants had to concur was an independent investigator?

Mr. DAVIS. Yes; I would think so.

Senator NEUBERGER. In your opinion, that would qualify as an independent investigator?

Mr. DAVIS. I would think so. I would think that if you and I had a dispute and we could not settle it any other way and we agreed to let one of our colleagues settle it, which is very common; I do not think there is any more fair way of settling a dispute than that of having the parties agree that we will have so-and-so settle it for us.

Senator NEUBERGER. You think this was absolutely fair?

Mr. DAVIS. I think it was a reasonable procedure and I think it was fair, yes.

Senator NEUBERGER. Did the Forest Service agree? You said the parties agreed. I did not think the Forest Service agreed.

Mr. DAVIS. After all, this is a procedure in the Bureau of Land Management primarily.

Senator NEUBERGER. Was the Forest Service a contestant?

Mr. DAVIS. They were a contestant and produced testimony; however, the testimony they produced was almost entirely, except as to the values, by the employees of the Bureau of Land Management.

Senator NEUBERGER. Did not the Forest Service represent the United States Government? They were the agency that had jurisdiction over the land involved?

Mr. DAVIS. They have some jurisdiction over the land involved, yes, but so does the Bureau of Land Management.

Senator NEUBERGER. It was part of the national forest?

Mr. DAVIS. Also part of the public domain so far as mineral claims were concerned.

Senator NEUBERGER. Is this not a fact, that you have compared this to an appellate court proceeding several times, I think?

Mr. DAVIS. That is right.

Senator NEUBERGER. You know more about this than I do, perhaps I am wrong and if so I would appreciate being enlightened. When a record goes up to an appellate court, does an appellate court take further evidence or does it rely on the record or remand it back for further evidence from the same sources?

Senator NEUBERGER. You referred to the case of the *United States v. Cameron* on page 24:

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Mr. DAVIS. Ordinarily, in the judicial system, of course the appellate court does not take further evidence. In that respect, the administrative process differs from the judicial process, that is true. They are not identical, Senator.

I have not even pretended that they were but I think they are quite a similar proceeding.

Senator NEUBERGER. But you yourself have said in your testimony that you were, in effect, an appellate judge?

Mr. DAVIS. That is right, of an administrative proceeding.

Senator NEUBERGER. Yet, actually, this departed drastically and radically from normal appellate procedures?

Mr. DAVIS. Not from normal administrative appellate procedures.

Senator NEUBERGER. Just to return to the point made by the distinguished Congressman from North Carolina, page 470:

Mr. VOLIN. If I had not had the instructions which made it necessary to reach an agreement, I would have sent the samples to one of the west coast firms.

Senator NEUBERGER. If you had not had those instructions from the solicitor's office, you would have sent the samples to one of the west coast firms?

Mr. VOLIN. That is right.

Senator NEUBERGER. In other words, it was those instructions which resulted in the samples being sent to Mobile, Ala., for testing?

Mr. VOLIN. I believe that is a fair statement.

That certainly would indicate that the Bureau of Mines, which you have praised highly for its integrity and confidence and neutrality, was certainly not a free agent in the mind of the man who was in charge in the field?

Mr. DAVIS. Well, he did not have unlimited authority to take this and do as he pleased with it; no.

Senator NEUBERGER. In other words, the Bureau of Mines—

Mr. DAVIS. But he was a free agent within a very definite path; that is, of agreeing to collaborating with and approving a neutral agent. He was free within that general framework.

Senator NEUBERGER. He was free to follow your instructions. He was free within the framework of your instructions?

Mr. DAVIS. That is right.

Senator NEUBERGER. And the agency which you praised so highly for neutrality and integrity was not assigned by you to go ahead and make a wholly independent study and report to you?

Mr. DAVIS. That is right.

Senator NEUBERGER. Now, you brought up a number of times that the hearings in the field broke up in rather boisterous disagreement.

I think Mr. Rice, one of the BLM examiners, testified in Portland about the Al Sarena people walking out and so on. You mentioned that in your testimony; is that correct?

Mr. DAVIS. That is right; that is what the record shows. I was not there.

Senator NEUBERGER. In effect, are they not people who are being rewarded for walking out and not following through with the normal hearing before the mineral examiner in the field?

Mr. DAVIS. I do not think so. I have no idea what this thing was about. The record does not tell you very completely. At any rate, there was some pretty violent disagreement and bitter words exchanged and evidently some fast talk, because the reporter said he was not able to make up a record.

Senator NEUBERGER. They walked out and there was bitter disagreement?

Mr. DAVIS. That is right.

Senator NEUBERGER. Again I say, by being given this extraordinary treatment, are they not being rewarded in effect because of the many thousands of other mineral claimants, large and small, who have had perfectly orderly procedures before mineral examiners, have been denied patent and never received this treatment?

Mr. DAVIS. That may be. There may have been a full hearing and a complete record, but would you say that even though their counsel had made a mistake in walking out that they should pay the price of the loss of their whole controversy because of that sort of thing?

Senator NEUBERGER. Well, I would say this—you are asking me the question, Mr. Secretary. I certainly would say this, that the very most that should have been done for them was to have remanded this to the BLM and the mineral examiners.

Instead, after their having had this big blowup, you yourself said in your opinion where patent was granted:

• • • having had full opportunity to participate in the hearing, chose to withdraw therefrom without submitting its evidence.

Mr. DAVIS. That is right.

Senator NEUBERGER. Now, in effect, when the appellant stalked out without submitting evidence, instead of your remanding it to those agencies in the field which had jurisdiction, you have given them this extraordinary procedure. I would like to ask you this:

There are thousands of mining claimants in my State on national forest lands. Supposing at the next hearings by mineral examiners that they stalk out without submitting evidence. You have said you felt this procedure was fair. Are you going to allow them the same memorandum that you sent to the Bureau of Mines in the Al Sarena case?

Mr. DAVIS. So far as I am concerned, that would all depend on the record of the particular case before me. No, I would not say that I was going to do this in every case. I might do something else. I would adopt that administrative procedure which I thought was best adapted to getting at the truth of the situation, whatever that may be.

What I think you are saying is that these people should not be given a chance for another hearing because of error of their counsel in abandoning the hearing. I do not know whether he should have abandoned or not. I do not know what was said or done. I do know they abandoned the hearing. I do know, Senator, that this thing had dragged on for 5 years.

As I said in the statement, I did feel that to remand it back to the Bureau of Land Management with the controversy there was, and the mutual recriminations that were going on, that you just were not going to get anywhere.

Senator NEUBERGER. To begin with, it had been at the secretarial level only about 17 months; is that not correct by your own chronology?

Mr. DAVIS. About 20.

Senator NEUBERGER. I do not intend to get off on any sidetrack, but I want to say to you that I have many letters from prominent constituents from Oregon of your own party complaining about corre-



spondence with Secretary McKay. But when you cite the fact that this had gone so long, again I get back to this point:

Why did you not at the very most remand it for proceedings in the field when you, by your own statement, have said that they withdrew without submitting their evidence?

Representative HOFFMAN. I want to make a point of order.

You said you had many letters in your files complaining against Secretary McKay. That is all political propaganda. If you want to get that in the record for that purpose, that is all right, but why couple it with a question. Why preface all your questions with some slur at the Secretary or the Department?

Senator NEUBERGER. May I say this: That the Senator from Nevada for 70 minutes the other day and 45 minutes today constantly made statements questioning the acts of various Presidents of the United States, and you sat by here and said nothing.

Representative HOFFMAN. I did?

Senator NEUBERGER. Yes.

Representative HOFFMAN. I could not hear all he was saying and I am not responsible for what he said. If you are just trying to balance up the record on some political propaganda, I want you to have a fair deal.

Senator NEUBERGER. It is not a question of political propaganda.

Representative HOFFMAN. You said you had so many complaints from people about Secretary McKay. It does not solve any issue in this case.

Senator NEUBERGER. It merely goes to the heart of the matter because the matter had been up for 18 or 20 months that this extraordinary procedure was justified.

Mr. Secretary, to get back to whether some other mining company or some other prospector would be allowed this same procedure, do you not think what you did is an encouragement to others to stalk out of mineral examiners' hearings where they feel their evidence perhaps may be weak and to request the same special procedure which Al Sarena received?

Mr. DAVIS. No; I would not think so.

Senator NEUBERGER. Why would it not be?

Mr. DAVIS. Oh, Senator, this happens all the time in controversies. It does not establish precedents at all. Anybody who has been around the courts as much as I have knows that lots of times you get into a wrangle and things breakup and you have to do something to get the record straight and start over again, but it does mean that it will not go as orderly as it ought to go.

Senator NEUBERGER. This happens all the time?

Mr. DAVIS. I am not talking about the Interior Department. I say it happens in controversies all the time. No two of them have quite the same pattern, you know.

Senator NEUBERGER. It is true, is it not, that this sort of procedure has never been followed before to the knowledge of the career people who testified?

Mr. DAVIS. Well, I think that is true. If you want to be strict and literal about it, I think that is true. I think that the Cameron case, despite the fact that you do not agree with me, I think the Cameron case is a pretty good example of the kind of thing that has been done from time to time.

I think every Secretary, and I am not critical of him at all, I think every Secretary gets in situations over there where for one reason or another there is a controversy or he feels that a bureau is a little bit overenthusiastic for some program or doing something it ought not do, and calls on some of the other bureaus to give him a report of what they think about it, and frequently acts accordingly; that happens frequently.

Senator NEUBERGER. Did you not testify a short time ago that you did not think it would instill confidence in the Government if this were turned over to another bureau?

Mr. DAVIS. What is that?

Senator NEUBERGER. You have just now said that many times a secretary will turn something over to another bureau to decide. Have you not said that?

Mr. DAVIS. That is right.

Senator NEUBERGER. Yet a short time ago, maybe 10 or 15 minutes ago, you testified that you did not think this would inspire confidence in the Government to turn this over to another agency of the same department.

Mr. DAVIS. That is right, because of the circumstances here that there were definite accusations of bad faith on the part of the department. These other cases do not necessarily involve that. These other cases may not involve any questions of bad faith at all. They may be simply matters where you want additional information more than you have.

Senator NEUBERGER. You are talking about bad faith on the part of the department all the time——

Mr. DAVIS. I am not talking about bad faith, Senator; I am talking about accusations of bad faith. I do not know whether there was bad faith or not. I know that was the constant accusation.

Senator NEUBERGER. Did you ever attempt to determine whether or not these career employees of your Bureau of Land Management were in fact guilty of bad faith, Mr. Hattan and Mr. Rice?

Mr. DAVIS. I do not know how you would tell that. I only know what the records show. The records indicate, as I point out in the statement, that the Bureau of Land Management notified the Forest Service on the 7th of December, I believe it was, in 1949 or 1948 of the filing of these claims; that there is no actual protest of record by the Forest Service until sometime in May, I believe, or March, in which the Forest Service writes this letter and says this letter was written by Mr. Hattan and so "We want to protest."

Mr. Hattan was in a dual capacity in doing that.

Then I know there is a telegram which is also in the record, in which the Bureau of Land Management said that the Forest Service had filed a complaint on the 15th of December. Whether they did or not, I do not know. There is no record of it in the file.

Apparently the 15th of December, I have not checked this, Senator, I want you to know that, but apparently the 15th of December was the proper date within which the protest should have been filed. At any rate, the two dates do not seem to agree materially and one of the bases, as I understand it, if you can understand it from this record, one of the bases of this demurrer which was filed out there was the fact that the protest to the Forest Service was filed out of time, after the time that it should have been filed.

Frankly, I do not think there is any merit in that contention, never have, but it shows you the thing that was generating controversy.

Senator NEUBERGER. If in your opinion there was some doubt about the fairness and impartiality of the BLM minerals examiners, Mr. Hattan and Mr. Rice, did you ever give these men an opportunity to prove themselves?

Representative HOFFMAN. Wait a minute, Mr. Chairman; I object to that question.

In the first place, you tell him what is in his mind and then you ask him a question as to whether he ever gave him an opportunity to prove himself. That is not a fair way to examine a witness because if he goes ahead and answers, then by implication or by his silence or neglect in answering the first statement, you get him on the record as saying certain things which he has not said.

You may not be a lawyer but you are very adroit in getting the witness on the record or trying to get the witness on the record on something that he has not testified to, and I object to it. I say it is out of order—improper.

Senator NEUBERGER. The Secretary has said that the reason he did not return this to the BLM mineral examiners for further proceedings was because of the accusations of bad faith against the career employees of his department.

Representative HOFFMAN. That is right.

Now let the stenographer read the question you asked to see what is in it.

Senator NEUBERGER. You have said that that was the reason. I think it is a perfectly proper thing for me to ask whether or not you made any effort to find out if these accusations of bad faith were, in truth, well-founded.

Representative HOFFMAN. And I have no objection, Mr. Chairman, to that question, but you preface it by an assertion of your own as to what he thought about Hattan and Sanborn.

Senator NEUBERGER. I asked if there was any doubt in his mind as to their impartiality.

Have you made any effort to find out whether these accusations of bad faith against these men were, in fact, well-founded?

Mr. DAVIS. No, Senator, I made no effort outside of the record as it was before me. I do not know how you could anyhow.

Senator NEUBERGER. Did you accept the assertions of the McDonald Co. that these men were guilty of bad faith?

Mr. DAVIS. Oh, no.

Senator NEUBERGER. Well, if you did not, why did you not remand it?

Mr. DAVIS. Simply because I accepted their repeated assertions and the evidence which was in the record as evidence in my mind that we were never going to have any fair determination of this controversy by that method.

Senator NEUBERGER. By what method?

Mr. DAVIS. By referring it back to Land Management.

Senator NEUBERGER. And why were you sure in your own mind that you were not going to have a fair solution?

Mr. DAVIS. Senator, let me tell you.

When the accusation of unfairness and prejudice is made against a judge, for instance, it does not make any difference how fair he

may actually be, there is always the feeling that he should not have heard the controversy and that the decision is not what it ought to be; that is the type of thing here that was motivating me.

SENATOR NEUBERGER. Do you see any reason then, Mr. Secretary, why all the thousands of mineral claimants on national forests should not come in with similar accusations of bad faith against mineral examiners who have rejected their requests for patent?

MR. DAVIS. No, I do not see any reason why they could not, but the fact is they do not and they will not.

SENATOR NEUBERGER. Is not this case an encouragement to them to do so?

MR. DAVIS. I do not think so.

REPRESENTATIVE HOFFMAN. You will not find another case like this where the Department has pushed somebody around the way they have until 3 and 4 Senators and 3 Congressmen at least had to protest; that is, the Chapman administration I am talking about.

SENATOR NEUBERGER. I would just like to say for the record, so the record shows that the people on this side allowed the Senator from Nevada to question the Chief of the Forest Service for 70 minutes without interruption. We allowed the Senator from Nevada this morning to question the witness for nearly 45 minutes without interruption.

If you want to take over, I will be glad to let you take over and resume later on.

REPRESENTATIVE HOFFMAN. No, but if you want to continue the tactics and ask questions that are not fair to the witness, you will get a point of order every time.

SENATOR NEUBERGER. You can make a point of order for as long as you like.

REPRESENTATIVE HOFFMAN. I will continue if you continue doing the way you are. You are almost as bad as Chudoff and Scott.

SENATOR NEUBERGER. Mr. Secretary, did you believe the accusations of bad faith the McDonalds made about Hattan and Rice?

MR. DAVIS. I neither believed nor disbelieved. They were made. There are certain corroborative circumstances, 1 or 2 of which I have related to you.

SENATOR NEUBERGER. What will you do if and when others make accusations of bad faith against mineral examiners? Will you follow the same procedure you did in this case?

MR. DAVIS. Not necessarily.

SENATOR NEUBERGER. Do you think this company should receive a treatment that no other company ever has had in prospecting and locating claims on public land?

MR. DAVIS. Well, of course not. However, that is a bad way to state a question, if I may say so.

SENATOR NEUBERGER. Do you know of any precedent for what was done in this case?

MR. DAVIS. Yes, I know a lot of precedents for substantially what was done in this case. I do not have any case exactly like it because I do not think there have been any exactly like it.

SENATOR NEUBERGER. That was the testimony from many career people in many agencies, the Bureau of Land Management, Bureau of Mines, and the Forest Service, so you are in agreement with them on that.

You again brought up in your oral testimony as well as your written testimony *U. S. v. Cameron*. Actually, what you did was quite different from *U. S. v. Cameron*, is it not?

Mr. DAVIS. No, I do not think so in substance. You can quibble around about the form, yes, and you can make it appear as though it is slightly different, but the substance of both those cases is that the Secretary was in a dilemma and he did not know what the answer was.

In the one case he turned to the Geological Survey and said, "Tell me what the answer to this thing is. Are there any minerals on these claims?"

In this case the Geological Survey said no.

I turned to the Bureau of Land Management and said, "Set up a procedure that will give me the answer," and they happened to say yes. But, fundamentally, the procedures are quite identical.

Senator NEUBERGER. You turned to the Bureau of Mines but you also restricted the Bureau of Mines as Mr. Volin, the Bureau of Mines representative in the field, has testified; is that not correct?

Mr. DAVIS. Well, we have been over that at least half a dozen times. I do not think I restricted him any more than——

Representative JONAS. Would the Senator yield?

I meant to bring this up before.

Senator NEUBERGER. Go right ahead.

Representative JONAS. I would like to read into the record the questions I asked Mr. Volin and his responses bearing on that particular point, if the Senator will yield for that purpose, and he has.

On page 491 of the record I quote from the transcript:

Representative JONAS. What I am trying to get you to say is whatever it was the company representative said, whether it amounted to a categorical rejection of any assayer out there or if it was merely a countersuggestion which you took under consideration and, after investigation, agreed to it. Which was it?

Mr. VOLIN. At the time I took it as a countersuggestion because if I had, as a result of my inquiry, been dissatisfied with the A. W. Williams Co., I would have rejected it and we would have had to arbitrate farther on the thing.

Representative JONAS. Then you would have had to have a meeting of the minds about some other company?

Representative CHUDOFF. I did not hear your answer. Did you say if the applicant had insisted on the Williams Co., you would have insisted they give to somebody else?

Mr. VOLIN. No; I did not say that.

Representative CHUDOFF. What did you say? I did not hear it.

Mr. VOLIN. I said if as a result of my inquiry about the Williams Co. inspection I had been dissatisfied with the answer I received, I would have asked for further discussion, further negotiation to select an assaying firm.

Senator NEUBERGER. Mr. Secretary, the reason I have kept asking you about the Cameron case is that we have been trying to find out about the Cameron case.

Now, to begin with, we have brought out that you made certain instructions to the Bureau of Mines which did limit their activity but, and I have not read this but I have been talking to counsel for the Interior Committee, and we have been going over the Cameron case, and counsel informs me that he cannot find where the United States Geological Survey is introduced into the Cameron case.

Mr. DAVIS. That is right, Senator, it is not so said in the Supreme Court opinion.

Senator NEUBERGER. What about the Circuit Court opinion?

Mr. DAVIS. No; I do not know whether it is mentioned in the circuit court opinion, but that is what is done.

Senator NEUBERGER. Inasmuch as you brought this in—I never heard of the case before—it seems to me we ought to find out what you did bring in, in justification for the action you took. This has just come to me. This is the opinion of Mr. Justice Vandeventer and he refers to the fact that the Secretary of the Interior directed that the hearing be had in the local land office. The land office was the predecessor to BLM, is that not correct?

Mr. DAVIS. That is right.

Senator NEUBERGER. I do not find—of course it may be, this has just been given to me—in the Vandeventer decision where this procedure is described.

Mr. DAVIS. Well, Senator, the procedure is departmental procedure and is not mentioned in the Supreme Court opinion.

Senator KUCHEL. Would the gentleman yield?

Senator NEUBERGER. Yes.

Senator KUCHEL. Do I understand, generally speaking, the issue before the Supreme Court in the case, Mr. Secretary, to which you allude, was whether or not the Secretary had the discretionary authority to take the action that was questioned there?

Mr. DAVIS. Yes.

Senator KUCHEL. So that the administrative technique would not have been a part of any issue in the lawsuit before the Supreme Court, is that correct?

Mr. DAVIS. Pardon me, Senator?

Senator KUCHEL. The administrative techniques which were used by the Department of Interior were not in issue in the Supreme Court?

Mr. DAVIS. That is right.

Senator NEUBERGER. These opinions, Mr. Secretary, just do not seem to bear out what you have said in your testimony so far. We will have to go over these some more.

In the Supreme Court, and I guess this is the Circuit Court of Appeals for the Ninth Circuit, I think the decision which is questioned is not only the jurisdiction of the land department, but whether within its exclusive determination. The land department was the predecessor to BLM, and BLM was not allowed to reenter this case by you?

Mr. DAVIS. It is an exclusive determination of the Secretary of Interior in that case, and in this case, too, of course.

Senator NEUBERGER. The only thing I think is, this Cameron case then, quite from upholding what you did, would seem to refute it.

Mr. DAVIS. No, no, Senator; the reference in the Cameron case was by Mr. Ballinger, who was then Secretary of Interior in 1911. It is a departmental letter. Those files are, of course, old and so forth but, in any event, the letter was from Mr. Ballinger as Secretary of the Interior to the Director of the Geological Survey, and he tells the Geological Survey to make an investigation and report to him upon impartial and thorough field examination of each of the claims.

I have a copy here of that administrative letter of Secretary Ballinger, and I am perfectly willing to submit it to you. It is a copy out of the files of the Interior Department in connection with the Cameron case.

Senator NEUBERGER. Was it sustained by the Court?

Mr. DAVIS. Yes; that is, the Secretary stood on the record of the Geological Survey and was sustained by the Court, as I understand the case.

Senator NEUBERGER. Were there any limitations placed on the determination by the Geological Survey?

Mr. DAVIS. No.

Senator NEUBERGER. Such as there were?

Mr. DAVIS. No.

Senator NEUBERGER. There was nothing parallel with the letter you sent to the Bureau of Mines?

Mr. DAVIS. Nothing parallel with saying to them that your determination of this thing is to be filed, or nothing telling them to consult with Senator Cameron with reference to the techniques to be employed; no, that is true.

The case is cited to show that the Secretary of the Interior from time to time has found it desirable to make references to other agencies; that is the only purpose of it.

Senator NEUBERGER. But you yourself did say earlier today that it could cause a lack of confidence in the Government if, in a case of this sort, it was referred to another agency of the Interior Department; is that not correct?

Mr. DAVIS. I do not think I said it could cause a lack of confidence but I think I did say that it is not entirely the way to restore complete confidence when you have an agency such as the Interior Department under charges of unfair treatment to simply say, "We will have another agency of this same Department, subject to the same executives at the top, we will have them look at it and tell you what to do."

I had the strange notion that a citizen in connection with these matters is entitled to some kind of 50-50 run for his money. Maybe that is wrong.

Maybe the Government should say, "This is the way we are going to do it and this is it," but that does not conform to my idea of fair play and does not conform to my idea of giving the citizen the kind of reasonable opportunity that I think he is entitled to.

Senator NEUBERGER. Do you think the Forest Service was entitled to a 50-50 show and that it should have been called in?

Mr. DAVIS. I think so. I think the Forest Service were entitled to produce the evidence which they had, and they had already done that in the record.

Senator NEUBERGER. Do you think the Forest Service should have been consulted before you handed down this procedure?

Mr. DAVIS. No; I am not at all sure that they should.

Senator NEUBERGER. Is it not true at the time the Forest Service evidence was 5 years old?

Mr. DAVIS. Well, no, it is not true. As a matter of fact, the hearing was not until 1950. It was 3 years old.

Senator NEUBERGER. But you granted patent in early 1954 so that the Forest Service evidence was 4 years old?

Mr. DAVIS. Something like that.

Senator NEUBERGER. Do you not think perhaps that they should have been consulted before you handed down the final patent and been informed?

Mr. DAVIS. Well, Senator, I do not know any good purpose that would be served by it particularly. I recognize your point of view that if they had been consulted, they would have come in and testified that lumber had increased tremendously in value and all that sort of thing, but that just is not material to the allowance of this claim.

The question is: Are there minerals on this claim? If there are minerals on there, these people are entitled to a patent. The question is: Have they minerals? If you can believe anything in all this correspondence from Members of the Senate and House and other people, and from these McDonald statements and so forth, there have been literally hundreds of assays taken on these claims, some of which were good and some of which were not good.

Now, all the assays do not have to be good. Because you get some bad ones does not necessarily defeat the claim. The thing you have to show is that there are minerals in paying quantities on the claims.

Senator NEUBERGER. I regret that my attention was diverted and that I was asked if I wanted to take a long-distance call. I am sorry, Mr. Secretary.

Mr. DAVIS. Surely.

Senator NEUBERGER. In your letter of instructions where you talked about the expense of assaying, we have touched that very briefly. Do you think that was a very material thing that the company should bear the expense?

Mr. DAVIS. Well, I think it was important. In the first place, it seems to me that when people make complaints of that kind they should ordinarily pay the expense.

Representative HOFFMAN. Mr. Chairman, will you yield right there?

Senator NEUBERGER. Yes.

Representative HOFFMAN. This is from section 108.549, subsection (b), page 347 of the Code of Federal Regulations, and reads as follows:

A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make a survey of his claim. All expenses of survey of mining claims and publication of the required notices of application for the patent ought to be borne by the mining claimant.

Senator NEUBERGER. In other words, I would like to check with counsel on that, is that the procedure that the claimant pays for the assays?

Representative HOFFMAN. You can read it here. It is printed in here.

Senator NEUBERGER. I just wanted to find out.

Mr. LANIGAN. The claimant pays for his own assays.

Senator NEUBERGER. However, the assays which are done by the Bureau of Land Management or the Forest Service are paid for by the agencies, is that not correct?

Mr. DAVIS. I do not know. I would suppose so but I do not know.

Senator NEUBERGER. Is it not correct if the Bureau of Land Management or the Forest Service makes an assay, they pay for it?

Mr. DAVIS. I suppose they do, Senator. I do not know.

Senator NEUBERGER. The point I am trying to get at is this:

The assays which the claimant pays for are his assays which he submits in evidence, is that not correct? He pays for his own assays which he submits in evidence?



Mr. DAVIS. I would suppose so, yes.

Senator NEUBERGER. And the Government pays for the assays which the Government submits in evidence?

Representative HOFFMAN. No, no; the claimant pays the whole story except, and if you will go along through there you will find where the Government pays, for instance, in this case they pay the expenses and salary of Mr. Appling, but the other expenses were paid by the claimant.

Senator NEUBERGER. In other words, then——

Representative HOFFMAN. If you do not believe me, ask any one of the four counsel.

Senator NEUBERGER. In other words, when the Forest Service and the BLM made the surveys on these claims, the claimant paid for the assays? The Government paid for these assays, is that not correct?

Representative HOFFMAN. What is that?

Senator NEUBERGER. The point I am trying to make with you so that we do not have incorrect matter in this record, when the Forest Service and the BLM made assays, the Government paid for the assays?

Representative HOFFMAN. You mean Appling and McCormick?

Senator NEUBERGER. Not Appling and McCormick.

When Mr. Sanborn and Mr. Hattan made these assays to determine whether there was mineralization on these claims, the Government paid for those assays?

Representative HOFFMAN. Certainly they did for those.

Senator NEUBERGER. That is right.

Representative HOFFMAN. The claimant was not fooling around there, that was the Government's own business.

Senator NEUBERGER. That is right.

Representative HOFFMAN. You want McDonald to pay for all these investigations Hattan started?

Senator NEUBERGER. The point I am making is that the Government pays for its assay and the claimant for his assay.

Representative HOFFMAN. For the joint assays made in this case by McCormick and Appling.

Senator NEUBERGER. In this instance, Mr. Secretary, you granted final patent on the basis of claimant's assays which he paid for?

Mr. DAVIS. No, I did not. I granted patent on the basis of a neutral assay taken by people who had agreed on the competency of the assay house.

Senator NEUBERGER. Who paid for that assay?

Mr. DAVIS. The claimant paid for it.

Senator NEUBERGER. That is the point I wanted to establish.

Mr. DAVIS. I do not know whether they did or not. Anyhow, I assume they did.

Senator NEUBERGER. Those were your instructions?

Mr. DAVIS. The Government did not anyhow. Let us put it that way.

Senator NEUBERGER. You granted patent on the basis of assay which you instructed the claimant should pay for?

Mr. DAVIS. On the basis of an assay by a house on which the Government and the claimants agreed with the claimants paying the cost, yes.

Senator NEUBERGER. Do you think that is a wise public policy?

Mr. DAVIS. I think that is a wise public policy.

Representative HOFFMAN. Will the Senator yield for a moment?

Senator GOLDWATER. I think there is some confusion entering here. I have never heard of a case of a claimant having the Bureau of Mines make their assay.

If I owned a mining claim that I wanted patent on, I do not believe that the Bureau of Mines has any right to make my assays at Government expense. I may be wrong, but I think that is the confusing point here, Senator; that this was a case where the owner of the claims disagreed and he paid for his own assays. He would have done that regardless.

If there was no contest in this case, he would have paid for his own assay. That is the usual way of doing it.

Senator NEUBERGER. The only thing is that I think the record should show, Senator, that the final patent was based on an assay which the claimant paid for.

Senator GOLDWATER. I do not know of any where they did not.

Senator NEUBERGER. They certainly did not pay for the assays made by the Bureau of Land Management and the Forest Service.

Senator GOLDWATER. They did not make them for patent. They are not asking to patent the lands but the McDonalds are.

Senator NEUBERGER. Exactly, and the point I am trying to make and the point you are trying to help me make is that the assays made by the BLM and the Forest Service when they examined the land for its mineralization was paid for by the Government.

Senator GOLDWATER. There is no argument on that.

Senator NEUBERGER. I am glad of that.

Senator GOLDWATER. But I do not believe the McDonalds could not have used that for patenting purpose. I will say this:

If they can, there are a lot of prospectors in the West that would like to know about it.

Senator NEUBERGER. The Government used it in originally denying patent, is that not correct?

Senator GOLDWATER. Yes, that is correct.

Senator NEUBERGER. So, ultimately, final patent was granted on the basis of an assay which the claimant paid for.

Senator GOLDWATER. What I am trying to bring out is that I do not know of any other way it could be done. If the Government is going to go out and make assays for the miners, it should be published because there are hundreds of thousands that would like to know that.

Senator NEUBERGER. The only point I am making is that when the prospector applies for patent, the Government determines whether his patent should be granted.

Senator GOLDWATER. If there is no argument.

Senator NEUBERGER. I presume the Government would examine it. The Government in this case made its assays by 2 agencies and the 2 agencies paid for them.

Senator GOLDWATER. No argument on that.

Senator NEUBERGER. And denied patent.

Senator GOLDWATER. They did not deny patent. They did not hand down a decision.

Senator NEUBERGER. The Forest Service and BLM—

Senator GOLDWATER. The Secretary of Interior grants patents.

Senator NEUBERGER. The Forest Service and BLM recommended that patent not be granted.

Senator GOLDWATER. But the Secretary of the Interior has final say.

What I wanted to bring out is that you might leave some false impression that the Bureau of Mines customarily makes assays for all.

Senator NEUBERGER. No.

Senator GOLDWATER. If you read the testimony you will get that, and I do not think you want that in there.

Senator NEUBERGER. I certainly do not because a number of people with Bureau of Mines testified that this situation was absolutely unique in their whole career and I think you were here during some of that testimony.

Representative HOFFMAN. For my own information, Senator, will you tell me, do you contend then that when McCormick and Appling took these samples and the assay was made at the request of the Al Sarena Co. that the Government should have paid for that?

Senator NEUBERGER. The point I am making is—

Representative HOFFMAN. Answer me that question if you will.

Senator NEUBERGER. I do not have to answer your question.

Representative HOFFMAN. That is your contention. You want the Government to pay for a survey and assay that was made for the benefit of the McDonalds.

Senator NEUBERGER. I think what the Government did in this instance, if you ask me, was entirely inappropriate, and I think the most this company should have received was that it should have been remanded to the Forest Service and the BLM, and the point I seek to make, and is on the record, is that the claimant paid for the assay which you had before you when final patent was granted.

Mr. DAVIS. And, Senator, that has been true of thousands of patents all over the country. I have little doubt of that.

Representative HOFFMAN. That is the regulation.

Mr. DAVIS. Because the claimant has to come in there and prove mineralization and of course he always pays for it. If there is no contest, then he gets his patent, but for you to pick this up and make a point of it, you are not in any different situation than you are in dozens of cases. Of course the claimant pays for the assays and of course he pays for assay on which the patent is granted, if it is granted. If it is not contested, he pays for the assays and proves his case.

I do not think it is quite a fair statement to try to highlight the point that there is something wrong with the assays because the claimant paid for them.

You can make that supposition about every assay ever submitted to the Bureau of Mines.

Senator NEUBERGER. This assay which the claimant paid for was superior in your mind to those which the BLM and Forest Service took?

Mr. DAVIS. I had more confidence in it because it was under the joint supervision of all the contesting parties.

Senator NEUBERGER. I thought the Forest Service was a contesting party.

Mr. DAVIS. The Forest Service was a contesting party.

It was taken under the direction of the Government of the United States. You can quibble all you please about which bureau and which this and that, but the fact is that it was taken in a contest between

these claimants on the one side and the United States Government on the other.

SENATOR NEUBERGER. You said all the contesting parties. Was not the Forest Service a contesting party?

MR. DAVIS. Yes, the Forest Service was a contesting party.

SENATOR NEUBERGER. And the Forest Service was actually not consulted at all in the procedure you handed down nor was the Forest Service consulted before you granted final patent. Is that correct or incorrect?

MR. DAVIS. I do not think they were because we moved it over to the Bureau of Mines as an agency to supervise the taking of an independent, and what I thought was dependable and still think was dependable, set of assays on this property.

SENATOR NEUBERGER. In one of your letters to the Director of the Bureau of Mines, you said:

All people concerned should therefore cooperate in obtaining samples and assays upon which no doubts will be harbored by anybody.

Do you think the Forest Service was concerned in this?

MR. DAVIS. I suppose they were, but you are directing here to an independent agency.

SENATOR NEUBERGER. I do not understand here your instructions. You say:

All people concerned should therefore cooperate in obtaining samples and assays upon which no doubts will be harbored by anybody.

Was not the Forest Service concerned by law as the custodian of this timber and land?

MR. DAVIS. I think they were somewhat.

SENATOR NEUBERGER. Then all people concerned were not participating in this, is that not true?

MR. DAVIS. The one side of this, the Forest Service side of this, was all complete in this record. They had testified at length, their evidence was in there at length.

SENATOR NEUBERGER. In other words, the Forest Service then did not participate in any way in taking these additional samples? You did not believe they were concerned?

MR. DAVIS. Well, now, which question?

SENATOR NEUBERGER. You did not believe the Forest Service was concerned?

MR. DAVIS. I do not think they were concerned in a record where they had made up their side of it complete, no.

SENATOR NEUBERGER. And you did not believe the Forest Service should be consulted?

MR. DAVIS. Well, their evidence was in the record, sir.

SENATOR NEUBERGER. And you believe then, in a matter of this sort where the Forest Service has the custody of the land, that you should have granted final patent without even giving them an opportunity to review or question this assay which came from Mobile, Ala.?

MR. DAVIS. I did not think so, and I think that when you refer the thing, as I did, to the Bureau of Mines with instructions which I gave them, I think you had a perfectly fair method of obtaining a fair and dependable answer to the question of whether there were minerals on those claims.

Senator NEUBERGER. Again I ask you a question which I think you did not answer before, at least not to my satisfaction. This is a perfectly fair method, you said that again. What about all the other thousands of claimants to land on national forests on the basis that it has minerals? What are you going to do about them?

Mr. DAVIS. We are going to go right ahead following the ordinary procedure unless circumstances develop similar to this, in which case we probably will adopt that agency which we consider competent and dependable to advise the Secretary on what to do.

Senator NEUBERGER. And if they should walk out of the hearing without presenting their evidence, will they have the benefit of this same procedure that you have set up for the Bureau of Mines in the Al Sarena case?

Mr. DAVIS. There is a good deal involved in this besides the mere walking out of the proceeding. You must remember that there were a good many of these records which were not submitted to the Solicitor's office, and which everybody concedes had been filed with the Bureau of Land Management, so it is not one of these things where you could say that if somebody walks out they get another special treatment of some type.

Senator NEUBERGER. There was no question of economy, governmental economy, at stake in your suggesting that the company pay for the assays; was there?

Mr. DAVIS. Not primarily economy, no, but I think it is the common thing to do, at least it is the procedure that I am very well accustomed to in lawsuits and things of that nature where somebody does something that requires you to back up and do it over again. The court always makes an order, "Well, you can't do it, but you will do it at your own expense"; that is a perfectly normal thing.

Senator NEUBERGER. I am concerned, of course, about this one thing, that if a claimant fails to introduce his evidence in the course of a regularly conducted hearing in the field that he might still win his case by claiming the record was incomplete, despite the fact that blame for the incompleteness of the record rested solely on his shoulders.

Are you not somewhat concerned about that?

Mr. DAVIS. I would be if I had let you state the facts the way you like to state them, but I am not concerned with the record in this case.

Senator NEUBERGER. Did you not say in your opinion that the claimant left without presenting his evidence, left the hearing? I mean you yourself used that language, I think.

Mr. DAVIS. That is right. That is right, he did.

Senator NEUBERGER. Well, I just asked if you are not concerned that further claimants can stalk out of hearings without presenting—

Mr. DAVIS. No, I am not concerned about that either, not at all. The fact is, if you will examine the record, Senator, you will find that this thing started out in a legal controversy immediately because these people claimed the right to file demurrers to test, among other things, the legality of the filings of the Forest Service—that is, whether it was filed within the specified legal time within which they might be filed. They wanted to argue that question.

Please remember I am quoting from a very incomplete record here, but that is what the summaries of the stenographer say, the substance. They argued that question and then they were told that the hearing examiner, the field man, was not going to pass on those legal questions.

They insisted that those legal questions should be passed on first before they got into the question of evidence.

Now, that is a unique situation that does not arise, as far as I know, has never arisen before and may never arise again.

They were asserting an agreement with the solicitor's office. I do not know whether they had that kind of agreement and I have no way of knowing that they had a right to a hearing on the legal aspects of this thing before they got into the evidence question.

As I said, Mr. White, my predecessor, denies that. I am not trying to choose between the two of them. So it is not at all a fair statement to say that anyone can walk out of a hearing and get special treatment.

Senator NEUBERGER. But you yourself, Mr. Secretary, in your opinion said:

The appellant, having had full opportunity to participate in the hearing, chose to withdraw therefrom without submitting its evidence.

Mr. DAVIS. That is right. I think they made a very unwise decision.

Senator NEUBERGER. And yet you yourself say here today that they made an unwise decision and yet, instead of remanding it for further proceedings to the agencies that they had walked out of, you set up this wholly new procedure for them?

Mr. DAVIS. That is right.

Senator NEUBERGER. Despite the fact that you say today they made an unwise decision?

Mr. DAVIS. That is right.

Senator NEUBERGER. What if other mining claimants make a similar unwise decision?

Mr. DAVIS. Does that bother you?

I do not think anything, whether in the courts or in the administrative process or what, ought to go through a final determination on a record where, admittedly, one side of the evidence is not in the record. That just is not fair play, that just is not cricket in my book.

Now, then, these people, right or wrong, their evidence was not in this record. The fact is that this thing had gone along for 5 years. The fact is that the record is full of violent protests from all kinds of people, their friends, Senators, Congressmen, these people themselves, their lawyers, all insisting, and again right or wrong, I do not know, but insisting that the fact that this thing was not settled was doing them serious financial damage.

Now, under those circumstance, would you send that back to the Bureau of Land Management to go through that bureau process again which, as a minimum, takes months and months and if somebody along the line wants to and leaves it lay on the desk for 6 months, which is not unheard of in Government, why there is no telling how long it takes to get it back up again.

As against that, I say that the reference of it to the Bureau of Mines to get somebody that they could agree on to take samples, get somebody they could agree on to take an assay, was a much more expeditious proceeding to be followed by a much more expeditious decision.

Senator NEUBERGER. Again, in making your statement you used the analogy of a court. Again I ask you, is it not correct that the court would not take new evidence in the way this was done?

Mr. DAVIS. That is right. In the judicial system you do not do that but you are dealing here with an administrative process which in many

ways is comparable to the courts and in many ways not. The reference is, of course, to the administrative process.

A trial court might very well adopt this procedure as I have outlined to you in the statement. It is pretty common in a trial court to make an independent reference on all kinds of technical questions.

Senator NEUBERGER. Do you feel that the Bureau of Land Management did not give these people a fair hearing?

Mr. DAVIS. I do not know whether they did or not. I do know that if I were these people, I am not here to make any defense of these people, do not misunderstand me, but I am telling you that looking at the record I can see why they felt grounds for complaint against the Bureau.

Here is a written record in which the Forest Service had not objected until the Land Management asked them to. Here is the same Land Management then hearing the evidence, taking the samples and being the judge which determines it.

Here is the same Land Management sending the record into Washington which has only one side of the evidence in it. Here is the same Bureau of Land Management having other evidence in its files which it did not originally send in.

Right or wrong, I am not condemning the Bureau of Land Management, I have no idea of these people, I have never seen them in my life at all, but I say to you that on the face of that record it is not a record to inspire confidence in a claimant.

Senator NEUBERGER. In your opinion granting the patent, you quoted with approval from the mineral examiners' findings on the eight uncontested claims, is that correct?

Mr. DAVIS. In my statement, you say?

Senator NEUBERGER. Not in the testimony today, Mr. Secretary, but in the ruling which you granted final patent, *United States v. Al Sarena*.

Mr. DAVIS. Read it to me, I do not have one before me.

Senator NEUBERGER. It is quite long, but you say:

Report of the mineral examiner of this Department made in 1949 contained this statement.

Then you quote at some length, in which the mineral examiner commented upon the value of the eight uncontested patents. Is that not correct?

Mr. DAVIS. I think so.

Senator NEUBERGER. Well this is what puzzles me—where this mineral examiner granted patent on the eight uncontested claims, you quote him with approval. Yet this same mineral examiner you seem to doubt with respect to his ruling on the 15 contested claims, the same mineral examiner?

Mr. DAVIS. That is right.

Senator NEUBERGER. I do not understand that.

In other words, the same man, where he approved patent on 8 claims which were not contested, you quote him favorably in your own opinion in support of your granting the 15 contested patents. You quote this man, yet you reject him as an arbiter to remand it back to him on the 15 contested claims.

If he was unfair, he certainly would be unfair all around. He is the same man.

Mr. DAVIS. Let us suppose that the eight claims were so clear that nobody could contest those. Let us suppose that we have here a man who is pretty obviously imbued with the idea that he should deny claims if he thinks the timber is worth more than the mine.

Let us suppose that we have a man here who is employed by BLM but who is hired by Forestry to do this.

Is it inconceivable to you that he would hold the claims which he allowed down to a minimum?

Senator NEUBERGER. Well, if he would so act, and you think he might so act, why would you quote him approvingly on any mineral findings?

Mr. DAVIS. Because I would say, as I frequently do, that when a witness concedes from a rather obviously hostile standpoint, concedes mineralization on eight of these claims, he has made a concession which has quite an effect upon my mind.

The very fact, Senator, that 8 of these claims were allowed uncontested, everybody conceded that 8 of them were mineralized, the fact that the others were around the fringe of the 8 which were allowed—that is a loose statement but more or less accurate—the fact that there is all kinds of testimony in the record that this was a great mineralized mass on this side of this mountain, led me to believe that nobody on either side of this controversy, for that matter, could sit down and draw a line around the mineralized area of these claims. I do not think it could be done.

Senator NEUBERGER. If they apply now for 15 more claims on the basis of that, would you give them patent?

Mr. DAVIS. They do not have 15 more.

Senator NEUBERGER. If they go ahead and expand it.

You say if a line is drawn; is there any limit to the area they will get?

Mr. DAVIS. Of course, there is a limit to the area they are going to get. But the size of this claim, the size of this land, Senator, as I understand this thing, and I am, of course, a Nebraskan, not a miner, but as I understand the thing, and as I understood it at the time, the actual area involved is not much greater, if any, than you would normally use if you went into mass production on these claims, being a mass operation.

We are not talking about veins of ore here of the kind we read about in story books where you can pick out nuggets. We are talking here about an area of a great lot of rock, soil, and gravel, and so forth, which has scattered all through it these little deposits of these various minerals.

As I understand it, to work that you need to turn a tremendous amount of dirt, a tremendous amount of rock, because the amount you get out of any one ton is necessarily pretty small. So that that cannot help but influence anyone who looks at the situation in feeling that since the area is not definable, everybody says that, including Mr. Hattan, he does not undertake to define the area, anyone cannot help but be impressed by the fact that if you are going into an operation, if it is a mining operation, that the amount of claims is not proper in relation to the amount allowed.

Sure, if you keep on filing claims down here 15 miles, obviously then you are going to have to start back to the very fundamental question of whether the mineralization will stand up on them and whether the



discoveries have been made, whether work has been done, all of those things you have to do all over again.

However, so far as I know, as a matter of law there is not any reason why people cannot go on filing additional claims. There is nothing to stop them. As long as they comply with the law, there is no crime being created in following the mining law.

Senator NEUBERGER. And you feel that the method in which this patent was taken was complying with the law?

Mr. DAVIS. Certainly I do. I would not have ruled the way I did.

Senator NEUBERGER. I would like to go back to an answer several answers before this one before we proceed.

If I am not mistaken, you said this examiner "obviously hostile." Did you not say that?

Mr. DAVIS. No, sir.

Senator NEUBERGER. But a few minutes earlier, you said you had not passed judgment on him. I asked you if you had—

Mr. DAVIS. You asked me if I had made up my mind as to whether he was a badly prejudiced fellow, and I said I had not called him in. But I do say, if you will read the record of that testimony, which I am sure the staff have done if you have not, I think you will come up with the conclusion that the gentleman was pretty thoroughly determined that these claims were not good and that he just did not think that they ought to be allowed because they had some timber on them.

I do not say that he is a bad fellow, I do not attack his character or anything of that kind, but I think he has that kind of definite slant.

Senator NEUBERGER. Again I want to get back to this because I think it is important.

You said earlier that you had not passed judgment on him?

Mr. DAVIS. That is right.

Senator NEUBERGER. Yet just now you said he was obviously hostile?

Mr. DAVIS. That is right.

Senator NEUBERGER. Have you not passed judgment on him without giving him a chance for a hearing before you?

Mr. DAVIS. I think we are quibbling over words as to what passing judgment is.

Senator NEUBERGER. You say this man was obviously hostile?

Mr. DAVIS. That is right.

Senator NEUBERGER. That was your phrase, not mine.

Mr. DAVIS. That is right.

Senator NEUBERGER. Yet you said that you had not studied into his case or looked into it, and yet you passed on him on the basis of no study or giving him a hearing?

Mr. DAVIS. I have passed judgment on what I think the record shows about him, that is all.

Senator NEUBERGER. And you think the record shows that he is obviously hostile?

Mr. DAVIS. I think that the records indicate that he is in not permitting the allowance of these claims and these claims in particular.

Senator NEUBERGER. Do you think that he is any less prejudiced than the Williams Assaying Co. 3,000 miles from the claim?

Representative HOFFMAN. I made a point of order against that one. No witness is required to evaluate the testimony of another witness or to pass upon the interest of any witness.

You are asking him to compare witnesses and their interest in a case.

Senator NEUBERGER. They are not witnesses. The witness, the Secretary, used the Williams assay report to grant patent to this timberland.

I certainly think I have the right to ask him his opinion of it. He used their assay. You just sit here and object to things one after another, but I submit—

Representative HOFFMAN. Not to half as many as I should.

Senator NEUBERGER. I submit that it is a perfectly proper question to ask the Under Secretary of Interior, who used an assay made by the company to which the patent was granted.

Representative HOFFMAN. The answer cannot possibly be a statement of fact. All it can be anyway is at best his conclusion or opinion or a comparison.

Who is the biggest liar? This fellow or that one?

Senator NEUBERGER. I have asked the Secretary if the mineral examiner in his department was "obviously hostile"; whether he thought the Williams Assay Co. was any less prejudiced than that mineral examiner.

Mr. DAVIS. Well, Senator, I am not going to set myself up here as the judge of the comparative mental processes of a group of witnesses. I do not know the Williams Assay Co., I never heard of them in my life until they crossed my path in connection with this.

The Bureau of Mines inquired about them enough that they were convinced that they were dependable people.

When you ask me whether somebody was more or less prejudiced than they were, implicit in the question that you ask is an implication that they were prejudiced and I am not going to answer a question which has an implication casting aspersions upon any witness.

Senator NEUBERGER. You have cast aspersions on the mineral examiner of your own department.

Mr. DAVIS. That is because I have read the record, correspondence, that the gentleman has done. I have not done that about the Williams Co.

Senator NEUBERGER. You made no study at all of the Williams Co.?

Mr. DAVIS. That is right.

Senator NEUBERGER. In other words, you were concerned about prejudice on the part of your own mineral examiner.

I ask that in the form of a question. You were concerned with prejudice on the part of the mineral examiner?

Mr. DAVIS. I felt the record indicated that there was some little feeling, perhaps, yes.

Senator NEUBERGER. Did it ever occur to you that a company selected to make the assay in which the claimant had a role in the selection might not be wholly unprejudiced?

Mr. DAVIS. Well, I suppose you can attack the integrity of any professional man on that basis, if you care to do so.

Senator NEUBERGER. You have questioned the integrity of a career employee in your department.

Mr. DAVIS. On things on which I had some evidence, I thought. I have no evidence about these people at all, and therefore, I am not going to be a party to drawing conclusions about them.

Senator NEUBERGER. In other words, though you made a much closer judgment of the prejudice or hostility or integrity of the ex-

aminer in your own department who rejected the claims than of the Mobile firm who handed down the assay on which you based patent?

Senator KUCHEL. Let me interrupt, if I may.

It seems to me in the last question that my colleague, Senator Neuberger, asked, it is not correct to list the word "hostility" along with the word "integrity."

As I understand the law business, one who is testifying is described as a hostile witness if the burden of his testimony is against a position taken by the other party to the lawsuit or to the proceeding.

So that, when you describe from a legal standpoint a person as a hostile witness, you are not imputing to him any venom or any physical aspects of violence; you are merely describing a witness whose point of view and whose testimony is hostile or antagonistic or in opposition to that which the other party to the dispute takes.

So that I want to be sure, Mr. Secretary, that when you answer that question, you are fully aware of the fact that the Senator has, and in good faith, of course, coupled the word "integrity" with the word "hostile."

If I understand it, you were using that phrase originally as a lawyer to describe a witness whose testimony was at variance and against that of the applicant here.

I wanted to be helpful and that is the reason I am saying it.

Mr. DAVIS. Thank you, Senator. I think you are helpful with a very good explanation.

Senator NEUBERGER. The Senator from California is always helpful. The point I was making, and I think Senator Kuchel will concur in this, was that the Secretary felt that the mineral examiner of his own department was prejudiced in this case. Yet you felt that the assay made by the Williams Co. was not prejudiced?

Mr. DAVIS. That is right. I had never heard of the assay company and I was assured by the Bureau of Mines that they were a dependable assay house. I had no reason to consider their prejudice one way or the other.

Mr. COBURN. Mr. Davis, what was the narrow legal basis for your opinion of January 6, 1954? Do you have it there, Mr. Davis?

Mr. DAVIS. What do you mean by that?

Mr. COBURN. I notice that in the syllabus of the opinion you affirm the action taken by the Bureau of Land Management both as to the conduct of the hearing and on appeal, but at the end of the syllabus this appears:

It appearing from all of the evidence, including new assay reports of samples taken jointly by the appellant and the Bureau of Mines, that a sufficient mineralization of appellant's claims is established to justify a prudent man in the further development of the property, and the other requirements of the statute having been complied with, patent to the appellant should issue.

Is that not the only legal basis for your opinion?

Mr. DAVIS. That is the real legal basis of the opinion; yes.

Senator GOLDWATER. Is the Senator from Oregon finished with his interrogation?

Senator NEUBERGER. I am finished at the moment. The chairman is back.

Senator GOLDWATER. The Senator from Arizona has some other problems this afternoon. I did have one question that might take 5 minutes at the most that I wanted to get in the record.

Senator NEUBERGER. It is fine with me and Senator Scott. Go ahead, Senator Goldwater.

Senator GOLDWATER. Mr. Secretary, in this morning's paper, the Washington Post and Times Herald, under the byline of Drew Pearson appeared this statement, and I will read it to you:

Buried in the Senate Interior Committee files is an interesting letter, which was picked up when the Senate subpoenaed the records of Secretary McKay.

It's a letter from a friend of President Eisenhower's addressed to him, asking that the Al Sarena section of the Rogue River National Forest be released to the McDonald family.

Across the letter in his own handwriting President Eisenhower had scribbled "Dear Doug." Then followed a personal request from Ike to Doug to see what he could do about granting the Rogue River request.

That is the end of that quote, Mr. Secretary.

Have you any knowledge of this letter?

Mr. DAVIS. I have none, Senator.

Senator GOLDWATER. Mr. Chairman, I would like to ask, inasmuch as this reporter says, and I quote:

buried in the Senate Interior Committee files is an interesting letter—  
does the counsel have this letter?

Mr. COBURN. I do not have it.

Senator GOLDWATER. Does Mr. Redwine have this letter?

Mr. REDWINE. I do not.

Senator GOLDWATER. Do any of the counsel have this letter?

Mr. LANIGAN. Never have seen it.

Senator GOLDWATER. Have you ever seen this letter?

Mr. REDWINE. I haven't any comments on that, Senator.

Senator GOLDWATER. I think it is very important. The honesty of the President of the United States has been impugned by this person in writing his column this morning and I think it is necessary that we get this cleared up when he speaks with evidently some authority saying:

buried in the Senate Interior Committee files.

Have you seen this letter?

Mr. REDWINE. I have not seen the letter that is referred to there; no, sir.

Senator GOLDWATER. Had you ever seen a letter that the President of the United States penned a note to the Secretary of the Interior on in this particular case?

Mr. REDWINE. Yes, sir.

Senator GOLDWATER. Can you get that letter?

Mr. REDWINE. I think so.

Senator GOLDWATER. Where is it?

Mr. REDWINE. It is downstairs.

Senator GOLDWATER. In the files?

Mr. REDWINE. Yes, sir.

Senator GOLDWATER. I think, Mr. Chairman, it is necessary that we have that letter in these hearings.

Representative HOFFMAN. While he is waiting for it, Mr. Chairman, it seems to me that minority members of the committee should be permitted to have, say, one-tenth of the degree of access to the committee files that Drew Pearson has, especially in view of the fact that the reorganization act expressly provides that every Member of

the House, not limited to the members of the committee, shall have access to them.

I have tried to get from this committee certain records and they turned me down. I would just like to have a ruling by the Chair.

Senator NEUBERGER. Let me say for the record, as far as the gentleman from Michigan is concerned, I have never seen such a letter, anyway, whatsoever.

Representative HOFFMAN. I am not complaining on your account. I am complaining that I have a right to it. Yet the committee staff will not give me and did not give me even a copy of the typewritten transcript. Yet comes Drew Pearson and he can get it, and the counsel for the Interior Department after he offered to pay for a record could not get it. How come?

Is Mr. Redwine the handmaiden or however you might describe him, of Drew Pearson and is he using the committee authority to get this stuff and then hide it?

Mr. COBURN. Could I answer the gentleman as far as staff counsel is concerned? He referred to a transcript of the record and in that I assume he referred to the transcript of the whole Joint Timber Committee record. That transcript was kept for revision purposes on order of Congressman Chudoff. The staff had nothing to do with that.

Representative HOFFMAN. He tells me that is not true.

Mr. COBURN. Those are the instructions we got.

As far as the Al Sarena transcript is concerned, that was released.

Representative HOFFMAN. Tell us why—tell the committee chairman, if you will—why a member of the committee was not entitled to receive a transcript of the hearings held on the 25th of November at Portland? You withheld that and I could not get a copy of it for more than 7 days.

Mr. COBURN. Are you referring to the Al Sarena record?

Representative HOFFMAN. Yes; after it was printed.

Mr. COBURN. You mean after it was made up in transcript form?

Representative HOFFMAN. Yes. When I asked the stenographer he said it had been delivered to the Senate committee and when I called over here they said it was not available.

Mr. COBURN. We had no orders to keep the Al Sarena record.

Representative HOFFMAN. Why did you not let me have it?

Mr. COBURN. I was informed that your people over on the House side had additional copies that you were supposed to get.

Representative HOFFMAN. Maybe they did, but I could not get them. Why could not the Solicitor for the Department get the one that he paid for? It is a direct violation of the law to deprive a member of the committee or a Member of the House access to these records. Yet they do it right along.

Senator GOLDWATER. I do not want to delay the proceedings and when Mr. Redwine comes back with this letter may I have permission to proceed a minute or two after seeing it?

Why do you not go ahead with whatever questioning counsel might have?

Mr. COBURN. Mr. Davis, you will recall your last answer to my question. This was the sole legal basis for the order that patent should issue. Proceeding further over to page 4 of your decision, the first paragraph at the top of the page—I am not going to quote it; I will

just paraphrase it—you say there on appeal the Al Sarena Mines, Inc., made some 18 assignments of error and it boiled down, first, that its contention was it was entitled to a patent prior to the filing of the protest, and therefore your department had no authority to entertain that protest. How did you rule on that?

Mr. DAVIS. Well, we brushed that point aside, as you know.

Mr. COBURN. Did you not say the contention is untenable?

Mr. DAVIS. I don't know. You are reading and I don't know where you are reading from.

Yes, that is right.

Mr. COBURN. In other words, you overruled the first of the contentions of the Al Sarena Mines, Inc.; is that correct?

Mr. DAVIS. That's right.

Mr. COBURN. Second, there were certain irregularities in the protest and in the manner in which the hearing was conducted. How did you rule on that?

Mr. DAVIS. I think we ruled pretty well down the line that there was not merit in these various procedural objections.

Mr. COBURN. And by so doing you confirmed procedures of conduct of hearings in the field; is that correct?

Mr. DAVIS. If you can call it that. We said there wasn't enough in that alone to justify a reversal; yes.

Mr. COBURN. You said, I believe on page 9, that these contentions appear to be "immaterial and without substance." So that when we come right down to it what you based your decision on was an assay report—and I won't quibble about when it was delivered to you—an assay report from the A. W. Williams Co., and a telephone conversation that you had with Mr. Appling of the Bureau of Mines in Grants Pass, Oreg., on December 29; is that correct?

Mr. DAVIS. I think that is substantially correct.

Mr. COBURN. Haven't you also testified that you knew nothing about the A. W. Williams Co. yourself, but you had checked with the Bureau of Mines as to its competency?

Mr. DAVIS. That's right.

Mr. COBURN. With whom did you check?

Mr. DAVIS. We checked with Mr. Appling—

Mr. COBURN. Mr. Appling?

Mr. DAVIS. —who made the report to us and sent his report.

Mr. COBURN. He said that A. W. Williams Inspection Co. was okay.

Mr. DAVIS. You know what he said. It is in your record here already.

Mr. COBURN. I am asking you what he told you.

Mr. DAVIS. That they had called the Bureau of Mines in Nashville, I believe, that Nashville had called the State Geologist Office of Alabama, and they had checked it on the Department of Commerce list of approved assay houses.

Mr. COBURN. He related this information to you on the phone?

Mr. DAVIS. That's right.

Mr. COBURN. During the course of that conversation did he make any mention of having suggested other assay houses to the McDonalds?

Mr. DAVIS. I don't recall whether he did or not. He probably did because we talked this thing over, of course. I said what anyone would say "How come an assay house in Mobile, Ala.?" A perfectly natural question.

Mr. COBURN. This was the first you heard of it?

Mr. DAVIS. That was the first I heard they were going to Mobile. I quite naturally said "Why Mobile?"

Mr. COBURN. What did he say?

Mr. DAVIS. He said in substance that they had discussed the matter, that they had proposed 1 or 2 houses on the west coast, these people had suggested this Mobile house, the Mobile house being, of course, down where they had lived, that they themselves had done what they thought was necessary to assure them that it was a legitimate and dependable assay house, and therefore they had accepted it.

Mr. COBURN. I think we switched in there at one point. When you are speaking of "they" did Appling say that he had checked as to the competency of the A. W. Williams Inspection Co.?

Mr. DAVIS. I don't know whether he said that he had, or whether Mr. Volin had.

Mr. COBURN. He said somebody had.

Mr. DAVIS. Somebody connected with the Bureau of Mines had checked it; yes.

Mr. COBURN. And that his information was the company was competent to conduct the assay?

Mr. DAVIS. Yes.

Mr. COBURN. This is after he received the report of the assay?

Mr. DAVIS. That's right, that is, the conversation was after that.

Mr. COBURN. That is what I say.

Mr. DAVIS. The inquiry was before the samples were sent down as I understand it.

Mr. COBURN. The inquiry was made as to the competency of the A. W. Williams Co.?

Mr. DAVIS. Before the Bureau of Mines agreed to use them; yes.

Mr. COBURN. In your conversation with Mr. Appling when he mentioned these other assay houses did he tell you why the McDonalds refused to go along with this?

Mr. DAVIS. I don't recall whether he did or not.

One factor that I think was in the picture, and the fact has been referred to in this testimony, I believe, was the fact that this matter of payment for the assays which Senator Neuberger has been raising and that these people preferred the house down there on the matter of charges. I know nothing about this, you understand, but that's the story as I get it.

Mr. COBURN. In other words, he indicated to you that because they had to pay for the assays maybe you—not you personally, but I mean the Government—ought to go along with their selection of the assay house is that correct?

Mr. DAVIS. I think it was a factor in their consideration, but again I don't know, but as I recall the piece of testimony that was read here a few moments ago from Mr. Volin, it certainly wasn't a controlling thing at all because he testified if he hadn't approved them he wouldn't have let the assays go to Mobile.

Mr. COBURN. But in answer to Senator Neuberger's question of Mr. Volin which was read from the January 11 transcript, page 470.

he said that he felt bound by the instructions to go along with A. W. Williams Inspection Co.

Representative JONAS. Would Mr. Coburn yield to me at this point? There is one other thing I meant to read into the record when Senator Neuberger yielded to me right at that particular point, but I could not put my finger on the page of the transcript which contains the questions and answers.

They are on page 453. With your permission I would like to read about 3 or 4 questions and answers which I think should clear that up:

Representative JONAS. Did you receive any instructions, suggestions, or requests from anybody in the Department of the Interior or elsewhere to select the A. W. Williams Inspection Co. to do the assaying?

Mr. VOLIN. I did not.

Representative JONAS. Was it not your responsibility as the independent umpire or the representative of the Government to inspect this sampling and supervise it, to agree upon the assayer to do the work?

Mr. VOLIN. I believe it was; yes, sir.

Representative JONAS. And do you feel that you discharged that responsibility and that duty to your entire satisfaction by the procedures you followed in the selection of Williams?

Mr. VOLIN. I was satisfied at the time, sir.

Representative JONAS. If anybody made a mistake in the selection or agreeing to the use of the A. W. Williams Co. to make this assay, you would have to take the responsibility of that mistake, would you not?

Mr. VOLIN. I am afraid so, sir.

Representative JONAS. Because you did it yourself, thinking it was the thing to do and the proper thing to do and the reasonable thing to do under the circumstances, but without any suggestion from Secretary McKay or anybody in his department?

Mr. VOLIN. That is right.

Representative JONAS. What did you mean when you responded to the question asked by Mr. Lanigan that you did the best you could within the scope of instructions which were given to you? Did you not have instructions to use your best judgment in seeing that proper samples were taken and that a correct assay was made from them?

Mr. VOLIN. I have just read you my instructions.

Representative JONAS. You did not mean to imply your independence of movement was restricted at all by your instructions, did you?

Mr. VOLIN. I did not intend to imply that.

Mr. COBURN. I think we can stipulate that, and my question wasn't going particularly to that point, that the instructions issued by Mr. Davis said that the company had to be mutually acceptable. There is no question about that.

Here is the testimony of Mr. Volin in answer to Senator Neuberger:

Senator NEUBERGER. If you had not had those instructions from the Solicitor's office you would have sent the samples to one of the west coast firms?

Mr. VOLIN. That is right.

Senator NEUBERGER. In other words, it was those instructions which resulted in the samples being sent to Mobile, Ala., for testing?

Mr. VOLIN. I believe that is a fair statement.

Apparently when one person asked him a question he had one answer and for somebody else another, but my point is that in my question to Mr. Davis I am trying to find out this: Mr. Davis has testified that he issued this decision on the basis, legal basis, of a finding of mineralization which in turn was based on reports from the A. W. Williams Inspection Co. and Mr. Appling of the Bureau of Mines; is that correct, Mr. Davis?

Mr. DAVIS. That's right.



Mr. COBURN. Therefore, I want to find out what Mr. Appling or anyone else in the course of the proceeding did with respect to determining the competency of the A. W. Williams Co. to take mineral samples and assays and therefore I asked you to relate that telephone conversation that you had with Mr. Appling.

Mr. DAVIS. I have already related it.

Mr. COBURN. Yes, I am just reviewing for the record what I was leading up to.

Mr. DAVIS. Excuse me.

Mr. COBURN. After that conversation with Mr. Appling, as I recall your testimony, Mr. Davis, you then called in Mr. Armstrong to go over the assay reports that you had already received from the A. W. Williams Co.

Mr. DAVIS. Mr. Armstrong was on the telephone conversation with me.

Mr. COBURN. After the telephone conversation?

Mr. DAVIS. This was a three-party conversation.

Mr. COBURN. Did you have the assay reports from the A. W. Williams Co. at that time?

Mr. DAVIS. Yes.

Mr. COBURN. And you received them from whom?

Mr. DAVIS. I received them through the Williams people and through Congressman Ellsworth's office.

Mr. COBURN. You received one copy from the Williams people and one from Mr. Ellsworth?

Mr. DAVIS. No; I didn't receive anything direct from the Williams people.

Mr. COBURN. Not direct?

Mr. DAVIS. Not direct from the Williams people.

Mr. COBURN. These all came through Congressman Ellsworth's office?

Mr. DAVIS. Yes.

Mr. COBURN. Were they certified copies?

Mr. DAVIS. They are in evidence. You can see what they are.

Mr. COBURN. Are they in that stack that you had there?

Mr. DAVIS. Yes, and the photostats are attached to my statement of the morning here. They appear to be duplicate originals.

Mr. COBURN. Did you have any conversation with Congressman Ellsworth as to the nature of these assay reports, or did he just send them up to you?

Mr. DAVIS. No, I didn't have any conversation, as I recall, with Mr. Ellsworth. I don't believe I did. I am quite sure that I did with Mr. Garber, his administrative assistant.

Mr. COBURN. Mr. Garber is his administrative assistant?

Mr. DAVIS. To Mr. Ellsworth; that's right.

Mr. COBURN. Did he notify you that the reports were in Congressman Ellsworth's office and would shortly be sent to you?

Mr. DAVIS. That is right and my best recollection is he brought them down in person. Our telephone records indicate he called on the 22d of December. I was out of town, I believe, at least the next day, and as the statement says they were brought down the next morning, the 24th of December.

Mr. COBURN. Did you make any effort independently to determine whether or not these assay reports were the same as the ones sub-

mitted by the A. W. Williams Co. to Mr. Appling and Mr. McCormick in the field?

Mr. DAVIS. No; no independent one. We checked them over the telephone, the totals and all that.

Mr. COBURN. You checked with Mr. Appling?

Mr. DAVIS. Yes; my recollection is the same about that as Mr. Appling has testified. I don't think anybody after a lapse of a couple of years can start to repeat a telephone conversation, but in substance we checked the columns, or the numbers, and the answers that were in the last column, and so forth and so on, enough that there wasn't any question in my mind about the authenticity of the copies that we both had and that they were duplicates of each other.

Mr. COBURN. Didn't your instructions state that these reports should be sent promptly to you? I think paragraph 6, as I recall, of your instructions.

Mr. DAVIS. To me?

Mr. COBURN. Yes.

Mr. DAVIS. I don't recall whether they were sent to me or the Bureau of Mines.

Mr. COBURN. Paragraph 6 of your instructions dated September 3, 1953, Al Sarena Mines, Inc., Trail, Oreg., says:

The assay report should be labeled so that they are easily identified to the claims from which they are procured and the reports sent to me promptly.

Instead of coming directly to you promptly they went to Congressman Ellsworth first; is that correct?

Mr. DAVIS. They came through his office; yes.

Mr. COBURN. Before you had seen them?

Mr. DAVIS. That's right.

Mr. COBURN. Did you think this was unusual, Mr. Davis?

Mr. DAVIS. I didn't think it was particularly unusual at the time; no.

Mr. COBURN. Congressman Ellsworth had indicated considerable interest in this case, did he?

Mr. DAVIS. Very considerable, no doubt about it.

Mr. COBURN. And Mr. Garber?

Mr. DAVIS. That is right.

Senator GOLDWATER. Mr. Redwine is back. I wonder if we might see the letter that he brought with him.

Mr. REDWINE. Mr. Chairman, Senator Goldwater asked me a while ago about a letter with respect to what was in the column this morning. I said that I had not seen that letter. That is correct, I believe, Senator. You asked me then if I had seen any letter regarding the President of the United States in respect to the Al Sarena case. I said that I had.

Senator GOLDWATER. I think I included in my question, although I might not have, a letter that contained a personal note to Mr. McKay. Might we see that letter?

Mr. REDWINE. This letter, Senator, that I have here is addressed—I will hand it to you in just a minute—to a Mr. Powell. It is signed by Secretary McKay. The first paragraph reads:

Your letter to President Eisenhower relating to the Rogue River National Forest mining claim allowance has been referred to me for reply.

Mr. McKay then replies to it.

This letter of reply by Mr. McKay to Mr. Powell is dated January 5, 1955, after this decision was over.

Senator GOLDWATER. Who is Mr. Powell?

Mr. REDWINE. I don't know, sir.

Senator GOLDWATER. Is there scribbled on that in the President's handwriting anything that says "Dear Doug"?

Mr. REDWINE. No, sir.

Representative JONAS. Do you know whether there is in the committee files any such letter as that?

Mr. REDWINE. Not so far as I know.

Representative JONAS. Can you tell us whether you or any staff member took out of the Department of the Interior file any such letter as was referred to by Mr. Pearson in his column?

Mr. REDWINE. Not so far as I know, sir.

Representative JONAS. The inference is certainly clearly to be drawn from the column in the paper that there exists at present in the files of this committee such a letter which committee staff members obtained when they went through the file in the Department of the Interior, but you have no knowledge of any such letter or any such communication?

Mr. REDWINE. No, sir.

Senator GOLDWATER. Mr. Jones, I might comment that this letter, from the contents of it, seems to be in opposition to the granting of these patents. The answer to Mr. Powell would lead me to believe that Mr. Powell wrote criticizing the President.

Mr. REDWINE. I didn't evaluate the letter at all, Senator.

Senator KUCHEL. It is irrelevant to your question.

Senator GOLDWATER. It is irrelevant to my question. It is astounding to me that a member of the press of this country would constantly refer to these lies and if there are leaks in the committee staff I think, Mr. Chairman, we should investigate it.

How would Drew Pearson know of the existence of any letter unless somebody in this committee staff were telling him these things and how can he justify his statement that was contained in his column this morning that goes to some 600 newspapers in this country, if I am not incorrectly informed, that the President of the United States had personally interceded in this case?

I made a speech on the floor the other day on this subject in which I agreed with Senator Neuberger on the need for freedom of the press. This man is destroying the freedom of the press.

That is all I have to comment.

Representative HOFFMAN. Mr. Chairman, inasmuch as this morning's statement by Mr. Pearson seems to be to the effect that the President gave support, by a notation on a letter, to the charge that the Secretary of the Interior had participated in a steal of timber, it seems to me that Mr. Pearson should be brought before the committee and we should understand or be given an opportunity to learn where he gets his information.

I make that statement for one reason because I happen to be on a House committee where Mr. Moss is subcommittee chairman, and doing a very fine job, and the press appears there and the press claims to be the people, or 1 or 2 of them do, anyway, and they have the right to know. I do go along with that except on matters which must be kept secret because of national security, but I also tried to get the committee to take some action or make some inquiry as to whether or not, as the press had the right to know, an obligation did not rest upon the press to accurately report.

Do you see what I am getting at, Mr. Chairman? I am in favor of the press having all the information, televising it and getting a recording if they want it, but I think there should be the reciprocal obligation, then, to at least make an effort to report accurately.

In this situation to which the Senator has called attention this morning—there it is right before us and there are those charges—should we not try to learn whether or not the President did as charged by Mr. Pearson; endorse this steal? I ask that Mr. Pearson be called, put under oath, and that the Senator or the members of the committee have an opportunity to examine him as to where he got his information.

Senator NEUBERGER. I would just like to suggest, Mr. Chairman, we go ahead with the hearing. I want to say this as far as the press is concerned. I think this ought to be put on the record.

I have never seen any such letter as that that has been discussed here. I am behind everybody, because I have not read the column in the Washington Post and Times Herald of this morning that has been discussed, but there is a great tendency to use the press when you want and berate it when you want.

There was put into the record of this hearing a voluminous set of newspaper articles which praised and defended the role of the Interior Department in the Al Sarena case. Those articles were placed in the record of the hearings by the gentleman from Michigan. They were placed in the Congressional Record by the distinguished Senator from Arizona, which, of course, is quite their right and no objection was made to including those articles.

It just seems to me we ought to go ahead and hold the hearing and not argue about the press. The press prints some things that the gentleman from Michigan and the gentleman from Arizona like. They print some thing probably that I like, and there are all kinds of statements in the press and all kinds of comments.

I do not know who had access to the files. I never have had. I do know that there are newspapermen who have written stories that are not wholly unfavorable to the Department's role in this who have gone through the files in the Department and had access to them and studied them in connection with this case. They may even have gone and interviewed the distinguished gentleman on the stand now and others in the Interior Department.

I just think this bringing in of the press and berating it when you do not like it and filling up the record with articles when you do like it is a side issue.

If we want to get into this, as far as the press is concerned we could run out of newsprint putting things in here.

Senator GOLDWATER. I can agree with much the Senator from Oregon says, but in a column that is read by millions of American people is a statement that says that the President of the United States intervened. I feel sure that had such a letter existed it would have long ago been put in these records. I think that I am perfectly within my rights in asking whether or not such a letter existed and if my comments on what I feel to be the responsibility of all reporters and the press to report accurately do not coincide with the thoughts of the Senator from Oregon, I am sorry.

I happen to be a layman, I am not a newspaperman; but I am like Will Rogers, all I know is what I read in the newspapers, and I

want to feel when I read it in the papers that it is correct. I am glad we had this opportunity to clear it up because we will further clear it up on the floor of the Senate.

Representative HOFFMAN. I make a motion that Mr. Pearson be called, Mr. Chairman, and I ask that the chairman rule that he be called by the committee as a witness. I want to know who sanctioned and approved his course in charging the President of the United States of participating or giving support to a steal, alleged to be a steal, by the Secretary of the Interior.

Senator NEUBERGER. I am just going to say that I am not going to put the motion.

Representative HOFFMAN. You are not the chairman.

Senator NEUBERGER. Senator Scott appointed me as acting chairman when he left and on his return asked if I would continue to preside.

Representative HOFFMAN. Has the salary been turned over, together with the gavel? That may be irrelevant.

Senator SCOTT. He gets the same.

Representative HOFFMAN. You won't put the motion?

Senator NEUBERGER. Will you let me finish?

Representative HOFFMAN. Yes.

Senator NEUBERGER. You haven't.

Representative HOFFMAN. I don't care if you want to cover up for him.

Senator NEUBERGER. I am not covering up for him. I just want to say that Congressman Chudoff isn't here. Furthermore, I want to say this for the record: I truly believe in freedom of the press in our society. I believe if any newspaper, or journalist, or radio commentator makes a misstatement that it is within the province of those about whom the misstatement was made to correct it in a public forum. When I ran for the Senate, over 80 percent of the newspapers in my State opposed me very vigorously, extremely vigorously at times. I might add. That was their right. Naturally, I think they were mistaken, but that was their right and I have never suggested or hinted that because of the things they said about me, many of which were unkind, and a good many of which were grossly untrue, they ought to be hauled before any committee. I think so far as I am concerned, we have already had too much hauling of members of the press before committees, and you don't happen to like a certain newspaperman, so you want to haul him up.

It may be that those of us on the other side don't like another newspaperman of different political persuasion and we might be tempted, unwisely, I think, into calling him up and subpoenaing him. As a former journalist and as a person who is devoted to freedom of the press, I think that any suggestion that we turn this investigation and study of natural resources into an inquisition of newspapermen or journalists or commentators is out of order.

Representative HOFFMAN. All right, Mr. Chairman. I am not complaining about the printing of anything especially but this committee is supposed to be investigating this particular case where the charge is that this land—and this article this morning charged it—was given away here, although I notice he came down from \$600,000 in value of the timber to \$200,000, which is quite a shrinkage within a week, but where the charge is, and the charge has been in the previous articles all the way through, that the Secretary of the Interior participated in a

timber steal—that is the way it has been characterized time and time again—if the committee is interested, and it has called many witnesses in trying to determine whether or not it was a timber steal, why logically shouldn't we call a man who professes to have evidence that it was and that they had gone to the highest level of authority to put it over?

If you want the facts, Pearson has the facts, allegedly, so why not call him?

Senator NEUBERGER. I would just like to say this, and I think we ought to have this on the record and then proceed:

There are other newspapermen who have said it was a perfectly orderly and fine thing for the Interior Department to do. We might suggest that they be subpoenaed and interrogated. I am opposed to inquiring into newspapermen who say things we agree with or things we don't agree with. I think it is totally out of order and I don't think it has anything to do with congressional study.

Senator GOLDWATER. I don't think we are in disagreement with you on that at all, Mr. Chairman. I support your views on freedom of the press and I always will, but I don't think it falls within the rights of any writer to use a deliberate lie. I don't know if we would prove anything by bringing him up here. We might discourage him from doing it in the future. I don't think that we should call people up here just because we disagree with them, or agree with them, but here is a case, a rather flagrant abuse of what you and I call the freedom of the press. The responsibility of a writer or of a newspaperman is to represent the truth. Just as you have related, I have had most of my newspapers against me, because I happen to be a Republican from a Democratic State, but I don't charge them with dishonesty unless they are dishonest and I don't care what they write about me as long as they write the truth. I don't like to see a man in this position say that in the files of this committee there is a letter from the President of the United States and I don't think the Senator from Oregon feels very happy about it, either.

Senator NEUBERGER. I think we ought to go on ahead and I don't think we ought to go off in any pursuit of the press.

Representative HOFFMAN. Mr. Chairman, just once more, if I may. I am not criticizing the press. I have nothing against freedom of the press or freedom of speech. I use it so certainly I couldn't be against it, but in this article the charge is that the President himself, by the note on a letter, influenced the action of the Secretary of the Interior. Are you not interested? The whole hearing, if I understand correctly, on this Al Sarena, ever since the 25th day of November, has been to attempt to learn why the Secretary granted these patents. We have had some testimony of both sides on that now. I notice counsel shakes his head. We have. Here is a man who professes to know that the President himself asked McKay to do it. Do you want to know whether the higher level did or didn't, or do you want to forget it?

Senator GOLDWATER. Let me pursue one other thought on this. I mentioned this earlier. Ever since I have come to Congress I have been very concerned with the leaks that go on in this building. I don't believe that any reporter would just sit down at a typewriter and dream something like this up. Possibly, Mr. Hoffman, we ought to suggest that we investigate our own staff to see who is leaking these

things, to see who called Mr. Pearson and said "Look, we have a letter down here that the President of the United States scribbled a note on."

Maybe we are talking, as the Senator from Oregon suggests, about the wrong side of this thing. Maybe we ought to look into our own staff and find out who is giving this information out that was completely erroneous.

Representative HOFFMAN. That was not my point. I don't care what the staff does. My point was that the chairman of the committee, Senator Scott, the distinguished chairman here from North Carolina, in a statement put out, said that the higher level overruled these gentlemen in the Department. We got into the highest level. We have gotten up to the top. We have gotten up to the President of the United States, and here is a newspaperman, who undoubtedly has some knowledge of what he is talking about, who says that the President in his own handwriting wrote across this letter telling the Secretary of the Interior to do that. Aren't we as a matter of fact, as a matter of proof, interested in that?

Senator GOLDWATER. We should at the same time be interested in who is putting this information out. This isn't the first instance.

Representative HOFFMAN. That is all right, but here is an issue that is squarely before this committee: Who caused this patent to be granted? Here is a man who says in this release published all over the country that he knows that a certain gentleman in the White House advised the Secretary to do it. Do you want to know who determined this thin for the Secretary, or don't you? There is a witness. There is a witness if you want him. Of course you have the authority. You have the gavel over there.

Senator NEUBERGER. We have the testimony this morning that the Secretary absolutely knew nothing about it and had nothing to do with it, is that not correct?

Mr. DAVIS. Yes, sir.

Representative HOFFMAN. Pardon me, but you have Mr. Pearson, who says that he knows that the other fellow——

Senator NEUBERGER. You people are so accustomed to having every single thing that appears in the press pleasing to you that what you want to do is call up anybody who prints something that you don't like. Will you let me finish?

Representative HOFFMAN. I am sorry.

Senator NEUBERGER. You put a vast mass of material in the record from newspapers defending what was done. Should we ask the authors of those articles?

Representative HOFFMAN. If you want to. I don't care.

Senator NEUBERGER. I don't believe we should enter into an inquisition or study of the press, period, whether they write something that you like or whether they write something that somebody else likes.

Mr. DAVIS. Mr. Chairman, I would like the grace of a minute or two. This statement was prepared before I ever saw the Pearson column. It is the truth. I want to say to you, Mr. Chairman, that when in a column of that kind there can appear scurrilous attacks upon the President of the United States, and especially a man of the high character of President Eisenhower, and it can go unchallenged that be interfered by some method or other with this thing we are talking about, we have arrived at a serious point in these United States.

Now, I said here that Secretary McKay didn't even know about this thing except very extremely casually. I know nothing about any letter from the President of the United States. So far as I know, no such letter ever was written and I have no recollection of it, no communications with the President, not anything of the kind. This is my decision. I will stand on it as having been my best judgment at the time. It was not interfered with by any one except as I have told you by the letters here of Congressmen of both political parties pleading about it and that sort of thing, no other interference of any kind that I know of. I want to say that I do resent, sir, and I resent keenly, the implication that I was subjected to any pressure from the President of the United States or anyone else in connection with the opinion which was rendered in this case.

I can hardly conceive that a committee would not make an effort to inquire about a statement that their own staff had leaked a letter impugning the integrity of the President of the United States and then bypass it on the ground of freedom of the press.

Thank you, sir.

Senator NEUBERGER. I just say this to you, Mr. Davis: That I regret an unfair attack upon anybody, whether an average citizen or a President of the United States. I have known nothing about any such letter. I have never seen any such letter. If there was any criticism made of the President that was unjustified, I regret it. I think it is too bad. I want to say to you that two Presidents whom I supported were bitterly criticized and attacked all throughout their careers in the presidency: President Roosevelt and President Truman. There were shabby things said about them and their families in columns, and over the radio, and in the press, and I do not know when it was suggested that the people who said these unfavorable and very shattering attacks upon President Roosevelt or President Truman, and their families, should be haled up before a congressional committee. I do not know—I am very new in the United States Senate—from my own reading experience when it was ever suggested, because there was unfair and often scurrilous criticism of President Roosevelt or President Truman, that the newspaper people who did that should be haled up before congressional committees.

Unfortunately, Presidents through history have been bitterly attacked and criticized, often unfairly. I think the first President of your party was one of the most bitterly attacked men who ever served in the White House, and I do not know when it was ever suggested that the men attacking him and criticizing him be called up before a congressional committee.

Mr. DAVIS. This is alleged to come from members of your own committee.

Senator KUCHEL. Mr. Chairman, may I break in for just a moment. Let's see if we can take this down a little bit.

Mr. Redwine, do you have charge of the files which were subpoenaed from the Department of the Interior concerning this Al Sarena matter?

Mr. REDWINE. Senator, my answer on that will have to be yes and no. At certain times I have had. Other times I have not.

Senator KUCHEL. Where are they located now?

Mr. REDWINE. Some of them in 224 and some in 2-A.

Senator KUCHEL. Have you gone over personally the files which were subpoenaed from the Department?



Mr. REDWINE. Senator, there was actually no files subpoenaed from the Department. I did not go over them when they first came to the committee. I will have to ask Mr. Coburn if I am right on this.

Mr. COBURN. That is right.

Senator KUCHEL. Let me ask Mr. Redwine now and then I will ask you, Mr. Coburn. Mr. Redwine, is it your answer that you have not gone over the files on the Al Sarena case which you obtained from the Department of the Interior?

Mr. REDWINE. Yes, sir; I have gone over them.

Senator KUCHEL. You have gone over all of them?

Mr. REDWINE. Yes, sir.

Senator KUCHEL. Have you found—I guess this will be the second time you have been asked this question—any letter which indicates any message of any kind or character from the President with respect to this matter?

Mr. REDWINE. No, sir. I have answered that before.

Senator KUCHEL. Mr. Coburn, let me ask you, have you gone over the records of this case as they have come to you from the Department of the Interior?

Mr. COBURN. In a rather cursory way. If you let me make a statement, I will explain it.

Senator KUCHEL. All right.

Mr. COBURN. At the request of the chairman of the committee, made in writing to the Secretary of the Interior, these files were sent up to the committee via special messenger, I believe—I believe a lawyer from the Solicitor's Department—and made available to the staff of the committee.

At that time Mr. Chambers, Ed Chambers, was on the staff and he and I looked them over cursorily and subsequently I turned them over to him. This is in the main committee office.

Senator KUCHEL. Is Mr. Chambers still a member of our staff?

Mr. COBURN. I don't know. Yes, he is.

Senator KUCHEL. Were the files delivered by a messenger from the Department of the Interior?

Mr. COBURN. That is correct, and he remained in the room all the time. He stayed with the files.

Senator KUCHEL. Then when he left did we retain the files?

Mr. COBURN. We retained certain photostatic copies, things that we wanted.

Senator KUCHEL. Did you see at any time any letter which indicated any kind of interest by the President with respect to this matter?

Mr. COBURN. The only one that I recall was the one that Mr. Redwine introduced.

Senator KUCHEL. You referred, Mr. Coburn, to this photostatic copy of the letter of the Secretary of the Interior to a man named Powell?

Mr. COBURN. I haven't seen it for a long time. I assume that is it.

Senator KUCHEL. This is the only one?

Mr. COBURN. Yes.

Senator KUCHEL. I want this letter to be placed in the record rather than try to interpret it. I think it might well be read, since it is the statement of our two counsel here that this constitutes the only time

that the President's name is mentioned. This is from the Secretary of the Interior dated January 5, 1955, and it reads as follows:

**MY DEAR MR. POWELL:** Your letter to President Eisenhower relating to the Rogue River National Forest mining claim allowance, has been referred to me for reply.

I share your concern for the preservation of the scenic grandeurs of the national parks and forests.

The enclosed photostat from a newspaper which investigated this case, and which supported Adlai Stevenson, should clarify this matter for you.

The decision granting this allowance to the Al Sarena Mining Co. was entirely within the laws, which have been unchanged since 1876. The Secretary of Interior is permitted no discretionary action under these laws.

The 1876 statute provides that when minerals are discovered in paying quantities on mining claims, the miner is entitled to a patent on the land, including the surface rights; and that once such minerals have been discovered, the Secretary has no discretion in the matter.

Before the Al Sarena case was decided upon, the legal staff of the Department made a painstaking and honest appraisal of all the facts. The decision was fully publicized several months ago through the press associations and in the major newspapers in the Pacific Northwest.

In this Department's administration of the laws we are determined to comply with the law.

This Department must adhere to the laws as they are written. If the laws need modernization and in this case there appears to be that necessity, the legislative branch has the responsibility to revise them.

I am glad to have had this opportunity to discuss this matter with you and trust that I have reassured you that I am fully aware of my responsibility to all the citizens of this Nation.

Sincerely yours,

**DOUGLAS MCKAY,**  
*Secretary of the Interior.*

With certain initia of copies sent to other people.

I ask that that be made a part of the record.

(The letter referred to follows:)

**THE SECRETARY OF THE INTERIOR,**  
*Washington, January 5, 1955.*

**Mr. C. W. POWELL,**  
*Overland, Mo.*

**MY DEAR MR. POWELL:** Your letter to President Eisenhower relating to the Rogue River National Forest mining claim allowance, has been referred to me for reply.

I share your concern for the preservation of the scenic grandeurs of the national parks and forests.

The enclosed photostat from a newspaper which investigated this case, and which supported Adlai Stevenson, should clarify this matter for you.

The decision granting this allowance to the Al Serena Mining Co. was entirely within the laws, which have been unchanged since 1876. The Secretary of Interior is permitted no discretionary action under these laws.

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Before the Al Serena case was decided upon, the legal staff of the Department made a painstaking and honest appraisal of all the facts. The decision was fully publicized several months ago through the press associations and in the major newspapers in the Pacific Northwest.

In this Department's administration of the laws we are determined to comply with the law.

This Department must adhere to the laws as they are written. If the laws need modernization and, in this case, there appears to be that necessity, the legislative branch has the responsibility to revise them.

I am glad to have had this opportunity to discuss this matter with you and trust that I have reassured you that I am fully aware of my responsibility to all the citizens of this Nation.

Sincerely yours,

DOUGLAS MCKAY,  
*Secretary of the Interior.*

Senator KUCHEL. I think it is fair to say for the two attorneys of law who are members of this staff, and who have had the primary custody of the data which has come from the Department of the Interior, that the statement in this morning's newspaper is incorrect.

Senator GOLDWATER. I would like to pursue this one little bit further. I have before me a copy of an excerpt of Mr. Pearson's broadcast on January 21, 1956, in the course of which he spels out the name of the Oregon Democrat who wrote the letter. There must be a little bit more to this than we know. I can't imagine that any man on the air would care to quote—

the amazing thing is that this letter was written by an Oregon Democrat, Lou Wallace.

This is an interesting excerpt. I think it should be made a part of the record. I will be glad to read it. I quote:

CAPITOL HILL (exclusive).—The Senate Interior Committee has been nursing one of the hottest letters in Washington. They're trying to figure out what to do with it. It pertains to the famous sale of part of the Rogue River National Forest to the McDonald family of Mobile, Ala., and why Secretary McKay went out of his way to make this amazing sale when other Secretaries of the Interior had consistently refused. The letter is from an Oregon insurance man to Eisenhower, asking that the Rogue River National Forest be sold to the McDonalds.

Across the top of this letter, Eisenhower wrote in his own handwriting: "Dear Doug, please see what you can do about this." "Dear Doug," of course, referred to his Secretary of Interior, Douglas McKay. The Senators now figure they have the answer as to why McKay acted. The amazing thing is that this letter was written by an Oregon Democrat, Lou Wallace.

I think we ought to see if there is such a letter some place. It would have a terrific bearing on this case.

Senator NEUBERGER. You mean a letter from a Democrat?

Senator GOLDWATER. No, no; the letter from the President saying "Dear Doug" or letters to that effect.

Mr. PERLMAN. Mr. Chairman, may I make a statement on behalf of the Public Works and Resources Subcommittee?

Mr. Chairman, on behalf of the Public Works and Resources Subcommittee, of which I have the honor to be the staff director, I want to state that as far as the letter in question is concerned, I have never seen any such letter. I want to further state that all the files, all the letters, all the correspondence, in connection with the Al Serena case have been in the possession of the Senate Interior and Insular Affairs Committee and none of the correspondence or none of the files has ever been in the possession of the chairman or the rest of the staff of the Public Works and Resources Subcommittee.

Senator GOLDWATER. I would like to suggest, Mr. Chairman, that Mr. Lou Wallace be asked if he did write such a letter.

As I say, this could have a tremendous bearing on this case.

Representative HOFFMAN. I had a couple of questions I wanted to ask Mr. Redwine, Mr. Chairman, if I may. They are very brief.

Senator NEUBERGER. We are going to adjourn at 4:30 today.

Representative HOFFMAN. Mr. Redwine, who other than yourself and Mr. Coburn, and you said Mr. O'Brien——

Mr. REDWINE. Mr. Chambers.

Representative HOFFMAN. Who other than the three had access to these files?

Mr. REDWINE. So far as when they are in my office, only the two secretaries.

Representative HOFFMAN. Who are the secretaries?

Mr. REDWINE. Miss Hoban and Miss O'Connor.

Representative HOFFMAN. And no one else?

Mr. REDWINE. That is right.

Representative HOFFMAN. Do you know whether they have any business relations with Mr. Pearson?

Mr. REDWINE. Not so far as I know. I have never seen any indication of it.

Representative HOFFMAN. What do you say, Mr. Coburn?

Mr. COBURN. Do you want me to answer your specific question?

Representative HOFFMAN. Yes.

Mr. COBURN. My office is wide open. It isn't even locked. It is just part of a room, except for a locked file drawer where I kept the Al Sarena files when I had them. I had a key to it. Mr. Mapes had a key to it. Mr. Mapes is staff member. I don't think Mr. Chambers had a key to it, and I believe my secretary had a key to it.

Representative HOFFMAN. Do you know whether any of these people, to ask the same question I put to Mr. Redwine, that you have known, or have you inquired to ascertain whether they gave any such information to Mr. Pearson?

Mr. COBURN. I have no reason to believe that they would give any information.

Representative HOFFMAN. I assume they won't, but he gets so much that is exclusive.

Mr. COBURN. May I make a statement on that point? We were never under any inhibition from the Department to keep these files secret. As a matter of fact, newspapermen have gone down to the Department and looked through the whole file.

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Mr. COBURN. I say in the Department of the Interior.

Representative HOFFMAN. I understand the Department of the Interior gives them everything.

Mr. COBURN. The same file as there was in my office. It is the same file.

Representative HOFFMAN. But you gentlemen do not know anything about it, either one of you?

Mr. REDWINE. No.

Senator NEUBERGER. Senator Scott, what are your wishes about tomorrow?

Representative HOFFMAN. You mean is Mr. Pearson coming tomorrow?

Senator NEUBERGER. I am informed, Mr. Davis, that the committee will meet again next Tuesday morning at 10 o'clock, at which time we would like to have you return, if that is convenient with you.

Mr. DAVIS. What day is that, Senator?

I am glad to have had this opportunity to discuss this matter with you and trust that I have reassured you that I am fully aware of my responsibility to all the citizens of this Nation.

Sincerely yours,

DOUGLAS MCKAY,  
*Secretary of the Interior.*

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Senator NEUBERGER. I am informed, Mr. Davis, that the committee will meet again next Tuesday morning at 10 o'clock, at which time we would like to have you return, if that is convenient with you.

Mr. DAVIS. What day is that, Senator?

Senator NEUBERGER. I understand it is the 31st of January, Mr. Secretary.

Mr. DAVIS. Let me ask another question: How long do you anticipate these examinations will last, Mr. Coburn?

Mr. COBURN. I would say, Mr. Davis, that my examination would probably consume, without interruption, an hour or an hour and a half.

Senator NEUBERGER. In fairness to the Secretary, who has other duties, do you think we can tell him that the committee would be through with him next Tuesday? He has other responsibilities.

Mr. DAVIS. I would like an understanding on that because I have a lot of speaking engagements and things of that kind. I would like to know that one day will terminate it. I don't want to be in the position of asking to run away from the committee.

Senator NEUBERGER. We understand.

Mr. DAVIS. On the other hand, I can't always walk away from these other people.

Senator NEUBERGER. You do know that we did in convenience to you postpone your time to today.

Mr. DAVIS. I realize that.

Senator NEUBERGER. Otherwise we would have had several days this week.

Mr. DAVIS. I am aware of that and I did appreciate it.

Senator NEUBERGER. We will try to finish next Tuesday, the 31st.

Mr. DAVIS. All right.

(Whereupon, at 4:30 p. m. the committee was recessed, to reconvene at 10 a. m. Tuesday, January 31, 1956.)

## THE AL SARENA CASE

TUESDAY, JANUARY 31, 1956

UNITED STATES SENATE,  
SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT FUNCTION  
OF THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC WORKS AND RESOURCES,  
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,  
*Washington, D. C.*

The subcommittees met at 10 a. m., in the Caucus Room, Senate Office Building, Washington, D. C., Hon. W. Kerr Scott (chairman of the Senate subcommittee) presiding.

Present: Senators W. Kerr Scott (North Carolina), and Richard L. Neuberger (Oregon).

Also present: Senators Henry C. Dworshak (Idaho), Thomas H. Kuchel (California), and Barry Goldwater (Arizona).

Present: Representatives Earl Chudoff (Pennsylvania) (chairman of the House Subcommittee); Clare E. Hoffman (Michigan) and Charles Raper Jonas (North Carolina).

Senator Scott. The meeting will please come to order.

In order to move along as fast as possible I would like to again ask the members of the subcommittee to withhold any questions or statements until counsel has finished questioning Secretary Davis. The Secretary has already been on the witness chair for a full day. His time is very valuable and I am sure it is of utmost importance that we finish with him as soon as possible so he can get back to his regular duties and the subcommittee can move along with its work.

Secretary Davis, we are glad to have you back again this morning.

Mr. Coburn, will you take over?

### STATEMENT OF CLARENCE A. DAVIS, UNDER SECRETARY OF THE DEPARTMENT OF THE INTERIOR—Resumed

Mr. DAVIS. Thank you, Mr. Chairman.

There is one very minor matter that I ought to call to your attention if you will look at page 2 of my statement, Mr. Coburn.

Mr. COBURN (Chief Counsel, Senate subcommittee). Of your statement, or your transcript record?

Mr. DAVIS. No; the statement. The second full paragraph there says "March 8."

Mr. COBURN. Yes.

Mr. DAVIS. That just simply says it is a record of a telephone call in which we did not talk. We discovered in checking this back pretty carefully that actually it was April 8 instead of March 8.



Mr. COBURN. What about the next date, then?

Mr. DAVIS. The next date is right.

Mr. COBURN. This conversation took place after March 20 then?

Mr. DAVIS. It wasn't a conversation. It is just a call that we did not answer.

Mr. COBURN. It is not in sequence, in other words?

Mr. DAVIS. Just out of sequence. It is very, very minor. I don't know that it is material.

Mr. COBURN. Mr. Davis, you testified that when you were briefed by your staff on cases pending before the Solicitor there were some 278 land appeals cases then pending; is that substantially correct?

Mr. DAVIS. That's right.

Mr. COBURN. You said that several of these pending cases were considered troublesome and characterized as "headaches" and that the Al Sarena case was in that category.

Mr. DAVIS. That's right.

Mr. COBURN. How many of these so-called troublesome cases involved applications for mining claims on national forest lands?

Mr. DAVIS. I don't think any of them did; as I recall.

Mr. COBURN. None of them was identical to the Al Sarena?

Mr. DAVIS. No, no.

Mr. COBURN. This was the only one involving national forest land?

Mr. DAVIS. So far as I remember; yes.

Mr. COBURN. What action did you take on these other troublesome cases at that time?

Mr. DAVIS. They went along. They were settled and decided one way or another.

Mr. COBURN. You decided them yourself on the basis of the record before you at that time?

Mr. DAVIS. That's right.

Mr. COBURN. And you did not attempt to invoke the aid of any other agency of the Department, though, to help you in the settlement of those cases?

Mr. DAVIS. No; I don't think so, Mr. Coburn. Of course, no two cases are alike.

Mr. COBURN. That is true. Were these just as troublesome and difficult, however, as the Al Sarena case?

Mr. DAVIS. Oh, I think so. Lots of them involved matters of law and all that sort of thing.

Mr. COBURN. I didn't catch that last word.

Mr. DAVIS. I say they involved all kinds of problems, both factual and legal, but, of course, the difficulty with this one, as I have said repeatedly, was that the record in the case was not complete and admittedly not complete.

Mr. COBURN. That was according to the allegations of the McDonalds?

Mr. DAVIS. That's right, but I think that was generally recognized in the Department.

Mr. COBURN. Let me recapitulate, then. In these other troublesome cases there was no independent investigation ordered by you?

Mr. DAVIS. That's right.

Mr. COBURN. You settled them on the basis of the record before you at that time?

Mr. DAVIS. I think that is right.

Mr. COBURN. And those records were complete in your opinion?

Mr. DAVIS. At least there was no complaint about them as there was here.

Mr. COBURN. There was no complaint from anyone about them?

Mr. DAVIS. I think that is right.

Mr. COBURN. And more specifically not from any Member of Congress, at least?

Mr. DAVIS. I think that is right, although, Mr. Coburn, you must realize that when there are various matters pending down there they may not be cases like this at all, but naturally an administrative office like that has a constant line of telephone calls from up here on the Hill about all kinds of things.

Mr. COBURN. But in this Al Sarena case you met with the McDonalds at the request of Congressman Ellsworth on March 30; is that correct?

Mr. DAVIS. I believe it is.

Mr. COBURN. And this meeting was set up for the McDonalds with you by Congressman Ellsworth?

Mr. DAVIS. That's right.

Mr. COBURN. You spent about an hour with the brothers McDonald on that date?

Mr. DAVIS. That's right.

Mr. COBURN. Was anyone else present?

Mr. DAVIS. I don't believe so.

Mr. COBURN. Was Mr. Garber present?

Mr. DAVIS. I think Mr. Garber may have been there.

Mr. COBURN. Representing the Congressman?

Mr. DAVIS. That's right.

Mr. COBURN. In reciting to the committee what the McDonalds told you during this hour's conference, I noticed that they told you that there was invested about \$200,000 in the development of this mining property. Does that statement necessarily mean that the McDonalds themselves had invested \$200,000 of their own money in this property?

Mr. DAVIS. No, I think not.

Mr. COBURN. This is the accumulative investment from 1897 to that time?

Mr. DAVIS. I think that's right, yes.

Mr. COBURN. The statement says: "That they had well over a mile of tunnels in the mountain." Does that necessarily mean that they, themselves, constructed those tunnels?

Mr. DAVIS. They hadn't constructed them, Mr. Coburn. As you know, this was an old mine on which work had been done for 50 years or better.

Mr. COBURN. But the inference here is that they had constructed these tunnels and I wanted to clear that up for the record.

Mr. DAVIS. You are perfectly right about it.

Mr. COBURN. There is no question about the fact that they did construct this pilot mill, this 100-ton-a-day pilot mill; is that correct?

Mr. DAVIS. I think that is right, yes.

Mr. COBURN. But as to bunkhouses, and messhalls, toolsheds, and so forth, including access roads, as I understand it, a number of these so-called improvements were in place when the McDonalds acquired the property; is that correct?

Mr. DAVIS. Well, I don't know, but I think they were, yes. I don't even know the exact date on which the McDonalds acquired this property, but those improvements were there.

Mr. COBURN. As I understand from the previous testimony taken in this case and the record of the administrative hearing, Mr. Hattan testified that a number of these so-called improvements were in place prior to the time the McDonalds took over the property and that they were in a deteriorated condition. I think he put a value of something like a thousand dollars on the improvements, that is, the messhall, toolsheds, and things like that?

As to these access roads that are referred to here in your statement, had they not been in large part at least constructed by the Forest Service?

Mr. DAVIS. Frankly, I have never seen this place, of course, and I don't know.

Mr. COBURN. You are relating what they told you?

Mr. DAVIS. My impression—

Representative HOFFMAN. Let him answer.

Mr. DAVIS. My impression from reading the record is that a part of the road getting up there, which is, as I understand about forty-some miles north of Medford—of course, a lot of that I assume is public highway and then when you leave the public highway I think part of it is Forest Service road, but I think they also have some access roads on their own property.

Mr. COBURN. I do not want to belabor the point, but my attention has been called to page 152 of our record of November 25, in Portland. Mr. Redwine is questioning Mr. Wood, of the Forest Service, supervisor of the Rogue River National Forest, and says Mr. Redwine:

This property is served with access roads; is it not?

Mr. WOOD. Yes.

Mr. REDWINE. There are two roads on it; are there?

Mr. WOOD. Yes, sir.

Mr. REDWINE. How long have those roads been there?

Mr. WOOD. A long time, probably 30 years.

Mr. REDWINE. They are Forest Service roads; are they not?

Mr. WOOD. Yes.

As I say, I do not want to belabor it, but it seems to me the implication of this statement that you relate in your prepared statement is that this is a hardship case, these people have spent all this money in improvements and in various roads, and so on, so that you felt impelled to help them by reason of what they told you.

Representative HOFFMAN. Before he leaves that, Mr. Chairman, you do not claim that the Forest Service ever built any roads on this property or any other property from the main road up to the mine: do you?

Mr. COBURN. I am relating strictly the testimony of the Forest Service.

Representative HOFFMAN. I know, but there is an implication in your questions. I think it is a fact admitted by the Forest Service that they never built a road from a main road up to the mine. You call it an access road.

Mr. COBURN. I think if you read the testimony of the administrative hearing you will find that Mr. Hattan, in testifying under oath—

Representative HOFFMAN. I do not care what Mr. Hattan testified. He is the bird who is behind the whole contest, in my judgment.

Mr. COBURN. I do not know about that, but he testified under oath that these are Forest Service roads. Mr. Wood also so testified.

Representative HOFFMAN. I think you will find that the Forest Service never built any roads from the main highway up.

Mr. COBURN. I cannot find those words, Congressman.

Mr. Davis, in any event, regardless of who built what and how much money was invested by the McDonalds in this property, that would be no legal ground for your issuing a patent to these claims: would it?

Mr. DAVIS. Not in the absence of mineralization; no.

Mr. COBURN. It is not the main ground on which you based your decision. In fact, you felt there was sufficient mineralization.

Mr. DAVIS. That is right.

Mr. COBURN. And it would not make any difference how much money or how much of a hardship these people had undergone?

Mr. DAVIS. Yes; I think that is true. The amount of the improvements, of course, enter into this common improvement doctrine which you get into, of course.

Mr. COBURN. Isn't that considering where the improvements are?

Mr. DAVIS. Not necessarily, but as to just the mere fact that there is a large investment there, that is certainly not conclusive of the claim.

On the other hand, the fact that the claims had been worked for 50 years and that there were and had been very substantial amounts of money spent developing at least goes to the fundamental fact that it was an actual mining venture for many, many years. I think there is no question of that. The Geological Survey report way back in 1930 deemed the mine of enough importance to devote a page or two to what had been done, and so forth, but you are perfectly right in your statement that regardless of how much money they spent, if there were no minerals on the claim they weren't entitled to patent.

Mr. COBURN. Is it not also true that the record discloses that there has not been any mining since 1943?

Mr. DAVIS. I think perhaps that is true also, but, of course, that again is not necessarily the test.

Mr. COBURN. And is it not also true that the \$30,000 or \$40,000 in gold that was alleged to have been mined from the property was produced in a period from 1897 to 1943?

Mr. DAVIS. Oh, I think that is true; yes.

Mr. COBURN. And the McDonalds did not apply for patent until 1948.

Mr. DAVIS. That is right.

Mr. COBURN. As to this long recital that was made to you by the McDonalds of their difficulties and their hardships, and so on, was anything required from the McDonalds here that would not have been required of any other applicant for a mining patent?

Mr. DAVIS. I don't think so. I don't know what you are driving toward.

Mr. COBURN. For example, I am relating this to statements made by the McDonalds to you in which they said taxes were accumulating on the property, they had been the victims of bureaucratic delays, they had paid their filing fee, they had done this and done that, and I am

just wondering if there was anything there that was required of them that had not been required of any other applicant for a patent?

Mr. DAVIS. I don't think there is anything required of them; no. The requirements are perfectly clear. And there was no more in this than there was in any other case except the fact that, of course, there had been a rather extended 5-year delay in the matter during which, of course, as a claimant they were quite obviously unhappy, as I suppose anybody would be, because they were getting accumulated taxes and getting their plans. He had plans to finance and go ahead. He was getting those continuously delayed. So far as the paying of the filing fee and this statement about \$5 an acre, that's all perfectly standard and is applicable to all mining claims.

Mr. COBURN. That is right. They would not have been liable for the payment of taxes unless patent had been granted; is that not correct?

Mr. DAVIS. I don't know. I assume perhaps not, but, frankly, I am not familiar with the laws of the States as to what happens to those taxes.

Mr. COBURN. If the patent had not been granted wouldn't the lands revert to their former status?

Mr. DAVIS. It would revert back to Government land, I assume, of course. In fact, they wouldn't revert back; they just never would have passed.

Mr. COBURN. So this would remain as Federal Government land and not subject to State taxation; isn't that correct?

Mr. DAVIS. I think so.

Mr. COBURN. Speaking of this length of time that it took to decide this case, have you any knowledge or figures of the average time it takes for applicants to finally get a patent on national forest lands from the time they file their application to the time of the decision?

Mr. DAVIS. No, I don't, Mr. Coburn.

Mr. COBURN. Could someone furnish that from the Department for our record? I should not think it would be too difficult.

Mr. DAVIS. I will be glad to furnish it. I'm not too sure how difficult it may be, because those records would not necessarily be available here, you see, and his thing would arise, if there was no contest, out in the various land offices out over the country. That's the reason that I don't have the figures.

Mr. COBURN. I understand. I didn't expect you to have them, but I thought we could probably get for the record some data on how long it usually takes in a contested claim of this kind for a final decision to be reached, which I think would bear on the question of whether or not these people were unnecessarily or unreasonably delayed.

Mr. DAVIS. That's right, it would.

(The information referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C., April 25, 1956.

HON. W. KERR SCOTT,

*Chairman, Subcommittee on Legislative*

*Oversight Function, Committee on Interior and Insular Affairs,  
United States Senate, Washington 25, D. C.*

My DEAR SENATOR SCOTT: On January 31, 1956, Mr. Coburn of the committee staff, orally requested Under Secretary Davis to estimate the average time elapsed between the filing of a patent application and the rendering of a final departmental decision in contested mining claim cases on national forest lands.

We understand that a similar inquiry was directed to the United States Forest Service and that on February 16, 1956, Mr. Edward C. Crafts, Acting Chief of the Forest Service, directed a reply to you in which the average elapsed time in such cases was estimated.

We have done considerable inspection of departmental files. However, in the interest of time and having read a copy of Mr. Craft's letter, we offer no better estimate.

Sincerely yours,

EDWARD WOOLEY, *Director.*

Mr. COBURN. Is it not also true, Mr. Davis, that if your decision had been not to grant these patents, there was nothing in the previous decision of the Assistant Director of the Bureau of Land Management or, as a matter of fact, in the decision ultimately made by Mr. Rice, the Bureau of Land Management hearing officer, that would have prevented the McDonalds from continuing mining these claims, sell the ore, and continue to prospect for a valid discovery?

Mr. DAVIS. Well, I think there wasn't in the opinion. Of course, one thing that was not proper, that is, the Forest Service and the Bureau of Land Management in their complaints made a mistake, was a prior asking for the absolute cancellation of the claims. Of course, they were in error in that, and it was ultimately corrected. I mean, they changed their position and said, "We don't mean that we want to cancel the claim. We just mean we don't think patent should be issued." However, that was one of the things which was cited constantly as being unfair to them. Of course, it had been corrected so it had worked out all right. It wasn't unfair to them except it was unfortunate and it didn't improve relations between them when the application asked for a cancellation of claims.

Mr. COBURN. That amendment was made by the Forest Service counsel in the administrative hearing?

Mr. DAVIS. I think it was made in the administrative hearing; yes, sir.

Mr. COBURN. After Mr. MacMahon, representing Al Sarena, and his clients, left the hearing?

Mr. DAVIS. I think that is right.

Mr. COBURN. The record so discloses.

Mr. DAVIS. I think that is right.

Mr. COBURN. I also would like to quote from the decision of April 27, 1951, of the Assistant Director of the Bureau of Land Management:

The decision of the manager—

meaning Mr. Rice in the field—

Is affirmed and mineral entry Oregon 0665 is held for cancellation as to—  
and then he lists the 15 contested claims.

This ruling does not invalidate the mining claims and the mineral claimants may retain possession thereof and continue prospecting work looking to the discovery of valuable minerals which will warrant the filing of an application for patent of the claims.

Another thing, Mr. Davis, that you relate in your statement is that the McDonalds charged, bitterly as I recall the language, that they had an unfair hearing before the Bureau of Land Management hearing officer, that is, Mr. Pierce M. Rice, in Portland, Oreg., on September 13, 1950. I notice in your opinion, however, your decision on the case, you do point to the fact that the manager, that is, the hearing officer, was entirely within his rights and was entirely correct in the

way he handled the contention of counsel for Al Sarena that he should be given the right to demur and have the case decided not on the merits at that time, but on the demurrer, so that I was wondering how much weight you gave to the statement by the McDonalds that this had been an unfair hearing.

Mr. DAVIS. Well, your record, of course, is not at all complete as to what happened out there. Apparently these people, as you can gather from the stenographic summary or statement of what went on, went into the hearing and had some considerable wrangle about the way they were going to make up the record and a good deal of colloquy ensued between the hearing officer and their counsel. The hearing officer had a right to run the hearing as long as he conducted it more or less according to due process of law. There is no doubt about that. That was the conclusion that we finally arrived at, but that had nothing to do with the complaints which were made to me by them in the beginning, because they were very consistent at all times that the whole Land Management or Forest Service were just determined to defeat these claims, right or wrong.

I don't say that is true, understand. I am just telling you the statement that they had made.

Mr. COBURN. Then you gave considerable weight to the charge made by the McDonalds to you that they had been unfairly treated by the representatives of the Bureau of Land Management and the Forest Service?

Mr. DAVIS. Well, I gave some weight to it, yes.

Mr. COBURN. How much weight did you give to the statement that the record was incomplete?

Mr. DAVIS. Well, I gave a good deal of weight to that because it was incomplete. It is yet as far as that goes.

Mr. COBURN. Has there been any supplemental information filed to make the record complete?

Mr. DAVIS. Mr. Coburn, I don't think so. It's not here now, at any rate.

Mr. COBURN. What do you think is missing, Mr. Davis?

Mr. DAVIS. Well, in the first place, of course, many of these assays which had been filed there with the Bureau, some of them, as I understand it, filed even prior to the hearing, are not in the record. Yet everybody concedes that there has been a tremendous number of various assays taken on this property, and again if you could believe what these people say a good many of those had been filed prior to that date. Then they filed a suitable set of assays in December, I guess it was, after the hearing was over, anyhow, and after Mr. Hattan's report had been completed and gone in, and those assays were not in the file.

After we had written some of those assays were sent in. Others I have never seen to this day. The whole assay situation was not very clear in the record.

Mr. COBURN. Are you finished, Mr. Davis?

Mr. DAVIS. Yes.

Mr. COBURN. On this matter of submission of additional assays, I assume now that you are referring to the allegations made by the McDonalds that they had assays which they tried to get in the record and could not get into the record; is that correct?

Mr. DAVIS. That's right.

Mr. COBURN. Is it not true, Mr. Davis, that a mineral examiner working for the United States Government in a case of this kind is under absolutely no duty or any obligation to accept assay reports submitted to him by the claimant?

Mr. DAVIS. No, I wouldn't agree with that at all. He is certainly not bound to accept as accurate assay reports submitted by the claimant, but I think he is entitled and should receive them into the record for whatever they may be worth or whatever credibility anybody may care to give to them. They should be in the record.

Mr. COBURN. You say he should do this, but my question went to whether or not legally he has to accept assay reports prepared by the claimant.

Mr. DAVIS. What do you mean "accept"?

Mr. COBURN. Accept for the record.

Mr. DAVIS. Yes, I think he ought to accept them for the record.

Mr. COBURN. He ought to, or has to?

Mr. DAVIS. I should say that his duty as a hearing examiner certainly—

Mr. COBURN. I am not talking about a hearing examiner, sir; I am talking about the mineral examiner who goes on the claims, takes samples, submits them to an assay house, and then makes his report based on those samples.

Mr. DAVIS. That's right.

Mr. COBURN. Now, is he legally obligated to accept assay reports handed to him or presented to him by the claimant?

Mr. DAVIS. Well, he is not legally bound to follow them, Mr. Coburn, but I would think he was bound to take a look at them if he is trying to do a fair job.

Mr. COBURN. Yes, he perhaps ought to morally and ethically and in fairness, but he does not have to, does he, under the law?

Mr. DAVIS. Well, I don't know that there is any fixed law on that.

Mr. COBURN. Isn't his primary and legal duty within the scope of his employment to go on to that claim and perhaps have the claimant point out spots, discovery places, and so on, and take samples for the Government, have those samples assayed, receive the reports, and then check back, as Mr. Hattan did in this case 3 times, to make sure that they were valid, and he submits that evidence to a hearing officer who is supposed to be a judge—at least he acts in a quasi-judicial capacity—and up until the time of the hearing the minerals examiner certainly is under no legal obligation to accept assay reports from the claimant; is that not correct?

Mr. DAVIS. Well, his business, Mr. Coburn, as a mineral examiner, is to make a report stating his views as to whether or not these claims are mineralized. That is his job. Now, if he wants to ignore assays that are handed him by the claimant he can do that. If he wants to believe that the claimant's assays are more dependable than the ones he took himself he can do that. He's got a definite judgment, opinion function to perform and he can rest that opinion on what he thinks is the best evidence that is available.

Mr. COBURN. But he cannot rest it on the opinion of what someone else says as to minerals?

Mr. DAVIS. If he wanted to.

Mr. COBURN. In the final analysis it is his judgment?

Mr. DAVIS. That's right.



Mr. COBURN. Is it not also true that according to proper procedure the place for the claimant to submit his assay reports and his evidence of whatever kind he may be able to procure is at the hearing before the hearing officer?

Mr. DAVIS. That's right.

Mr. COBURN. And in this case the McDonalds did not submit that evidence, did they?

Mr. DAVIS. That's right.

Mr. COBURN. And that is why the record is incomplete?

Mr. DAVIS. That's right. That's part of the reason.

Mr. COBURN. What is the other reason?

Mr. DAVIS. The other reason is that there were some of these assays that had been tendered before, as I understand the statements of everybody.

Mr. COBURN. Tendered by whom?

Mr. DAVIS. By the McDonalds to the Bureau of Land Management there.

Mr. COBURN. Let us be specific. To whom in the Bureau of Land Management? It is important because they could present them to the hearing officer at the hearing, but, as we have decided, if Mr. Hattan refused to accept them, still it would be a legal procedure. It might not be—strike that.

Senator GOLDWATER. That was rather an important remark you started to make.

Mr. COBURN. To whom did the McDonalds tell you they tried to submit their original assay report?

Mr. DAVIS. I don't even remember, Mr. Coburn. I wasn't drawing it that fine at that time. I was just listening to a story.

Mr. COBURN. Has the allegation ever been made by the McDonalds that they attempted to give these assay reports to Mr. Hattan, the minerals examiner?

Mr. DAVIS. Prior to the hearing I wouldn't say that they had.

Mr. COBURN. Prior to the field hearing, or the hearing before you?

Mr. DAVIS. No; prior to the field hearing.

Mr. COBURN. I think that the record of that hearing would indicate that at least at the time of the hearing no attempt was made by counsel or by the McDonalds to submit this evidence; isn't that correct?

**Mr. DAVIS.** I think there was no evidence offered by them at the hearing.

**Mr. COBURN.** No evidence offered. However, you don't know whether prior to that time the person in the Bureau of Land Management to whom the McDonalds attempted to submit assay reports was or was not Mr. Hattan?

**Mr. DAVIS.** No, I don't.

**Mr. COBURN.** You have testified, have you not, Mr. Davis, that when you decided to undertake this supplemental investigation through the Bureau of Mines the Forest Service was not notified?

**Mr. DAVIS.** That's right.

**Mr. COBURN.** And after the investigation had been completed and the file was before you, at that time did you or did you not advise the Forest Service of the receipt of the assay reports and Mr. Appling's report to you?

**Mr. DAVIS.** No; I did not.

**Mr. COBURN.** And you issued your decision on January 6, 1954?

**Mr. DAVIS.** That's right.

**Mr. COBURN.** You also testified, did you not, that on December 24 the assay report from the Williams Inspection Co. was submitted to you by hand by Mr. Garber?

**Mr. DAVIS.** That's right.

**Mr. COBURN.** Of Congressman Ellsworth's office?

**Mr. DAVIS.** Yes.

**Mr. COBURN.** I am just recapitulating so we will get this in the record.

At that time you examined those reports yourself or had them examined?

**Mr. DAVIS.** I looked them over; yes.

**Mr. COBURN.** Do you recall whether or not there were some penciled notations to the right of the figures listed, showing the values of the minerals?

**Mr. DAVIS.** Those figures on there are the figures, so I am informed, of Mr. Armstrong, who checked them over.

**Mr. COBURN.** I am referring to the identification of the values with the claims. I believe you will find in your exhibit that this A. W. Williams inspection report shows an addition to the values. I think it is to the right of the right-hand column. I will wait until we find it.

**Mr. DAVIS.** Do you have the exhibit number?

I guess I have it here.

Mr. COBURN. This one is not numbered. It is this one [indicating]

A. W. WILLIAMS INSPECTION COMPANY  
MOBILE, ALABAMA

REPORT OF Assays of Gold Ores

For Al Sarena Mines, Inc.  
408 1st National Bank Building  
Mobile, Alabama  
Sample identification: Al Sarena 1-28 Incl.

Lab. No. 53-912  
Report No. 431869  
Date December 17th, 1933  
Client's Mat. Order No.  
Client's Requisition No.  
Client's Insp. Ord. No.  
Our Order No. 33001  
Date 11-25-53

Sample submitted

By Mr. D. Ford McCormick

We find the samples submitted by Mr. D. Ford McCormick to contain the following:

Sample	Au oz./ton	Ag. oz./ton	Au \$/ton	Ag \$/ton	Total Value \$/ton
1	0.05	0.15	1.75	.14	1.89
2	0.04	0.60	1.40	.54	1.94
3	0.05	0.20	1.75	.18	2.03
4	0.05	0.10	1.75	.09	1.84
5	0.08	0.05	2.80	.05	2.85
6	0.06	0.05	2.10	.05	2.15
7	0.05	.07	1.75	.06	1.81
8	0.05	0.06	1.75	.05	1.80
9	0.06	0.04	2.10	.04	2.14
10	0.04	0.08	1.40	.07	1.47
11	0.03	0.06	1.05	.05	1.10
12	0.04	0.40	1.40	.36	1.76
13	0.02	0.10	.70	.09	.79
14	0.03	0.11	1.05	.10	1.15
15	0.04	0.07	1.40	.06	1.46
16	0.05	0.10	1.75	.09	1.84
17	0.07	0.05	2.45	.05	2.50
18	0.03	0.03	1.05	.03	1.08
19	0.05	0.02	1.75	.02	1.77
20	0.03	0.06	1.05	.05	1.10
21	0.05	0.10	1.75	.09	1.84
22	0.06	0.04	2.10	.04	2.14
23	0.05	0.07	1.75	.06	1.81
24	0.06	0.04	2.10	.04	2.14
25	0.04	0.64	1.40	.58	1.98
26	0.06	0.60	2.10	.54	2.64
27	0.12	0.72	4.20	.65	4.85
28	0.10	0.50	3.50	.45	3.95

This report is submitted for the exclusive use of the client or his representative and may not be used in any connection with advertising or sale of any product or process without our written authorization.

Assays by J. A. McDaniel

4 Reports To: Al Sarena Mines, Inc.  
408 1st. National Bank Bldg.  
Mobile, Ala.

A. W. WILLIAMS INSPECTION CO.

By

*Wm. H. Williams*

Mr. DAVIS. Yes; that's right.

Mr. COBURN. To the right of the column entitled "Total Value Per Ton" there is a column of designations which would appear to relate the value to a particular claim. For instance, at the top there is \$1.89 and \$1.94, and then a little bracket followed by "Rainbow." Who wrote those in there?

Mr. DAVIS. Mr. Armstrong.

Mr. COBURN. I don't know whether this is a fair question or not, but do you know how he correlated these two? From what source?

Mr. DAVIS. No, I don't. No, I don't. They are correlated obviously from the sample numbers and the location of the sample numbers with relation to the claims on which they were taken.

Mr. COBURN. At that time did he have before him the assay map prepared by Mr. Appling?

Mr. DAVIS. I don't know whether he did or not.

Mr. COBURN. He couldn't have, could he, if this took place on December 24 prior to the receipt of the Appling report?

Mr. DAVIS. No.

Mr. COBURN. What?

Mr. DAVIS. I suppose not, Mr. Coburn, but these were identified and they are identified and they are correct.

Mr. COBURN. They have been checked, have they?

Mr. DAVIS. I think that is right. What identification method was used to check them I frankly don't know.

Mr. COBURN. What I frankly was trying to find out is whether these notations that are on the assay report were on it when it came to you from Congressman Ellsworth's office.

Mr. DAVIS. Oh, no.

Mr. COBURN. They were not?

Mr. DAVIS. I am sure they were not. They are Mr. Armstrong's notations on there.

Mr. COBURN. He may have had some material in this huge file which would permit him to relate these topics?

Mr. DAVIS. I would assume so. As I say, they appear to be correct. So far as I know nobody has questioned the applicability of the samples to the claims.

Mr. COBURN. You said that at one time, Mr. Davis, you considered a remand of this case for a further hearing in the field before a hearing officer of the Bureau of Land Management.

Mr. DAVIS. Yes.

Mr. COBURN. And you felt in view of the charges made by the claimant, that is, Al Sarena, this would be a vain act?

Mr. DAVIS. That's right; I said that.

Mr. COBURN. Did you base that opinion on what the McDonalds had told you about their treatment?

Mr. DAVIS. No, I didn't by that time, Mr. Coburn. Naturally, when complaints of this character have been made you watch for whatever straws there are in the wind that would point to a direction as to the likelihood or possibility that the accusations are true, but by that time, of course, this foot and a half thick file was available and pretty carefully gone through.

Mr. COBURN. Was that file complete at that time?

Mr. DAVIS. Well, I think substantially so; yes. I don't know what may have gone in there since that time, but it was about like that.

Mr. COBURN. What I am getting at is this, Mr. Davis: I think you said in your statement—not in your statement, but in your opinion in your decision in this case—that the missing assay reports eventually were received by your Department, by you. At the time that you were considering a remand was that file complete as to the missing assay reports?

Mr. DAVIS. I don't know, Mr. Coburn. I don't think it was.

Mr. COBURN. If it had been complete at that time, could you not have rendered your decision then without going through this other procedure, that is, the Bureau of Mines procedure?

Mr. DAVIS. No, I don't think you could.

Mr. COBURN. Why not?

Mr. DAVIS. Because the old record of the assays of this thing is far from satisfactory at any stage of the game. I don't like to get myself here in the position of being too much of a critic of this thing, but you must remember that, just speaking generally, the first sampling that was made by Mr. Hattan on May 13, 1949, was sent over to an assay house in Grants Pass, Oreg., the Annes Engineering Co. He took samples from all of these old 23 claims at that time and sent them over to Annes. On the Annes report, as I recall, every single claim, including these which were admittedly good, which he ultimately allowed, the whole 23 simply showed trace, trace, trace, all the way down the page, as you know.

Then he went back there in July and he took a bunch more samples in connection with Mr. Sanborn of the Forest Service. You understand, I don't know any of this; I am just relating what Mr. Hattan says and what is developed in your own record because none of it is to my personal knowledge, but the record indicates he and Mr. Sanborn went over in the middle of July and they took a bunch more samples.

Mr. COBURN. That was in 1949?

Mr. DAVIS. In 1949. Those samples were sent to Abbit Hanks, but by a sort of informal route. They were sacked up and, as I believe Mr. Sanborn says, they rode around in his car for a week and then he delivered them to somebody in the Forest Service down in California, and they ultimately sent them over to have them assayed.

I think that is about the story. But, at any rate, they were not samples taken from all of the claims at that time.

Then in addition to that—my sequence of dates may not be entirely accurate, but it is approximately so—at that time Mr. Hattan took some old pulps out of the shack which was over there on the mine which the McDonalds had had prepared—I don't know how long ago, but a substantial period of time—and sent those over to Abbit Hanks, and they showed a reasonably valuable gold deposit—I have forgotten what it was—some \$3, \$4, \$5 a ton that they showed, and yet those were not taken from all even of the 8 claims which Mr. Hattan was preparing to allow; so that then he went back up there after his report was prepared apparently, and just before the hearing took some more samples, but only seven, so that didn't cover anywhere near all the claims, sent those over to the Bureau of Mines, got back that report, incidentally, by telephone, and testified to that at the hearing; and of course there again you have just this same trace, trace, trace business that you got in the first bunch, so that I think it is not an unfair statement that as a result of all of those assays you

still didn't have assays on all other claims which agreed with each other or in which you necessarily could put too much credibility.

Mr. COBURN. Mr. Davis, you have read this record of the hearing before the BLM hearing officer, Mr. Rice, have you not?

Mr. DAVIS. Yes; I have skimmed through it.

Mr. COBURN. If you look at it in detail you will find that Mr. Hattan testified under oath in answer to an examination by the Forest Service and the BLM manager that he took samples from each of these claims at one time or another.

Mr. DAVIS. Yes; and I noticed that very thing, that it was at one time or another.

Mr. COBURN. Well, it is a pretty consecutive record. I do not want to read the whole thing, but he identifies each claim. He tells where he went, when he took the sample, at whose direction he took the sample, namely, at the direction of either the caretaker, the Al Sarena people, or the McDonalds, and is it not also true, Mr. Davis, that in referring to the samples that you say he took from the seven claims and submitted to the Bureau of Mines, that was done because the McDonalds had written him a letter offering additional assay reports from those seven claims, and that he therefore went back to check as to the validity of the report submitted to him by the McDonalds?

Mr. DAVIS. I don't remember that.

Mr. COBURN. I am sure that that is in the record.

So that I got the impression—and I don't know whether you did or not—that Mr. Hattan was endeavoring to check himself all the way through this thing.

Representative HOFFMAN. May I have that last? Mr. Hattan was endeavoring to do what?

Mr. COBURN. To check himself on the accuracy of his own samples.

Representative HOFFMAN. He is trying to prove that his first conclusion was right.

Mr. COBURN. You can read that inference if you want to.

Senator NEUBERGER. Mr. Chairman, I wonder if I may make a brief statement about Mr. Hattan.

Mr. Hattan is my constituent. Earlier this morning the gentleman from Michigan said of Mr. Hattan:

He's the bird that is behind this whole thing.

Last week the Under Secretary accused Mr. Hattan of being obviously hostile and of being prejudiced. As a Senator from Oregon I feel I should make a brief statement about Mr. Hattan, inasmuch as twice this morning already these charges have been entered against Mr. Hattan.

I have endeavored to find out in the past week something about Mr. Hattan. I find out from as many authorities as I can check at this distance that Mr. Elton M. Hattan is a respected resident of my State. He is a career employee of the Bureau of Land Management. I do not know what his political affiliation is. That makes no difference.

Mr. Hattan has had a great deal more experience with the Bureau of Land Management than Mr. Appling, who was allowed to be virtually the determining person, has had with the Bureau of Mines. The Under Secretary last week testified that he had not investigated Mr. Hattan and that he had not given Mr. Hattan any hearing as to

prejudice or as to being hostile. I do feel in all truth and candor that if these attacks are to be constantly made upon this career employee of the Bureau of Land Management, who is very obviously being made a goat in this thing, some evidence should be presented to indict Mr. Hattan, and I very much resent it as a Senator from Oregon who the gentleman from Michigan says of Mr. Hattan:

He's the bird who is behind this whole thing.

In my opinion Mr. Hattan has tried to do his duty as he saw it and according to his professional qualifications, and I think these attacks upon Mr. Elton M. Hattan are indeed most unfair.

Representative HOFFMAN. Now, Mr. Chairman, in answer to my colleague, let me ask, What do you gentlemen say about McCormick and the rest of the fellows you have been after? However, the fact that you gentlemen have been attacking this, that, and the other fellow does not justify any attack that I made.

Mr. Chairman, I want to apologize and, if I am permitted, withdraw the word "bird" and substitute the word "gentleman," and that the rest of the charge I want to stand. I want to repeat that apparently Mr. Hattan, and at the suggestion in my opinion of Mr. Neuzorg, is the gentleman who instigated these charges. I will concede that perhaps he was motivated by his desire to protect the Forest Service, but when they put a mine down there in that particular locality he took the attitude of a mother of a child; anything that was going to affect that child adversely was wrong; it does not make any difference whether it is right or not, the mother defends her child. That is what he was doing, and he is the gentleman, and the record shows, Mr. Senator, that Mr. Hattan is the gentleman who instigated these charges in the beginning. He has been back of them all through and has attempted to show something which I think he was not able to substantiate, that is, that there was not sufficient mineralization there.

Apparently he entertains the idea that to justify the granting of patent on a mining claim the claimant must show that the minerals are of more value than anything else that is on the claim; for example, the timber.

He has gone off on that legal theory, apparently, and that is not the law.

Senator NEUBERGER. In further fairness to Mr. Hattan I think it should be pointed out that he has examined hundreds and perhaps thousands of mining claims in the Northwest. I can find no other instance when charges such as this have been made against Mr. Hattan's competence, ability, or fairness. Only in this instance have such charges been made against Mr. Hattan in all his long experience with the Bureau of Land Management.

Representative HOFFMAN. Perhaps he has never before been encouraged by politicians. If you will look at pages 62 and 84 of the record you will find that Mr. Hattan testified that he had not been back on these claims and he also testified—I can put that page into the record at this point—that he never had met the McDonalds before a certain date, and yet I think the record will show that he was well acquainted with them, or at least had met them.

Representative CHUDOFF. Mr. Chairman, I would just like to comment. I listened to Mr. Hattan's testimony very carefully and it

were sitting as a juror in this case I would say that his testimony is the testimony that should really be believed because he is perhaps the most disinterested person in this entire hearing. He had nothing to gain and nothing to lose in the decision that he made, and certainly it was a fair decision as far as his opinion was concerned. I do not think he had an ax to grind.

Senator GOLDWATER. Mr. Chairman, I think comment on Mr. Hattan might be proper from this end of the table.

I do not know Mr. Hattan. I do not know his professional qualifications, but a study of the report on mineralization that was submitted by Mr. Hattan puts some questions in my mind and I think the questions exist in the Secretary's mind. For instance, on the 8 claims that he allowed only 2 showed any mineralization. Six showed nothing, and on the six that showed nothing under his report we find the vast amount of money that is supposed to have been taken out of this property; I think in the neighborhood of \$40,000. That would be enough to just put a little question in my mind, and I think it is something that we might properly pursue.

I do not think it is wrong to question the accuracy of a person. I think, as the Senator suggests, we are wrong in questioning his gentlemanliness and his intentions otherwise, but I do think it is proper that we question his ability, inasmuch as he allowed patents to be granted on claims that showed nothing, by his own assays.

Mr. COBURN. Just for the record, Mr. Chairman, could we have some identification of that? Is it from his report of December 22, 1949, or what?

Senator GOLDWATER. The report reviewing three instances of sample taking. It would cover all of his sample taking.

Mr. COBURN. I was just asking the Senator for purposes of identification to tell the committee from what report he is reading.

Senator GOLDWATER. This is out of the Annes report that was submitted in this testimony.

Mr. COBURN. The Annes Engineering Co.?

Senator GOLDWATER. Yes; and from the Abbot Hanks Co.? This is a compilation. Counsel may see it.

Senator KUCHEL. Mr. Chairman, I am going to ask for the regular order, if the chairman will apply such a rule in this committee. We have here the second ranking official of the Department of the Interior, and I suggest that the interrogation of him be completed so that he may return to his duties and let this kind of colloquy proceed after the Secretary is excused. I renew my request, Mr. Chairman, for the regular order, if the chairman will apply it.

Senator SCOTT. Senator Kuchel, I may repeat this again to you: In order to move along as fast as possible I would like to again ask the members of the subcommittee to withhold any questions or statements until counsel has finished questioning Secretary Davis. The Secretary has already been in the witness chair for a full day. His time is very valuable and I am sure it is of utmost importance that we finish with him as soon as possible so he can get back to his regular duties and the subcommittee can move along with its work.

Senator KUCHEL. I congratulate the chairman and I suggest that that rule be enforced and that we proceed to the culmination of the interrogation of the Under Secretary.



prejudice or as to being hostile. I do feel in all truth and candor that if these attacks are to be constantly made upon this career employee of the Bureau of Land Management, who is very obviously being made a goat in this thing, some evidence should be presented to indict Mr. Hattan, and I very much resent it as a Senator from Oregon when the gentleman from Michigan says of Mr. Hattan:

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He has gone off on that legal theory, apparently, and that is not the law.

Senator NEUBERGER. In further fairness to Mr. Hattan I think it should be pointed out that he has examined hundreds and perhaps thousands of mining claims in the Northwest. I can find no other instance when charges such as this have been made against Mr. Hattan's competence, ability, or fairness. Only in this instance have such charges been made against Mr. Hattan in all his long experience with the Bureau of Land Management.

Representative HOFFMAN. Perhaps he has never before been encouraged by politicians. If you will look at pages 62 and 84 of the record you will find that Mr. Hattan testified that he had not been back on these claims and he also testified—I can put that page in the record at this point—that he never had met the McDonalds before a certain date, and yet I think the record will show that he was well acquainted with them, or at least had met them.

Representative CHURCHOFF. Mr. Chairman, I would just like to comment. I listened to Mr. Hattan's testimony very carefully and if I

were sitting as a juror in this case I would say that his testimony is the testimony that should really be believed because he is perhaps the most disinterested person in this entire hearing. He had nothing to gain and nothing to lose in the decision that he made, and certainly it was a fair decision as far as his opinion was concerned. I do not think he had an ax to grind.

Senator GOLDWATER. Mr. Chairman, I think comment on Mr. Hattan might be proper from this end of the table.

I do not know Mr. Hattan. I do not know his professional qualifications, but a study of the report on mineralization that was submitted by Mr. Hattan puts some questions in my mind and I think the questions exist in the Secretary's mind. For instance, on the 8 claims that he allowed only 2 showed any mineralization. Six showed nothing, and on the six that showed nothing under his report we find the vast amount of money that is supposed to have been taken out of this property; I think in the neighborhood of \$40,000. That would be enough to just put a little question in my mind, and I think it is something that we might properly pursue.

I do not think it is wrong to question the accuracy of a person. I think, as the Senator suggests, we are wrong in questioning his gentlemanliness and his intentions otherwise, but I do think it is proper that we question his ability, inasmuch as he allowed patents to be granted on claims that showed nothing, by his own assays.

Mr. COBURN. Just for the record, Mr. Chairman, could we have some identification of that? Is it from his report of December 22, 1949, or what?

Senator GOLDWATER. The report reviewing three instances of sample taking. It would cover all of his sample taking.

Mr. COBURN. I was just asking the Senator for purposes of identification to tell the committee from what report he is reading.

Senator GOLDWATER. This is out of the Annes report that was submitted in this testimony.

Mr. COBURN. The Annes Engineering Co.?

Senator GOLDWATER. Yes; and from the Abbot Hanks Co.? This is a compilation. Counsel may see it.

Senator KUCHEL. Mr. Chairman, I am going to ask for the regular order, if the chairman will apply such a rule in this committee. We have here the second ranking official of the Department of the Interior, and I suggest that the interrogation of him be completed so that he may return to his duties and let this kind of colloquy proceed after the Secretary is excused. I renew my request, Mr. Chairman, for the regular order, if the chairman will apply it.

Senator SCOTT. Senator Kuchel, I may repeat this again to you: In order to move along as fast as possible I would like to again ask the members of the subcommittee to withhold any questions or statements until counsel has finished questioning Secretary Davis. The Secretary has already been in the witness chair for a full day. His time is very valuable and I am sure it is of utmost importance that we finish with him as soon as possible so he can get back to his regular duties and the subcommittee can move along with its work.

Senator KUCHEL. I congratulate the chairman and I suggest that that rule be enforced and that we proceed to the culmination of the interrogation of the Under Secretary.

Senator SCOTT. Mr. Coburn, go ahead.

Representative HOFFMAN. In answer to what the Senator from California says, I did not start the ball rolling, but when somebody starts it I am going to be in on it. Moreover, the Senator from Oregon examined this witness at length the other day and then counsel takes him up, and if you had been around at some of the previous hearings you would have observed some of these practices and noticed that the minority has never been given an opportunity to know what was going on. After the hearings have been held some Senators who were not present and who know nothing about what happened, come in and sit for a short time and become critical.

Senator KUCHEL. All I do is repeat my request that the interrogation of the Secretary proceed.

Representative CHUDOFF. I just want to say in answer to Mr. Hoffman, if you count the words in the record you will find Mr. Hoffman has elucidated more words than all of us put together.

Representative HOFFMAN. That is about as accurate as the rest of your statements and it is not accurate at all.

Mr. COBURN. We were talking about the subject of remanding this case for a further hearing.

Mr. DAVIS. That is right.

Mr. COBURN. I think in answer to some questions put to you by Senator Neuberger you stated that you felt that Mr. Hattan, the minerals examiner, was hostile or prejudiced, or at least had been charged with being prejudiced; is that correct?

Mr. DAVIS. Yes. I think at that point I should like to interpolate just a word on this subject.

I don't think the other day, and if I did I didn't mean to imply that there was any prejudice here by Mr. Hattan in the broad sense of the word that he had any great ax to grind or anything of that nature. I didn't mean to imply that, and I don't now. I do say in reading his report in which he talks about the value of the timber, as contrasted with the benefits of the mine and—

Mr. COBURN. Excuse me. I cannot find that in his report. Could you show me where that is in his report?

Mr. DAVIS. Yes. Look on page 19, Mr. Coburn, under the heading of "Pertinent data."

Do you want me to read it to you?

Mr. COBURN. If you choose to do so.

Mr. DAVIS. It is just one of the numerous little things that are all through these reports and the correspondence, and it is not conclusive of anything and I don't pretend that it is, but I think it does show a very considerable zeal for consideration of the overall things that are concerned here. This is just a little bit of it:

The land embraced by this group of mining claims is timber land and highly suitable for the propagation of timber crops. The land also has an inestimable value as a watershed. The timber with its undercover is the protector of the watershed.

That type of thing I think shews probably a very commendable zeal as far as that goes, but I do think that it shows that his mind is definitely concerned with several problems which haven't anything to do with the allowance of mining claims. They may be perfectly meritorious, but they just haven't anything to do with mining claims.

Mr. COBURN. Where does he say anything about the value of the timber compared to the value of the minerals?

Mr. DAVIS. I am like you, Mr. Coburn. Out of a twenty-some page document I can't sit here on the witness stand and put my finger on it, but I think that runs through the general tenor of the report.

Mr. COBURN. I studied this report very carefully, Mr. Davis, and I regret to find myself in disagreement with you as to the report. I cannot find in the Hattan report any reference made to the comparative value of the timber, vis-a-vis the value of the mineral.

Mr. DAVIS. I don't think there is, Mr. Coburn.

Mr. COBURN. I don't think there is, either.

Mr. DAVIS. No. There is no attempt by him to set up any dollar standard of comparison between the timber and the minerals.

Representative JONAS. Mr. Chairman, I apologize for interrupting, but I wonder if we could get copies of that report. I have never seen this Hattan report.

Would it be proper to ask the Secretary if he could furnish us with some extra copies?

Mr. DAVIS. We can get you some photostatic copies. I have one here which is one of these new processes which is very hard to read. I will try to get you some better ones.

Mr. COBURN. Congressman, you may have that one.

Representative JONAS. I would like to read it. I never have.

Mr. COBURN. The charge apparently was made to you that Mr. Hattan was prejudiced, but it is not a fact when it comes down to a decision, Mr. Davis, Mr. Hattan has nothing to do with the decision itself?

Mr. DAVIS. That's right.

Mr. COBURN. Mr. Pierce M. Rice, the hearing officer, is the one who made the decision; is that not correct?

Mr. DAVIS. Oh, I think that's true, but, of course, Mr. Coburn, you have the old, old problem of administrative law here staring us right in the face that I have wrestled with through the American Bar Association for 20 years. You have people who are all employed by the same agency. They are all friends. They have been together, and a matter is pending before the administrative official and his own department has taken a position and is arguing right before the same official that theoretically is neutral and all that sort of thing, and there is nothing unique about this situation except it is a thing which I am sure you, as a lawyer, and all of us, recognize as one of the vices of the whole administrative law process, one which the Administrative Procedure Act tries to get away from, and which all of us try to get away from, to get independence in the hearing examiner. I don't want to apply that to this case except to point out it is only one of hundreds of cases in Government where the Agency is the protestant or, as we say, to make it vivid, the prosecutor. They are not that, but the prosecutor, and is the judge and the jury, everything else, all in one package.

Mr. COBURN. We have to stick to this case, don't we, Mr. Davis, because, after all, one of the bases for——

Mr. DAVIS. Yes, we have to stick to the case, but I am just pointing that out, that that is one of the things that can't help but influence you when you start going through a record which is not as clear as it ought to be.

Mr. COBURN. Are you saying in effect now that at the time you decided not to remand there was some doubt in your mind as to the impartiality and fairness of Mr. Pierce M. Rice of the Bureau of Land Management, Mr. Elton M. Hattan, and the Forest Service officials who had participated?

Mr. DAVIS. No, I am not saying that.

Mr. COBURN. Then I do not understand your statement. Didn't you indicate at least that because of there being, let's say, facetiously, one big happy family the claimant in this case could not have had a fair hearing on remand?

Mr. DAVIS. I don't say he couldn't have had.

Mr. COBURN. But you doubt it?

Mr. DAVIS. I just say that I think the procedure of transferring the thing to someone where that situation does not exist is a fair and proper procedure.

Mr. COBURN. Apparently you don't feel the same way about the Bureau of Mines as you do about the Bureau of Land Management, from your testimony.

Mr. DAVIS. Well, I didn't know at the time—after all, I had only been down here about 6 months at this time—anything about either one of them to any great detail, beyond what was apparent from this record, but I do think that the Bureau of Mines, having no connection with it and not having held the hearing or not having any of their people previously mixed up, employed in it, or having anything to do with it, it just seemed to me at that time a more neutral agency.

Mr. COBURN. More neutral?

Mr. DAVIS. That's right.

Mr. COBURN. Of course, the record shows that Mr. Hattan when he took those last samples at the request of the McDonalds submitted them to the Bureau of Mines assay office at Albany and that those results were still insufficient in mineral quality.

Mr. DAVIS. Yes, that's right.

Mr. COBURN. That appeared in your record; did it not?

Mr. DAVIS. That's right, Mr. Coburn, but you must also remember that so far as I have examined these records, did examine them, so far as I know them now, if you want to get right down to putting this thing on purely an assay basis, even the claims which are admittedly mineralized by everybody, these eight which were allowed without contest, do not have in here clear evidence of mineralization.

I accepted the fact that the Forest Service agreed, seemed to agree, that there was no doubt they were mineralized, and Mr. Hattan seemed to agree with it, so I accept that, but when you get down to actual assays on those particular claims, there are several of them that were not even submitted to the assay house.

Mr. COBURN. But in your decision, which is based on sufficient mineralization, you allowed the 8 claims as well as the 15 claims?

Mr. DAVIS. That's right.

Mr. COBURN. Yet now you question them.

Mr. DAVIS. No, I am not questioning at all, I am not questioning them at all. I am simply saying to you that as to the 8 claims on which the Forest Service said, "We withdraw objection because admittedly these are mineralized claims," even as to those the process of taking a mineral sample under Government supervision and having it assayed was not carried out completely. As a matter of fact, as I

examined this record, Mr. Coburn, these assays that were made, that were taken by the Bureau of Mines and were sent to the Williams assay house, are just about the only really complete set of assays, all identified and numbered claim by claim and all that sort of thing, that there is in this record except the first ones which were sent to the Annes Laboratories by Mr. Hattan and which he himself frankly said he didn't regard as dependable.

Mr. COBURN. Who said that?

Mr. DAVIS. I think Mr. Hattan said that somewhere in your record.

Mr. COBURN. He didn't say that precisely.

Mr. DAVIS. He didn't say it. I am just summarizing what he said.

Mr. COBURN. I think precisely what he said was that he wanted to check the accuracy of those samples.

Mr. DAVIS. That may be.

Mr. COBURN. And that is entirely different from saying they were not dependable.

Mr. DAVIS. Well, the fact, Mr. Coburn, that those assays showed only traces on these 8 claims where other assays had shown \$3, and \$4, and \$5, and \$6 a ton in itself must have caused Mr. Hattan to wonder.

I don't blame him at all for wondering. I think that's as far as you should go in any fairness to him, is to say that he wasn't very sure of them.

Mr. COBURN. The point is, is it not also true, that following the check that he made on Annes with Abbit Hanks, an assay company in San Francisco, I believe, the results of the Abbit Hanks Laboratory checked out with those of the Annes Laboratory?

Mr. DAVIS. Yes, on the 2, or 3, or 4, whatever small number were sent over there, they did. They were not all sent, you know.

Mr. COBURN. The only ones that were not sent were those which were taken from those claims that were clear-listed for patent, so that what he was checking—

Mr. DAVIS. I'm not so sure of that.

Mr. COBURN. What he was checking in effect was the accuracy of the Annes Engineering Co. reports.

Mr. DAVIS. Yes.

Mr. COBURN. And it checked out.

Mr. DAVIS. That's right.

Mr. COBURN. As a matter of fact, so did the Bureau of Mines assay reports check out, did they not, as to the amount, as to the seven claims?

Mr. DAVIS. They checked out. They also showed just trace, trace down the line, that's right.

Mr. COBURN. When you come right down to it, Mr. Davis, is it not true that the only assay reports that showed sufficient mineralization in your opinion were those submitted to you from the A. W. Williams Co., via Congressman Ellsworth?

Mr. DAVIS. No, no; there are several others in there.

Mr. COBURN. As to the contested claims?

Mr. DAVIS. There are several others which Mr. Hattan had sent which I think show mineralization, but they are spotted. This is the kind of a thing where really it is pretty difficult to sit here and generalize because we are talking about 23 claims and the samples sent

Mr. COBURN. Are you saying in effect now that at the time you decided not to remand there was some doubt in your mind as to the impartiality and fairness of Mr. Pierce M. Rice of the Bureau of Land Management, Mr. Elton M. Hattan, and the Forest Service officials who had participated?

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around have to be checked back into the record about each claim and all that sort of thing.

Mr. COBURN. On this question of remand again, were you aware of the action taken by your predecessor, Mr. White, in offering to remand this case?

Mr. DAVIS. Yes. That appears in his letter.

Mr. COBURN. Mr. Chairman, I would like to read from a letter from Mastin G. White, Solicitor of the Department of the Interior, to the Al Sarena Mines, Inc., dated August 3, 1951, on this question of remand. It is to the Al Sarena Mines, Inc., 408 1st National Bank Building, Mobile 13, Ala.

GENTLEMEN. It appears, upon the basis of your letter dated June 23, 1951, as supplemented by information received from the manager of the land office to the effect that the reporter failed to obtain a complete transcript of the earlier portion of the proceedings at the hearing on September 13, 1950, that if you desire a further opportunity to submit evidence bearing on the question whether valuable mineral deposits have been discovered on the claims involved in your appeal (A-26248), it would be appropriate to remand the case for a supplemental hearing with respect to that issue.

It will be appreciated if you will inform me promptly whether you desire that the same be remanded for the purpose mentioned in the preceding paragraph.

That is signed "Mastin G. White." I did not read the last paragraph. I would like to have the letter placed in the record.

Senator SCOTT. Without objection, it will be admitted.

(The letter referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., August 3, 1951.

AL SARENA MINES, INC.,  
Mobile, Ala.

GENTLEMEN: It appears, upon the basis of your letter dated June 23, 1951, as supplemented by information received from the manager of the land office to the effect that the reporter failed to obtain a complete transcript of the earlier portion of the proceedings at the hearing on September 13, 1950, that if you desire a further opportunity to submit evidence bearing on the question whether valuable mineral deposits have been discovered on the claims involved in your appeal (A-26248), it would be appropriate to remand the case for a supplemental hearing with respect to that issue.

It will be appreciated if you will inform me promptly whether you desire that the case be remanded for the purpose mentioned in the preceding paragraph.

In the event of a further hearing in this case, the supplemental hearing and all subsequent proceedings will be conducted in accordance with the applicable regulations of this Department.

Very truly yours,

MASTIN G. WHITE, *Solicitor*.

Mr. COBURN. This letter was available to you at the time you were making your decision?

Mr. DAVIS. Oh, yes; there had been some serious thought given to remanding this thing.

Mr. COBURN. Do you know what response Mr. White got to this letter of August 3, 1951? Is that in your record?

Mr. DAVIS. I don't recall. At any rate, it wasn't done. They didn't accept his proposal.

Mr. COBURN. They did not accept his proposal?

Mr. WHITE. That's right.

Mr. COBURN. Mr. Chairman, I would like to offer for the record—and if the witness cares to identify it, it is all right with me—correspondence involving this matter of the remand. There is a memorandum

dum in the file here dated August 9, 1950 which I don't believe has been put in. It is from Mastin G. White concerning contest over the application of Al Sarena Mines, Inc. That is dated August 9, 1950. There is a memorandum from Mr. Marion Clawson, who was the Director of the Bureau of Land Management at that time, dated August 17, 1950, to Mr. White, in which he says:

I should like to suggest that to the greatest possible extent we avoid making commitments to Congressmen about earlier handling of cases than would normally occur. As you know, one of the problems which the land office faced for many years was the large volume of requests from Congressmen for making cases special. The volume of requests was so large that oftentimes cases received no attention unless they were special. This in turn led to applicants contacting their Congressmen for special treatment of their bad cases. Those who did not have political connections or did not realize that they were essential often got very poor service indeed. We have done our best to correct this situation by the giving of as prompt service as possible to take up all cases in reasonable order irrespective of the political connections of the applicant. \* \* \*

Apparently Mr. Clawson was somewhat disturbed about—  
Representative Jonas. What was the date?

Mr. COBURN. That was August 17, 1950.

I would like to have those placed in the record, Mr. Chairman.

Senator SCOTT. Without objection, they will be admitted.

(The memoranda referred to follow:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
*Washington 25, D. C., August 9, 1950.*

MEMORANDUM FOR THE FILE

Memorandum for the file

Subject: Contest over application of Al Sarena Mines, Inc., for mineral patent (Oregon 0635).

At the request of Congressman Boykin, of Alabama, I conferred this morning with W. O. MacMahon, of 26 Country Club Drive, Spring Hill, Ala., H. P. McDonald, Jr., of 408 First National Bank Building, Mobile 13, Ala., and Charles McDonald, of the same Mobile address, concerning the contest that is pending with respect to the application of Al Sarena Mines, Inc., for a mineral patent (Oregon 0665).

The visitors related in some detail the story of the applicant's difficulties and delays in the matter of obtaining a mineral patent to the land involved in the contest, and they stated that, as a result, the company had undergone great financial hardship. It was indicated that the company **faces financial ruin** unless it can obtain favorable action upon its application for a patent at an early date.

The visitors first requested that a short-cut procedure be adopted in this case, and that the initial, and likewise final, decision be rendered in the office of the secretary, so that the applicant might know at an early date whether it has a legal right under the mining laws to the land involved in the contest. I endeavored to explain to them the reasons why the departmental procedure governing cases of this sort provides for a record to be made in the field and an initial decision to be rendered "on the ground" by a field official, with the office of the secretary exercising only the function of appellate review.

The visitors then asked whether the Department would cooperate in obtaining an early hearing on the contest in the field. In particular, it was stressed that a hearing before the last week in September would be highly desirable, because H. P. McDonald, Jr., who seems to be taking the leading part for the stockholders in this matter, must return to school in Chicago not later than the last week in September. I stated that the Department would communicate with the field office and endeavor to have the hearing scheduled for an early date.

I passed this information on to Frederick Fishman, of the Bureau of Land Management, who has been working on this case. He stated that a teletype would be sent to the manager of the land office at Portland on the subject of fixing an early date for the hearing in this proceeding.

MASTIN G. WHITE, *Solicitor*.

Memorandum to: Mr. MASTIN G. WHITE, *Solicitor*.

From: Director, Bureau of Land Management.

Subject: Contest of Al Sarena Mines, Inc., for Mineral Patent, Oregon 0665.

I have read the copy of your memorandum of August 9 for the files and the note you placed on the teletype of August 15 which we received from the region. I am instructing the region to proceed with the hearing prior to September 23.

I should like to suggest that to the greatest possible extent we avoid making commitments to Congressmen about earlier handling of cases than would normally occur. As you know, one of the problems which the land office faced for many years was the large volume of requests from Congressmen for making cases special. The volume of requests was so large that oftentimes cases received no attention unless they were special. This in turn led to applicants contacting their Congressman for special treatment of their bad cases. Those who did not have political connections or did not realize that they were essential often got very poor service indeed. We have done our best to correct this situation by the giving of as prompt service as possible to all applicants and by trying so far as possible to take up all cases in reasonable order irrespective of the political connections of the applicant. I recognize that there are limitations as to how far one can go with such a policy and we have tried to be realistic about it. I am sure that we can count on your cooperation on the same policy.

MARION CLAWSON, *Director*.

Representative HOFFMAN. I would like to have the staff if we are entitled to it, and if we are not entitled to it as a matter of right, as a matter of graciousness, let us see some of those documents that he has been offering.

May I beg of you to let us take a look at them?

Senator SCOTT. Proceed.

Mr. COBURN. I also have a letter dated November 16, 1950, from Mr. White to Mr. W. O. MacMahon, Esq., 408 First National Bank Building, Mobile 13, Ala., in which he denies and repudiates any agreement that Mr. MacMahon allegedly had with Mr. White as to how the proceeding would be conducted in Portland, Oreg.

Senator SCOTT. Without objection, it will be admitted.

(The letter referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR.

OFFICE OF THE SOLICITOR.

Washington 25, D. C., November 16, 1950.

W. O. MACMAHON, Esq.,

Mobile 13, Ala.

MY DEAR MR. MACMAHON: I feel that I should comment for the record upon one statement appearing in your letter of October 30, relative to a proceeding which is now pending in the Bureau of Land Management and which involves Al Sarena Mines, Inc.

You refer in your letter to " \* \* \* our agreement had with you and that the hearing and all matters pertaining thereto should be conducted, and conducted only, in accordance with the rules of evidence and the rules of practice as obtain in Federal and State courts."

The only sort of commitment that I have ever made with regard to this proceeding was to the effect that I would endeavor to arrange for an early hearing in the field for the reception of evidence bearing on the issues involved in the case. I agreed to do this because of representations respecting the hardship which would be caused to Mr. H. P. McDonald, Jr., if his return to Chicago were delayed beyond the last week in September.

I would not, in any case, make an agreement of the sort mentioned in your letter of October 30. Administrative proceedings in this Department are less formal than judicial proceedings, and the Department does not feel required to

adhere strictly to the rules of evidence or to the procedural requirements which obtain in the courts. The Department endeavors, however, to accord fair treatment to persons who participate in its proceedings. Any such person who feels aggrieved by a decision rendered in his case by a bureau may take an appeal to the head of the Department.

Sincerely yours,

MASTIN G. WHITE, *Solicitor*.

Representative HOFFMAN. As a matter of procedure, I think it is only fair to the minority, only decent, to let us know where you have those documents and let us take a look at them.

Mr. COBURN. Mr. Chairman, could I answer that question? These are official documents from the file that is available to you, Congressman. They are departmental files.

Representative HOFFMAN. What of it? If the counsel is to offer them we are entitled to look at them.

Representative CHUDOFF. So there is no misunderstanding, I just want you to know that I have never seen them either. Nobody in the House, either the staff, counsel, or any member of the House committee, has seen any of these letters, although I am perfectly willing to have them admitted in the record. I think they are a part of the Interior Department's business. I think that we ought to get copies of them when you offer them for the record.

Representative HOFFMAN. It is standard practice. It is a matter of common decency.

Senator SCOTT. Let us have order.

Representative HOFFMAN. You will get order and you are getting. It is a matter of common decency, of fairness, I repeat, to let the members of the minority see a document about to be put into evidence before it is offered and before it is read. Everybody knows that.

Senator SCOTT. Go ahead, Mr. Coburn.

Mr. COBURN. Mr. Davis, this line of questioning goes to something I mentioned to you the other day about the file of letters that is available in your files from Congressman Ellsworth.

Mr. DAVIS. Yes.

Mr. COBURN. Now, as I understand, your first communication from Congress was from Congressman Ellsworth, a letter to you dated April 15, 1953, and marked "Personal"; is that correct?

Mr. DAVIS. I don't know whether you are reading from my statement.

Mr. COBURN. Well, I am not, at the moment. We made that correction as to the March 3 date on page 2 of your statement.

Then on March 20, Mr. Garber got an appointment with you for the McDonalds, and you met with them on March 30, 1953; is that correct? That is on page 2.

Mr. DAVIS. That is correct.

Mr. COBURN. You have also submitted as an exhibit a letter from Congressman Ellsworth dated April 15, 1953?

Mr. DAVIS. I think that is right, but I don't seem to put my finger on it.

Mr. COBURN. It was submitted later, as a matter of fact, in a supplemental communication to you, this April 15, 1953, letter?

Representative HOFFMAN. Mr. Chairman, unless I am mistaken, all of those letters were offered and received in the hearing at Portland

in that photostat that I put in evidence. It rehashed the whole situation.

Mr. DAVIS. Mr. Coburn, I don't find it in this copy, but I am not disposed to dispute with you a particle about it. I meant to have all of those in here.

Mr. COBURN. I think you submitted this later.

Mr. DAVIS. Oh, did I?

Mr. COBURN. Yes. You may keep that before you, if you like.

Mr. DAVIS. All right.

Senator SCOTT. Just a moment, Mr. Coburn. The House Members will have to adjourn at 12 o'clock to be over for their meeting. We will adjourn at 12 o'clock and then come back at 2 o'clock.

Mr. COBURN. Mr. Davis, in that letter before you there is some reference made to an agreement which Mr. Ellsworth states that you have with Mr. Charles R. McDonald and Mr. Herbert McDonald and Mr. Garber, relating to the patent application of the Al Sarena people. Could you give us the substance of that agreement to which he refers at that time?

Mr. DAVIS. Well, "understanding" would be a little better word than "agreement." I simply told them that we would take a look at this thing.

Mr. COBURN. You would take a look at the file?

Mr. DAVIS. That is right. This was very early in April.

Mr. COBURN. Yes. Then on April 23 you replied to Congressman Ellsworth, in which reply, among other things, you said that you were expecting some new personnel to come in to the Department. I believe you were referring to Mr. Armstrong?

Mr. DAVIS. That is right.

Mr. COBURN. And that when the personnel had arrived, you would have him look over the record?

Mr. DAVIS. That is right.

Mr. COBURN. Now, there is some reference made to this lawsuit which has been in and out of the record, which was filed by Al Sarena against the Government in Alabama. In your last paragraph, you say:

I am sorry if this conflicts with the necessities of the lawsuit pending in Alabama. However, a preliminary look at that lawsuit would indicate that it probably cannot be sustained on jurisdictional grounds, at any rate.

Was a request ever made to you to join in having this suit continued.

Mr. DAVIS. Yes, I think there was.

Mr. COBURN. What was your reaction to that?

Mr. DAVIS. I didn't care. I frankly thought the suit was subject to dismissal on grounds of lack of jurisdiction, and I didn't see it was of any consequence whatever. These people were insisting they had a good lawsuit, and the simple thing seemed to be to let it drag.

Mr. COBURN. There is not much to the statement that the Department was using the lawsuit as the reason for delaying the decision?

Mr. DAVIS. I am sure in my case, but not my predecessors, in view of the note of "Let's keep this on ice."

Mr. COBURN. That is undated and unsigned.

Mr. DAVIS. That is right.

Mr. COBURN. Is it not true that the plaintiff can move to dismiss it at any time without prejudice to his rights?

Mr. DAVIS. The plaintiff, certainly.

Mr. COBURN. The plaintiffs continued to keep that suit on, did they not?

Mr. DAVIS. That is right; they thought they had a lawsuit.

Mr. COBURN. I will offer this for the record.

(Letter referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
*Washington 25, D. C., April 23, 1953.*

Re: Al Sarena Mines, Inc.

HON. HARRIS ELLSWORTH,  
*House of Representatives, Washington 25, D. C.*

DEAR MR. ELLSWORTH: Following our telephone conversation yesterday, I have personally gone through the sequence of events as set up by Mr. McDonald.

According to our understanding, I will have a complete review made of this file by one of the new men who is joining this Department and who is completely unfamiliar with it. This is substantially what I promised the Messrs. McDonald several weeks ago but, unfortunately, the new personnel has not arrived and will not be available for another 2 weeks. This will necessitate some lapse of time but will also ensure a completely independent investigation of this record.

I am sorry if this conflicts with the necessities of the lawsuit pending in Alabama. However, a preliminary look at that lawsuit would indicate that is probably cannot be sustained on jurisdictional grounds at any rate.

Sincerely,

CLARENCE A. DAVIS, *Solicitor.*

Mr. COBURN. Again on April 24, and if you do not have this before you, I will be glad to give it to you, Congressman Ellsworth wrote you again calling attention to the tax liability the company was undergoing at the moment, and asking you to take expeditious action. In fact, his request is:

In view of these additional circumstances, it appears urgent that the record be completely investigated and reviewed as agreed as soon as you have new personnel to accomplish this.

Now, in that letter which you have before you, Mr. Davis, and in response to the request made by Congressman Ellsworth, had Mr. Armstrong already begun to review the file at that time?

Mr. DAVIS. I don't know, but I don't think so. I don't think he came in until a little after this date.

Mr. COBURN. So that the Department at that time, at least, had taken no action?

Mr. DAVIS. That is right.

Mr. COBURN. On the case. Did you do anything with reference to the tax situation that Congressman Ellsworth points to in that letter? Is there anything you could have done?

Mr. DAVIS. Did we do anything?

Mr. COBURN. Yes.

Mr. DAVIS. No; I don't know what we could have done.

Mr. COBURN. Again, on April 30, 1954, Congressman Ellsworth sent you a telegram in care of the Paxton Hotel in Omaha, Nebr. This is short, and I would like to quote it, if I may, Mr. Chairman.

Senator SCOTT. All right. [Reading:]

Long distance call today regarding Al Sarena Mines case requesting contact with you as to possibility of your requesting district attorney, Mobile, Ala., to secure delay of case scheduled for May 6 or join with plaintiffs by letter or memorandum to them agreeing to 30 to 60 days extension pending administrative consideration of appeal. Uncertain if you had opportunity to see my letter—

I think he is referring to this letter there—

advising of action by Jackson County, Oreg., officials preparing for delinquent tax sale of mining claims involved. Status of land records of county on property gives county legal power to levy for taxes under State law. Lands have been on county tax duplicate 3 years without any payment of taxes because patents not issued entrymen. Unlikely any party would purchase lands at tax sale as long as case is pending in court. Appreciate having reply concerning request to district court by wire or on return to Department Monday.

That is signed "HARRIS ELLSWORTH, *Member of Congress.*"

In view of this telegram, was any action taken by the Department?

Mr. DAVIS. I don't recall any, Mr. Coburn. I don't even recall that telegram until you read it to me.

Mr. COBURN. May I offer this for the record, having read it?

Senator SCOTT. Yes.

(The telegram referred to follows:)

WASHINGTON, D. C., April 30, 1951.

HON. CLARENCE DAVIS,  
*Solicitor, Department of the Interior,*  
*Paxton Hotel, Omaha, Nebr.:*

Long-distance call today regarding Al Senena mines case requesting contact with you as to possibility of your requesting district attorney Mobile, Ala., to secure delay in hearings of case scheduled for May 6 or join with plaint ff by letter or memorandum to them agreeing to 30 to 60 days extension pending administrative consideration of appeal. Uncertain if you had opportunity to see my letter advising of action by Jackson County, Oreg., officials preparing for delinquent-tax sale of mining claims involved. Status of land records of county on property gives county legal power to levy for taxes under State law. Lands have been on county tax duplicate 3 years without any payment of taxes because patents not issued to entrymen. Unlikely any party would purchase lands at tax sale as long as case is pending in court. Appreciate having reply concerning request to district court by wire or on return to Department Monday.

HARRIS ELLSWORTH.

Mr. COBURN. Again on June 1, 1953, Congressman Ellsworth wrote you a 6-page, single-spaced letter, setting forth in considerable detail the facts, the law, and the issues in the Al Serena case as they appeared to the Congressman. Have you that before you?

Mr. DAVIS. I have that before me; yes.

Representative HOFFMAN. Mr. Chairman, if I may, I want to call counsel's attention to the fact that that letter is already in the record.

Mr. COBURN. Where?

Senator SCOTT. I want to make the observation that there is a whole lot of things in the record 3 or 4 times. Let counsel move along here and we can get some of it put together.

Representative HOFFMAN. The difficulty with that is that counsel on that side keeps putting it in. If you will go back to where I offered it on November 25 at Portland, that very letter was put in the record. I have a copy of it here.

Mr. COBURN. Isn't it a newspaper article?

Representative HOFFMAN. Yes; it is a photostat.

Mr. COBURN. I am trying to examine the witness on the basis of photostatic copies of letters, not on the basis of newspaper articles.

Representative HOFFMAN. The Senator advises me that this is not a photostat. I come from a country town and do not know about those things, but this material, all of it, is in the record.

Mr. COBURN. May I proceed, Mr. Chairman?

Senator SCOTT. Go ahead.

Mr. COBURN. On the basis of that letter of June 1, 1953, Mr. Davis, and it is a rather involved and lengthy communication, I note that on page 4 a charge of fraud is made. I was wondering what action either you or Mr. Armstrong took on the basis of that allegation? It is about the third paragraph down.

Mr. DAVIS. On page 4.

Representative JONAS. Pardon me, sir. Would it be proper to read the allegation into the record?

Mr. COBURN. I was waiting for the witness to identify the letter.

Mr. DAVIS. I guess I have it located. Go ahead and read it.

Mr. COBURN. You would have to read the preceding paragraph, too:

It is a matter of conjecture whether the decision at any point, regardless of collateral testimony of witnesses and experts, would have been accepted as sufficient in the absence of the applicant's evidence of mineralization as against the Government's assay reports, all of which are in the file. If not in substance, at least in effect, the result accomplished was essentially in the nature of accepting the evidence of the contestant and suppressing the evidence of the contestee.

Such action, wilfully done, would constitute fraud and vitiate every action and decision predicated upon the incomplete file.

Did you give that any weight?

Mr. DAVIS. Not in particular. That is just making an argument, calling things by names. It doesn't mean anything one way or the other.

Mr. COBURN. Thank you, Mr. Davis.

Now, attached to that I have a memorandum for the files dated June 4, 1953, in which you mention this June 1, 1953, letter.

Memorandum for the files.

Subject: Al Sarena Mines.

On June 1, 1953, the attached letter was personally delivered by Congressman Ellsworth and we had a 2 hour discussion over this claim both as to whether the record on the appeal is complete—

and so on.

The Congressman is in complete agreement that we must have firm proof of the value of the mineral deposit before granting this patent and he has agreed to get for us through his acquaintances in the Pacific northwest, some independent reports of disinterested mining people.

I understand that ultimately he got 4 letters into the record?

Mr. DAVIS. Yes, and those are attached to my statement.

Mr. COBURN. Now, Mr. Davis, would those letters in themselves constitute evidence?

Mr. DAVIS. I think not. They simply constitute background material.

You see, I was at that time strange to this whole thing and here were a lot of charges and counter-charges running around through the aid, and I just felt that if you had some letters here from some responsible mining engineers it gave you a little bit of a floor to at least be, what I call, background material, in connection with any controversy.

Mr. COBURN. Did you—not personally—but did the Department at any time endeavor to ascertain whether or not these mining engineers had ever been retained by the Al Sarena Mines or had been employed by them in one capacity or another.



Mr. DAVIS. Well, of course, the letters themselves show that they have, or else Congressman Ellsworth's transmission letter shows that they have. One of them, of course, was Mr. McCormick, who obviously was employed, and the other one was Taylor, who was the mineral surveyor who had spend 3 months up there on the claim. I am not sure about Morrison's connection, but Kiscock, being a consulting firm in New York, were obviously employed, or they would not have been there looking them over.

Mr. COBURN. It was the man from Kiscock, I think, who had set up this pilot mill, as I recall; is that correct?

Mr. DAVIS. I don't know that.

Mr. COBURN. In any event, you gave this no more weight than you would other opinion?

Mr. DAVIS. Not any more than I would give any reputable professional man who writes me a letter giving his ideas about a situation.

Mr. COBURN. On June 4, 1953, I think you will recall that you got in touch by memorandum with Assistant Secretary Wormser?

Mr. DAVIS. That is right.

Mr. COBURN. And you ask him to talk to you about it, and there is a notation down here that "F. E. W."—and I suppose that reference is to Felix E. Wormser?

Mr. DAVIS. That is right.

Mr. COBURN (reading):

says he has reported to Mr. Davis the name of Don Davidson of F. J. Longyear Co. Mr. Davis will get in touch with F. E. W. when action is taken.

what happened to Mr. Davidson? Did he take some interest in that?

Mr. DAVIS. No, it was dropped at that point, as I recall. I never contacted the man.

Mr. COBURN. Did Mr. Wormser submit the names of anyone else.

Mr. DAVIS. No; I don't think he did. At least, if he did, he wasn't definite enough that I bothered to make a note of it.

Mr. COBURN. Had you made up your mind then to employ the Bureau of Mines?

Mr. DAVIS. No; I don't think I had. I was definitely fumbling, to determine what I should do about the thing.

Mr. COBURN. This is on June 4, 1953.

Mr. DAVIS. That is right. My conversation with Mr. Wormser was a little along the lines of my conversation with Mr. Ellsworth. Wormser was an old mining man of long experience in the West. I said to him, "What do you know about this mine? What can you find out about this? Is this a legitimate thing or isn't it?", that sort of question.

He came up with the suggestion, "Why don't you call so-and-so of this Longyear Co.?"

Mr. COBURN. Did you call him?

Mr. DAVIS. I don't think we did. I have no recollection.

Mr. COBURN. The only expert opinion that you had up to that time was what the McDonalds had told you and what Mr. Ellsworth had told you?

Mr. DAVIS. And these various engineers.

Mr. COBURN. Their reports had not been received as yet?

Mr. DAVIS. That is right. On June 1, that is right.

Mr. COBURN. Then on June 9, Congressman Ellsworth wrote to you again, and he says:

This is the letter referred to in my letter of June 1 in the last paragraph of page 2. I did not have photostats available at the time the above mentioned letter was written, but thought such copy should be transmitted in the event any question was raised to the existence of such correspondence—

and he encloses a copy of the letter from Mr. Hattan, the mineral examiner, to Mr. McDonald, regarding those 7 claims that we discussed earlier.

Mr. DAVIS. I don't recall that letter at all.

Mr. COBURN. You do not recall that? The gist of this letter is, Mr. Davis, that the assay reports that were alleged to be missing he was unable to locate through the Forest Service or the BLM.

Mr. DAVIS. Yes, I am familiar with this, or I have read it since this came up. I have reread this letter of Mr. Hattan, dated January 4, 1950, as the result of this, attached to this letter.

Mr. COBURN. As a result of this, did you have the Bureau of Land Management—since, of course, you have no jurisdiction over the Forest Service—make a search of its files both in the field and in Washington for what he calls "this assay report"?

Mr. DAVIS. Well, it was about that time—and these records, which you have been through more than I have, I suspect—show that somebody in Land Management in the Washington office asked the Portland office to submit all of the additional papers and documents they had regarding the matter.

Mr. COBURN. Those reports apparently are the samples that Hattan took at the request of the McDonalds, and then submitted to the Bureau of Mines laboratory?

Mr. DAVIS. I think, Mr. Coburn, this thing is not completely clear, but, from reading this letter of Mr. Hattan, which is attached, he had received from them another set of samples, and assays, and shortly after the hearing had been closed, and he complains in this letter that he can't identify the spots from which they were taken, and consequently he can't identify which claims they are applicable to.

Mr. COBURN. That is right.

Mr. DAVIS. Then, as they follow that along, they wrote him another letter and attempted to point out the spots from which the samples had been taken.

Mr. COBURN. Yes, and as a result, they went back and took some samples.

Mr. DAVIS. I don't think so. This was after the sampling was done. This was in January 1950.

Mr. COBURN. It seems to me that he testified, or that I have a letter somewhere to the effect that after he had requested this information he went back and checked. However, it is immaterial. I just want to make sure that that is in the record.

In other words, the file up to this point is still incomplete, in your opinion?

Mr. DAVIS. Yes. I think this letter itself is no reflection on anybody, but the letter itself shows that there were a bunch of assays here that were inadequately identified for some reason or another.

Mr. COBURN. I think you will find that there were seven assays in all.

Mr. DAVIS. Something like that.

Mr. COBURN. Yes.

Now again, on June 24, 1953, Congressman Ellsworth wrote to you about this case and transmitted at that time these opinions from engineers whom he had contacted and who were familiar with the property. I think, though, that this has been put into the record.

Mr. DAVIS. These are all attached to my statement, as a matter of fact.

Mr. COBURN. That is right. You have already testified as to that, so I will not pursue that any further.

Now, on July 16, Congressman Ellsworth again wrote to you, July 16, 1953, with which letter he supplied the letter from the mining engineer, J. E. Morrison, which had been missing from his original transmittal. You discussed that. We will not go into that.

Now, there is one thing that I do not think has been put into the record, which in view of Congressman Hoffman's statement, I will offer for the record.

Representative HOFFMAN. Pardon me, Mr. Chairman, did counsel get in that letter from Congressman Boykin?

Representative CHUDOFF. They are attached to Mr. Davis' statement.

Mr. DAVIS. That is right.

Representative HOFFMAN. Pardon me. I do not want to delay anything, Mr. Examiner.

Senator SCOTT. We gave it to you because you asked to see everything.

Mr. COBURN. Mr. Davis, this is a memorandum dated October 1, 1954, to the Secretary from the Acting Solicitor, Mr. J. Reuel Armstrong, subject: Al Sarena Mines. I will offer it for the record.

(The letter referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SOLICITOR,

Washington 25, D. C., October 1, 1954.

Memorandum to: Secretary.

From: Acting Solicitor.

Subject: Al Sarena Mines.

On September 3, 1953, Solicitor Davis wrote to D. Ford McCormick, a geologist from Eagle Point, Oreg., who represented the applicants for a patent to the Al Sarena location and a similar letter to the Director, Bureau of Mines, in which he requested that samples of the ore from the locations be obtained for assaying purposes. The Bureau of Mines was asked to represent the Government for the reason that they had not participated in any of the previous assaying. Four men from the Bureau of Mines stationed on the west coast and Mr. McCormick were instructed to take the assays as promptly as possible and to record each sample as it was taken. They were given the names of the claims from which the samples were to be taken. They were instructed to retain the samples in their possession until they were shipped to a qualified assayer acceptable to Mr. McCormick and the Bureau of Mines team.

Mr. R. M. Appling, mining engineer in charge of the Grants Pass, Oreg., Bureau of Mines, together with three of his assistants, Jerry Briggs, Ed. Pattee, and Ben Lettcken, comprised the team which assisted the Solicitor in making the independent assay. They sent the samples to A. W. Williams Inspection Co., Mobile, Ala., on November 17, 1953. The A. W. Williams Inspection Co. was checked for competence and reliability by Bureau of Mines officials in Washington and found to enjoy a good reputation. The assays were returned by report dated November 25, 1953.

J. REUEL ARMSTRONG,  
Acting Solicitor

Mr. CORNUM. I will not read it all, but there is just one part of it that is puzzling to me. It is the final paragraph. I will quote it.

Mr. R. M. Appling, mining engineer in charge of the Grants Pass, Oreg., Bureau of Mines, together with three of his assistants, Jerry Briggs, Edton Patten, and Ben Lettcken, comprised the team which assisted the solicitor in making the independent assay.

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Does that final sentence mean that the report from A. W. Williams Inspection Co. reached someone who is unidentified, on November 25, 1953?

Mr. DAVIS. No.

Mr. CORNUM. What does it mean?

Mr. DAVIS. Well, I don't know. I didn't write it, but I suppose what it means is that when these things were delivered they were put in the binder, as you know, along with the report which McCormick had made to the McDonalds.

I am talking purely from memory, but I think you will find that that probably is a misstatement of the date.

Mr. CORNUM. In other words, it should be what, December 24?

Mr. DAVIS. It should be December 17.

Mr. CORNUM. I see.

Mr. DAVIS. That is the date they are dated, as I remember.

Mr. CORNUM. That is correct.

Mr. DAVIS. I think it is a misstatement.

Mr. CORNUM. Is he referring to the reports of the assays or to the assays themselves. Apparently he is referring to the report.

Mr. DAVIS. I think the report.

Mr. CORNUM. Now, these reports, let us say, dated December 17, reached you on the 21th of December; is that correct?

Mr. DAVIS. That is right.

Mr. CORNUM. And in whose possession were they up to that point, do you know?

Mr. DAVIS. No, I don't know.

Mr. CORNUM. Copies of these reports were also sent to Mr. McCormick.

Mr. DAVIS. They were sent to the West and were, of course, delivered to the McDonalds in Mobile, and the intervening thing I don't know.

Mr. CORNUM. But you satisfied yourself as to their being originals, not having been altered in any way?

Mr. DAVIS. That is right.

Mr. CORNUM. Apparently up until this date, October 1, 1954, the Secretary knew nothing about this matter; is that correct?

Mr. DAVIS. I don't think he knew anything about it after that.

Mr. CORNUM. I was wondering what the purpose of the memorandum was. It is none of my business, precisely, but you have testified that he knew nothing about this case and I wondered if this would in some way establish when he did find out about it.

Mr. DAVIS. I don't think that actually Secretary McKay knew anything about this until probably February, after the opinion had been rendered.

Mr. DAVIS. Well, of course, the letters themselves show that they have, or else Congressman Ellsworth's transmission letter shows that they have. One of them, of course, was Mr. McCormick, who obviously was employed, and the other one was Taylor, who was the mineral surveyor who had spend 3 months up there on the claim. I am not sure about Morrison's connection, but Kisson, being a consulting firm in New York, were obviously employed, or they would not have been there looking them over.

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Mr. COBURN. Yes, and as a result, they went back and took some samples.

Mr. DAVIS. I don't think so. This was after the sampling was done. This was in January 1950.

Mr. COBURN. It seems to me that he testified, or that I have a letter somewhere to the effect that after he had requested this information he went back and checked. However, it is immaterial. I just want to make sure that that is in the record.

In other words, the file up to this point is still incomplete, in your opinion?

Mr. DAVIS. Yes. I think this letter itself is no reflection on anybody, but the letter itself shows that there were a bunch of assays here that were inadequately identified for some reason or another.

Mr. COBURN. I think you will find that there were seven assays in all.

Mr. DAVIS. Something like that.

Mr. COBURN. Yes.

Now again, on June 24, 1953, Congressman Ellsworth wrote to you about this case and transmitted at that time these opinions from engineers whom he had contacted and who were familiar with the property. I think, though, that this has been put into the record.

Mr. DAVIS. These are all attached to my statement, as a matter of fact.

Mr. COBURN. That is right. You have already testified as to that, so I will not pursue that any further.

Now, on July 16, Congressman Ellsworth again wrote to you, July 16, 1953, with which letter he supplied the letter from the mining engineer, J. E. Morrison, which had been missing from his original transmittal. You discussed that. We will not go into that.

Now, there is one thing that I do not think has been put into the record, which in view of Congressman Hoffman's statement, I will offer for the record.

Representative HOFFMAN. Pardon me, Mr. Chairman, did counsel get in that letter from Congressman Boykin?

Representative CHUDOFF. They are attached to Mr. Davis' statement.

Mr. DAVIS. That is right.

Representative HOFFMAN. Pardon me. I do not want to delay anything, Mr. Examiner.

Senator SCOTT. We gave it to you because you asked to see everything.

Mr. COBURN. Mr. Davis, this is a memorandum dated October 1, 1954, to the Secretary from the Acting Solicitor, Mr. J. Reuel Armstrong, subject: Al Sarena Mines. I will offer it for the record.

(The letter referred to follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington 25, D. C., October 1, 1954.

Memorandum to: Secretary.  
From: Acting Solicitor.  
Subject: Al Sarena Mines.

On September 3, 1953, Solicitor Davis wrote to D. Ford McCormick, a geologist from Eagle Point, Oreg., who represented the applicants for a patent to the Al Sarena location and a similar letter to the Director, Bureau of Mines, in which he requested that samples of the ore from the locations be obtained for assaying purposes. The Bureau of Mines was asked to represent the Government for the reason that they had not participated in any of the previous assaying. Four men from the Bureau of Mines stationed on the west coast and Mr. McCormick were instructed to take the assays as promptly as possible and to record each sample as it was taken. They were given the names of the claims from which the samples were to be taken. They were instructed to retain the samples in their possession until they were shipped to a qualified assayer acceptable to Mr. McCormick and the Bureau of Mines team.

Mr. R. M. Appling, mining engineer in charge of the Grants Pass, Oreg., Bureau of Mines, together with three of his assistants, Jerry Briggs, Elmer Pattee, and Ben Letteken, comprised the team which assisted the Solicitor in making the independent assay. They sent the samples to A. W. Williams Inspection Co., Mobile, Ala., on November 17, 1953. The A. W. Williams Inspection Co. was checked for competence and reliability by Bureau of Mines officials in Washington and found to enjoy a good reputation. The assays were returned by report dated November 25, 1953.

J. REUEL ARMSTRONG,  
Acting Solicitor.

Mr. COBURN. I will not read it all, but there is just one part of it that is puzzling to me. It is the final paragraph. I will quote it.

Mr. R. M. Appling, mining engineer in charge of the Grants Pass, Oreg., Bureau of Mines, together with three of his assistants, Jerry Briggs, Elton Patten, and Ben Letteken, comprised the team which assisted the solicitor in making the independent assay.

They sent the samples to A. W. Williams Inspection Co., Mobile, Ala., on November 17, 1953. The A. W. Williams inspection was checked for competence and reliability by Bureau of Mines officials in Washington and found to enjoy a good reputation. The assays were returned by report dated November 25, 1953.

Does that final sentence mean that the report from A. W. Williams Inspection Co. reached someone who is unidentified, on November 25, 1953?

Mr. DAVIS. No.

Mr. COBURN. What does it mean?

Mr. DAVIS. Well, I don't know. I didn't write it, but I suppose what it means is that when these things were delivered they were put in the binder, as you know, along with the report which McCormick had made to the McDonalds.

I am talking purely from memory, but I think you will find that that probably is a misstatement of the date.

Mr. COBURN. In other words, it should be what, December 24?

Mr. DAVIS. It should be December 17.

Mr. COBURN. I see.

Mr. DAVIS. That is the date they are dated, as I remember.

Mr. COBURN. That is correct.

Mr. DAVIS. I think it is a misstatement.

Mr. COBURN. Is he referring to the reports of the assays or to the assays themselves. Apparently he is referring to the report.

Mr. DAVIS. I think the report.

Mr. COBURN. Now, these reports, let us say, dated December 17, reached you on the 24th of December; is that correct?

Mr. DAVIS. That is right.

Mr. COBURN. And in whose possession were they up to that point, do you know?

Mr. DAVIS. No, I don't know.

Mr. COBURN. Copies of these reports were also sent to Mr. McCormick.

Mr. DAVIS. They were sent to the West and were, of course, delivered to the McDonalds in Mobile, and the intervening thing I don't know.

Mr. COBURN. But you satisfied yourself as to their being originals, not having been altered in any way?

Mr. DAVIS. That is right.

Mr. COBURN. Apparently up until this date, October 1, 1954, the Secretary knew nothing about this matter; is that correct?

Mr. DAVIS. I don't think he knew anything about it after that.

Mr. COBURN. I was wondering what the purpose of the memorandum was. It is none of my business, precisely, but you have testified that he knew nothing about this case and I wondered if this would in some way establish when he did find out about it.

Mr. DAVIS. I don't think that actually Secretary McKay knew anything about this until probably February, after the opinion had been rendered.



Mr. COBURN. This is some months later that the memorandum went out.

Mr. DAVIS. I don't recall ever talking to him about it. It doesn't fall within his domain, the way the Interior Department is organized. I don't think he ever knew a thing about it.

Mr. COBURN. In other words, in this interim period from December 17 until December 24, you would not know whether these assay reports were in the hands of the McDonalds, Mr. Gabriel of the company, Mr. Ellsworth, or with whom they were deposited?

Mr. DAVIS. That is right.

Mr. COBURN. Now, again, on August 27, 1953, you received a letter from Mr. H. S. Garber, secretary to Congressman Ellsworth, in which he states:

As you undoubtedly are informed by this time, the applicant in the Al Sarena Mines, Inc. case (Oregon 0655) is proceeding in accordance with arrangements discussed with Congressman Ellsworth on August 4, as a basis for possible settlement of the question at issue, namely, mineralization on the contested claims.

Now, at that time, August 27, 1953, is it true that you had entered into an agreement or arrangement with Congressman Ellsworth to follow out this procedure that was later developed?

Mr. DAVIS. I don't think I ever had any agreements. I think at that time I probably made up my mind about what I was going to do and I may have told him so.

Mr. COBURN. But he did know that you were thinking of doing this?

Mr. DAVIS. I assume so from the tone of that letter.

Mr. COBURN. He discussed this matter with you on August 4th, according to this letter?

Mr. DAVIS. Well, I discussed it with him several times, the whole problem, but he was making, of course, the typical congressional argument on behalf of the constituent; so naturally the discussion was "What can you do about it?" Of course, as you can see by these letters, the urging was that these people were not going to get a fair shake out there, and all that sort of thing, and I was casting about for some method that would come up with what I thought was a dependable answer, and at the same time, would stop this complaint that was being made that Land Management was not giving them a fair shake.

Mr. COBURN. In other words, you felt that the fair way to do it—and you so told him, Ellsworth—was to follow this Bureau of Mines procedure?

Mr. DAVIS. Was to get some neutral agency. I don't know that I even made up my mind on the Bureau of Mines. As a matter of fact, I might have well picked the Geological Survey.

Mr. COBURN. In his discussion with you, Mr. Davis, on August 4, did the Congressman suggest utilization of the Bureau of Mines?

Mr. DAVIS. I wouldn't say that. I don't know. I don't think so.

Mr. COBURN. Did he suggest that any agency of the Department of the Interior undertake an independent investigation?

Mr. DAVIS. No; I don't think so.

Mr. COBURN. This Bureau of Mines then was—

Mr. DAVIS. I think this conception of using the Bureau of Mines as an independent agency, a neutral agency, was our own decision.

Mr. COBURN. What other methods did he suggest, if any, to you?

Mr. DAVIS. I don't think he suggested any.

Mr. COBURN. He did not? He just discussed the problem as a need for haste or urgency?

Mr. DAVIS. Yes; that is right. He was urging haste as, of course, everybody had for 5 years, that these people were being unduly delayed and all that sort of thing; and then all this mineralization business that we have been through here, that it was not satisfactory, and wasn't very clear, and for heaven's sake get this thing settled somehow, get some dependable assays that you can depend on and get this settled and get these people a decision.

I will say this—and I think I should, in fairness to the Congressman—that there never was any time in connection with this thing when he was urging anything more than that we get a dependable assay and what he thought was a fair decision of this controversy.

Mr. COBURN. Did he not in one of his letters suggest the possibility of fraud?

Mr. DAVIS. Oh, yes—of course he did, but that was an accusation against the very Bureau of Land Management that we are talking about, and I don't think that that made any great impression on me.

As you know as a lawyer, Mr. Coburn, everybody arguing their side of a controversy overstates their case.

Mr. COBURN. Certainly I will agree that Congressman Ellsworth was in the position of a lawyer as an advocate for these people in the case. There is no doubt about it, no question about it.

Representative HOFFMAN. Wait a moment.

Mr. DAVIS. That is right.

Representative JONAS. I rather question whether counsel should be permitted to make a statement of that sort in the record. He is not the judge in this case.

Mr. COBURN. I did not mean anything disrespectful.

Representative JONAS. I think it ought to be stricken. Counsel's opinion has no bearing on it.

Mr. COBURN. I said I agreed with him.

Mr. DAVIS. May I be permitted to interject?

Representative JONAS. You went further and said that in your opinion the Congressman was acting as an advocate. There is no question about that. I raise the question as to whether counsel should be permitted to express his opinions as a part of the record.

Mr. DAVIS. May I interject for a moment?

Representative HOFFMAN. Before you ever get that in, I would like to have the statement of counsel read, so that we know what we are talking about.

May we have it, Mr. Chairman?

Senator SCOTT. All right.

(The record was read by the reporter.)

Representative JONAS. I just wonder if that is a proper statement for counsel to make.

Representative HOFFMAN. Of course, it is obviously false because a lawyer presumably is getting paid for what he does.

Representative CHUDOFF. Mr. Chairman.

Representative HOFFMAN. You wait until I get through, will you?

For a staff member to come in and accuse a Congressman of accepting the role of a lawyer in appearing before the Department is to charge him with a criminal offense, because no Congressman has the right to appear as a lawyer, but every Congressman is under the

duty and the obligation to represent his constituents here before any of the Departments, and we all do it.

Representative CHUDOFF. Mr. Chairman?

Representative HOFFMAN. If we are worth anything.

Representative CHUDOFF. I want to say that this is much ado about nothing. I think that the gentleman from Michigan and the gentleman from North Carolina and I have appeared on behalf of many constituents without getting a fee. There is nothing wrong unless a fee is accepted. I think that there is an article in the United States Code that says that the only time it is illegal for a Congressman to go before an agency of the Government is if he accepts a fee. I know that I have done it and I know that the Congressman from Michigan has, and perhaps the Senators have appeared, representing constituents.

If you say that the Congressman is acting as an advocate or lawyer, unless there is anything wrong, unless you say he accepts a fee, I do not think that anybody is accusing Congressman Ellsworth of anything about getting a fee.

Mr. DAVIS. Mr. Chairman, might I interject?

I think the best comment on this is the fact that the record speaks for itself. The correspondence is all in evidence and neither my comments or Mr. Coburn's comments, or anybody else's comments are going to change exactly what the record shows. I suggest that we stand on the record.

Mr. COBURN. Thank you.

Representative CHUDOFF. Mr. Chairman, I agree with Mr. Davis. I think that that is exactly the answer to the whole problem.

Mr. COBURN. I think that, in all fairness, I should certainly state that I had no intention of implying or accusing the Congressman of accepting a fee or anything like that. It was far, far from my mind.

Mr. Davis, in the second paragraph of this letter from Mr. Garber, it says:

Inasmuch as this arrangement will require possibly a month of actual examining time, this will run beyond the period covered by the present continuance in connection with the pending case before the United States District Court at Mobile, Ala.

Did Mr. Garber have any idea of what this arrangement that he refers to consisted of? He must have had.

Mr. DAVIS. Oh, he must have had, yes.

Mr. COBURN. But he did not know precisely—or did he know precisely, the method that you intended to employ?

Mr. DAVIS. I don't think he knew precisely the method because I doubt if I did, myself, although that is only 4 or 5 days before I wrote those memos of September 3, in which it was referred to the files.

Mr. COBURN. Yes; September 3.

Mr. DAVIS. I do not think he knew anything about the details, but I think at that time undoubtedly I had advised him and everybody concerned that I was going to refer the thing to one of the Interior Department agencies to take some new assays.

Mr. COBURN. It says:

Will require possibly a month of actual examining time.

And he must have had a fairly good idea of some arrangement, at least, to consume that much time.

You did discuss the proposal, did you not, of having some agency, not necessarily the Bureau of Mines, do this?

Mr. DAVIS. I think I undoubtedly told them that that was what I was thinking about doing; yes. I don't know where the "month" comes from.

Apparently, about 4 days is what they need on most of these sampling jobs.

Senator SCOTT. We will stand adjourned until 2 o'clock.

(Whereupon, at 12 o'clock noon the committee recessed, to reconvene at 2 p. m. of the same day.)

#### AFTER RECESS

Senator SCOTT. The meeting will please come to order.

Mr. Coburn informs me that he should be able to finish questioning Secretary Davis shortly, barring any interruptions.

I mean I would like to ask members of the subcommittee to refrain from interrupting until counsel has finished.

In order to save time, I would like to have an understanding with all members of the subcommittee as to procedure following the Secretary's questioning by counsel. If agreeable to everyone, I suggest that, when the counsel has finished, each side of the table have equal time to question the Secretary, with 45 minutes for the minority and 45 minutes for the majority.

Is there any objection to that?

Representative HOFFMAN. Whatever the Senator says.

Senator GOLDWATER. I am not a member of the subcommittee. I am just sitting in here.

Representative HOFFMAN. I understood that senatorial courtesy permitted you to sit.

Senator GOLDWATER. Anything that you gentlemen agree to is all right with me.

Senator SCOTT. Mr. Lanigan has said that, when Mr. Coburn finishes, he would like to ask one or two questions. I would ask Mr. Lanigan to keep those questions down, please.

#### STATEMENT OF CLARENCE A. DAVIS, UNDER SECRETARY OF THE DEPARTMENT OF THE INTERIOR—Resumed

Mr. COBURN. Shall I proceed, Mr. Chairman?

Senator SCOTT. Go ahead.

Mr. COBURN. I was referring, Mr. Davis, in my questions to you, to a letter written to you on August 27, 1953, by Mr. Garber.

In that letter he refers to the case and to its proceedings in accordance with the arrangements discussed with Congressman Ellsworth, and so forth.

In the second paragraph the letter says:

Inasmuch as this arrangement will require possibly a month of actual examining time, this will run beyond the period covered by the present continuance in connection with the pending case—

and as I recall your testimony—and correct me if I am wrong—you said that at that time, in referring to "arrangements," Mr. Garber did not know that you were going to refer this to the Bureau of Mines?

Mr. DAVIS. I did not mean to say quite that, and I don't think I said

quite that. I said I didn't think he knew any of the details of what I was going to do except that unquestionably, in the tone of the letter, he knew that I was going to refer it to an agency, and he may have known it was the Bureau of Mines.

Mr. COBURN. That arrangement was satisfactory to both Mr. Garber and Congressman Ellsworth, is that correct?

Mr. DAVIS. That is not the question. The question was whether it was satisfactory to me.

Mr. COBURN. But they did not disagree?

Mr. DAVIS. Oh, that is right.

Mr. COBURN. Now, going to the instructions that you issued on September 3, 1953, as I see it here, the original went to the Al Sarena Mines with copies to the Director, Bureau of Mines; Congressman Ellsworth; and Mr. D. Ford McCormick.

Mr. DAVIS. You can state it just as well the other way, Mr. Coburn. You can state it just as well that way, because there are three separate letters, as you know, right in the record, one to the Bureau of Mines, One to Al Sarena Mines, and one to Mr. McCormick.

Mr. COBURN. But the letter of September 3, 1952, to Al Sarena Mines, Inc., Trail, Oreg., lists copies to Director, Bureau of Mines; to Congressman Ellsworth; and to D. Ford McCormick?

Mr. DAVIS. All three were sent in a package, as I recall.

Mr. COBURN. It says "Pursuant to my conversation with Mr. Garber, the following *modus operandi* as acceptable to me in acquiring further evidence of a valid discovery on you contested claims"—and then you list your *modus operandi* and instructions.

From that language I gather that this proposal was made to you by someone. You say, "The following *modus operandi* is acceptable to me."

Is that correct or is that the wrong interpretation?

Mr. DAVIS. As I told you this morning, frankly, I do not think the proposal was made by Congressman Ellsworth or Mr. Garber, either one. I think it was evolved in the solicitor's office, but it was obviously discussed, as the other letter shows, and the letter from Garber to me from which you have been reading, and the last letter which you are reading is, of course, a confirmation of the fact that I had apparently discussed it with Mr. Garber.

Mr. COBURN. Had you discussed the *modus operandi* according to which the thing would be handled?

Mr. DAVIS. Oh, in a general way, yes. That is, that the thing would be referred, I was going to refer it to the Bureau of Mines, and with instructions to them to take their action.

Mr. COBURN. That is what the language means "pursuant to my conversation with Mr. Garber"? It follows, does it not, Mr. Davis, since you say "Pursuant to my conversation with Mr. Garber, the following *operandi* is acceptable to me," that infers, at least, that Mr. Garber had something to do with the *modus operandi*, does it not?

Mr. DAVIS. Well, I had discussed it with him, if that is what you mean, yes.

Mr. COBURN. All right.

Mr. DAVIS. But if you are trying to imply that the whole conception here was a suggestion of Mr. Ellsworth and Mr. Garber, and that I simply went along, then I think you are wrong. That isn't my recollection of it.

Mr. COBURN. I am merely trying to establish the record as to whether or not they either suggested to you this means, or you discussed it and they agreed to it, or just how it came about. That is all I want.

Here is another thing that bears on that same question. In your letter of September 3, 1953, to Mr. D. Ford McCormick, with a copy to the Director, Bureau of Mines, you say—

DEAR MR. MCCORMICK: As you know, the Al Sarena patent application has been appealed to the Secretary of the Interior. The application, to this point, has been rejected on the ground that the company has not produced satisfactory evidence of a valid discovery on certain of the claims.

In an effort to determine the matter fairly, I have agreed with Congressman Ellsworth, who has interceded on behalf of the company, to ask you and Mr. Volin of the Bureau of Mines, or his substitute, to procure personally, sufficient samples of the deposits on each claim to afford adequate assays on which the Secretary can base his decision on the validity of the discoveries.

Doesn't that also bear out the fact that either this *modus operandi* was suggested to you by Congressman Ellsworth, or that you discussed it with him and he did agree to this exact procedure?

Mr. DAVIS. He agreed or acquiesced in the procedure as being a fair method of getting at it, yes.

Mr. COBURN. And, in order to apprise all parties of the interest taken in this matter, you found it necessary in your instructions to refer to your conversation with Mr. Garber, is that correct?

Mr. DAVIS. I did not find it necessary to. I did.

Mr. COBURN. You did; yes. Now, this has nothing to do with the instructions. Mr. Davis, when you rendered your decision on January 6, 1954, did you have before you at that time the written report from Mr. Appling, the written report of the Bureau of Mines?

Mr. DAVIS. No; I have said that in the statement.

Mr. COBURN. You had no opportunity yourself, nor did your subordinates, have any opportunity to evaluate that written report; is that correct?

Mr. DAVIS. No; that isn't correct because, as I have testified a couple of times already, that report was pretty thoroughly discussed with Mr. Appling over the telephone.

Mr. COBURN. Yes, but neither Mr. Volin nor the Director of the Bureau of Mines, or anyone in your office or your Department had an opportunity to evaluate that written report prior to the time you rendered your decision. Is that not correct?

Mr. DAVIS. Well, I am afraid you are playing on words on me.

Mr. COBURN. I do not mean to. I am sorry if I gave that impression.

Here is what I am trying to get at: When you rendered your decision on January 6, 1954, is it not true that the written report of Mr. Appling, with the certificate of assays, accompanying the material, had not been evaluated for you?

Mr. DAVIS. All right.

Mr. COBURN. Had not been evaluated for you by any of your subordinates, except Mr. Appling, perhaps—who wrote the report.

Mr. DAVIS. No; I can't say that. If you want to say that they had not seen this report of Mr. Appling's, I will agree with you; but Mr. Armstrong had heard all the conversation, and knew what was in the report, just as I had, so when you say "none of your subordinates had evaluated," I can't agree with you.

Mr. COBURN. I said the written report.

Mr. DAVIS. Well, the answer is "Yes" to that because I told you the written report wasn't there.

Mr. COBURN. That is right. So no one did have an opportunity to evaluate for you the written report that was coming to you, that was en route at the time you rendered your decision; isn't that correct?

Mr. DAVIS. I guess that is correct.

Representative HOFFMAN. Can I make a point of order? I suppose I am permitted to make a point of order, even if I cannot ask a question, Mr. Chairman. Can I make a point of order or can I not?

Senator SCOTT. Go ahead.

Representative HOFFMAN. My point of order is that the line of questioning is wholly improper because what he is trying to do, and of course can successfully do, is to get the Assistant Secretary, then the Solicitor, to say that he made his decision without seeing or evaluating the written report, but leaving out of the record the fact that he had evaluated the contents of it, because they had been given to him. What they want to do is to get that statement into the record so that in the report they write they can say that the Secretary admitted that he made a decision before he had ever seen the report, and leave out the fact that he knew the contents of it.

It is just a lawyer's tricky way of getting a witness to say something that is technically correct but does not give the true situation.

If this is the way you want to do business, it is all right. It is not a fair method.

Senator SCOTT. The point of order is overruled. Not being a lawyer, I do not understand those tricky ways, so go ahead.

Representative HOFFMAN. I want to add that the ruling is a terrific shock to me, but I think I will get along, and further it is in keeping with the other rulings that have been made by the gentleman and by the chairman of the House Committee. You are consistent in all of those rulings, both of you, which all deny to the minority and to the witness, a fair opportunity to get our views on the record.

Senator SCOTT. Proceed.

Mr. COBURN. It is a matter of record, is it not, Mr. Davis, that you did call Mr. Appling on December 29, 1953, and that you asked him for 18 minutes all about the report that he was making; that you asked him as to his opinion of the value of the property? Is that not all correct? Is that not all in the record?

Mr. DAVIS. That is right.

Mr. COBURN. All my question goes to simply is this, and I think you have answered it but I am trying to answer the Congressman's statement: that no one in your Department except Mr. Armstrong, who was part of the conversation, had had an opportunity when you rendered your decision, to evaluate the written report that was coming in at that time?

Mr. DAVIS. That we hadn't seen it?

Mr. COBURN. Yes.

Mr. DAVIS. That is right.

Mr. COBURN. And you have also testified, I believe—and correct me if I am wrong—that the basis for your decisions were, (1) that the record at the time you received it was incomplete, and that, in order to obtain evidence, unquestioned evidence of mineralization, you

ordered this procedure; they came in with an assay report, and that was what you finally based your decision on, is that correct?

Mr. DAVIS. Yes, that is correct, with limitations. It is true that the opinion was based, the weight was cast in favor of the assay reports which were made. Of course, you must realize that there are a great many other things that cannot help but enter into the minds of anyone who is discussing the situation and trying to find out about it, as, for instance, in Mr. Hattan's report of this situation there in the first place is this language:

No intensive study of the geology was made, except to note the general trend of known veins and determine in general the rock types exposed on or near the surface of the individual claims. From an examination of the present underground development, and the various surface openings and rock outcrops—

Mr. COBURN. Mr. Davis, could I follow you on that, if you will tell me where it is.

Mr. DAVIS. It is on page 3 of the Hattan statement—

there appears to be a dome-shaped mass, roughly 4,000 feet in diameter, which consists of volcanic—

you pronounce those two words.

Mr. COBURN. I am not with you yet.

Mr. DAVIS. The next to the last paragraph on page 3.

Mr. COBURN. The title of that is "Mineral Deposits" in this report?

Mr. DAVIS. No, "General Geology."

Mr. COBURN. The page references are not the same, apparently.

Mr. DAVIS. It is page 2. I am sorry. I beg your pardon. This is a very dim copy. It is hard to read.

Mr. COBURN. Mr. Davis, I have the reference.

Mr. DAVIS. I was reading the next to the last paragraph on the page, in which he says that there is—

a dome-shaped central mass, roughly 4,000 feet in diameter, which consists of— naming a couple of types of stone which I cannot read here. It does not make any difference—can you pronounce them for me?

Mr. COBURN. I understand it is pronounced Breccias and Rhyolite.

Mr. DAVIS (reading):

Breccias and Rhyolite—

then if you will go to the next page—

the mine development indicates there is one main mineralized vein structure and a possibility of there being one or possibly two more parallel mineralized veins—

then, dropping down to the foot of the page:

Although the ground in either direction from the higher-grade zone is mineralized to an unknown distance, samples indicate its grade is low.

That is enough to illustrate my point that I think it appears from Mr. Hattan's report and from all of these others that, as I have said, in the statement, we have here a very large, unidentified mineralized mass, some of which has paying ore in it and some of which does not; and that it is impossible for anyone, until after exploration is completed, to lay out exact boundaries on this so-called mass of identical material.

Mr. COBURN. Is it not true that this report was not introduced in evidence?



Mr. DAVIS. I have no idea of what you have introduced in evidence.

Mr. COBURN. I do not mean at this hearing. I mean at the administrative hearing conducted by the Bureau of Land Management?

Mr. DAVIS. I don't think the report is, but it has been available all the time.

Mr. COBURN. So the report has been available. My point is that it was not part of the so-called record, or incomplete file, before you as evidence?

Mr. DAVIS. No. That is right. Mr. Hattan had, in substance, testified to a good many of the things that were in the report and he had not testified to all of them.

Mr. COBURN. I think that is correct. I believe that Mr. Rice testified in our hearings out there, in answer to a question, that he did not consider this as evidence, and therefore, would not permit it being put into the record of the case, at that time.

Have you finished, Mr. Davis? I did not mean to interrupt you.

Mr. DAVIS. Yes.

Mr. COBURN. In your opinion, the decision of January 6, on page 14, it says:

However, the reports of assays and samples of the various claims were not included in the file when it reached this office.

Now, there, are you referring to assay reports that either had been offered or had been taken by the McDonalds, the Al Sarena Co.?

Mr. DAVIS. Yes; I am referring to the fact that the file, when we first got it, was pretty much devoid of assays.

Mr. COBURN. Did it not contain the assay reports made by Hattan, the minerals examiner?

Mr. DAVIS. It contained his testimony of them.

Mr. COBURN. Did it not contain the report?

Mr. DAVIS. I guess it does contain the first two or three.

Mr. COBURN. Does it not contain any reports submitted by the Al Sarena Co.?

Mr. DAVIS. I don't believe so.

Mr. COBURN. So that the missing information, which was as you say later there—"and all those copies were later supplied"—were later supplied by the McDonalds; is that correct?

Mr. DAVIS. I think that is right.

Mr. COBURN. And they were supplied to your office here in Washington?

Mr. DAVIS. No; they had been supplied to Mr. Hattan.

Mr. COBURN. Did he send them in subsequently?

Mr. DAVIS. Not until they were later asked for, did they come in as I recall it.

Mr. COBURN. That was due to this inquiry as to where they were!

Mr. DAVIS. As to where they had been taken.

Mr. COBURN. They eventually got into your file here?

Mr. DAVIS. That is right.

Mr. COBURN. And you had the opportunity, then, did you not, to examine them, or have someone examine them for you?

Mr. DAVIS. Mr. Coburn, there are so many of those things in here that I am not too sure that we are talking about the same ones. That is one point of confusion about this thing.

Mr. COBURN. Then the point is, is it not, that despite the evidence on file of various assay reports, numerous assay reports—

Mr. DAVIS. Yes.

Mr. COBURN. You decided to start all over again?

Mr. DAVIS. That is right. That is a very fair statement. I am glad you made it because that is exactly my attitude on the thing.

There had been, as you will notice in these various letters and statements, presumably several hundred assays taken at various times, none of them available to us, you understand, but historically, a great lot of them had been taken. Apparently they had varied widely from time to time, and these still varied widely.

Mr. COBURN. But the single assay report upon which you based your final decision came from the A. W. Williams Co. It consisted of one assay report?

Mr. DAVIS. That is right, and that, I may say, if that assay is correct and dependable, is enough to show a discovery on the claims.

Mr. COBURN. But you were convinced that there was sufficient showing?

Mr. DAVIS. Yes, I was.

Mr. COBURN. Did you ask for the concurrence of the Bureau of Mines experts in that opinion? How did you arrive at the sufficiency for decision?

Mr. DAVIS. Well, because I think it was pretty obvious from the assays, that there were minerals there in paying quantities. That is outlined in Mr. Hattan's testimony and in the other testimony, as to about what was required.

Mr. COBURN. What I was trying to get at, Mr. Davis—any maybe it was a cloudy question—was, when you did get this assay report from the S. W. Williams Co., and it showed certain values, did you then become convinced in your own mind that that was enough showing to grant the patent, or did you talk to some expert about it, from the Bureau of Mines, or to some of your own people?

Mr. DAVIS. I don't think we talked to anybody about it. I don't know who Mr. Armstrong may have talked to about it. I do not think I talked to anybody besides him.

Mr. COBURN. Besides Mr. Armstrong?

Mr. DAVIS. That is right.

Mr. COBURN. And on the basis of what he said—

Mr. DAVIS. You must remember that the testimony in the record—nobody seemed to disagree at all about that—was that if the minerals were present there up to whatever the figure was, around one dollar, I believe, that the minerals were present in sufficient quantities to justify further exploration.

Mr. COBURN. When you say people testified to that, to what record are you referring—our record or your record?

Mr. DAVIS. No; I think that is in the transcription of the testimony of Mr. Hattan. Maybe it is in Mr. Hattan's report. It is one of those things that didn't seem to be any particular disagreement about in the record.

Mr. COBURN. Well, I recall from Mr. Hattan's report, that he did mention that the Juneau, Alaska, Mining Co.—and perhaps that is not correct—but some big mining company in Alaska had successfully milled and sold ores at something like 90 cents a ton. Are you referring to that?

Mr. DAVIS. Yes; and the statement that goes along with it there.

Mr. COBURN. Did you happen to hear the testimony, or have you had access to the testimony of Mr. Holderer of the staff of the committee, who testified that, in his opinion, after examining the record, you would have to have at least a showing of \$20 a ton to come out whole on this thing?

Mr. DAVIS. I am not familiar with it, and I have not read the record.

Mr. COBURN. The only reason I introduce that is this, Mr. Davis—and I think Senator Malone brought out this point very well; that mining engineers and mining experts certainly differ widely on what constitutes sufficient mineralization. Now, I was wondering where you got this figure of \$1 as sufficient mineralization?

Mr. DAVIS. Well, this is in the Hattan report and I don't know which one of these numerous pages it is in, for one thing, and then, of course, I think you have to remember, Mr. Coburn, that the test of these cases is not whether you can instantly start to operate a property of a mine. As Senator Malone pointed out the other day, the mining business has been historically an up and down business, depending on a lot of things: the price of the mineral or whatever it is that you are mining; frequently world conditions—which I suppose determine the price—the efficiency of your machinery, and all that sort of thing; and these mass operations, as I would understand it. That is no more knowledge than anyone would have, but we do know that, because of the tremendous improvement that has been made in this heavy duty machinery which handles these large volumes of rock very very cheaply, compared to what it used to be, that that picture changes almost completely from year to year.

So that, I do not think that you can lay down any fixed pattern of an exact price at which, at the moment, you will operate a mine for profit. I just do not think that that is your rule.

In other words, if that were your rule, then a patent might be allowable today but, if the price of the minerals dropped a cent a pound on the market, it might become unprofitable, so that you get no patents. I just don't think that is the rule.

Mr. COBURN. What I am trying to get at is this, Mr. Davis:

If you have to show sufficient mineralization to get a patent, sufficient so that it would warrant a reasonable and prudent man to invest his capital and labor in further development, where is the value judgment? How do you arrive at the value judgment, as to just what the assay reports have to show by way of value?

Mr. DAVIS. I suppose that is an opinion matter.

Mr. COBURN. Strictly an opinion matter.

Mr. DAVIS. That is right, in which you exercise your own best judgment. That is all.

Mr. COBURN. In some cases then, if I came in with a showing of \$1 a ton or 90 cents a ton, that might be grounds for granting me a patent, regardless of where the mining claim is located, is that correct?

Mr. DAVIS. Well, I would think that that could enter into your calculations.

Mr. COBURN. I mean as a basis for a decision.

Mr. DAVIS. Well, that is what I say—as a basis for a decision. I think perhaps those things can enter into the question of whether you are justified in further attempting to develop it.

Mr. COBURN. What are the other criteria that enter in?

Mr. DAVIS. Well, that is the primary one there.

Mr. COBURN. That is the primary one. So it is quite a simple matter to obtain a patent if you have any showing at all?

Mr. DAVIS. Oh, I wouldn't think so, no.

Mr. COBURN. You would not think so?

Mr. DAVIS. No; you know the test as well as I do.

Representative HOFFMAN. Let him answer.

Mr. COBURN. Excuse me.

Mr. DAVIS. Well, of course it is, stated as near as words can state it, whether there is a sufficient showing of mineralization to justify a reasonably prudent man—of course, as Senator Malone says, no prospector is a prudent man—in attempting a further development of the mine. That does not mean that he has got sufficient evidence to assure him he is going to have a profit out of that mine, because we know that historically about 7 out of 10, or maybe more than that, mining ventures, have not proven profitable; but is there enough there to justify encouraging him to believe that he can go ahead and do some more development with a reasonable chance of getting somewhere.

Mr. COBURN. What is the test of sufficiency? That is what I want to know. How do you determine whether or not there is sufficient mineralization? What is "sufficient"? Are there any dollar criteria?

Mr. DAVIS. I wouldn't suppose there were any firm dollar criteria; no.

Mr. COBURN. Then on what do you base your finding of sufficiency?

Mr. DAVIS. I think on your opinion of the whole situation. For instance, here is a statement in Mr. Hattan's report on this thing. It says that:

Concentrates made by the pilot mill which was operated from 1939 to March 1943, were shipped to the American Smelting & Refining Co.'s Selby smelter. From one of these shipments, which were concentrated 20:1, the metallurgist calculated the average value of the mill heads for that particular shipment.

He ended by saying that it ended up \$5.88 per ton.

Mr. COBURN. That was for lead and zinc concentrate?

Mr. DAVIS. Most of that was gold, but the point is, as we have to recognize, that here is, as everybody seems to agree, a large centralized mineralized mass of rock, impregnated with certain amounts of minerals. I don't think anybody will dispute that. That is widely diffused over a substantial area, which is fixed here in one place at 4,000 feet and in another at some lesser figure, as I recall, around 3,000; but a great mass of material.

If it is handled at all, it is going to be handled as a mass-production thing. You are not going in there with a pick and pry loose a nugget. You are going to engage in a mass production thing.

The question is: How much paying mineral does there have to be in a ton of this stuff to justify the labor and the machinery expense that you have to have to develop this? That is a judgment figure. I do not think that you can lay down any mathematical formula for it.

Mr. COBURN. You have quoted rather extensively from Mr. Hattan's report in substantiating that premise. Yet, according to the testimony in the record, there have been some doubts cast by certain statements, on the reliability of Mr. Hattan. So why would we use

part of his report to substantiate a finding of mineralization, and then use the rest of it for other purposes not useful?

Mr. DAVIS. That is a good question, Mr. Coburn, and, of course, I knew you would ask that.

I have never said that Mr. Hattan was completely unreliable or anything of that nature. I do say that I think, if you will go through his reports of these various things, that he is not greatly impressed with the allowance of mineral claims, especially in the forests, and especially when he is making a report for the Forest Service; and, therefore, on some of the conclusions, where those factors enter into it, I would rather have completely independent advice, but on a matter of this kind where he is simply stating observations that he has made on these claims, although he made them pretty hurriedly, I am willing to go along.

Of course, you have always to remember that the mineral surveyor here which is in this record spends 3 months on this property making this mineral survey and he also uses the phrase that there was a widely diffused mineralized mass on this mountain, and discussed it at some length. So, there are both of these people not disagreeing at all about the fundamental conception that I have tried to portray to you.

Mr. COBURN. Mr. Davis, I am sure you will agree that the duties of a mineral surveyor are not the same as those of the mineral examiner?

Mr. DAVIS. No, they are not quite the same.

Mr. COBURN. In fact, they are hardly analogous. The findings of a mineral surveyor were not introduced in evidence in this case, whereas, at least the testimony on the findings of Mr. Hattan was a part of the record.

Mr. DAVIS. Well, now—just a minute. The findings of a mineral surveyor and the certificate of a cadastral engineer are part of, shall we say, the pleadings in the case. They are part of the application itself.

I suppose you are always entitled to consider it.

Mr. COBURN. That is right. The mineral surveyor is employed by the claimants to go on the property and survey it, is that correct?

Mr. DAVIS. That is right, but he has to examine the property in other capacities, too.

Mr. COBURN. But you would not say that Mr. Hattan was employed by the company to go on and examine the property?

Mr. DAVIS. No.

Mr. COBURN. His function was to represent the Government, was it not?

Mr. DAVIS. That is right.

Mr. COBURN. I think that is all I have. Do you have some evidence that you want to present?

Mr. REDWINE. Mr. Chairman, here is some correspondence between Senator Murray and the American Smelting and Refining Co. as to just what the production of this company has been. I think that it should go in at this point.

Senator GOLDWATER. What company is that?

Mr. REDWINE. The Al Sarena Mines.

Mr. Chairman, this has just come in, and the secretarial staff has not had time to give the figure tabulations on it, to make up a copy of that.

All the correspondence is there, with that exception. I suggest that after everyone has seen these figures, they be turned over to the reporter.

(The document referred to follows:)

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
January 24, 1956.

Mr. J. D. MCKENZIE,  
Vice President, American Smelting and Refining Co.,  
New York, N. Y.

DEAR MR. MCKENZIE: Hearings on the affairs of the Al Sarena Mines, Inc., whose post-office address is Trail, Oreg., are presently being held jointly by the Subcommittee on Legislative Oversight Function of the Senate Committee on Interior and Insular Affairs and the Subcommittee on Public Works and Resources of the House Committee on Government Operations.

An assertion has been made that between 1939 and 1943 the Al Sarena Co. produced between \$30,000 and \$40,000 worth of lead and zinc concentrates, carrying small amounts of gold and silver, and that these concentrates were shipped to your company's Selby smelter. No records verifying this statement have been found. During World War II, the company did sell some concentrates to the American Smelting and Refining Co., but the only record available is the attached copy of the Metals Reserve report. The RFC records are stored with the Bureau of Mines at Mount Weather, Va., but these records are not complete, and some of them may have been destroyed.

The committee would appreciate your furnishing us with any available information as to what the Al Sarena Co. actually shipped to your company from the year 1937 to date if, in fact, any shipments were made.

Sincerely yours,

JAMES E. MURRAY, Chairman.

*Metals reserve, over quota production premium payments—Agent: American Smelting & Refining Co.*

Date	M	Excess production	Amount
October 21, 1942	L	178	\$4 90
February 22, 1943	L	630	17.33
November 11, 1944	L	86	2.37
Total			24.60

AMERICAN SMELTING & REFINING CO.,  
New York, N. Y., January 25, 1956.

Re: Al Sarena Mines, Inc., Trail, Oreg.

Senator JAMES E. MURRAY,  
Chairman, Committee on Interior and Insular Affairs,  
Senate Office Building, Washington, D. C.

DEAR SENATOR MURRAY: As requested by your letter of January 24, I have today telegraphed the manager of our Selby, Calif., plant, Mr. W. S. Reid, 405 Montgomery Street, San Francisco, to promptly gather and forward to you all available information regarding any shipments received from Al Sarena Mines, Inc., of Trail, Oreg., from the year 1937 to date.

With copy of this letter, I am sending copy of your letter of January 24 to Mr. Reid with the request that he telegraph the information to you or, if the same is too voluminous, that he send it to you by airmail. Probably the best method of transmitting this information would be for Mr. Reid to send you photostatic copies of any settlement sheets covering shipments from Al Sarena Mines, Inc.

Sincerely yours,

J. D. MACKENZIE, Vice President.

[Telegram]

SAN FRANCISCO, CALIF., January 26, 1956.

Senator JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,*  
*Senate Office Building, Washington, D. C.:*

Reurtel Al Sarena Mine shipments providing you wish to know payments made against shipments, our procedure does not show actual payments against each metal but value per ton including payment for metals less treatment charges. will require a little time to develop payments, all shipments which involve numerous small lots.

W. S. REID,  
*American Smelting & Refining Co.*

[Telegram]

SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*January 26, 1956.*

Mr. W. S. REID,  
*American Smelting & Refining Co.,*  
*San Francisco, Calif.:*

Reurtel today Al Sarena Mine shipments. Please translate values of gold, silver, and lead separately into dollars.

JAMES E. MURRAY, *Chairman.*

[Telegram]

SAN FRANCISCO, CALIF., January 26, 1956.

Senator JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,*  
*Senate Office Building, Washington, D. C.:*

In reply Mr. J. D. MacKenzie's wire January 25 re shipments Al Sarena Mines to Selby plant American Smelting and Refining Co. during years 1937 through 1942 and 1944 received 148 tons concentrates containing 382.6 troy ounces gold 1,926.9 troy ounces silver, and 21,402 pounds lead. Received 2 tons ore during 1938 containing 17.7 troy ounces gold, 46 troy ounces silver, and 314 pounds lead. Received 11 pounds precipitates 1939 containing 6.3 ounces gold and 10 ounces silver.

W. S. REID,  
*Manager, American Smelting & Refining Co.*

AMERICAN SMELTING & REFINING CO.,  
 SELBY SMELTING WORKS,  
*San Francisco, Calif., January 27, 1956.*

Re Al Sarena Mines., Inc., Trall, Oreg.

Hon. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,*  
*Senate Office Building, Washington, D. C.*

DEAR SIR: In further regard to our telegram of January 26, 1956, there is attached a statement showing shipments received at the Selby plant of the American Smelting and Refining Co. from the year 1937 to the present time.

The payment shown on this statement represents the amount paid to Al Sarena Mines, Inc., or for their account, for shipments received, and is based on the value of the various metals, less our treatment charges, under agreed upon terms of settlement. Settlement is based on gold, silver, and lead values only and no zinc concentrates were treated at Selby.

Should it be necessary that you have actual copies of our settlements or any of these lots it will be necessary that we go through our files, now in storage, to obtain original settlements and have photostatic copies made.

Yours very truly,

W. S. REID, *Manager*

*Shipments received at Selby plant of the American Smelting & Refining Co. from Al Sarena Mines, Inc., Trail, Oreg.*

Selby lot No.	Date received	Description	Dry weight	Payment
			<i>Pounds</i>	
8223	Oct. 17, 1938	27 sacks concentrates.....	2,681	\$415.46
8224	do.	20 sacks concentrates.....	1,944	209.09
8222	do.	6 sacks concentrates.....	603	315.50
8581	Nov. 21, 1938	39 sacks concentrates.....	2,935	154.23
8508	Dec. 1, 1938	13 sacks ore.....	1,395	53.79
8582	Nov. 21, 1938	21 sacks ore.....	2,851	315.24
8583	do.	40 sacks concentrates.....	4,097	275.81
8509	Dec. 1, 1938	26 sacks concentrates.....	2,623	211.88
8510	do.	56 sacks concentrates.....	5,609	287.54
8833	do.	1 box precipitates.....	11	201.72
9509	Mar. 4, 1939	Bulk concentrates.....	20,271	314.74
3191	Dec. 7, 1939	48 sacks concentrates.....	4,396	545.93
3192	do.	233 sacks concentrates.....	21,031	671.19
3323	Dec. 21, 1939	31 sacks concentrates.....	2,867	232.62
3324	do.	212 sacks concentrates.....	18,955	391.75
3449	Jan. 4, 1940	220 sacks concentrates.....	21,216	768.95
3450	do.	25 sacks concentrates.....	2,290	431.23
3669	Jan. 29, 1940	58 sacks concentrates.....	5,436	602.04
3703	do.	Bulk concentrates.....	55,937	1,135.24
5555	Nov. 25, 1940	120 sacks concentrates.....	10,934	246.89
5806	Dec. 14, 1940	81 sacks concentrates.....	7,537	296.30
5817	do.	43 sacks concentrates.....	4,168	858.51
7540	July 5, 1941	151 sacks concentrates.....	15,242	1,070.59
7970	Aug. 23, 1941	22 sacks concentrates.....	2,569	224.87
7971	do.	110 sacks concentrates.....	12,642	365.28
8140	Sept. 19, 1941	96 sacks, 8 drums concentrates.....	14,444	330.23
8268	Oct. 7, 1941	75 sacks concentrates.....	9,175	205.93
8269	do.	16 sacks concentrates.....	1,822	195.06
8552	Nov. 18, 1941	144 sacks concentrates.....	17,813	394.89
8753	do.	14 sacks concentrates.....	1,487	227.80
9227	Jan. 23, 1942	11 sacks concentrates.....	1,139	149.71
9228	do.	79 sacks concentrates.....	9,090	325.78
1609	Sept. 3, 1942	40 sacks concentrates.....	3,843	213.72
1806	Dec. 12, 1942	78 sacks concentrates.....	7,158	346.72
1897	do.	8 sacks concentrates.....	812	294.60
4104	Aug. 28, 1944	Bulk concentrates.....	2,770	13.68
<b>Total.....</b>			<b>299,853</b>	<b>13,324.55</b>

Senator SCOTT. Mr. Lanigan?

Mr. LANIGAN. At the time you made your decision on January 6, 1954, were you aware of the fact that the A. W. Williams Co. had run a series of assays on samples from the Al Sarena claims in 1951 and again early in 1953, and that in both of these series they showed mineral values less than half of that which was contained in the set of assays submitted to you as the result of the Bureau of Mines' samples?

Mr. DAVIS. I don't know whether I was or not, and, Mr. Lanigan, if so, it hadn't made any impression on me. I didn't know any of these assay houses at the time. I am taking your word for the accuracy of the statement.

Mr. LANIGAN. I am just taking the testimony that was given to us at the hearing.

Now, if the Forest Service had had an opportunity to cross-examine on the question of the assays submitted to you by the A. W. Williams Co., do you think they would have had a chance to bring out the facts relating to the earlier assays?

Mr. DAVIS. Well, I would have no way of knowing what a cross-examination might have gone into.



Mr. LANIGAN. Now, on July 6 of last year, I believe it was, you testified before the Subcommittee on Public Works and Resources, and stated the following:

I was interested, and I still am, in this administrative process. In other words, I have insisted, long before I came into the Government that these administrative processes, these powers that are vested in the administrative officials, ought to be brought into conformity with the Administrative Procedure Act, that action ought not to be taken until after there has been an opportunity for hearing and some opportunity to build the record.

Do you think that your action in requesting the advice on December 28 of Mr. Appling as to his opinion on the mineral prospects in the claim and the accepting of evidence without an opportunity for the Forest Service to cross-examine, were consistent with the principles of the Administrative Procedure Act?

Mr. DAVIS. Well, let us put it this way: I think it was just as consistent as the making up of this whole record has been.

Mr. LANIGAN. You are aware that the act provides that no employee engaged in performing investigative or prosecuting functions shall participate or advise in the decision or agency review, except as witness or counsel in public proceedings. That is in section 5 of the act. Do you remember that section?

Mr. DAVIS. I have read it.

Mr. LANIGAN. And section 7 provides that every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. I suppose you are aware of that section, too?

Mr. DAVIS. I know the section.

Representative HOFFMAN. Mr. Chairman, may I inquire, does counsel want to prosecute the Assistant Secretary for having violated some provision you are reading?

Mr. LANIGAN. No; I was asking about the consistency with the principles of the act, not with the specific provisions of the act.

Representative HOFFMAN. I know that since you have gotten out of the Department it has not done anything that you have approved, but I wondered whether there was any particular statute the violation of which you are trying to prosecute him for.

Senator SCOTT. Go ahead, Mr. Lanigan.

Mr. LANIGAN. Now, I believe you testified that \$30,000 or \$40,000 worth of minerals were removed from the Al Sarena claims. Do you know how much of that came from the 8 claims which were approved for patent, and how much from the 15 contested claims?

Mr. DAVIS. No, I do not.

Mr. LANIGAN. That is all that I have.

Senator SCOTT. I would ask the minority to take their 45 minutes if they care to.

Representative JONAS. All right, sir. I will ask a question or two.

Senator SCOTT. Congressman Jonas, it is 10 minutes to 3 at the present time.

Representative JONAS. Before I ask the Secretary any questions, may I ask counsel a question about this letter from Senator Murray to the American Smelting and Refining Co., and the file you have just offered for the record.

This letter, which was dated January 24, 1956, says this, and I quote:

An assertion has been made that between 1939 and 1943 the Al Sarena Co. produced between \$30,000 and \$40,000 worth of lead and zinc concentrates, carrying small amounts of gold and silver, and that these concentrates were shipped to your company's Selby smelter.

Now, where does this assertion appear in the record? I do not remember anybody asserting that they got \$30,000 or \$40,000 out of lead and zinc out of the mine. The only reference I have seen to that is in the Hattan report in which, on page 3, Mr. Hattan says, and I quote:

The application for patent indicates that ores to the value of \$30,000 to \$40,000 have been mined, milled, and sold, prior to April, 1943; when development work in the mine was discontinued.

Representative CHUDOFF. Mr. Chairman, I do not want to transgress on Mr. Jonas' time, but my recollection is that the gentleman who testified in Portland, I believe Mr. McCormick, said something about \$30,000 or \$40,000.

Representative JONAS. My only point is that this letter from Senator Murray ties that down only to a shipment of that amount of ores to one particular company. I do not think it would be fair to put this in the record, if that is the only effort the committee is going to make to establish whether \$30,000 or \$40,000 worth of gold and silver have been mined off of this property.

Representative CHUDOFF. We are trying to find whether or not that is in the record, Mr. Jonas, but I want to say to you that from what I can determine and from what my recollection of the testimony is to date, both in Oregon and here, there has been very little mining on any of these claims, the contested or uncontested claims, and you certainly cannot ship ore if you do not mine it.

Representative JONAS. I know that, but the way to find out where they shipped this ore, is to go to the records, and not just make inquiries of the American Smelting and Refining Co. Maybe they shipped to other refineries.

Representative CHUDOFF. Of course, the Hattan report says—

Representative JONAS. The Hattan report says that the application for patent indicates that \$30,000 or \$40,000 were mined, and I think that application certainly should be in the record, immediately following this.

Representative CHUDOFF. Of course, I want to go back to my original statement.

Representative HOFFMAN. May I call attention to the fact that they are using up your time. Do not let them get away with that.

Senator SCOTT. Let us come to order.

Representative CHUDOFF. I just want to answer the question.

Representative HOFFMAN. Do it on your own time. Do not hog our time.

Representative CHUDOFF. Mr. Jonas, I am sorry if I took some of your time. I will not say anything further.

Representative JONAS. I was trying to find out if you were going to leave the record in the position, so that it shows that we have a denial from just one company that it received \$30,000 or \$40,000 worth of ore from this mine. I do not think that that is the proper way

to establish whether \$30,000 or \$40,000 worth of ores have been removed.

Representative HOFFMAN. Of course it is not, but by this time you ought to be familiar with and used to their methods. I want 5 minutes, Mr. Chairman, of that 45 minutes, and I will take it when Mr. Jonas gets through.

Representative JONAS. May I ask committee counsel to call me in 15 minutes, and do not let me take but 15 of the 45 minutes.

Mr. DAVIS, did the fact that the representatives of the Forest Service and the representatives of the Bureau of Mines and all Government agencies that had anything to do with this application agreed that 8 of these claims had sufficient mineralization for patent, was that taken into consideration in your final decision with respect to the other 15 claims?

Mr. DAVIS. Yes, Mr. Jonas. Of course, it cannot help but be.

Representative JONAS. Is it not true that the assay report from Williams Co. showed the same amount of mineralization in the 15 claims that it showed in the right claims?

Mr. DAVIS. Substantially.

Representative JONAS. Would you say that the fact that the mineralization was comparable throughout the entire area, as disclosed in the Williams assay, was worthy of some consideration by you on the question of whether the area was sufficiently mineralized to be called a mine?

Mr. DAVIS. I think it is very important, as I stressed in my statement; the fact that, shall we say, in the heart of these claims, these eight were conceded by everybody to be adequately mineralized; the fact that the mass of material extends very extensively over the mountain, admittedly away beyond the confines of these eight claims.

Representative JONAS. Mr. Coburn asked you about your opportunity to have the written report of Appling evaluated. Tell the committee whether the written report from Mr. Appling when it came to the office, agreed with his oral report to you of what it contained, over the telephone?

Mr. DAVIS. I have already said that it did; yes.

Representative JONAS. It was in substantial agreement?

Mr. DAVIS. That is right.

Representative JONAS. You have testified that the record shows that the claimants, back in 1948 or 1949, paid the \$5 per acre deposit required, and that amounted to \$2,375?

Mr. DAVIS. That is right.

Representative JONAS. Was that money ever refunded by the Government to the claimant, during this 5-year period, when the argument extended?

Mr. DAVIS. No, it was not.

Representative JONAS. You mean the Government retained the money paid by the claimant, the fee required?

Mr. DAVIS. That is right, from February 17, 1949.

Representative JONAS. Did you also say that the records show that it was the Government, that is, the Bureau of Land Management, that took the affirmative action which resulted in transferring this property on the assessment rolls in Oregon to the name of this company?

Mr. DAVIS. That is my understanding.

**Representative JONAS.** Since which time the property has continued to be assessed in the name of the company, notwithstanding the contest which has continued during these years, over patent?

**Mr. DAVIS.** That is right.

**Representative JONAS.** Do you know and does the record show whether any representative of the Government, either the Bureau of Land Management, or any other agency in your Department, took any steps to have that property removed from the assessment rolls in Oregon from the name of the company back to the name of the Government?

**Mr. DAVIS.** The records don't so indicate.

**Representative JONAS.** I have a question to ask you, please, if you will refer to Mr. Hattan's report on page 3. We had some testimony here one day last week from Mr. George B. Holderer, to whom reference has been made by Mr. Coburn this afternoon, in which he stated that his examination of the veins in these claims indicated that they were only a foot or two in width.

Now, will you turn to the last paragraph on page 3 and tell me if the report of Mr. Hattan does not indicate that—

the main vein appears to be zone of enrichment which is from 3 feet to possibly 100 feet wide?

**Mr. DAVIS.** That language is in the report, yes.

I don't put my finger on it, but I remember it.

**Representative JONAS.** You do remember it, do you?

**Mr. DAVIS.** Yes; that is right.

**Representative JONAS.** I will ask you to turn to page 6 of the Hattan report.

**Mr. DAVIS.** I might add that I remember also—and I just finished quoting some more of the same talk to the effect that after describing this rather wide vein, the sentence appears:

Although the ground in either direction from the higher-grade zone is mineralized to an unknown distance—

which cannot help but strike you.

**Representative JONAS.** That is additional supporting evidence of the position you take in that the mass of evidence in this case indicates that the entire area is mineralized, and it is a question of how rich it is, and it is richer at some points than at others?

**Mr. DAVIS.** That is exactly right.

**Representative JONAS.** And the mineralization is not consistent throughout.

**Mr. DAVIS.** That is right.

**Representative JONAS.** Therefore, the mineralization shown in any sample would depend upon whether they actually took a sample at the rich spot or the poor spot?

**Mr. DAVIS.** I think that is right, and I think that accounts, in many cases, for the wide variation in these assays, depending on where they were taken, and how carefully they were taken.

**Representative JONAS.** Will you describe to the committee the procedures Mr. Appling said he used in taking the samples?

**Mr. DAVIS.** Well, in general, the procedure that was used—and I don't have his report here before me—was in general they went on these claims at points indicated by the claimant, which I guess you will agree was proper, and clearing off the surface of the ground and

inspecting it as to whether there had been any tampering with the surface, they then chipped away 2 or 3 or 4 inches of rock, so that they got down to good, clear, solid rock in place, and everything scaled away, everything that was on the surface, and scaled away part of the rock itself.

They then cut the sample from that rock.

Representative JONAS. And, after having done that, does not his report indicate that they pulverized the sample and panned it, and discovered with the naked eye evidences of mineralization?

Mr. DAVIS. That is right.

Representative JONAS. That was done, according to Appling's testimony, on each one of the claims?

Mr. DAVIS. That is right—on all 23 of the claims, and, as he says, I believe, in the presence of all of these people.

Representative JONAS. Is there any evidence that any of the Hattan samples were so handled, or so treated?

Mr. DAVIS. No; there is not.

Representative JONAS. Looking at this evidence as to the way the Hattan samples were taken and the Appling samples were taken, is it not fair to say that there is evidence that the Appling samples were more representative of what was actually in the area, rather than a haphazard sample taken the way Mr. Hattan described his samples?

Mr. DAVIS. Well, it seemed that way to me, Mr. Jonas, and with reference to all of these others, there has not been anything like the care exercised, both as to the taking of the sample, the cutting of it, the pulverizing, the shipment of it, and all that sort of thing. None of that process, so far as the record discloses, at least, was used with reference to any of the other samples.

Some of them were taken by the McDonalds alone. Some of them were taken by Mr. Hattan alone. Some of them were taken jointly, and were not submitted too carefully to the assay house.

Representative JONAS. Is it not true that you felt that the Appling samples, at least, were worthy of consideration because of the care with which they were taken, and the pulverization and the discovery from panning, and all of those other things?

Mr. DAVIS. That is right. I felt, and I still feel, that they were taken in the most dependable and accurate manner possible.

Representative JONAS. Will you turn to page 6 of the Hattan report?

Mr. DAVIS. Yes, sir.

Representative JONAS. Tell me: Did you read into the record earlier the third paragraph on that page, or is that one of those you read?

Mr. DAVIS. Well, I haven't yet.

Representative JONAS. May I ask you to read it to the committee, and read it into the microphone? I think that is a very important paragraph.

Mr. DAVIS. It is an important paragraph. As a matter of fact, it is quoted actually in the opinion that I rendered in the case.

Representative JONAS. I have not happened to have read that opinion yet.

Mr. DAVIS. Here is the paragraph:

The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth the possibilities are good that the whole mass could be developed, mined, and milled at a profit by low-cost large scale mining methods.

The topography is such that any 1 of 3 methods might be employed, i. e., glory-holing, shrinkage system, and open-pit mining.

Representative JONAS. Now, will you turn to page 8 of the Hattan report and to the last 2 paragraphs on that page, and tell me if I correctly interpret those paragraphs to state that Mr. Hattan found even more mineralization than was claimed by the applicant on his application for the patent in that 1 particular claim?

Mr. DAVIS. Yes; he says:

On June 12, 1949, a second sample was taken from the same cut—this is the Oro Alto claim—

11 on this occasion, the cut was extended and hole was dug in the face to get more depth. The sample was cut by Mr. Sanborn and taken by him to Abbot Hanks in San Francisco for assaying. The results were gold, \$3.32/ton; silver, \$0.05/ton. Total, \$3.37/ton.

The applicant's sample submitted with exhibit 1 of the application for patent indicates a value of \$1.75 per ton.

Representative JONAS. So, at least with respect to that claim, Mr. Hattan found greater mineralization, even, than the applicant claimed?

Mr. DAVIS. That is right.

Representative JONAS. Is that not true with respect to several other of the claims?

Mr. DAVIS. Mr. Jonas, I have said that, and repeat it again, that I think that that is true throughout the controversy. I have no doubt that there are spots here where you will get just a trace throughout some of these claims. I have no doubt that there are other spots—and these assays show it, and they are admitted—where they have run as high as 8 or 9 dollars a ton, depending on where those assays were taken.

Representative JONAS. Now, this morning you were questioned about some of the improvements on the claims. I suppose the purpose of that line of questioning was to indicate that the claimant did not actually put those improvements there. As a matter of fact, does it make any difference who put in the improvements, so long as the applicant purchased the claims? In other words, when you purchase a claim, do you not get all of the improvements that your assignor put on there?

Mr. DAVIS. Yes; I think there is no doubt about that. It doesn't make any difference whether all this work was done by predecessors in title or done by the applicants. They are perfectly assignable claims, so far as I know.

Representative JONAS. They do not contend, as I read the record and understand it, that they originally discovered all of these claims, or staked them out, but that they purchased 10 of them along about 1935 and later purchased some of the others. Actually—and correct me on this if I am wrong—do your records show that the claimant actually originated the claim on at least one of the uncontested claims that Mr. Hattan approved?

Mr. DAVIS. Two of them, I believe, were made by them as late as 1939—after they had apparently been passed up for years by these predecessors, and those two definitely showed enough mineralization that they were not even contested, which does nothing more than demonstrate what I have been trying to say all the time, that I

don't think anybody can unequivocally say that there is not mineralization on these claims.

Representative JONAS. When you called for the remainder of the record to be sent in from Portland, do you recall who sent it in? Was that from the Bureau of Land Management office?

Mr. DAVIS. It was from the Bureau of Land Management, Mr. Jonas.

Representative JONAS. I do not mean the individual. Did you call from your branch office in Portland?

Mr. DAVIS. That is right.

Representative JONAS. When the original record was made up, which did not contain some of this material you later obtained, can you tell us who made that record up? Was it Mr. Rice, the hearing examiner?

Mr. DAVIS. It was made up, I suppose, under Mr. Rice's direction. He was in charge.

Representative JONAS. Was he the manager of the office? Is that the way he came to be called the hearing examiner? Does the manager of the local office act as hearing examiner?

Mr. DAVIS. That is right. It is certified by Mr. Rice as manager of the land office, which was the title that he had at the moment, apparently.

Representative JONAS. I understand that my time is up and I would like to say, before I quit talking, that I have not had an opportunity to read the report.

Representative HOFFMAN. How much time remains?

Senator SCOTT. There is none remaining, if you want 5 minutes.

Representative HOFFMAN. If I want 5 minutes?

Representative JONAS. I have used only 15 minutes. We have 30 left, do we not?

Senator SCOTT. Do you want to save him 5 minutes, then?

Representative JONAS. I would like to say for the record that I have asked Mr. Davis some questions concerning some of the comments made by Mr. Hattan in his report. I would examine him further with respect to some other comments in the report, but I have never had an opportunity to read the report until here today and I, therefore, have not been able to prepare myself to ask questions. I think that each of those claims ought to be considered separately and some of the comments made by Mr. Hattan put in the record, but, since the report itself will go into the record, I do not think it is necessary for me to ask any other questions about it.

I will ask you one final question, Mr. Secretary:

Throughout your entire procedure in handling this claim, or this application, were you influenced or subjected to any pressure by any person, individual or group, concerning the decision you would make?

Mr. DAVIS. No; I was not. I certainly was not.

Representative JONAS. And you stated the other day that the decision you rendered was, according to your best judgment, the proper and wise decision to make, under all of the circumstances, and you accept full responsibility for having made it, without being influenced by anyone?

Mr. DAVIS. That is right, sir.

Representative JONAS. That is all.

Representative HOFFMAN. Senator Goldwater?

Senator GOLDWATER. Mr. Chairman, we have heard today reference to the testimony of Mr. Holderer that in his opinion it would require \$20 a ton assay to cause a prudent man to continue exploration for gold.

Now, I think Mr. Holderer should know better than that. If this were the case and we had nothing but \$20-a-ton assays in this country, we would not have anybody in the gold-mining business.

I tried the first day that I attended these hearings to put into the record a study called Rule as to What Constitutes a Valid Discovery on Minerals Sufficient to Support a Mining Location.

I was denied that. I understand that Mr. Bradshaw, who is the author of this rule, is here and that he possibly might be called on to testify.

In the event that he is not called, I would like to just read 1 or 2 brief things from this. He says:

One, there must be a vein or lode of quartz or other rock in place.

Two, the quartz or rock in place must carry gold or some other valuable mineral deposit.

Three, the two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine.

I want to read one other sentence from this rule that Mr. Bradshaw has drawn up.

Mr. Bradshaw is in the solicitor's department of the Department of the Interior, and, as I understand, they are expert on mining law.

I read this because it is indicative of the value of this whole report to these hearings. It says:

In 1905 the Supreme Court in *Chrisman v. Miller* said that the law imposed no conditions on the locator as to the value of the ore discovered.

That has been borne out here by testimony from others who have spoken on the general rules applying to the value of ore located.

Now, to try to get some concrete information as to what is going on in the gold mining States, I wired each of the States that produced gold.

I am sorry to say that the records are such, in these various States, that I was only able to get concrete information from two.

One is South Dakota and one is my own State of Arizona.

I cite these figures, and I will submit them for the record, to show the wide variance of value of gold per ton that we find in this country.

For instance, in South Dakota, which has some of the richest gold-producing mines in the country, we have one mine over a 5-year period which has averaged \$13.86 a ton.

We have one mine that has averaged \$5.22 a ton.

We get into Arizona and find over about a 4-year period an average of 9 cents a ton recovered per ton of ore treated in gold, and 9.1 cents recovered per ton of ore treated for silver.

I submit both of these for the record.



(The documents referred to follow:)

SOUTH DAKOTA NATURAL RESOURCES COMMISSION,  
Pierre, S. Dak., January 16, 1956.

HON. BARRY GOLDWATER,  
United States Senator,  
Senate Office Building,  
Washington, D. C.

DEAR SENATOR: Pursuant to telegram of today I am specifying yearly data on average value of gold recovery of the two producing mines in South Dakota.

Year	Homestake (average per ton)	Bald Mountain (average per ton)
1950.....	15.22	5.51
1951.....	14.80	5.23
1952.....	13.53	5.08
1953.....	13.34	4.90
1954.....	12.40	5.41
For 5-year period.....	13.86	5.23

As I suggested in telegram, the determination of the number of claims patented is difficult to compile except through county offices. However, the Bureau of Land Management in Washington should be able to furnish such information, also that pertaining to which are on forest land, most expeditiously. Their regional office at Billings, Mont., should have that information.

I might add with respect to the above figures that our State tax director had only data for the first 3 quarters of 1955. The average recovery, however, for that period is down.

May this information be of assistance to you.

Sincerely yours,

HUGO A. CARLSON,  
Executive Secretary.

Table showing number Arizona lode and placer mines, tons ore sold or treated, value of gold and silver recovered, and value recovered per ton ore treated

Year	Number lode mines	Number placer mines	Tons ore sold or treated	Gold—Lode and placer			Silver—Lode and placer		
				Fine ounces	Value recovered	Value recovered per ton treated	Fine ounces	Value recovered	Value recovered per ton treated
1952.....	187	7	15,385,327	112,355	\$3,932,425	\$0.065	4,701,390	\$4,254,941	\$0.279
1953.....	163	6	15,700,618	112,824	3,948,840	0.064	4,351,424	3,998,233	0.253
1954.....	(1)	(1)	11,760,000	114,800	4,018,315	0.062	4,278,811	3,800,641	0.251
1955 (estimated)	(1)	(1)	(1)	121,500	4,532,500		4,652,000	4,210,000	
Estimated average.....						.060			.061

<sup>1</sup> Not available.

Senator GOLDWATER. I use these figures, Mr. Chairman, to point out what I think is one of the basic points in this whole investigation and whole argument; namely, that the Department of the Interior, if it followed the law, had nothing else to do but to grant these patents.

You might get back to the argument that it did not show enough ore to cause a prudent man to invest. I can tell you that there are miners all over Arizona who are working with a burro or with a jeep. They have themselves to support, or they have a partner, and they do this with pick and shovel and with water, and they work at far less assays than we have been talking about today, and live. A man does not

need much to live out there, and whether or not he goes on with the exploration of a mine pretty much depends on whether he wants to live on \$1 a day or \$5 a day or 50 cents a day. It is up to him entirely.

I am hopeful, Mr. Chairman, that the committee will call Mr. Bradshaw, and allow him to testify as to the rule that has been used historically in the granting of patents across the country, because I think on that we will find a resolution of this case, and a better understanding of it by the people in the country.

That was not in the nature of a question, Mr. Secretary, and if a question was necessary, I apologize.

Mr. Davis. I am glad to have you make the statement, Senator, and I am sure the committee would profit later if they would call Mr. Bradshaw, who has been with the Department for, I forget whether it is 30, 35, or 40 years, who knows this legal field quite thoroughly, and I am sure would be very happy to inform the committee as to the law with reference to mining claims. I, too, would appreciate the committee's taking into consideration these legal rules which I have outlined, of course, in broad language in my own statement, but which have been passed on by the courts through the years and modified somewhat from time to time. They come down, I repeat, to the fundamental statement that I have made in my own original presentation; but I think the committee would profit and, I would say, perhaps enjoy, Mr. Bradshaw giving you a dissertation on the mining laws.

Thank you, Mr. Chairman. I don't mean to interrupt.

Representative HOFFMAN. How much time remains before we adjourn, Mr. Chairman?

Senator SCOTT. It depends on when you want to adjourn.

Representative HOFFMAN. You limited us to 45 minutes on this side, after the majority and these other gentlemen had questioned the witness for pretty nearly a day and a quarter.

Senator SCOTT. Your side has 19 minutes.

Representative HOFFMAN. Left now?

Senator SCOTT. It will be less.

Representative HOFFMAN. Still remaining now?

Senator SCOTT. About 17½ minutes now.

Representative HOFFMAN. I will talk another half minute. You may be happy then to realize that I only have 17.

Mr. Jonas, have you some more questions? Go ahead if you have. All I want is 5 minutes.

Are you going to adjourn then, or turn the hearing back to the other side?

Senator SCOTT. We will decide that later.

Representative CHUDOFF. I am going to ask some questions.

Mr. HOFFMAN. Some more inquisition then. I will keep my 15 minutes now, if I may, until the end.

Senator SCOTT. Right now.

Representative HOFFMAN. Right now? You mean you are going to force me to the suggestion made by the Senator from Oregon, to go ahead now and let them come on with rebuttal?

Senator SCOTT. That is what we decided a while ago.

Representative HOFFMAN. You did not say anything about there being another end to it.

You said Mr. Coburn was to finish and then we were to have 45 minutes on this side.

Now what you are doing is limiting us to 45 minutes on this side and then turning the witness back to the tender mercies of these 3 attorneys again. I say that is not cricket.

Senator SCOTT. We are not paying cricket today.

Representative HOFFMAN. No, nor fairly either.

Senator SCOTT. Go ahead.

Representative HOFFMAN. I am so shocked at such a ruling on your part it is very difficult for me to get started and the statement of the Secretary is so clear and so convincing that I do not know that anything more would be needed to convince the average individual that the decision that he made could not have been any other than what it was.

Counsel has suggested that the McDonalds hired a mineral surveyor. Under the regulations put out by the Department the Department qualifies a surveyor and the claimant cannot hire anyone else, can he?

Mr. DAVIS. That's right, that is my understanding.

Representative HOFFMAN. Surely; I would like to ask counsel what were you trying to get at in saying that the McDonalds hired him?

Mr. COBURN. They can hire any registered mine surveyor.

Representative HOFFMAN. Anybody that is qualified by the Department.

Mr. COBURN. That is registered.

Representative HOFFMAN. You have been squawking here all the time, and I use that word advisedly—the Senator used it the other day—about bringing in a surveyor who was approved by the Al Sarena people. Now, when the claimant wants a mineral surveyor he has to take the fellow approved by the Department. Why do you not be frank about it?

Mr. COBURN. There is a vast difference between a minerals examiner and a minerals surveyor.

Representative HOFFMAN. We are not talking about a minerals examiner until a minerals surveyor comes along and gives an O. K., the location is stymied. He cannot go anywhere.

Mr. COBURN. I do not think anybody has questioned the qualifications of the minerals surveyor.

Representative HOFFMAN. The point I was making is that you just raised Cain all the time because the McDonalds were entitled to name at least some fellow who might pass the examination. At the same time they were required to accept the Government's mineral surveyor. I do not wonder you smile when that inconsistency is pointed out to you.

You were asked, too, here about your decision Mr. Davis—and that was a tricky question—as to whether you did not rest it on the report of the assays obtained by the Al Sarena people. In addition to what they said, there was a lack of evidence to support the protest of the Forest Service, was there not, in the record?

Mr. DAVIS. I felt there was a lack of completely dependable assays from anybody. That was why I wanted to get a new one.

Representative JONAS. May I interrupt my colleague to ask him a question?

How much time do we have on this side? 13 minutes?

Senator NEUBERGER. Until 25 to 4.

Representative JONAS. It was suggested that if you did not care to use 13 minutes in asking Mr. Davis questions we might take part of

our time and ask Mr. Bradshaw some questions about mining law.

Representative HOFFMAN. If you can in some way get the consent of the chairman of the committee it is all right with me, but you had better get that first. Put Mr. Bradshaw on if he will let you and you wish. Ask the prosecutor first.

Representative JONAS. That will be all right, asking for some time to ask Mr. Bradshaw to come up. They say that will be all right.

Representative HOFFMAN. Put him on.

Representative JONAS. Come up, Mr. Bradshaw.

Senator SCOTT. Will you swear Mr. Bradshaw in, Congressman Chudoff?

Representative CHUDOFF. Will you raise your right hand?

Do you solemnly swear the testimony you are about to give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRADSHAW. I do.

Senator GOLDWATER. Mr. Bradshaw, I want to ask you just two questions. Maybe it will develop others. What was the original intent of the mining law?

#### **TESTIMONY OF C. R. BRADSHAW, ACTING ASSISTANT SOLICITOR, DEPARTMENT OF THE INTERIOR**

Mr. BRADSHAW. The original intent, as I understand it, was to open all of the mineral deposits in the public land to the free use and disposition of miners. In other words, one of the first provisions of the mining law is that all mineral deposits in public lands are open to free disposal. That's the substance of it.

Senator GOLDWATER. I forgot to have you identify yourself. Would you tell the committee your title and so forth?

Mr. BRADSHAW. My name is C. R. Bradshaw. I am Acting Assistant Solicitor, Department of the Interior.

Senator GOLDWATER. How long have you been in that capacity?

Mr. BRADSHAW. Well, I have been with the Bureau of Land Management and its predecessor, the General Land Office, and the Department of the Interior for approximately 35 years.

Senator GOLDWATER. 35 years?

Mr. BRADSHAW. Yes, sir.

Senator GOLDWATER. Would you say that during your time in these various offices in the Bureau of Land Management and its predecessor that the Department has pretty well followed the rule that you have just outlined?

Mr. BRADSHAW. Yes, sir; it has. You mean the rule as to discovery?

Senator GOLDWATER. The general policy that you just outlined to open up the lands.

Mr. BRADSHAW. That is correct, sir.

Senator GOLDWATER. Would you tell me, are you a lawyer?

Mr. BRADSHAW. Yes, sir.

Senator GOLDWATER. Are you also an engineer?

Mr. BRADSHAW. No, I'm not an engineer.

Senator GOLDWATER. Just a lawyer. I do not say "just a lawyer" in a derogatory way.

Mr. Bradshaw, what is the rule as to profitability of a patent application?

Mr. BRADSHAW. Profitability?

Senator GOLDWATER. Yes.

Mr. BRADSHAW. There is no rule that I know of that the patent applicant must show that he has a profitable operation. The rule, first formulated, that is, first formalized in specific terms, as far as I know, was formulated or stated, rather, in 1894 in the case of *Castle v. Womble* by the Department. That rule was that when mineral is discovered of such quantity and of such quality as would justify a prudent man in the expenditure of his labor and means in an effort to develop a paying mine, he has made a discovery which should entitle him to a patent.

Senator GOLDWATER. Have you followed the Supreme Court decision of 1905 which I referred to, *Chrisman v. Miller*, which said that the law imposed no conditions on the locator as to the value of the ore discovered?

Mr. BRADSHAW. That is correct, sir.

Senator GOLDWATER. In other words, the value of the ore has no particular bearing on this, on the granting of a patent, does it?

Mr. BRADSHAW. Well, in the sense that a man must not have a profitable operation in order to get a patent, that is true. I think the value of the ore is an element.

In other words, you take the value of the ore discovered together with the geological facts and together with the information that may be obtained from adjoining mines and determine on the basis of all the facts whether a valid discovery has been made or not.

Senator GOLDWATER. However, there is no dollar-and-cent rule that has ever been followed?

Mr. BRADSHAW. No dollar-and-cent rule.

Senator GOLDWATER. That has ever been used to your knowledge in the history of the granting of mining patents?

Mr. BRADSHAW. That is true.

Senator GOLDWATER. Is it not true that before the corrections were made in the mining law hundreds, maybe thousands, of patents were granted on lands that contained nothing but gravel, or sand, or flagstone, or decomposed granite?

Mr. BRADSHAW. That I couldn't say. I couldn't say that that is true; no, sir. I would say this: That the patents have been granted to my knowledge at various times during the past 35 years on showings of five and ten-hundredths percent, or five and ten-hundredths percent of gold, silver, lead, or zinc.

Senator GOLDWATER. That low?

Mr. BRADSHAW. That low; yes, sir.

Senator GOLDWATER. Five and ten-hundredths?

Mr. BRADSHAW. That is right. That was the only showing the miner had.

Senator GOLDWATER. That is not five and ten-hundredths as one figure?

Mr. BRADSHAW. It is five one-hundredths of a percent; yes, sir. The reason for that was that other mines developed on the same deposit, and where shafts had been sunk on comparable surface showings, had developed some of the richest lead-zinc mines in the West.

Senator GOLDWATER. Mr. Bradshaw, I have one more question.

I have in my hand a document entitled: "Memorandum of Authorities on the Rule As To What Constitutes a Valid Discovery of Mineral Sufficient To Support a Mining Location."

Do you recognize that title?

Mr. BRADSHAW. Yes, sir.

Senator GOLDWATER. Are you the author of that paper?

Mr. BRADSHAW. Yes, sir.

Senator GOLDWATER. Mr. Chairman, I have a copy of that signed by Mr. C. R. Bradshaw. I would like to have it inserted in the record at this point.

Senator SCOTT. That is all right. That is all right if there is no objection to it.

(The memorandum referred to follows:)

MEMORANDUM OF AUTHORITIES ON THE RULE AS TO WHAT CONSTITUTES A VALID  
DISCOVERY OF MINERAL SUFFICIENT TO SUPPORT A MINING LOCATION

By C. R. Bradshaw, Acting Assistant Solicitor, Branch of Minerals, Division of  
Public Lands, Department of the Interior

The general rule is stated in *Castle v. Womble* (19 L. D. 455), to be where mineral is found in such quantity and of such quality as would warrant a prudent man in the expenditure of his labor and means in an effort to develop a paying mine. In *Jefferson-Montana Copper Mines Co.* (41 L. D. 320), the Department undertook to outline the elements necessary to establish a valid discovery, on a lode claim, as follows:

"1. There must be a vein or lode of quartz or other rock in place.

"2. The quartz or other rock in place must carry gold or some other valuable mineral deposit.

"3. The two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine."

The same rule has been applied by the courts. *Chrisman v. Miller* (107 U. S. 313, 323). In the Chrisman case, however, the Court also said that:

"It is true that when the controversy is between two mineral claimants the rule respecting the sufficiency of a discovery of mineral is more liberal than when it is between a mineral claimant and one seeking to make an agricultural entry, for the reason that where land is sought to be taken out of the category of agricultural lands the evidence of its mineral character should be reasonably clear, while in respect to mineral lands, in a controversy between claimants, the question is simply which is entitled to priority."

This statement of the Court is self-evident. From a date substantially prior to the date of admission of California into the Union in 1853, Congress had adopted the policy of disposing of mineral lands separately and apart from agricultural (or nonmineral) lands, *Mining Co. v. Consolidated Mining Co.* (102 U. S. 167). Later in 1866 and 1870, the lode and placer mining laws, respectively, provided for the free exploitation of minerals in public lands. It naturally follows that when the real question is whether or not land is mineral in character a higher type of evidence of the existence of minerals in the land is required than where the real issue is as to the right of possession between rival mineral claimants.

But with the exception of saline minerals and building stone the rule is that it is not necessary to show a discovery of a deposit known to be valuable and except for saline minerals and building stone it is never necessary to show that the discovery is of a deposit more valuable than the timber on the land or than the land may have for any nonmineral purpose. First, to dispose of the exceptions:

Saline lands: The act of January 31, 1901 (31 Stat. 745; 30 U. S. C., sec. 162), in terms require that the lands to be locatable must be chiefly valuable for salines.

Building stone: The act of August 4, 1892 (27 Stat. 348; 30 U. S. C., sec. 161), makes lands chiefly valuable for building stone subject to mining location.<sup>1</sup> With

<sup>1</sup> The act of February 11, 1897 (29 Stat. 526; 30 U. S. C., sec. 101), now superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 181) made lands chiefly valuable for petroleum subject to location under the placer mining laws.

respect to saline minerals and building stone lands more valuable for timber than for these minerals are not subject to location.

What constitutes a valid discovery of a mining claim necessarily came to the attention of the courts and the Interior Department after the enactment of the mining laws. However, as late as 1886, we find that the United States Circuit Court for Oregon concluded that it had not then been judicially determined. And that court in the same case, *United States v. Reed* (28 Fed. 482), concluded that nothing short of known mines capable of being worked at a profit, as compared with any gain or profit that may be derived therefrom when entered under the homestead law is sufficient to prevent such entry. However, within the succeeding 20 years the courts had frequent occasion to define discovery as related to the location of mining claims and in 1905 the Supreme Court in *Chrisman v. Miller*, supra, said that the law imposed no conditions on the locator as to the value of the ore discovered and as stated above adopted the rule in *Castle v. Womble*. Previous to 1905, several Federal courts had wrestled with the problem. In *Shoshone Mining Co. v. Butler* (Idaho 1898, 87 Fed. 806), it was said that it was not intended that the miner determine the precise extent and character of the mineral or continuity of the ore before he can make a valid location. *Migoon v. Montana Central Railroad Co.* (Mont. 1896, 77 Fed. 249, 253), holds that the flinding of rock in place containing mineral is a discovery, whether the rock assays high or low.

Since 1905, the courts have consistently followed *Chrisman v. Miller*, supra, and many of the pertinent cases are collected in 30 United States Code Annotated, section 23, note 141. *Cameron v. United States* (1920, 252 U. S. 450, 459), is especially pertinent. There the court approved the rule announced in *Castle v. Womble* and *Chrisman v. Miller*, which the Secretary of the Interior had followed with respect to claims within the Grand Canyon National Monument. The court had previously recognized that the Grand Canyon "is an object of unusual scientific attraction and annually draws to its borders thousands of visitors." The mining claims covered a tract which the court found embraces the head of the trail (the Bright Angel Trail) used to descent to and ascend from the bottom of the canyon. The rule was applied as late as 1942 in *United States v. Mobley* (45 F. Supp. 407). It has been applied to prevent withdrawal of the land by the United States. *United States v. Ohio Oil Co.* (D. C. Wyo. 1916, 240 Fed. 996), affirmed *United States v. Grass Creek Oil and Gas Co.* (C. C. A. 1916, 236 Fed. 481).

The Department of the Interior has followed the same rule. In *Cataract Gold Mining Co.* (1914, 43 L. D. 248), it said that if a claim contains mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money "in the reasonable expectation of success in developing a paying mine, such lands are disposable only under the mining law, notwithstanding the fact that they may possess a possible or probable greater value for agriculture or other purposes." This was consistent with many prior decisions involving conflicts between mining claims and other nonmineral entries and claims, e. g., *Aspen Consolidated Mining Co. v. Williams* (1896, 23 L. D. 34, 47) (*Mining Claim v. Pre-emption settlement*); *Walker v. Southern Pacific R. R. Co.* (1887, 24 L. D. 172) (*Mining Claim v. Railroad Selection*); *East Tintic Consolidated Mining Co.* (1914, 43 L. D. 79, 81) (mineral application); *Central Pacific Ry. Co.* (1914, 43 L. D. 545) (*Railroad Grant v. Mining Claim*); *United States v. Bunker Hill Mining and Concentrating Co.* (1922, 48 L. D. 598, 604) (mineral application). In *Helen v. Wells, et al.* (1933, 54 L. D. 306), it was said that while the existence of a valuable stand of timber on a claim supplies a reason for clear and convincing evidence, it "in no way qualifies the locator's rights under the mining law if he has a valid claim (see *United States v. Deary* 24 Fed. 2d 108)), \* \* \*." In *United States v. Langmade and Miskier* (1925, 52 L. D. 700), the Department after citing the *Cataract Gold Mining Co.* case, supra, said that whether the land in a national forest was more valuable for recreation than for a mill site located under the mining law was not a crucial test of its locatability but that it made it imperative that the claimant make a clear and unequivocal showing of compliance with the law. The *Castle v. Womble* rule was again applied in *United States v. Frank J. Miller* (1947, 50 L. D. 446), where mining claims in a national forest were involved and *Cataract Gold Mining Co.* was cited to support the proposition.

The case of *United States v. Dawson* (1944, 58 L. D. 670), contained language which has been frequently cited to support the proposition that mineral values must exceed surface values in order to meet the requirements necessary to prove a valid discovery. Actually, this was stated as an alternative rule only and

inssofar as I know, it has been applied only nonmetalliferous deposits. The decision also recited the normal laws of discovery and the pertinent language follows:

"In determining whether land is valuable for mineral it must be shown that the land is more valuable for the purpose of removing and marketing the substance than for any other purpose; that the removal and marketing will probably yield a profit; or that such substance exists in the land in such quantity as to justify a prudent man in expending labor and capital in the effort to obtain it. *Layman et al. v. Ellis* (52 L. D. 714, 720); *Pacific Coast Marble Co. v. Northern Pacific R. R. Co. et al.* (25 L. D. 233; *Lindley on Mines*, sec. 98); *United States v. D. L. Underwood* (unreported), decided by the Department on August 11, 1939, and as *Ickes v. Underwood*, by the United States Court of Appeals for the District of Columbia on March 20, 1944. For other cases see 30 U. S. C. A., sec. 21, notes 41, 42. And where mining claims are located on lands in a national forest and embrace desirable recreational areas the showing of mineral values should be clear and unequivocal. *United States v. Langmeade and Nistler* (52 L. D. 700); *United States v. Anna W. Strumquist* (C.A. 17380), 1933, unreported; *United States v. William S. Nestell et al.* (C.A. 20513), 1937, unreported). See also *United States v. Larsonson* (206 Fed. 755); *United States v. Lillibridge* (4 F. Supp. 204). Irrespective of other grounds of invalidity, it clearly appears that the locations in question are void for lack of a discovery of a valuable mineral deposit."

The thing that is said is that to determine whether the land is valuable for mineral "it must [either] be shown that the land is more valuable for the purpose of removing and marketing the substance than for any other purpose [or] that the removal and marketing will probably [not certainly] yield a profit, or that such substance exists in the land in such quantity as to justify a prudent man in expending labor and capital in the effort to obtain it." [Interpolations and emphasis added.]

Thus the case holds, inter alia, that if the evidence meets the standard test laid down in *Castle v. Womble*, *supra*, the claims would be valid. None of the departmental cases cited supports the proposition that the land must be more valuable for minerals than for other purposes and only *United States v. Reed*, *supra*, of the court decisions lends any support. As already stated the Reed case has not been followed, at least since *Castle v. Womble* and *Chrisman v. Miller*. Two of the cases cited in support involved sand and gravel, the third involved marble situated in the then sparsely settled West. The Dawson case involved pumicite. As to such minerals the rule is well settled as shown by the two cases involving sand and gravel that proof of the actual (rather than the potential) value of the particular deposit is necessary since without a convenient market the deposits could not be produced at a profit no matter had extensive they might be. This may explain the use of the first alternative basis for establishing the validity of the claim. The reference to *Lindley on Mines* fully support the holding if considered as above in the alternative but not otherwise since *Lindley* also states the rule in the alternative. There is no quarrel with the holding that the evidence in such a case must be clear and convincing.

There is no basis for saying that because a claim is in a national forest the rule as to discovery is different than it is elsewhere. The act of June 4, 1897 (30 Stat. 36; 16 U. S. C., sec. 478), governs such locations. It expressly provides for "prospecting, locating, and developing the mineral resources subject only to the condition that the 'rules and regulations covering such national forests' must be complied with."

After an exhaustive search no case has been found since the decision in *Castle v. Womble*, which holds that in order to locate a mining claim or to obtain a patent for such a claim any more need be established than that mineral in quantity and quality sufficient to justify a prudent man to expend his labor and means in the hope of developing a paying mine has been found. It is true that where other (nonmineral) rights are involved a higher degree of proof is required than where the controversy is between rival mining claimants. But the rule as to what must be established is the same in both cases. The reason that better evidence is required where the conflict is between mineral and non-mineral claimants is that the question of the mineral character of the land is the material issue while in a contest between rival mineral claimants it is merely collateral.

Any conclusion that there is one rule of discovery for mining locations for unclaimed, untimbered lands and another—and a stricter—rule for timber lands



or those claimed by nonmineral claimants would ignore the fact that the mining law makes no distinction and that, except for saline and building stone minerals, no other statute provides or authorizes a different rule.

C. R. BRADSHAW,  
Acting Assistant Solicitor,  
Branch of Minerals.

Senator GOLDWATER. Those are all the questions I have.

Thank you, Mr. Chairman.

Senator SCOTT. You have 5 minutes more.

Representative HOFFMAN. I do not care to ask Mr. Davis any more questions. The time is so limited I could not develop the subject.

Yes, I would like to ask Mr. Bradshaw a question.

The rule was first laid down by the Land Department, in you said, *Castle v. Womble*, and that is 19 Land Decisions 455 and 457, was it not?

Mr. BRADSHAW. That is right.

Representative HOFFMAN. Later on we came along with this other case. The Dawson case? That is 58 Interior Department 670; is that right? The first case was quoted in this case you referred to, *Chrisman v. Miller*. That is 197 U. S. 322.

Mr. BRADSHAW. Yes.

Representative HOFFMAN. As a matter of fact, there is not a single statutory provision or department regulation which requires the finding of any particular amount of mineral in order to make a valid discovery, is there?

Mr. BRADSHAW. No, sir.

Representative HOFFMAN. What happened was later on there were some Supreme Court decisions which laid down the rule that to justify a discovery, there must be sufficient mineral to justify an average, prudent man in investing his money?

Mr. BRADSHAW. Yes.

Representative HOFFMAN. However, someone in the Forest Service or some other department tried to lay down the rule that in order to validate a discovery there must be mineral sufficient to show a profit or that the mineral must exceed in value the timber on the land or its value as an agricultural venture? They tried to put that one over, did they not?

Mr. BRADSHAW. In the Dawson case the rule is stated in the alternative. Incidentally, I think it is also stated in the alternative in *Lindley on Mines*.

Representative HOFFMAN. Ricketts, too, and Costigan. However, the point I am trying to make is that somebody connected with forestry tried to lay down the rule that the claim would not be a valid discovery unless the mineral was of greater value than the timber.

Mr. BRADSHAW. Well the Dawson case in the first statement, in the first alternative, makes that statement, that the mineral must be more valuable than the land is valuable for other purposes.

Representative HOFFMAN. That is not the rule, though, is it?

Mr. BRADSHAW. That is not the rule.

Representative HOFFMAN. And never has been?

Mr. BRADSHAW. Never has been so far as I know.

Representative HOFFMAN. That is all.

Senator SCOTT. You have 2 minutes more.

Representative JONAS. We will waive those.

Representative **HOFFMAN**. In not using those 2 minutes, may I put in the record later my opinion of the way the hearings have been conducted?

Senator **SCOTT**. Yes. You have.

Representative **HOFFMAN**. I have not expressed it all. I could not do it. It is impossible. I think these hearings will stand as an example of what a congressional committee should not do and the way a witness should not be treated. As some editorials said of the hearings on power. They are a disgrace to the Congress. That is all. As far as I am concerned the benediction for today is on.

Senator **SCOTT**. Mr. Chudoff.

Representative **CHUDOFF**. Mr. Davis, I think that you will agree that the issue in the hearings for today is whether or not the people who have owned the Al Sarena mine were interested in the minerals or interested in the timber is that correct? On one side we have been trying to show they were interested in minerals, and on the other side they were interested in timber.

#### STATEMENT OF CLARENCE A. DAVIS, UNDER SECRETARY OF THE DEPARTMENT OF THE INTERIOR—Resumed

Mr. **DAVIS**. That is what you have been trying to show, Mr. Chudoff, but that hasn't anything to do with the decision of the case.

Representative **CHUDOFF**. However, that is the issue; is that not correct?

Mr. **DAVIS**. It is no issue with me. It seems to be with you.

Representative **CHUDOFF**. This question of granting these patents in a contested claim has been going on for some time prior? It had been going on for some time prior in the prior administration; is that not correct, Mr. Davis?

Mr. **DAVIS**. Yes. You heard me say the claims were pending for about 5 years.

Representative **CHUDOFF**. And you knew about that question having been pending for about 5 years?

Mr. **DAVIS**. That's right.

Representative **CHUDOFF**. In your capacity as a Department of the Interior official why were you in such a rush to grant this patent? Why was it necessary to grant it so fast? Why did you not wait for the Appling report?

Mr. **DAVIS**. Mr. Chudoff, I covered that in my statement. I can say it again for you.

In the first place, I don't recognize that it was undue haste or that it was particularly fast. This thing had been mulled over 4 or 5 years by the Department. It became more and more apparent as you got to the bottom of it that the only real issue involved here was whether there was mineralization on these claims. The minute you established that fact, that's the end of your controversy. There either is or there isn't.

Representative **CHUDOFF**. What do you mean by mineralization?

Mr. **DAVIS**. I mean adequate mineralization to justify the showing of a patent.

Representative **CHUDOFF**. Do you mean by that sufficient mineral content of gold and lead and silver to warrant issuing a patent?

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Representative CHUDOFF. Do you mean by that sufficient mineral content of gold and lead and silver to warrant issuing a patent?

Mr. Davis. That's right.

**Representative CHUDOFF.** When you finally received the Appling report it was after you had issued a patent; is that not right?

**Mr. DAVIS.** That's when we received the typed copy, yes. We had the rest of it before that.

**Representative CHUDOFF.** Did you read the Appling report?

**Mr. DAVIS.** Oh, yes.

**Representative CHUDOFF.** Did you read those paragraphs under "Geology" where Mr. Appling said, on January 2, 1954:

The rocks underlying the claim area are principally rhyolite flows, with minor amounts of andesite in the north and northwest claim area. Volcanic agglomerate is common on many of the claims. Alteration is extensive in places in the eastern claim area. No outstanding fault or flexure was noted.

Pyrite is visible in minor quantities in most of the rhyolite exposures and galena was observed in some places. Panned concentrates made from discarded sample splits showed pyrite and a larger amount of magnetite. Apparently the gold is associated with the pyrite. No free gold was noted megascopically.

Is not pyrite known as fool's gold in the mining parlance?

**Mr. DAVIS.** I don't know.

**Representative CHUDOFF.** Is it not true that pyrite has only a very small amount of gold content, not sufficient to warrant mining an ore at that particular point?

**Mr. DAVIS.** I don't know anything about pyrite. I can't tell you, sir.

**Representative CHUDOFF.** If you had read the Appling report would it have had any influence upon your decision to grant patent, if you had received it before you granted patent?

**Mr. DAVIS.** No.

**Representative CHUDOFF.** You have been doing a lot of talking about mineralization, Mr. Davis. You must have felt that there was sufficient gold or silver in the mineralization to warrant a patent, did you not?

**Mr. DAVIS.** I did, yes.

**Representative CHUDOFF.** And did you consult anybody about that?

**Mr. DAVIS.** Well, it's all through the documents here. It gives you a pretty good idea as to what there ought to be there.

**Representative CHUDOFF.** The answer is you did not consult anybody?

**Mr. DAVIS.** Well, I consulted the record.

**Representative CHUDOFF.** Only the record?

**Mr. DAVIS.** You mean did I sit down and talk to some mining people about the mineralization? No.

**Representative CHUDOFF.** Did you talk to Mr. Bradshaw, the mining expert of your Department?

**Mr. DAVIS.** No, I don't think I did.

**Representative CHUDOFF.** Do you not think that since there was a controversy such as existed at that time that you should have discussed it with your counsel who is an expert on mining laws?

**Mr. DAVIS.** Well, I don't think there is any controversy about the law, Mr. Chudoff, at all. I think the question is a purely factual question of what content of gold there is at these discovery points, and that is a matter for the assayer. You might be interested to know, incidentally, that there have been hundreds and hundreds of these mining claims allowed without any assays at all just because somebody made up their mind, long before my day, but somebody made up

their mind as a matter of judgment that there were probably paying minerals on the claim because they made some kind of a strike or other so the mining claim was allowed.

Representative CHUDOFF. And you felt that under the circumstances you were competent to determine in your own mind and render an opinion that there was sufficient gold and silver in these minerals to warrant granting of a patent?

Mr. DAVIS. That's what I thought.

Representative CHUDOFF. You said that you had received, I believe, numerous inquiries concerning this matter personally from the Congressman from Oregon. Did you receive any inquiries personally from any other Congressman?

Mr. DAVIS. Oh, I don't know that I did. I have read into the record already all of the correspondence, I believe, from Members of either House of the Congress that had accumulated through the years about this thing.

Representative CHUDOFF. I am talking about whether you received anything personally, not from some other member who wrote the previous administration.

Mr. DAVIS. No, I don't recall any.

Representative CHUDOFF. There was also some testimony about the question of how much ore had been sent to the American Smelting & Refining Co. for refinement, and the question was also raised that it might have been sent to other companies.

Mr. DAVIS. Mr. Appling testified that he was in the neighborhood of the mine at least from 1950 to 1955 when he was transferred to Spokane, Wash., and he said that there was no mining at all either on contested or uncontested claims. I believe that there are other facts in the record to show that there was not any mining at all on either of those contested or uncontested claims by the Al Sarena Mining Co. or its predecessors in title after 1943.

Mr. DAVIS. 1943, that's right.

Representative CHUDOFF. If there was the mineralization, and the gold and silver and lead in these minerals that you felt was sufficient to allow you in your opinion to grant a patent, why would you think that the property had not been mined since 1943?

Mr. DAVIS. That might not be mined for any one of a hundred reasons. Among others, of course, there was a clamp down on gold in 1943, but in addition to that, as we have been through 2 or 3 times, marketing conditions may be such, capital requirements for investments in machinery may be such, personnel may be such—as a matter of fact, the statement is made repeatedly through here that the actual reason this mine was closed down was because there was not any labor left up in Oregon to operate it. I don't know whether it is true or not.

Representative CHUDOFF. It might be said that there was more profit in cutting the timber off the land than mining the minerals?

Mr. DAVIS. It wasn't in 1943 apparently.

Representative CHUDOFF. However, your patent was given in 1954 when it was quite profitable.

Mr. DAVIS. That's right.

Representative CHUDOFF. Do you not think, Mr. Davis, if the cutting of the timber off that land was not so profitable you would not have had so much pressure on you to grant this patent?

Mr. DAVIS. I have no way of knowing that. I only say to you, as I have said repeatedly to the committee, that the amount of timber on that mining claim is not a material factor in the decision of whether a patent should be issued. It just isn't.

Representative CHUDOFF. You stick to that conclusion even though—

Mr. DAVIS. I stick to that—

Representative CHUDOFF. Let me finish. Even though you know there has not been any mining in the Al Sarena mine since 1943?

Mr. DAVIS. Certainly I do. I have not changed the law. It has not been changed at all. It is still just where it was.

Representative CHUDOFF. Of course, you could not have any ore smelted unless you send it to a refinery; is that not right?

Mr. DAVIS. I expect that's right.

Representative CHUDOFF. And there has not been any mining since 1943, so there could not have been any ore sent to a refinery.

Mr. DAVIS. I expect that's true.

Representative CHUDOFF. That is all.

Senator NEUBERGER. Mr. Chairman.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. Mr. Secretary, you mentioned the Cameron case. I would like to include for the record an analysis of the Cameron case, prepared by Mr. Stewart French, the Chief Counsel of the Senate Interior Committee. I will not read the entire thing because it is quite long, but I think several things in there will serve to indicate that the Cameron case is not on all fours in any way with the situation here. I will not go into detail, but I think it is significant to call your attention to two things.

In the first place, you have said that one of the reasons you handed down this decision so quickly was the fact that this had gone on so long. Yet the Cameron case, which you yourself introduced in your testimony, went on for about 9 or 10 years.

Mr. DAVIS. I shouldn't be surprised. Many of these go on a long time.

Senator NEUBERGER. However, you were the one who brought up the Cameron case. So far as I am concerned I had never heard of it.

Let me read you the conclusion of Mr. French on the Cameron case:

In summary, it can be observed that in neither of the reported Cameron cases nor in the reported decisions of the Interior Department relating to the case does there appear any basis for a statement that the case is authority for the referral of land patent applications to bureaus in the Department of the Interior other than the Land Office, which is the predecessor of the Bureau of Land Management. In neither of the reported court cases, nor in reported decisions of the Interior Department relating to public lands bearing upon the case, is there any evidence or even any suggestion that any evidence was taken before any officer of the Department of the Interior other than the "Land Department." Nor is there evidence or suggestion that the Secretary considered any evidence other than that adduced at the hearing at which both sides were present and permitted to participate.

That is signed "Stewart French, Committee Counsel" of the Senate Interior Committee.

In other words, you introduced the Cameron case as support for what you did. Yet Mr. French who has analyzed the case concludes that actually it is quite to the contrary.

I will submit Mr. French's entire brief for the record, if I may, Mr. Chairman.

Senator SCOTT. Yes.

(The brief referred to follows:)

UNITED STATES SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
January 30, 1956.

Memorandum to: Senator Richard L. Neuberger,  
From: Stewart French, Committee Counsel.  
Subject: The Cameron case,

In discussing his withdrawal of the Al Sarena case from the Bureau of Land Management and its referral to the Bureau of Mines, Under Secretary Davis stated:

"I am informed of one instance in which this very question of the amount of mineralization on mining claims was referred to the Geological Survey, in the leading case of *United States v. Cameron*, involving mining claims on the Bright Angel Trail in the Grand Canyon. In that case the Secretary referred the matter to the Geological Survey, and, I am informed, determined to follow the report of that agency, and was affirmed by the Supreme Court of the United States." (Pp. 24, 25, prepared statement.)

Careful reading of the Opinions of both the Supreme Court and the Circuit Court of Appeals for the 9th Circuit (found in 250 Fed. Reporter 943) fails to reveal any mention whatever by either tribunal of hearing before or findings or rulings by the Geological Survey. In fact, the authority of the "Land Department" is not only stressed, but referred to as "exclusive." The ruling of the Circuit Court, which was upheld by the Supreme Court, states:

"But on the hearing of Cameron's application much testimony on the part of the claimant, as well as on the part of the Government, appears to have been given before the officers of the Land Department respecting the character of the land applied for, and its location, some of it of a conflicting nature, *the decision of which questions was not only within the jurisdiction of the Land Department, but within its exclusive determination.*" (250 Fed. Reporter 946.) [Emphasis supplied.]

The decision of the District Court for the District of Arizona, which also held for the Federal Government's position, apparently is not reported. But in a voluminous statement of the facts made by the presiding judge of the circuit court in the headnote to the Circuit Court's Opinion, there is no mention whatever made of any agency of the Government other than the Secretary of the Interior and "the General Land Office."

In discussing his withdrawal of the Al Sarena case from the Bureau of Land Management and its referral to the Bureau of Mines, Under Secretary Davis stated:

"In its statement of facts, the circuit court reported: ' \* \* \* after due and proper notice to said Cameron a hearing was had, at which he appeared and introduced evidence in support of his alleged claim and his application for a patent thereto, and that thereafter, and on February 11, 1909, the Secretary of the Interior, *after full consideration of the evidence taken at such hearing* held that no discovery of minerals had been made within the boundaries of the said alleged Cape Horn lode mining claim, and that the land embraced therein is not mineral in character \* \* \*.' (250 Fed. Reporter 944.)" [Emphasis supplied.]

The facts of the case, stated briefly, appear from the two reported Opinions and the reported Departmental Decisions, to be:

One Cameron and others were claimants to a mining location on the rim of the Grand Canyon, then a part of the national forest. Subsequent to the date of their asserted location of the mining claims, the lands were withdrawn as a national monument also. Cameron and his associates refused to vacate the land and continued to operate a livery stable on it. The Federal Government brought suit to enjoin further occupation and use.

The statement of facts by the circuit court discloses that Cameron filed an application for patent on his claim; that "after due and proper notice" a hearing was held by Land Office officials in the field; and that "after full consideration of the evidence taken at such hearing," the Secretary of the Interior sustained the findings of the Land Office ruling that there had been no mineral discovery and that the lands embraced within the claim for which patent application had



been made were not mineral in character. The patent application was therefore denied.

(In view of the charges of excessive delay in the Al Sarena case, the chronology of the Cameron case may be of interest. The patent was applied for on May 17, 1905. The Secretary of the Interior denied the application on February 11, 1909. On April 3, 1912, the General Land Office declared the decision of the Secretary of the Interior, namely, that of February 11, 1909, to be final, and annulled the location of the mining claim. On July 28, 1914, Cameron filed a second application for a patent. On August 4, 1915, the Secretary denied the second application, holding that the claim had no legal existence.)

In its Opinion, the Supreme Court cited as one of the grounds for appeal the appellants' contention that "although the Secretary had ample authority to determine whether Cameron was entitled to a patent, he was without authority to determine the character of the land or the question of discovery, or pronounce the claim invalid." In ruling against this contention, the Supreme Court said:

"Of course, the Land Department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government, it does have power after proper notice and upon adequate hearing, to determine whether the claim is valid and, if found to be invalid, to declare it null and void."

The Court goes on to say that "due process in such cases implies notice and hearing." The Court quotes with approval the case of *Cosmos Exploration Co. v. Gray Eagle Oil Co.* (190 U. S. 301, 308) in which it was held "there can be, as we think, no doubt that the general administration of the Forest Reserve Act, and also the determination of various questions which may arise thereunder before the issuing of any patent for the selected lands are vested in the Land Department."

#### CONCLUSION

In summary, it can be observed that in neither of the reported Cameron cases nor in the reported decisions of the Interior Department relating to the case does there appear any basis for a statement that the case is authority for the referral of land patent applications to bureaus in the Department of the Interior other than the Land Office, which is the predecessor of the Bureau of Land Management. In neither of the reported court cases, nor in reported decisions of the Interior Department relating to public lands bearing upon the case, is there any evidence or even any suggestion that any evidence was taken before any officer of the Department of the Interior other than the "Land Department." Nor is there evidence or suggestion that the Secretary considered any evidence other than that adduced at the hearing at which both sides were present and permitted to participate.

STEWART FRENCH, *Committee Counsel*

Mr. DAVIS. May I have the privilege of commenting on that?

Representative HOFFMAN. Before he goes into that may I have the usual overruled objection that it is hearsay, Mr. Chairman?

Senator SCOTT. Go ahead.

Representative HOFFMAN. Thank you.

Mr. DAVIS. Senator, in the first place I have never said that the Cameron case was on all fours with the case that we are talking about.

I said that in the Cameron case, because of difficulties—I know not what—Mr. Ballinger, who was the Secretary of the Interior, called upon the Geological Survey to make him a report on the mineralization of the claims in the Cameron case and that they did so, and that he stood on the report of the Geological Survey in the decision which was rendered. That is all I said, and that, I think, is true.

However, since you have raised it again I think you will be interested in the letter which Mr. Ballinger wrote to the Director of the Geological Survey on January 9, 1911. Here it is:

#### THE DIRECTOR OF THE GEOLOGICAL SURVEY.

SIR: Four mining claims located on or near the Bright Angel Trail in the Grand Canyon of the Colorado River and embraced in mineral applications 714, 715, and 716, filed by Ralph H. Cameron in the Phoenix, Ariz., land district, and

known as the Magician, Wizzard, Golden Eagle, and Cape Horn lode mining claims have been made the subject of hearing and of several decisions by the General Land Office and this Department and the case is now pending before me upon motion for review, filed on behalf of the mineral applicant. The evidence submitted at the hearings had in this case is conflicting with respect to the mineral or nonmineral character of the several locations involved and is meager in geological and mineralogical details. In the further consideration of the case, I would like to have for my information and on behalf of the Government, which is always an interested party in cases involving the character of public lands, the findings of a competent and experienced geologist based upon an impartial and thorough field investigation of each of the claims.

I have, therefore, to request that you select a thoroughly competent mineral expert and direct him to make a careful and exhaustive field examination of each of the claims involved and submit to me, through you, a full report as to the said claims involved, taking into consideration any discoveries or disclosures made upon the claims in workings constructed by applicant or others, surface croppings, or indications, if any there be, geological formation and any and all facts bearing upon or evidencing the mineral or nonmineral character of the claims.

For the use of the party designated by you in making the examination, I enclose herewith the official plats of survey of the four claims mentioned, also a blueprint showing the location of the claims with respect to the Bright Angel Trail and the station grounds of the Grand Canyon Railway Co.

Very respectfully,

(Signed) R. A. BALLINGER, *Secretary*.

Senator NEUBERGER. That will be submitted for the committee, I hope.

Mr. DAVIS. I would like to submit it right now.

Representative HOFFMAN. May I put on the record my objection to the submission of this memorandum by Mr. French, which is a comment by one witness on the testimony of another, which is improper, and also that in any matter of this kind the witness should be required, that is, Stewart French, committee counsel, to appear before the committee so that we may test his ability, his recollection, and also examine him as to other cases.

Senator NEUBERGER. I would like to object to this intrusion on our time.

Representative HOFFMAN. Squawk. You get more in the record and more time than anybody else.

Senator SCOTT. Senator Neuberger.

Senator NEUBERGER. I would like to ask why you did not follow that procedure. Why did you not have a reputable man from the Bureau of Mines do just what the previous Secretary did, have the Geological Survey do it?

Mr. DAVIS. I think that's what we did.

Senator NEUBERGER. You did have them do that?

Mr. DAVIS. I think they did substantially the same thing; yes.

Senator NEUBERGER. You think there is no difference?

Mr. DAVIS. I don't think there is very much, Senator, no.

Senator NEUBERGER. And the claimants had to agree to the assay laboratory and so on?

Mr. DAVIS. I don't think that affects the integrity of the Bureau of Mines. The fact that they agreed with the claimant on the assay house, I just don't think—I'm not willing to admit at least—it affects the integrity of the Bureau of Mines.

Senator NEUBERGER. You have complete faith in the integrity of the Bureau of Mines?

Mr. DAVIS. I think so.

Senator NEUBERGER. You so testified the other day.

Mr. DAVIS. I so testified.

Senator NEUBERGER. Did you know that the Williams Co. assay was contrary to an assay made by the Bureau of Mines at Albany, Oreg.?

Mr. DAVIS. I wouldn't say that. I think you are overstating it. I would say that you had seven assays—we are talking here about 15 or 20 claims—from the Bureau of Mines taken by Mr. Hattan, all by himself as I recall, and delivered by him by automobile to the Bureau of Mines, all of which showed exactly the same traces that were shown in the original Annes assays which he had made and which he himself apparently distrusted because he probably had some others made. I will say that.

Senator NEUBERGER. Again I am asking you the question, the Williams Co. assay did not agree, is that not true, with the Bureau of Mines assay at Albany?

Mr. DAVIS. That is true, and no two sets of these assays agree with each other.

Senator NEUBERGER. In other words, you stated many times your faith in the integrity of the Bureau of Mines, but you allowed this one assay from Alabama to overrule Abbit Hanks, Annes Laboratories, and the Bureau of Mines laboratories?

Mr. DAVIS. I don't think that's a fair statement because you have some assays in there from Abbit Hanks that run \$6, \$8, \$9 a ton that Mr. Hattan himself reports.

Senator NEUBERGER. Were those not on the noncontested claims?

Mr. DAVIS. I don't know, and I don't think he did.

Senator NEUBERGER. That is the indication we have. Let me ask a further question if I may. You have said several times, and I have written it down as you said it, that you are totally strange to this whole thing. You said substantially that twice. When you have been asked technical questions on mining and on ores you have said, "I don't know. I shouldn't be expected to know."

Mr. DAVIS. That's right.

Senator NEUBERGER. Now, then, do you think you were qualified to decide that the Appling samples are, according to you, more representative and more dependable than the Hattan samples?

Mr. DAVIS. Because, Senator, I have just a little more faith in the way in which they were taken, a little more feeling of security in the way in which they were taken. The ones were taken rather informally, most of them by one man alone. The others were taken in conjunction with parties of both the Bureau of Mines and the claimants, and according to the testimony and according to what I was informed they were carefully pulverized and they were carefully shipped to the assay house. There was a great deal more care taken with those than of any other sets of assays, no matter whose they were.

Senator NEUBERGER. Despite your lack of familiarity with these technical questions you think you are qualified to say that the Appling samples are more dependable and more representative than the Hattan samples?

Mr. DAVIS. I think I am qualified to say that.

Senator NEUBERGER. Is it not true that the Hattan samples were taken at one time in the presence of the caretaker at the mines and in another instance in the presence of the McDonalds?

Mr. DAVIS. Yes; I think that's true.

Senator NEUBERGER. Then you said that he took them by himself. Mr. Hattan testified under oath—

Mr. DAVIS. Just a minute. I don't know who the caretaker of the mine is. I don't know whether he knows anything about mining or not. So far as any technical knowledge is concerned, I would say they were taken by Mr. Hattan on his own. His caretaker may have been with him and may have helped him—I don't know what your record shows—but I assume the caretaker is not a mining engineer.

Senator NEUBERGER. Mr. Hattan testified in Portland—he was referring to whom was with him—as follows:

Mr. W. C. Sanborn, from San Francisco, came to assist me in this second examination.

That is the Forest Service maybe.

Then both Charles and H. P. McDonald were present.

Mr. REDWINE. They belonged to the owner group of McDonalds?

Mr. HATTAN. Yes, sir; they were the agents for the applicant. They went along with us in making our second series of samples. That was the first series for Mr. Sanborn, but the second for me.

Mr. COMBS. You say they were the agents of the corporation. Were they not also officers of the company?

Mr. HATTAN. I believe they were, but they were representing the company so far as we were concerned. They pointed out the places where the discoveries were supposed to be and we took samples in every case at places pointed out.

Representative HOFFMAN. And for 10 days, between the 16th day of July and the 26th, they lay around in the back of the car under nobody's custody.

Senator SCOTT. Go ahead, Senator.

Senator NEUBERGER. Mr. DAVIS, does not that indicate to you that Mr. Hattan took the samples in the presence of representatives of the claimant, indeed the claimants themselves?

Mr. DAVIS. That's what he says, so I suppose that is true, surely.

Senator NEUBERGER. You mean you do not believe what Mr. Hattan said?

Mr. DAVIS. I didn't say that. I said that is what he testified to and I assume it is the truth.

Senator NEUBERGER. Then how can you cast a lack of credit to his samples, as you have done?

Mr. DAVIS. Your record, Senator, indicates what Congressman Hoffman has just finished saying, for one thing, although you must recognize that I didn't know that at the time, but these samples, as I understand it, were kicked around pretty loosely. They took a ride in the car and they stayed there for several days and they were delivered to somebody who, so far as this record shows, is still unidentified, in California—I believe the gentleman's name was Gray; I believe we know that unofficially, but officially I do not think it is even in the record—and were delivered by him over to Abbit Hanks, and I just don't think, Senator, that there is anything like the extreme care used in that process that was used in the samples that were taken under the supervision of the Bureau of Mines.

I am not casting aspersions on them or on anybody. I am just saying I just don't think they were as carefully taken, as carefully guarded, as were the others.

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Senator NEUBERGER. Inasmuch as you seem to lack faith in the way in which Mr. Hattan handled the samples, why did you quote favor-

ably in your opinion his judgment as to the eight uncontested claims? Would not this poor handling prevail with those samples too?

Mr. DAVIS. Not necessarily. As a matter of fact, as I have already pointed out, when you get right down to it there are still, while there is a general conceding by everybody, including the Forest Service, that these original eight claims are heavy enough mineralized to justify patent, when you get right down to it they are still not affirmative assays, labeled to each one of these particular claims, with anything like the particularity that the last set of samples were taken by the Bureau of Mines.

Senator NEUBERGER. Are you aware of the fact that Mr. Appling, whose samples you have such faith in, has had about 5 years' experience, by his own testimony, and Mr. Hattan has had approximately 30 years' experience.

Mr. DAVIS. Yes, I know that.

Senator NEUBERGER. Do you still doubt or question the judgment you made as between their two sets of samples?

Mr. DAVIS. I know an awful lot of old lawyers that aren't as good as the young ones, if you want to put it on that kind of a basis.

Senator NEUBERGER. Are you at all disturbed, Mr. Secretary, that since you granted final patent there has been no mining on these claims, but a substantial amount of commercial lumber operations?

Mr. DAVIS. Am I disturbed about that?

Senator NEUBERGER. Yes, sir.

Mr. DAVIS. No; I am not particularly disturbed by that. I think that it is a rather normal thing, so to speak. As a matter of fact, in the present state of the criticism, and of this investigation, and all that, I question whether anybody would go in there and undertake to develop a mine.

Senator NEUBERGER. In view of the criticism, Mr. Secretary, would they not be more likely to develop the mine than to cut timber?

Mr. DAVIS. Well, I don't know. You are talking about what motivates people and I can't always tell you about that.

Senator NEUBERGER. I cannot either, but you introduced that, as to what they might be likely to do in view of criticism, and I asked you if, in view of the criticism of this, the normal thing for them to do then would not be to operate a mine rather than to log the trees?

Representative HOFFMAN. If you would leave them money enough to do either it would be helpful.

Mr. DAVIS. I am not sure I know what the normal thing to do is.

Representative HOFFMAN. May I interrupt once more?

Senator NEUBERGER. No, you may not.

Representative HOFFMAN. I just suggest you call Mr. Redwine and have him tell you what he told Gabriel, about if they got possession of the mine they could bankrupt the McDonalds.

Senator NEUBERGER. You said the other day in your testimony that you took complete responsibility for this decision.

Mr. DAVIS. That is right.

Senator NEUBERGER. You and you alone made it and you accept that responsibility. I think you said that in effect. In addition to Mr. Ellsworth, did any other Member of the Congress of either House ever contact you personally by letter, interview you in person, or by telephone concerning these claims?

**Mr. DAVIS.** I don't remember anyone else, Senator.

**Senator NEUBERGER.** Only Congressman Ellsworth.

I want to ask you again about Mr. Hattan. Do you think it somewhat curious that only in this particular case has Mr. Hattan's, let us say, judgment and fairness been questioned?

**Mr. DAVIS.** I don't know whether that's true or not. I don't know how many times his judgment has been questioned.

**Senator NEUBERGER.** Inasmuch as you said that you had reached the conclusion that he was obviously hostile, did you not make an effort to check his professional record with a bureau of your own Department?

**Mr. DAVIS.** We went over this the other day. I was allowing this record in large part to speak for itself, and that is what I have done. I want to repeat again that I do not think Mr. Hattan was improper, was prejudiced in the bad sense of that word. I have some doubt whether I was the one who originally used the words "obviously prejudiced," but whether I was or not all I want to point out here is that in his own report the fact that he brings out the watershed point, the resources point, the thinking of that memorandum is along the line of these cases in the Interior Department which undertook to, I think, rewrite the law and determine for the Department what was the best use of the land. I think that general thinking is a little bit apparent in all of these things. You can call that prejudice. You can call it a predilection for a certain viewpoint. You can call it a political or economic philosophy. You can call it any of those things, but I have a feeling it is visible, and then when you couple with that the record that was before me, that it was Mr. Hattan who had called the attention of the Forest Service to the fact that they hadn't filed a protest, to the fact that he was in a dual capacity, representing Land Management, but also being hired by the Forest Service to make this, again I say those are just the sort of things that do not establish complete confidence.

**Senator NEUBERGER.** In other words, you feel that some of the things which he introduced into his reports were not germane?

**Mr. DAVIS.** I think that is so.

**Senator NEUBERGER.** Did you think that the material introduced into Mr. Appling's report about improvements which were not even on the contested claims was germane?

**Mr. DAVIS.** Well, that takes you up to the common improvement question.

**Representative HOFFMAN.** Mr. Chairman, point of order.

What about that 19 minutes that remained? It has been exhausted.

**Senator SCOTT.** Give him time and he will get in what he has to do.

**Senator NEUBERGER.** I beg to differ with you.

**Representative HOFFMAN.** Go ahead. I do not care personally.

**Senator NEUBERGER.** We started at 3:35 by the clock.

**Representative HOFFMAN.** I will withdraw it. Go ahead. Go ahead. I love to hear you talk.

**Senator SCOTT.** Fifteen minutes more.

**Representative HOFFMAN.** Seven minutes over.

**Senator NEUBERGER.** Mr. Jonas made the point that whoever put the improvements on the claims, whether present owners or past owners, that had no bearing; is that not correct?

**Mr. DAVIS.** I think that's right.



Senator NEUBERGER. Is it not true that you yourself in your testimony the other day, however, introduced the matter of improvements where you said, "It seems to be generally considered that there is somewhere from \$150,000 to \$250,000 of improvements on these various McDonald claims"? Is it not a fact that you brought that up? Was it not you who introduced that in the matter?

Mr. DAVIS. That's right.

Senator NEUBERGER. And you agree that that has no bearing either on whether you grant patent. That has no bearing on whether there is timber.

Mr. DAVIS. Just a minute. That isn't quite an accurate statement either. The improvements on mining claims, just to state the rule, and not get into an argument about these, but the improvements on mining claims may very well be a centralized improvement looking toward the development of other claims than the ones on which the improvement is necessarily located, so it is germane.

Senator NEUBERGER. Mr. Hattan spoke in his report, and Mr. Jonas quoted it, about the centralized mass which he found.

Do you think he was reliable in commenting on that?

Mr. DAVIS. As a general statement I would think so.

Senator NEUBERGER. In other words, is it not true that whenever Mr. Hattan says something that might be favorable to the claimants you take him as reliable; when he says something that is not favorable to the claimants you find that he is obviously hostile?

Mr. DAVIS. Well, I think that's a pretty unfair statement, Senator, but I'll pass it.

Senator NEUBERGER. I think the judgments that have been passed on Mr. Hattan today and on previous days are grievously unfair. You have admitted that you have not even consulted his record and his personal file in your Department. Yet you have overruled this veteran career employee and you have certainly cast a doubt on his fairness and professional competence, so if the question of unfairness is going to be brought up I think that should be stated for the record.

Representative HOFFMAN. Is that by way of a lecture, or one of the questions?

Senator NEUBERGER. I am about through, Mr. Chairman. I just wanted to ask one further question and the gentleman is yours.

I think one thing should be very, very clear for the record, Mr. Secretary, and that is this: Do you think you would have been better advised to have turned this all over to the Bureau of Mines to take samples and make an assay at the laboratory they chose rather than to designate the very limiting procedure which you specified?

Mr. DAVIS. I don't think you should have had any different answer, Senator, and of course you get in there the very limiting procedure which I specified, and I still insist that that is not a very limiting procedure. It's simply to hear, I don't know how, but I suppose a hundred assay houses in the United States, and everybody with a perfect freedom to pick one on which they could agree as to its competency and its fairness.

Senator NEUBERGER. You do not think you would have had a different answer?

Mr. DAVIS. You shouldn't have had.

Senator NEUBERGER. Do you agree that earlier samples assayed by the Bureau of Mines laboratory at Albany did show a different answer?

Mr. DAVIS. Well, there are seven of them here that do; yes, whatever that means.

Senator NEUBERGER. So there was a different answer at the Bureau of Mines laboratory?

Mr. DAVIS. There was a different answer on different sets of samples; yes, that's right.

Senator NEUBERGER. At the Bureau of Mines laboratory in Albany?

Mr. DAVIS. That's right.

Senator NEUBERGER. That is all, Mr. Chairman.

Senator SCOTT. Mr. Redwine.

Mr. REDWINE. Mr. Chairman, examination of the record shows that the Hattan report is not in and I suggest that it should go in at this time with the letters of transmittal.

Senator SCOTT. Without objection, they will be put in the record. Anybody who wants to look at them may do so.

(The letters and report referred to follow.)

#### DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT,  
REGION I, SWAN ISLAND STATION,  
Portland, Oreg., December 22, 1949.

Memorandum to: Director.

From: Regional administrator.

Subject: Mineral application, Oregon 0665, Oregon mineral survey, No. 879, Al Sarena Mines, Inc.

Attached hereto is one copy of a report prepared by Elton M. Hattan on the mineral application, and one copy of letter transmitting two copies of the report to the regional forester.

The land embraced within the application is all within the boundaries of the Rogue River National Forest.

JAMES L. DOYLE,  
Acting Regional Administrator.

DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
SWAN ISLAND STATION,  
Portland, Oreg., December 19, 1949.

Re Adjustments-Rogue River; Mining Claims; Mineral Survey No. 879; Mineral Application Oregon 0665.

Mr. N. J. ANDREWS,  
Regional Forester, United States Forest Service,  
Portland, Oreg.

DEAR SIR: Herewith attached is an original and one copy of a report prepared by Mr. E. M. Hattan, mineral examiner, about the field examinations and investigation of a mineral application for patent to a group of 23 lode mining claims filed by the Al Sarena Mines, Inc., H. P. McDonald, Jr., secretary-treasurer.

Also attached are papers pertinent to the application which were loaned from your files to assist in the investigation.

Sincerely,

JAMES L. DOYLE,  
Acting Regional Administrator.

DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
SWAN ISLAND STATION,  
Portland 18, Oreg., December 19, 1949.

**Re Adjustments—Rogue River; Mining Claims; Mineral Survey No. 879; Mineral Application Oregon 0665.**

Approved:

JAMES F. DOYLE,  
*Acting Regional Administrator.*

Mr. H. J. ANDREWS,  
*Regional Forester, United States Forest Service,  
Portland, Oreg.*

**SIR:** Your letter of December 15, 1948, requested our assistance in examining and making report on 23 mining claims embraced in Mineral Application Oregon 0665, Mineral Survey No. 879, in accordance with the system which has worked so successfully for you during the past 2 or 3 years. It was also requested that the examination be deferred until 1949 because weather conditions in the area made it impracticable to make such an examination during December.

A field examination was made of the group of claims during May 20-24, 1949, in company with Fred H. Altman, watchman at the mine, and samples were taken from each of the claims. The assays returned from the samples showed there was either no appreciable mineralization present, the assayer was in error, or the samples were not taken from the correct discovery places.

In order to forestall any possibility of error, Mr. H. P. McDonald, Jr., secretary-treasurer of the Al Sarena Mines, was contacted and arrangements were made for a reexamination of the claims beginning July 12, 1949. Mr. Wolfe of your office was also consulted and arrangements were made so that Mr. William C. Sanborn, mineral examiner from Forest Service Region No. 5, could also be present to assist in the examination.

The second examination of the claims was made July 12-15, inclusive, in company with Mr. Sanborn, Mr. McDonald, Jr., and his brother, Charles.

#### LAND STATUS

The claims are all situated within the Rogue River National Forest.

#### DESCRIPTION

The land embraced in the mineral application is known as the Al Sarena Mine, and is situated in northeastern Jackson County, sections 20, 21, 28, and 29 of township 31 south, range 2 east, west meridian. It is about 46 miles from Medford, 48 miles from Gold Hill, and 20 miles from the Crater Lake Highway at the mouth of Elk Creek. The first 15 miles of the road is semi-improved and along the water grade of Elk Creek. The last 5 miles is a steep, meandering forest road which was in very good condition.

The mine is situated on the slopes of a heavily timbered ridge and within the Rogue River watershed. The trend of the ridge is generally S. 15° west; its greatest elevation being about 4,200 feet above sea level at the north edge of the property and decreasing to about 3,900 feet at the south edge of the property. A tributary of Elk Creek, shown on the mineral survey plat as East Fork, is situated on the east toe of the ridge. It is approximately 700 feet in elevation below the ridge. Swanson Creek, another tributary of Elk Creek, is situated on the west side of the ridge. Its elevation is approximately 300 feet below the ridge. Both of these creeks flow southward.

The history and facts leading up to the present ownership of the mine are set forth in the application for patent and need not be repeated here. There is also a short description of the mine under the subtitle Buzzard Mine on page 131, United States Geological Survey Bulletin No. 893.

#### GENERAL GEOLOGY

A short description of the geology of the area may be found in the above-cited Bulletin No. 893, and also in a publication by the Oregon Department of Geology and Mineral Industries, Oregon Metal Mines Handbook Bulletin No. 14 C, volume II, section 2, page 195.

No intensive study of the geology was made except to note the general trend of known veins and determine in general the rock types exposed on or over the

surface of the individual claims. From an examination of the present underground development, and the various surface openings and rock outcrops, there appears to be a dome-shaped central mass, roughly 4,000 feet in diameter, which consists of volcanic breccias and rhyolite. Much of this mass of rocks is altered and bleached, and pyritized. Some of it, especially in the vicinity of the main vein, contains lead and zinc sulphide mineralization. These sulphides seem to be the carrier minerals for the gold and silver which are the principal values.

Outside of the central mass rhyolite, volcanic breccias, andesite, and other rocks—possibly phenolite andesite and/or dacite—are found outcropping. The geology of the outcrops indicates they consist of flows, dikes, and possibly sills and stocks. There is no known mineralization of value contained in the dacite or andesite rocks found on the surface, but some pyritization was noted in the volcanic breccias and some of the rhyolite.

There was no evidence of any great movement, folding or tilting, however, no bedding occurs in the rocks and this may not be entirely true.

#### MINERAL DEPOSITS

The mine development indicates there is one main mineralized vein structure and a possibility of there being 1 or possibly 2 more parallel mineralized veins. The main vein structure is in the central mass. It has a strike north  $41^{\circ}$  west, and its dip is vertical to  $85^{\circ}$  northeast. The country rock in the vicinity of the vein, consisting of volcanic breccias and rhyolite, is generally altered, bleached and pyritized. Some of the rock appears to be fresh, but generally, it is altered and intersected by many small seams, all of which contain disseminated pyrite.

The main vein has been explored and developed by two main levels, tunnel No. 1 at about elevation 3,675 and tunnel No. 2 at about elevation 3,450. Tunnel No. 1 is driven into the ridge from the Swanson Creek side and tunnel No. 2 from the Elk Creek East Fork side. They have been connected by step raises and stopes in the vein which average, according to reports, about  $2\frac{1}{2}$  feet wide. The application for patent indicates that ores to the value of \$30,000 to \$40,000 have been mined, milled, and sold, prior to April 1943; when development work in the mine was discontinued.

The main vein has also been explored in tunnel No. 5 on the Elk Creek East Fork side of the ridge and tunnel No. 6 on the Swanson Creek side, both at elevation 3,800, more or less. There are various cuts and trenches on the surface which indicate the surface trace of the vein.

Tunnel No. 3 in the southwest corner of the Telluride claim and tunnel No. 4 on the lode line of the H. McKenzie claim appear to be mineralized zones more or less parallel to the main vein. Little work has been done along these zones and they may be nothing more than local mineralizations. It was reported that a pocket of dendritic gold was found in tunnel No. 3. The main vein appears to be a zone of enrichment which is from 3 feet to possibly 100 feet wide. Mining by stoping between the two levels, tunnels Nos. 1 and 2, from 1939 to April 1943, was confined to a narrow width. About tunnel No. 1, where mining was carried on many years ago, the apparent higher grade portion of the vein is defined by definite walls which are caused by narrow parallel gouge seams. The distance between the walls of this old stoped area was estimated to be  $2\frac{1}{2}$  feet. Although the ground in either direction from the higher grade zone is mineralized to an unknown distance, samples indicate its grade is low. Apparently the mining in years past, as well as pilot milling tests carried on from 1939 to March 1945, was confined to the narrow width, because the grade was not sufficiently high to warrant mining and milling the material in small scale operations.

The main vein is intersected by a north-south fault-vein, which cuts the vein and offsets it. The offset was reported to be about 30 feet. This fault-vein, discussed as the North Drift in the application for patent, and reported in Oregon Metal Mines Handbook, Bulletin No. 14-c, "is composed of rhyolite breccia, from 3 to  $3\frac{1}{2}$  feet wide, together with a persistent narrow gouge seam. Walls of the vein are not as clearly defined as those of the main vein and the accompanying gouge does not contain such a large amount of sulphides. This vein is apparently a fault fissure and contains circulating water." Samples were taken by the applicant company and assayed and the vein was found to carry appreciable amounts of gold and silver.

The drift on this fault-vein is plotted incorrectly on the mineral survey plat. It is shown on the plat as having a direction approximately north  $45^{\circ}$  east. Its direction is about north  $4^{\circ}$  west, as determined from a map supplied by the

applicant. The fault-vein is also intersected by a southwest crosscut driven in the Mark Applegate claim. This crosscut was driven from tunnel No. 2 for a distance of 160 feet. It intersects the Mark Applegate northeast end line about 135 feet from its corner No. 3. It intersected the fault-vein at a distance of 110 feet from its initial point.

Mr. D. Ford McCormick, mention of whom was made in the application for patent, stated in a report to the applicant company, that, "Practically the entire mass of so-called rhyolite is mineralized. Pyrite and pyrrhotite with some galena and sphalerite can be detected with a lease occurring as crystals or small grains, sometimes thickly grouped, then again scattered. Where the stringers occur the values rise. Shattered zones and banded structure also show higher values." McCormick, in quoting Otto Ellerman's findings, says that where fine grained galena is present the values are highest. McCormick also reported in a report dated July 15, 1937, to the company, that samples from outcrops, from numerous places, over the claims showed mineralization without exception. Small crystals of pyrite, pyrrhotite, galena and sphalerite are present, scattered more or less through the rock. At some locations narrow stringers occur with kaolin gouge containing a higher proportion of small grains of galena, and where this occurs high grade gold and silver samples are found. Where the stringers and fissures are numerous, the enrichment makes milling ore.

He went on to say that insufficient developments have been done to prove a large body of milling ore; several blocks of \$4 to \$5 ore are indicated, and some higher values are present; but aside from one possible zone (roughly 400 feet long by 400 feet high, with varying widths from 3 feet to 50 feet or more) only partially developed, practically no other work has been done to more than expose small areas with promising assays.

McCormick went on to say that the property has additional advantages of promising a large volume of low-grade ore, if sufficient enriched zones, similar to the one the present work has been done in, can be established. And says, if the samples assayed and listed as handed to me and shown on the attached sheets and blueprints are correct, there are several excellent showings that should be investigated without delay. He suggested investigating the region around tunnel No. 3; the cliff and banded structure south of tunnel No. 5, both at the crest and below where excellent samples are shown; the region near the portal of No. 1 tunnel; and shafts, channels, and tunnels on the west side and north of tunnel No. 1. He stated that if these locations show good assays, there would be little doubt but that important mining operators would show a decided interest in the development of the Al Sarena Mine. Then goes on to say that there is not sufficient exposure of milling ore at present to warrant the consideration of a mill other than a pilot mill, and from a study of the assay map, it does not appear as though there is any hope of operating profitably a 50- to 75-ton mill continuously from ore to be mined from the available stopes at the present time.

As far as could be determined the suggestions about investigating the certain areas named above were never carried out, and no other highly mineralized areas or veins were investigated other than those already known, when McCormick's report was written. The ore which was put through the pilot mill came from stopes on the main vein, some material taken from the southwest crosscut in the Mark Applegate claim driven from No. 2 tunnel, and from the north drift which was advanced about 230 feet from the No. 2 tunnel, on the strike of the above-mentioned fault vein.

Concentrates made by the pilot mill which was operated from 1939 to March 1943 were shipped to the American Smelting & Refining Co.'s Selby smelter. From one of these shipments which were concentrated 20:1, the metallurgist calculated the average value of the mill heads for that particular shipment. The per-ton mineral content of the mill heads, which would be the mine run, was calculated to be: lead, 0.58 percent; zinc, 1.23 percent; gold, 0.032 ounces; and silver, 0.79 ounces. The value of this material in dollars and cents, based on present prices: gold, \$35; silver, 71 cents; lead, 15 cents; and zinc, 10 cents, is \$5.88 per ton.

#### PILOT MILL TESTS

A pilot mill was constructed by the company and tests for a metallurgical flow sheet were conducted from construction until about April 1943, when the mill was closed down because of inability to secure needed materials and labor. It was reported that the tests showed the feasibility of concentrating the ore on a 20 to 1 ratio with good recovery and separation of the minerals into four products, i. e., lead, zinc, and iron sulfide concentrates, and tails.

The lead and the zinc concentrates contain the greater portion of the gold and silver, but a small amount of these precious metals comes down with the iron sulfide concentrate. The iron sulfide, when separated from the lead and zinc sulfides by gravity concentration, can be cyanided and any values in gold which it does contain can be recovered. It was found, however, that this is a fairly expensive process because of a tendency of the concentrates to slime.

The pilot mill was constructed to determine if the ores could be concentrated, but no information was available which would show the minimum grade of material which could be mined, concentrated, and sold at a profit. Whether an operation is large or small there is obviously a low point in grade of material which can be handled through any mill at a profit.

The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined, and milled at a profit by low-cost, large-scale mining methods. The topography is such that any 1 of 3 methods might be employed, i. e., glory holing, shrinkage system, and open-pit mining.

#### MINERAL DISCOVERY CLAIMS

The applicant company supplied one copy of its available assay maps. These maps show that a large number of samples were taken and assayed prior to 1937, and as well, numerous other samples were taken and assayed up to the time operations ceased. The old pulps were still on hand and two such pulps were taken and assays made of them for a check on the results shown on the maps. Samples were also taken to check the sampling. The results of the check samples and assays show that in general, the assays shown on the maps may be assumed to be correct. The stopes from which ore was mined for the pilot mill are all within the boundaries of the H. McKenzie claim. The fault vein described above, is situated in both the H. McKenzie and the Mark Applegate claims.

Mr. McDonald, Jr., stated that he had complete confidence in the assaying ability of Abbot A. Hanks, Inc., of San Francisco, Calif., as an assayer. The questionable results reported by Annes Engineering Co., Grants Pass, Oreg., on samples left there for assaying, were checked by sending two pulps of sample rejects to Abbot A. Hanks for a confirmatory assay. The results obtained were the same in each case.

#### H. M'KENZIE CLAIM

The calculated value of the ore in the stopes on this claim is from \$3 to \$20 per ton. The calculated value of mill heads made from one shipment of concentrates, which was described above, was \$5.88 per ton.

#### MARK APPLEGATE CLAIM

The southwest crosscut from No. 2 tunnel is extended into this claim and therein intersected the north-south fault vein. The average value of 2 sets of samples taken from this crosscut and shown on the applicant's assay map was \$1.74 for 18 assays in 1 group and \$2.85 per ton for 19 assays in another group. The assays range from \$0.57 to \$14.14 value in gold and silver per ton. Two groups of samples taken in the fault vein, but within the boundaries of the H. McKenzie, average \$4 for 9 samples and \$1.68 for 11 samples. The indications are that commensurate values may be found within the fault vein in Mark Applegate's ground.

#### A. W. DAHLBERG CLAIM

No. 2 tunnel portal is on this claim and the tunnel intersects several hundred feet of the ground. The assay maps show that two samples were taken in the main tunnel at the crosscut which is about 40 feet from the portal. The average value shown is \$9.47 per ton in gold and silver. A group of 5 samples are shown to have been taken at the turn in the tunnel which is about 450 feet from the portal; the average value of those 5 samples was calculated to be \$5.83 per ton in gold and silver.

#### PETER APPLEGATE CLAIM

The assay map shows that a group of 4 samples was taken near the portal of No. 1 tunnel; the average of these 4 assays is \$3.95 per ton in gold and silver. They range in value from \$0.34 to \$7.92 per ton. The rock is considerably sheared

in this vicinity. Also on the map is shown a single assay of \$3.19 per ton. The sample was taken from a point in the tunnel which is 420 feet from the portal and in a vertical shear zone.

#### ORO REAL CLAIM

The No. 8 tunnel shown on the survey plat was evidently driven to try and intersect the main vein on its northwest course. The rock is light gray altered rhyolite containing disseminated pyrite. Applicant's samples Nos. 834 through 837 have an average assay value of \$1.07 per ton.

A sample was cut from the side of the wall in the tunnel at a distance 5 feet from the portal. This sample was assayed by the Annes Engineering Co., Grants Pass, Oreg. The result was gold, trace; silver, trace. A trace in gold means the value is less than 17 cents per ton, and a trace in silver means the value of that metal contained in the sample is less than 7 cents per ton.

Heretofore in this report when Annes Engineering Co. is referred to, it will be shown as AEC.

#### ORO RICO CLAIM

The improvements on this claim all situated within 250 feet of the southeast end line. The most extensive work was found in the improvement marked "tunnel" on the survey plat. On the applicant's maps this tunnel is designated "tunnel No. 9." A crosscut to the left inside the tunnel portal, intersected and followed a vein structure which has a strike N. 42° W., and dips 74° toward the northeast. The vein structure was about 28 inches wide and shows movement and gouge on the footwall. The wall rock, as well as the vein and gouge, contains disseminated pyrite and pyrrhotite. A sample was cut across 28 inches in the vein structure and taken by Mr. Sanborn to Abbot A. Hanks, Inc., 624 Sacramento Street, San Francisco, Calif., for assaying. The assay report shows the sample contained \$0.70 in gold and \$0.34 in silver, total \$1.04 per ton. Geologically, the vein may be on the extension of the main vein.

The contact between andesite and rhyolite is a short distance up the slope from the tunnel. This contact is probably the northwest limit of the above-described central mass of volcanic breccia and rhyolite.

#### ORO ALTO CLAIM

The whole surface of this claim, northwest of the road which crosses it, is andesite. The discovery shaft is in nonmineralized andesite. Down the steep slope from the road in the southeast corner of the claim, three of the improvements listed in "Improvements" were found. Highly altered rhyolite and andesite were found in these cuts. They are apparently on or near the contact of the central mass and an andesite flow.

On May 20, 1949, a sample was cut from a freshened surface at the end of the largest cut. It was taken to AEC for assay and the results were gold, trace; silver, trace.

On July 12, 1949, a second sample was taken from the same cut. On this occasion, the cut was extended and a hole was dug in the face to get more depth. The sample was cut by Mr. Sanborn and taken by him to Abbot Hanks in San Francisco for assaying. The results were gold, \$3.32 per ton; silver, \$0.05 per ton; total, \$3.37 per ton.

The applicant's sample submitted with exhibit I of the application for patent indicates a value of \$1.75 per ton.

#### COUGAR CLAIM

The improvements along the centerline of the claim disclose highly oxidized, leached, and broken rhyolite. On May 20 a sample was cut from the material exposed in the discovery shaft and taken to AEC for assay. The results reported were gold, trace; silver, trace. A solid outcrop of rhyolite was found exposed at a place about 150 feet north from the discovery shaft. A sample was picked from the outcrop and taken to AEC for assay. It also assayed gold, trace and silver, trace.

On July 13, the second visit to the property, a sample was cut from an outcrop of rhyolite exposed in a road cut which is 75 feet north from the centerline of the claim. This sample was taken by Mr. Sanborn to Abbot Hanks for assay and the results were: gold, \$0.17 per ton; silver, none. A second sample was taken by a representative of the applicant from the wall of a small tunnel, shown on the survey plat to be situated on the south side of the

the claim. This sample was also taken by Sanborn to Abbot Hanks. The reported assay results were: gold, trace; silver, none.

Abbot Hanks reports that a reported trace in gold is less than \$0.17 per ton and trace in silver is less than \$0.01 per ton.

#### J. W. MERRITT CLAIM

All of the improvements in the centerline of this claim are below the forest road and all exposed fragmental rocks, volcanic breccia or rhyolite. These rocks are all highly oxidized and there was little visual evidence of any mineralization.

On May 20 a sample was shipped from the face of the discovery cut. The material was very hard and brecciated but showed some iron staining. This sample was taken to AEC for assay and the returns showed: gold, trace; silver, trace.

On July 12 a second sample was taken in the face of the same cut by Mr. Sanborn. He took the sample to Abbot Hanks for assay and the returns were: gold, \$0.35 per ton; silver, none. An outcrop of banded rhyolite was found in a road cut which is situated 85 feet southerly from the northeast end line of the claim. A sample of the rock which showed pyrite mineralization was cut and taken by Mr. Sanborn to Abbot Hanks for assaying. The returns were: gold, trace; silver, none.

#### HENRY APPLIGATE CLAIM

The discovery shaft situated at the extreme northeast end of the claim is on the west slope of a very steep ridge. The material exposed is leached, highly oxidized material, probably rhyolite. In May 1949, a sample was cut from the material exposed in the shaft and taken to AEC for assay. The results reported were: gold, trace; silver, trace. At a point 75 feet west from the discovery shaft an outcrop of fairly fresh rhyolite containing some pyrite was found. This was also sampled and the sample taken to AEC for assaying with the same results as just described.

During the July visit to the property, Mr. Sanborn cut a sample from an outcrop of highly siliceous, light-gray feldsite which was found on the slope of the mountain. The outcrop is situated 200 feet in a S. 30° W. direction from No. 2 corner of the claim. The sample was taken to Abbot Hanks for assaying and the results reported were: gold, trace; silver, trace.

#### DELIA M'KINNON CLAIM

The rock exposed in the discovery cut and along the road near cut No. 5, described in the statement of improvements, is a volcanic agglomerate or breccia, which is very compact and hard. There is also some rhyolite exposed in the road cuts in the southwest portion of the claim.

During the May visit to the property a sample was taken from face of the discovery cut. It was assayed by AEO and the results reported were: gold, trace; silver, trace.

During the July visit Mr. Sanborn, along with representatives of the applicant company, cut a sample from the same kind of rock which is exposed in cut No. 5 which is listed in the statement of improvements. This sample was assayed by Abbot Hanks and the results reported were: gold, trace; silver, none.

Subsequent to the second visit, Mr. McDonald stated in a letter that he went back to the discovery cut and cut another sample which he took to Abbot Hanks for assaying. The assay results reported by Abbot Hanks under laboratory sample No. 9846, dated August 3, 1949, were: gold, \$4.20; silver, trace.

#### RAYNBOE CLAIM

This claim overlies a ridge which intersects the claim in a diagonal direction from near corner No. 4 to a point about 175 feet northeast from corner No. 2. The rock found along the ridge is dark colored and contains phenocrysts of feldspar. When oxidized, it is granular and contains very little quartz. The rock exposed in the discovery cut which is on the east slope of the ridge resembles andesite breccia or agglomerate. It is brecciated, hard, contains phenocrysts of feldspar, some sanadine, andesite, and possibly some rhyolite which may be the cementing material.



During the May visit a sample was cut from the rock exposed on the ridge at a point about 200 feet N. 5° W. from corner No. 2. The sample, when assayed by AEC, was reported to contain: gold, trace; silver, trace. The discovery cut did not show evidence of mineralization and a sample was not taken at that place.

Upon the July visit a hole was dug about 30 feet south of the last described sample, through some weathered surface material to expose the underlying rock and a sample was cut from the rock by Mr. Sanborn. The assay results, reported by Abbot Hanks, were: gold, trace; silver, none. The face of the discovery cut was also cleaned off by the applicant's representatives and Mr. Sanborn cut a sample of this material. The assay results, reported by Abbot Hanks, were: gold, trace; silver, none.

Subsequent to the second visit, Mr. McDonald stated in a letter that he had taken two samples from the vicinity of the most westerly corner of the claim. The laboratory number of the samples taken to Abbot Hanks for assaying were Nos. 9843 and 9844. The results reported on a copy of the assay certificate were: For 9843; gold-\$2.45/ton, silver-\$0.11/ton, and for 9844; gold-\$0.70/ton, silver-trace. From the description accompanying a letter dated August 19, 1949, from Mr. McDonald, sample No. 9843 was taken from a rock outcrop situated approximately 175 feet south of the most northerly claim corner (presumably corner No. 4); sample No. 9844 was taken from an outcrop situated approximately 75 feet south of the same corner.

There has been no opportunity to check these samples. The agents for the applicant company were called upon for all information on the date of examination which would indicate the mineral character of the land. Since the above outcrops were not known at that date, it appears that the claim was a location without discovery when patent was applied for, and even on the date of examination.

#### TELLURINE CLAIM

The rock found outcropping on this claim is practically all rhyolite except for an area of about 1 acre in the southeast, near corner No. 2, which is andesite.

The discovery cut exposes the rock formation which is considerably oxidized. Mr. Altman, a representative of the company, advised that a better and more representative sample could be had from the No. 4 tunnel, the major improvement within the limits of this claim. The material on the tunnel dump contained visible pyrite and pyrrhotite, and the walls of the tunnel showed disseminated iron sulphides. A sample was cut by Mr. Altman from the east wall of the tunnel, right at the turn, which is approximately 42 feet from the portal. The assay results reported by AEC were: gold-trace, silver-trace.

It was alleged by the applicant's agents, McDonald Brothers, that two samples had been taken from this tunnel. The results of assays of these samples are contained in D. Ford McCormick's report on the property made in 1937. The samples are listed as number 78 which was taken from the end of the tunnel, and number 79 which was taken at the turn in the tunnel. The assay returns reported for sample 78 were: Gold-0.30 oz/ton and silver-1.0 oz/ton. The returns for sample 79 were: Gold-0.10 oz/ton and silver-2.0 oz/ton. The results in dollars and cents would amount to: Sample 78: Gold-\$10.50, silver-\$0.90, total-\$11.40/ton; sample 79: Gold-\$3.50, silver-\$1.80, total-\$5.30/ton. The indications would be that the extension of the main vein is intersected at the end of the tunnel.

#### SULFIDE CLAIM

Rhyolite or volcanic breccia is exposed over most of the area of this claim which lies north of the East Fork Elk Creek, shown on the plat, but the area south of the creek is all andesite.

All of the improvements listed in the statement of improvements made by the mineral surveyor were found and all, except cut No. 9, which is in fresh andesite rocks, were excavated in loose oxidized rhyolite material. The improvements are all along the foot of the steep mountain slope and, consequently, the material overlying the bedrock is considerable.

The improvement shown as shaft No. 2 is actually a cut which exposes clay like material and loose rhyolite rock fragments. After digging a hole about 24 feet deep in the bottom at the face of the cut, rhyolite rock in place was encountered.

During the May visit the bottom of No. 6 improvement shaft was cleaned out and a sample was taken of the material. The material was compact laterite

and solid rock in place was not found. The results or the assays reported by AEC were: gold—trace, silver—trace.

During the July visit to the property, a sample was cut from the rock in place uncovered in the hole described above in the No. 2 improvement. The sample was assayed by Abbot Hanks and the results reported were: gold—none, silver—trace. At a point about N. 75° E. a distance of 350 feet from corner No. 3, an outcrop of rhyolite is exposed in a cut on the water ditch which conveys water to the mill. This sample contained some iron sulphides and was taken to Abbot Hanks for assaying. The results reported were: gold—trace, silver—none.

Subsequent to the reexamination of the property in July, the MacDonald brothers took one additional sample on this claim. The sample was taken from the side of the mill water ditch at a place which is N. 65° E. a distance of 30 feet from corner No. 3. The sample was taken by them to Abbot Hanks in San Francisco for assay. The results, under laboratory No. 9845, as shown on a copy of the assay certificate, dated August 3, 1949, were: gold—\$1.05/ton, silver—trace.

The location of this alleged sample has not been checked. On the date of examination it was not known, consequently, the location was without a valid discovery upon the date of application for patent.

#### MANGANESE CLAIM

The rock exposed in and around the area of the discovery cut appears to be dacite or a rock type closely related. The only area covered by rhyolite which could be identified as such, lies west of the creek channel.

In May a sample was cut from a fresh face of rhyolite found in a 12-foot high bank on the west side of the creek and at a distance of about 250 feet from the southwest end line of the claim. The results of the assay by AEC were: gold—trace, silver—0.12/ton.

During the July visit a second sample was cut from this same location by Mr. Sanborn and taken to Abbot Hanks for assay. The results reported were: gold—trace, silver—none.

#### ORO ESCONDIDO CLAIM

With the exception of a small area of rock given the field name andesite porphyry and situated in the southwest corner of the claim, the remainder of the claim is covered with a dense, dark-gray andesite. The discovery cut exposes nonmineral andesite.

In May a sample was taken from a cut shown on the survey plat at a point about 35-feet northeast of corner No. 3. The sample was assayed by AEC and the results reported were: gold—trace, silver—trace.

During the July visit to the property, a second sample was cut from the same location by Mr. Sanborn who took it to Abbot Hanks for assaying. The results reported were: gold—trace, silver—none.

#### J. L. GRUBB CLAIM

An area of about 300 feet in diameter surrounding the discovery cut is apparently volcanic breccias and platy rhyolite. There is a small area of rhyolite exposed at the west end of the claim. Andesite rock covers the remainder of the claim.

During the May examination a sample was taken of the material exposed in the bottom of the cut which is shown on the survey plot to be N. 4° W., a distance of 260 feet from corner No. 2. The sample was taken to AEC for assay and the results reported were: gold trace, silver trace. A second sample was taken at this time of leached and highly oxidized volcanic breccia exposed in the discovery cut. The reported results on this sample were also: gold trace, silver trace.

On the occasion of the July visit, the discovery cut was deepened in an attempt to secure fresher rock. The rock exposed was fine grained rhyolite, like felsite, and the sample was taken of the material which was hard and tough. The assay results, reported by Abbot Hanks, were: gold trace, silver none.

#### W. C. LEEVER CLAIM

The rock formations found on this claim appeared to be intermingled sills, flows or dikes of rhyolite, andesite and related rocks.

During the May examination a sample was taken at the discovery cut which appeared to be oxidized rhyolite. Within 20 feet of this cut the rock is andesite. A second sample was taken of a surface cropping of rhyolite which was found on a ridge about 500 feet southwest of the northeast end corner. These samples were assayed by AEC and the results were the same, i. e., gold trace, silver trace.

During July, with the assistance of the McDonald brothers, an outcrop of rhyolite rock was found at a place about 800 feet distant in a N. 50° E. direction from corner No. 1. This sample was assayed by Abbot Banks and the results reported were: gold trace, silver none.

#### J. D. M'KINNON CLAIM

In the vicinity of the discovery shaft there is a small area of rhyolite or related rocks exposed. The remainder of the claim is covered with andesite rock.

During the May examination a sample was cut from the material found in the bottom of the shaft. It was highly weathered rhyolite. The assay results reported by AEC were: gold trace, silver trace.

On the occasion of the July visit, the bottom of the shaft was cleaned out and a channel sample was cut by Mr. Sanborn across the bottom of the shaft. The material uncovered was fine grained rhyolite which shows flow structure and was highly oxidized. The assay results, reported by Abbot Hanks, were: gold trace, silver none.

#### ALABAMA CLAIM

Practically the whole area of this claim is andesite. There is, however, a very small area of rhyolite exposed in an outcrop which is situated on the southwest end line, and northwest 125 feet from the discovery cut.

During the May visit to the property, a sample was cut from this outcrop. It was taken to AEC and the assay results reported were: gold—trace, silver—trace.

During the second visit in July, Mr. Sanborn with the assistance of McDonald brothers, cut another sample from the outcrop. This sample was assayed by Abbot Hanks and the reported results were: gold—trace, silver—none.

Subsequent to the second visit to the property, the McDonald brothers have reported that they cut another sample from the same outcrop. This sample was taken by them to Smith-Emery Co., assayers and metallurgical engineers at Los Angeles, Calif., for assaying. An original assay certificate has been submitted which shows the assay results to be: gold—\$2.10/ton, silver—nil.

The outcrop is probably very near the contact of the central mass with the outlying andesites and other rock types. And, therefore, any ground east of the contact would be of little value for mining purposes even though the values were considerably higher than \$2 per ton. In this case, there is some doubt as to whether the outcrop will actually run \$2.10/ton in gold. The previous two assays are in agreement and show the value in gold to be a trace which would be less than \$0.17 per ton.

The material exposed by the discovery cut is oxidized, crumbly andesite. The cut is situated on the southeast end line of the claim. Rhyolite rock outcrops on the slope about 40 feet southeast of the discovery shaft which is Telluride ground.

#### STAPLES CLAIM

The rock found outcropping and in the various cuts on this claim is andesite. No indications of any mineralization were found in the claim. Exhibit 1, accompanying the application for patent, indicates that a sample was taken on the East Branch of East Fork Elk Creek, 40 feet from the southwest corner No. 3.

In May, this place was visited and examined. There is no rock in place on the surface within 40 feet of the corner. Upstream from the corner a distance of about 150 feet there is a bank of andesite agglomerate or breccia. A sample was cut from this material and taken to AEC for assay. The results reported were: gold—trace, silver—trace.

On the occasion of the second visit, the representatives of the applicant company had no further suggestions to offer as to a possible mineral discovery.

## LA JOLLA CLAIM

A creek in a small ravine enters this claim at the northeast end center. It traverses southwest past the two cuts shown on the survey plat, thence bears slightly more westerly and joins East Fork Elk Creek at a point about 450 feet upstream from the No. 3 corner Staples claim. Another creek in a small ravine enters the Arroyo Verde claim at a point 200 feet easterly from its corner No. 3; thence traverses northwesterly a distance of about 800 feet where it courses northwesterly across the La Jolla claim and empties into East Fork Elk Creek slightly downstream from the first-described creek.

The rock in the bottom of the creek on the La Jolla claim and near the discovery cut is probably andesite porphyry or a related rock. It contained iron sulfides and was light grey in color. The ridge between the two creeks appeared to be andesite porphyry or related rocks. The remainder of the claim area is unquestionably hard, fine grained andesite.

In May the discovery cut was found to be caved. A sample was cut of rock found in the bottom of the creek about 20 feet from the discovery cut. The rock exposed in the discovery cut appeared to be andesite while that in the creek bottom appeared to be rhyolite or a related rock and also showed some iron sulfides. The sample was taken to AEC for assay. The results reported were: gold—trace, silver—trace.

On the occasion of the second visit to the property, the McDonald brothers selected a place near the northeast end line on the south bank of the creek where there was an outcrop of andesite carrying much visible pyrite. This sample was cut by Mr. Sanborn, with the assistance of the McDonald brothers, and was taken by him to Abbot Hanks for assaying. The results reported were: gold—trace, silver—trace.

## ARROYO GRANDE CLAIM

The rock exposed at the discovery cut appears to be rhyolite or related rock. Due to the heavy forest cover of second-growth brush and timber and also apparent heavy overburden, no determination could be made of the nature of the principal rock underlying.

In May a sample was taken of the rock exposed in the discovery cut. It was taken to AEC for assaying and the results reported were: gold—trace, silver—trace.

On the occasion of the second visit, a second sample was taken of the rock exposed in the cut after excavating a small hole to a greater depth in the bottom of the cut. This sample, taken by Mr. Sanborn, was assayed by Abbot Hanks and the results reports were: gold—\$0.17, silver—none.

## EXPENDITURE OF \$500

Expenditures for improvements listed in the statement of expenditures accompanying the application shows expenditures, exclusive of a share in any common improvements, for each of the claims to be as follows:

Date of location	Claim name	Expenditure	Date of	Claim name	Expenditure
1939.....	Oro Alto.....	\$325	1897.....	Henry Applegate.....	375
1939.....	Oro Rico.....	1,675	1897.....	A. W. Dahlberg.....	500
1936.....	Cougar.....	820	1932.....	Telluride.....	1,040
1936.....	Oro Real.....	2,375	1934.....	Alabama.....	175
1897.....	J. W. Merritt.....	260	1933.....	Rainbow.....	490
1897.....	Peter Applegate.....	355	1897.....	D. McKinnon.....	525
1936.....	Oro Escondido.....	250	1934.....	Sulphide.....	630
1897.....	W. C. Leever.....	345	1934.....	Staples.....	275
1897.....	Mark Applegate.....	3,600	1932.....	Manganese.....	210
1897.....	H. McKenzie.....	875	1936.....	La Jolla.....	240
1897.....	J. L. Crubb.....	625	1936.....	Arroyo Verde.....	150
1897.....	J. D. McKinnon.....	300			

The Common Improvement No. 1 is a tunnel known as No. 2. Its elevation, according to maps supplied by the applicant, is a few feet greater than 3,400 feet above sea level. This tunnel with its laterals, crosscuts, drifts, stopes, and raises, was driven for the primary purpose of developing, exploring, and extracting ores from a vein which is almost exclusively within the boundaries of the H. McKenzie claim. Any information gained, such as intersecting unknown

mineralized seems or learning something about the geology of the ground and doing work which benefited any of the other claims in the original group of 10 claims, was purely incidental. The tunnel is at an elevation such that future exploration work might logically and feasibly be done from it. It is even conceivable that this improvement is of benefit to all the claims situated north of East Fork Elk Creek which is shown on the survey plat. For instance, a haulage tunnel driven from this development, even through the W. C. Leever claim, might be an economical project, if ore were found there.

On sheet 2 of the mineral survey plat, a copy of which is attached hereto, an approximate trace of the 3,400-foot contour has been made. It may be readily noted that it would not be good sense or good practice to drive an exploration tunnel from Improvement No. 1 into, for instance, the Alabama claim. If such an exploration was planned it would be done by a tunnel from the vicinity of Corner No. 3 of the claim, which is approximately the same elevation and thus save 1,800 feet of expensive tunnel work to accomplish the same object. It is inconceivable that this improvement could in any way benefit the exploration, development, or extraction of any ores which might at some future time be discovered within the boundaries of the Manganese, Sulphide, Alabama, Staples, La Jolla, or Arroyo Grande claims. In order to reach these claims at elevation 3,400 from tunnel No. 2, it would be necessary to construct a bridge.

Common Improvement No. 2, known as tunnel No. 1, would be of benefit to 8 of the 10 original claims located in 1897. The J. W. Merritt and D. McKinnon could not in any way be benefited because they are both lower in elevation than this tunnel level.

Common Improvement No. 3, known as tunnel No. 6, benefits only 2 of the 10 claims for the reason that the tunnel is at such elevation that it is above the surface of the other claims. Even though Common Improvements Nos. 2 and 3 are not applicable to all the claims, there appears to have been sufficient development work done in the No. 2 tunnel, the value of which, when added to the work credited on the individual claims, would exceed the amount of \$500 for all of them except the Manganese, Sulphide, Alabama, Staples, La Jolla, and Arroyo Grande. There appears to be no valid basis for apportioning any of the common improvement expenditures for the benefit of these claims.

Upon the copy of the mineral survey plat, sheet 2, which is attached, the approximate position of contour 3,400 has been traced, and as well, various places mentioned in the application for patent have been identified by like names. The north drift has been identified in solid red and the extension of the fault-vein has been dotted in red along its known south extension. The probable limits of the central mass has also been outlined in blue.

#### BONA FIDES

The Al Sarena Mining Co. is an Oregon corporation. Its officers are: H. P. McDonald, Sr., president; W. G. McDonald, vice president; H. P. McDonald, Jr., secretary-treasurer, all are residents of Mobile, Ala. The lode claims for which patent is sought were acquired by purchase or location by the applicant company. The company, in 1939, constructed a pilot mill and conducted tests of the material extracted from crosscuts, drifts, and stopes on or in the proximity of a vein containing gold, silver, lead, and zinc minerals. The pilot mill was closed down about March 1943 because of the difficulty in securing adequate personnel to operate the mine.

During the investigation no information was found which would indicate that the claims were being exploited for any use other than for mining purposes.

While the Forest Service had no accurate cruise of the timber embraced within the area of all the claims, the Oregon Metal Mines Handbook, page 197, states that "approximately 12 million board-feet of timber is estimated to be available on the mining claims." If the mine is developed and mined as contemplated, a large amount of timber will be necessary. In fact, it might well be to the advantage of the company to set up a sawmill on the property and produce the timbers which will be needed in such a large-scale operation. There is, of course, nothing to prevent the company, after patenting the claims, from mining the timber rather than the minerals.

#### PERTINENT DATA

The land embraced by this group of mining claims is timber land and highly suitable for the propagation of timber crops. The land also has an inestimable value as a watershed. The timber with its undercover, is the protector of the

watershed. When minerals are found on land of this kind and patent is sought, it is believed the mineral showings and prospective chances for successfully operating a mine should be thoroughly scrutinized.

Of the mining methods mentioned above, the central mass, being a low-grade proposition with suitable topography, could probably best be mined by the block-caving method. In any event, this method is the cheapest yet devised for large-scale mining of low-grade deposits. It is roughly estimated that the cost of mining with this method under average conditions would be about \$0.70 per ton at the mill. Thereafter, the material must bear the cost of milling, transportation, and smelting. The cost of milling is estimated at \$0.40 per ton.

The Alaska-Juneau Gold Mining Co. was, between 1934-37, one of the low-cost producers in large-scale mining of low-grade gold ores. The mining methods used in this mine were a combination of caving and shrinking. The cost of mining and milling over 12 million tons during these 4 years was: Mining, \$0.44 per ton; milling, \$0.29 per ton; other operating, \$0.07 per ton. Total cost, \$0.80 per ton. Present costs would necessarily be higher since cost of materials and labor is greater. By using as a basis these low actual costs for mining and milling Alaska-Juneau ores, it may readily be seen that in a disseminated ore body, any values less than \$0.80 per ton could not be successfully treated at present. Any future values which might be attached to such low-grade deposits would be purely speculative. If a value of \$0.80 per ton were found in a quartz ledge, for instance, there might be a possibility of finding greater values by advancing along the vein and a valid discovery would be indicated. In a disseminated body of low-grade minerals, if the average grade is not sufficient to justify the spending of time and money in its development, the land should necessarily be classed nonmineral in character. If this is not so, then ordinary rock containing the barest trace of precious or semiprecious minerals should be classed mineral in character and a patent granted. These things have been taken into consideration in the conclusions and recommendations which follow.

#### CONCLUSIONS AND RECOMMENDATIONS

The field examinations and investigations indicate that a valid discovery of minerals, such as to qualify under the statutes, has been made on the following lode claims:

Oro Alto	Oro Rico
Peter Applegate	Oro Real
H. McKenzie	Mark Applegate
A. W. Dahlberg	Telluride

It appears also that an expenditure of \$500 in improvements has been made on or for the benefit of each of the claims. It is therefore recommended that all of them be allowed to proceed to patent.

The field examinations and investigations indicated that the following named claims are invalid locations because of no discovery:

Henry Applegate	Cougar
J. W. Merritt	Oro Escondido
Rainboe	W. C. Leever
Sulphide	J. L. Grubb
Della McKinnon	J. D. McKinnon

It is, therefore, recommended that proceedings be directed against the claims on the following charges:

1. That the land embraced within the claims is nonmineral in character:

2. That minerals have not been found within the limits of each of the claims in sufficient quantities to constitute a valid discovery.

The field examinations and investigations indicated also that the following-named claims are invalid locations because of no discovery and because the expenditure for improvements on or for the benefit of each of the claims is less than \$500:

Manganese

Alabama

Staples

La Jolla

Arroyo Verde

It is, therefore, recommended that proceedings be directed against these claims on the following charges:

1. That the land embraced within the limits of the claims is nonmineral in character;

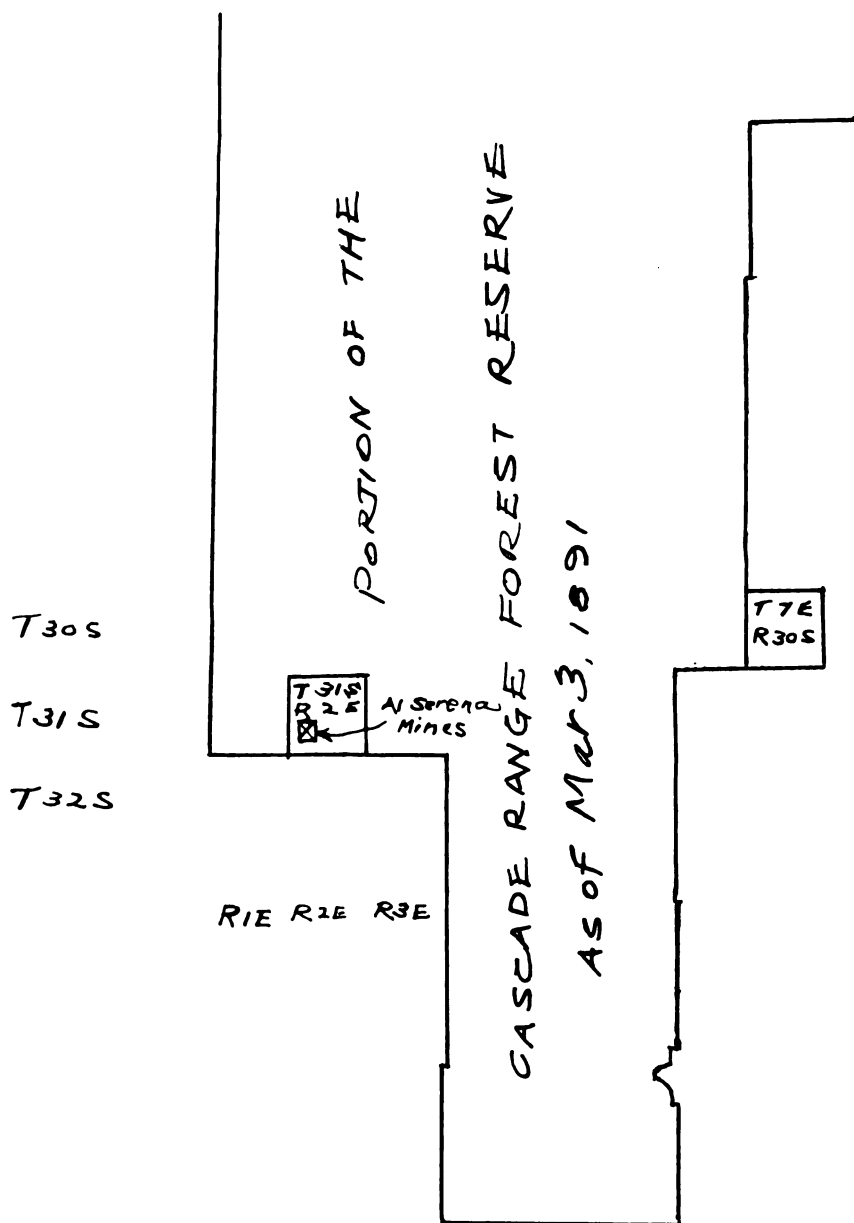
2. That minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery;

3. That an expenditure of \$500 for improvements has not been made on or for the benefit of each of the claims.

The information supplied by Mr. McDonald, subsequent to the second examination indicates a valid discovery may have been made subsequent to the patent application on the Sulphide, Delia McKinnon, and Rainboe claims. In view of this, and a probability the applicant will request additional time in which to perfect a discovery on the J. W. Merritt, Cougar, Henry Applegate, Sulphide, Delia McKinnon, and Rainboe claims, it is suggested that proceedings be directed against all claims as outlined above. In the event of a request for additional time in which to perfect a discovery; all claims can be reexamined at the same time.

Respectfully submitted.

ELTON M. HATTAN, *Mineral Examiner.*



Scale 1 inch = 12 miles



Representative JONAS. How about the surveyor's report? Are you going to put that in?

Mr. REDWINE. I believe that is in, Congressman. If it is not, we will see that it does go in.

Representative JONAS. Maybe it ought to go right after the Hattan report. They deal with the same subject.

Mr. REDWINE. That is a part of the application for patent. That is attached to it. I believe it is all in. If it is not and if the chairman does not object we will have the reporter put it in at that point.

Senator SCOTT. We will have no meeting of the committee tomorrow but we will try to have a meeting on next Tuesday at 10:30 in this same room.

(The Hattan report appears at p. 697.)

Representative HOFFMAN. Mr. Chairman, while they are looking for that I want to put on the record another objection. When we were at Idaho Falls, the Senate chairman was not there. The House committee chairman objected because I was reading papers. Now he is doing the same thing, reading newspapers. I want to either have him withdraw his objection to my doing it or I want to make an objection to his doing it.

Representative CHUDOFF. I want to say to the gentleman from Michigan that I am not reading the sports page as he was reading, but I am reading an article.

Representative HOFFMAN. It might be better if you would read the sports page.

Representative CHUDOFF. Sunday morning, January 29, Nashville, Tenn.

Senator SCOTT. Let us have order.

Representative CHUDOFF. Which article accuses the Head of the REA of trying to blackjack the cooperatives at their national convention from making certain resolutions which would be against the interests of the REA and said that, if they do no stop passing these resolutions he is going to cut off all help. That is what I am reading about, and I think it is important to this committee.

Representative HOFFMAN. I am glad you have recovered from your illness.

Senator SCOTT. I want to thank you, Mr. Secretary, for your time and patience, and your cooperation.

During your testimony, I have tried to refrain from interrupting you in the interest of time.

There are, however, several observations I would like to make in connection with your testimony.

I think all members of the subcommittees will agree with me that you have been a superb witness. Your record as a lawyer is above reproach, and your long years of public service are a tribute to your legal ability and the respect you command in the legal profession.

You stated in your testimony that the problems involved in the Al Sarena case are legal and not political.

I think you will agree that any legal act also includes attitude, point of view, philosophy, or whatever you want to call it. Legal acts cannot be separated from human nature.

Basically, then, this whole thing hinges on the attitude and philosophy that control legal acts.

I think you have every right to defend and promote your attitude and philosophy that led you to the decisions you made in this case.

But more important, regardless of how much you may justify in your own mind the course of action in this case, it is a matter of fact that your attitudes and philosophy are not standard procedure for everyone else. This is as it must be in democratic government.

As for myself, I am disturbed about the course you followed in accepting decisive information and data—upon which you based your final decision—from a Member of Congress.

I think this sort of practice is very unhealthy. I myself write many letters and make many visits to Government agencies concerning problems of my constituents. But, to me at least, it is a dangerous situation when Members of Congress become the chief source of facts and data upon which the executive branch of Government bases its administrative decisions. It is, in short, a shabby and shoddy way for Government to operate.

But again, it is a matter of attitude and philosophy, and I am certain that you consider it proper and correct, or you would not have followed the course you did.

I am also disturbed by the fact that you found it necessary to discredit and suspect career Government employees in order to defend your course of action. To say the least, such practices discourage efficiency and good morale among career Government employees. After both you and I have gone on, career Government employees will still make the day-to-day wheels of Government turn. These men, according to your testimony, never have had a hearing before you.

All in all, this whole case boils down to what practices and procedures are wise in managing our natural resources.

I am very grateful to you for giving us some insight into the procedures you used in this case and some understanding of your attitudes and philosophy in general.

It has been very helpful. We have learned a lot, and I want to thank you.

Representative HOFFMAN. Mr. Chairman, I have attended every one of these hearings ever since the 14th day of November last, except the one at Spokane where only the House chairman was present.

I want to know, in view of the fact that every member of the committee, and the staff, and the press received a copy of this statement, why I cannot have one. What is the idea?

Senator NEUBERGER. Here is one.

Representative HOFFMAN. I just do not like that kind of discrimination.

Senator SCOTT. I would like to say if you just stay in one pasture at one time we could get you these records.

Representative HOFFMAN. That does not make any difference. I have been around here long enough and you claim I have made noise enough so that I ought to be able to be identified by a member of the staff. It is just a part of the discrimination you gentlemen have practiced from the very beginning. You do not want me to know anything about it. You are afraid I might ask you some embarrassing questions.

Senator GOLDWATER. Mr. Chairman, just for the record, I want to be on record as not concurring with the erroneous statements just made by the chairman.

Representative HOFFMAN. And I want to concur in the statement made by the Senator.

Senator SCOTT. There seems to be agreement on that, that we do not agree.

Representative HOFFMAN. That is right.

Representative JONAS. I am trying to suggest that we call Mr. McCormick.

Representative HOFFMAN. They will call the witnesses they want.

Senator SCOTT. It is all right if you will call Mr. McCormick.

I certainly thank you again.

Mr. DAVIS. Mr. Chairman, I want to thank you for the kind preliminary words in the statement which you made. Of course I cannot subscribe to the conclusions which you draw. If I thought it were appropriate I would love nothing more than to take 5 minutes to adequately reply, but I do not think it is appropriate, so if you will excuse me I will leave.

Senator SCOTT. Mr. McCormick.

Mr. Hoffman, will you swear him in?

Mr. REDWINE. I believe you have already been sworn.

#### **FURTHER TESTIMONY OF D. FORD McCORMICK, MINING ENGINEER, EAGLE POINT, OREG.**

Mr. McCORMICK. That is correct.

Representative HOFFMAN. Mr. Chairman, I suggest the witness be permitted to make a statement if he has one.

Mr. McCORMICK. I have the following statement which I wish to read into the record.

Senator SCOTT. I will ask Senator Neuberger if he will take over, please.

Senator NEUBERGER (presiding). Please go ahead.

Mr. McCORMICK. Since the hearing held in Portland, Oreg., I have been trying to recall the sequence of events as they happened to me insofar as Al Sarena Mines is concerned. I would like to make a slight correction in my testimony when answering Senator Neuberger. It may not be of any importance, but there is one point not too clear in my recollection.

When asked by Senator Neuberger when I had first become acquainted with the Al Sarena Mine I replied that I thought it was about 1937. That is correct. It was known as the Buzzard Mine at that time. The roads and trails directing one to the mine were so marked.

To the next question, in effect, "Did you take a look at it?" I replied, "Yes, I did. I looked it over." That too was correct, but to the next question, "And were you paid by them?" I replied, as I remember it, "No, this was just a visit."

This statement could be in error. The year 1937 is a long time back and when thinking the matter over since the Portland hearing I seemed to recall that Dr. McDonald, Sr., not the boys who are carrying the load now, asked me to write him a letter or report on my observations.

I knew that it was after this visit in 1937, but possibly not until after I was employed by Mr. Haden, and possibly for him that I wrote an opinion. However, if I had written Dr. McDonald an opinion I certainly would have charged him a fee, since I was not under salary

to him then or any time afterward. The fee would not have been for more than \$100 or \$150 at that time.

I tried to verify the incident by looking into my old files and records, but we have moved several times since 1937 and each time have destroyed much of the surplus baggage and I could not find anything in any records.

I recalled that I either stated to Dr. McDonald verbally or had written him that much of the area, rhyolitic in nature, seemed to be mineralized and had a potential value, if sufficient mineralization could be established, to warrant an out-and-out drilling program to prove its worth.

It was not until Thursday, January 19, 1956, after listening to Mr. Holderer's testimony that I learned that a copy of my report to Dr. McDonald, dated July 15, 1937, could be found here in the files of the Interior and Insular Affairs; room 224, I believe. I was privileged to make a copy of my report.

Now, referring to that report, wherein I made statements regarding my opinion as to the future possibilities of Al Sarena Mines, and to substantiate this belief and conclusion on my part gathered from my own observation and facts laid before me at that time, I wish to read into this record some information given out by two members of the United States Geological Survey upon the occasion of their visit to the Buzzard Mine in 1930 and 1931, years before my first visit in 1937.

They reported in the bulletin of the United States Geological Survey, No. 893, under the heading, "Metalliferous Mineral Deposits of the Cascade Range in Oregon," and I quote from Bulletin No. 14-C, volume II, section 2, Jackson County, and entitled "Oregon Metal Mines Handbook" published by the State of Oregon Department of Geological and Mineral Industries, under date of 1943. It refers to the Al Sarena Mine, Buzzard Mine, owner, Al Sarena Mining Co.:

History: The following is quoted from Callaghan & Buddington based on field work performed in 1930-31:

"The Buzzard mine is in northeastern Jackson County, and the 10 claims constituting the property are in sections 19, 20, 29, township 31 south, range 2 east. It is about 47 miles from Medford and 20 miles from the Crater Lake Highway at the mouth of Elk Creek. The first 11 miles of the Elk Creek Road, which serves the Buzzard area is surfaced, but the remainder, is unimproved, and the last 5 miles is very steep;

"The mine is on a heavily timbered ridge trending nearly north in rugged country near the divide between the drainage systems of the Rogue and Umpqua Rivers on the headwaters of Elk Creek. The ridge is 4,000 feet in altitude, according to aneroid measurement, and slopes toward the south; the ravine on the east side is about 700 feet below the summit, and that on the west side is about 300 feet below the summit.

"The rocks exposed in the mine workings are volcanic breccias and dikes of rhyolite and andesite, all altered and bleached. The vein appears to be near the center of a large area of altered rocks. Fragmental rocks appear to be dominant both in the vicinity of the mine and along the road to the south, though flows of rhyolite, andesite, and labradorite andesite occur. No dioretic intrusive rocks were found.

"No evidence of folding or tilting was seen in the mine, as no bedding was revealed. Upcrops in the valley of Elk Creek suggest that the region has been only slightly deformed. The strike of the vein on which almost all the work has been done is north 40 degrees west, and the dip is vertical to 85 degrees east. Most of the dikes trend to the northwest.

"Gold was discovered in Elk Creek below the mine, and the claims were located in 1897 by Peter and Mark Applegate, according to the latter. Pearl Mining Co. was incorporated in 1898, but the first ore was not shipped until 1900.

W. L. Freres, under an option, shipped ore in 1912 and 1913, and the Pearl Mining Co. was active in 1914 and 1915. The mine was leased in 1916 to Paul Wright, who drove tunnel 4 on the east side of the ridge and shipped considerable ore. The total production, 1909-18, was nearly \$24,000 chiefly in gold, but it included some silver and lead.

"According to the owners, the mine workings consist of 3,334 feet of drifts and crosscuts, 1,000 feet of raises and winzes, and 75 feet of open cuts and trenches. \* \* \*

"Apparently the veins shown in plate 22 are the only ones found up to the present time, though it seems possible that so large an area of altered rock might contain similar veins."

They go on to state development and more geology, and finally they say:

The outcrop of the ore body is considerably altered. The rhyolite is soft and may be cut easily with a knife. Pyrite has been altered to hematite. On the lower levels the fault zones show alteration but the rhyolite wall rock is relatively unaltered.

So we see that these gentlemen, employees of the United States Government, as far back as 1930 and 1931 believed there could be a large mineralized area in and around the Buzzard or Al Sarena Mine, 6 or 7 years before my first contact with the Al Sarena, 3 years before I moved to Oregon, and 27 or 28 years before the McDonalds made application for patent. The McDonalds made application for patent after determining the line of contact, as nearly as they could, between the rhyolite and the andesite, two different rock formations, in order to outline the rhyolite body which is the host for the mineralization.

They traced this contact in order to delineate the rhyolite in order to stake their mining claims and to try to include the entire, the whole rhyolite body, and to protect their discovery.

Ever since that time obstacle after obstacle has been placed in their way to attempt to deprive them of their findings.

Mr. Hattan during the time of his investigation in 1949 visited me at my home and asked me my opinion of the Al Sarena as a large, low-grade deposit. It was nothing new to me nor to Mr. Hattan, I believe, that the property had possibilities as a large, low-grade mine.

He testified in Portland that he doubted his own sampling and was surprised at the assay reports which showed a trace.

Right here let me clear up Mr. Hattan's statement that he thought that he had taken his examination for his certificate to practice as a professional engineer in Oregon when I was a member of the board of examining engineers in 1920. I was in Cuba in 1920, did not move to Oregon until 1933, and did not join the board of examiners until the late 1940's, so he was mistaken in this assumption.

Furthermore, I am not surprised that Mr. Redwine could go down to Alabama and dig up assay reports of samples sent in by Al Sarena that would show traces. He could also have gone to Abbot Hanks, or to Smith-Emery, the two laboratories so much discussed in these hearings, or checked the assay records of the mine laboratory itself and found hundreds of assays that assayed over \$2 per ton. Nor am I surprised that Messrs. Hattan and Sanborn could have found and sampled places within the 300 acres of even on each of the disputed claims that would show barren spots. Even the McDonalds could do this, I am sure.

But some of the certificates of assays that Mr. Redwine dug out of the files of the Williams testing laboratory that were introduced here and certified to by Mr. McDaniel as being reports on samples received

from and assayed for the Al Sarena mean nothing in this case unless further certified to as to where the samples were taken or what they represent.

Mr. McDaniel could not do this. He does not know where the samples were taken.

These samples, or some of them, might have been samples to test old dumps. They might have been samples to test the overburden, or just blanks to test the accuracy of the Williams testing laboratory. They might have been samples of concrete or samples to check for future roadways over barren ground, or even samples to check barren areas, areas clear off of the claims. Maybe they were samples taken in another district or another State, say Tennessee, or from Mexico. They could all have come off of one of the disputed claims; maybe off of one of the undisputed claims. Who knows where the samples did come from?

We were not told by Mr. Redwine the exact location from whence they come nor what they represented, at least not for any of all the certificates he had McDaniel identify, except for one sheet. That was assay certificate No. 431869, which reported on 28 samples taken by Messrs. Appling and McCormick.

This assay certificate is significant because it reports the results of samples taken on the 15 disputed claims, and the exact location by survey of the area by Mr. Appling's crew, all Government employees, plotted on maps prepared by them and by photographs taken by Mr. Appling.

Mr. Appling and his crew were most careful and conscientious in performing their duty as per instructions, and in the presence of McCormick.

This one certificate is important. All the rest can be thrown out of the window insofar as this case is concerned. This one assay certificate, No. 431869, represents the results of samples taken in areas pointed out on each disputed claim by the McDonalds who guided us to the several claims and showed us areas of 50 by 150 feet, or of an acre or more of outcropping rhyolite formations, formations not covered by overburden, or bulldozer cuts 100 feet or more long and up to 15 feet deep, or creek banks showing exposures of the mineralized rhyolite, or discovery cuts or shafts where mineralization showed.

Mr. Appling and I chose the spots within these areas where we took the samples. On some claims we took 2 or 3 samples, just to doublecheck our own sampling and to determine if the assays would check each other when samples were taken 50 or 60 feet apart on some of these outcrops.

These assays shown on certificate No. 431869, and submitted by Mr. Redwine, by Appling in his report, and by McCormick along with the photostatic copy of his report, requested by Mr. Redwine in Portland, were not blanks or traces, and they all show mineralization in every instance.

This sampling was to test the claims and to show mineralization on each of the 15 claims if it did exist.

It has been stated in these hearings that the average of the 28 samples indicated a value of \$2.06. It is common knowledge and published information that the famous Homestake Gold Mine in South Dakota, now many years old, has operated continuously for

many years, and is one of the few gold mines operating today on the low gold price of \$35 per ounce. It has processed thousands and thousands of tons of ore, much of which did not assay as high as \$2 per ton and on which profits have been made.

Another famous, very famous, gold mine, the Alaska Juneau in Alaska, operated for years on ore lower in value than \$1 per ton and paid handsomely in dividends from profits until the mine was shut down by the War Order L-208.

Dredges are operating in California around Yuba City and Marysville making a profit on 6 cents per cubic yard of gold-bearing material, material that weighs 3,000 pounds per cubic yard, which means only 4 cents per ton of 2,000 pounds.

All this talk of values has little bearing on whether or not the Al Sarena will or will not become a profitable venture. That remains to be proven. Actually, 10,000 tons mined and processed per day at 40 cents per ton profit equals \$4,000 per day or \$120,000 per month profit.

The values of the timber on Al Sarena would soon be erased at this rate, and it is a possibility.

Congressman Chudoff's claim of Al Sarena mining timber instead of mining ore, and that the McDonalds never intended to mine gold, really would be a joke.

As to using all the timber on the claims for mining purposes, yes, if the square set mining method was necessary to win the ore, as in the case of the famous International Nickel mine at Sudbury, Canada, where 12,000 tons of low-grade ore per day is being processed daily, it would not be many weeks before Al Sarena would be buying mine timbers. International uses at times 800 square sets a day, or about 8 million feet of mine timbers per month.

There are many sawmills in the West that cut from 100,000 to 500,000 feet of timber per day. Ten or twelve million feet does not last long at this rate.

If persecuted further, as they have been in the past, Al Sarena will be forced to market more timber to pay the bills and then just have to buy timber for mining purposes later when needed; 10, or 12, or 20 million feet will not last them long once they get underground.

With reference to the insinuations that there was something improper regarding my handwritten postscript to my letter to the Williams testing laboratories and which postscript was so stressed in the opening moments of the hearing taken here in Washington when Mr. Redwine first put Mr. McDaniel on the stand, I wish to explain just why this postscript was added.

When taking samples one never knows what the gross weight of the sample will be. It might amount to 10 pounds or only 5 pounds, 7 pounds, or  $3\frac{1}{2}$  pounds, or have any weight, depending on the circumstances. If we cut a 10-pound sample to start with and make 1 split, then we would have two 5-pound samples identical to each other, 1 a reject and the other to be split again, and this repeated until one ends with a pulp-size sample from the last split. If one had started with a 5-pound sample as the original gross sample he would be starting with the same weight as the first split from a 10-pound sample, and naturally a 5-pound sample split several times to get a pulp sample would not end up with the same weight as if he had started a  $3\frac{1}{2}$ -pound gross sample. The splitting is a standard pro-

cedure to reduce the bulky original sample to a pulp from which the assayer takes his weight for the assay charge. In this instance the pulp would be 1 of the 2 halves resulting from the last split, one-half to be shipped to the assay laboratory and the other half would ordinarily just be discarded.

From Mr. Sanborn's testimony it is quite evident that he and Mr. Hattan sent the whole of the bulk samples, or else in several instances split their original sample to reduce the bulk for shipment to the assayer. They kept no splits or umpires.

In Mr. Appling's and my case we did not ship bulk samples, but prepared the samples and reduced them all to a size suitable for the laboratory so that, instead of shipping some 250 pounds of samples, we reduced the weight of the 28 samples to about 21 pounds. This is also standard practice.

In our case Mr. Appling and I elected to preserve one-half of the last split instead of discarding all the splits as Messrs. Hattan, Sanborn did, as Mr. Sanborn testified. They kept no duplicates, no splits, just threw away all their discards from any splits they made. We kept all of our discards and, except for the last or duplicate split, used them to pan for any evidence of mineralization.

In the panning operation all of the host rock is discarded, washed away, and only the metallics are saved. Examination of these metallics with a high-powered magnifying lens disclosed in this case pyrite, magnetite, sphalerite or galena present in every sample taken. The pyrite indicated the presence of gold and silver; the sphalerite, zinc; and the galena, lead.

This was good evidence of mineralization and an indicator in each case that values were present in the samples, which the assays would prove.

We had decided to preserve one-half of the last split as a duplicate or replacement in case the shipment was lost in transit or an accident occurred in the laboratory that would spoil the assay of any sample submitted, such as a broken crucible or beaker, a spill of the pulp, or a lost bead. It was just a precaution or a safety measure on our part. We had no desire to trudge back into those hills on snowshoes to resample one or more or all those claims.

When the safe arrival of the samples was assured, which was when we each had received our copy of the certificate of assay No. 431,869, there was no longer any use for the duplicates we had kept. So they were destroyed.

All this hullabaloo about how they were destroyed has no bearing in the case except that we happened to throw the samples into the river instead of into a wastebasket or onto a garbage heap. It has been dramatized to shock the public of the United States, when all that happened was simply this: After Appling and I got the samples back from the Department of Geology and Mineral Industries Office, where we had left them for safekeeping, we were driving toward Appling's office and talking about fishing.

I live right on the Rogue River and had invited Appling to come down and try his luck at fishing in front of my home. Just about that time, when about 2 blocks from his office, we could see the Caveman's Bridge over the Rogue River in Grants Pass about 2 blocks straight ahead.



I asked Appling if he ever fished the hole in front of the park across the bridge. He replied, "No."

I suggested that he drive down there and I would show him a spot I had noticed years before. He drove there and while talking we remembered the samples and jokingly it was suggested: "Let's feed the fish some gold and silver instead of cluttering up your office with the samples."

So, while talking fishing, we tossed the discards one by one out into the fishing hole.

Was there anything wrong with that? It was as good a way as any to destroy them, and we weren't cluttering up anyone's office.

Out of this little incident, born on the spur of the moment without a second thought, grows this fantastic story of a premeditated plan to swindle Uncle Sam out of a forest; and, oddly enough, neither one of us would benefit 1 cent out of the act. Nor did the McDonalds even know we were destroying the samples; nor did anyone else.

All this spending of our United States taxpayers' money to unravel such a mighty mystery is utterly ridiculous, I would say. There was never any intention of preserving the samples as umpires for check assaying. There were no instructions to do so; nothing irregular in not doing so.

As stated before, Hattan and Sanborn never even kept their splits or any duplicate samples.

As to umpires, this word has been used so loosely during this hearing that it has lost its significance when referring to assay samples, as generally referred to in "smelter parlance," to quote Mr. Hattan. I'm surprised that no mention has been made of a baseball umpire. If it had everyone would probably have known what was being talked about.

At one time Mr. Redwine actually referred to me as an umpire. Let me explain what is meant when an assay goes to umpire. It simply means that when a buyer and a seller of ores, bullion, alloys, matte, concentrates, or what-have-you, make a trade, usually each has his own assayer who is sent his portion of the pulp for assay, and an umpire pulp is preserved in case the two assayers do not check within certain limits as agreed upon, or according to standard practice and established custom.

If the assays agree and settlement is made, the umpire pulp is usually destroyed or maybe kept for a specified limited time and then destroyed.

We kept our replacement samples until they had served their purpose and were no longer needed, and then destroyed them. They were not preserved as an umpire in smelter parlance, just an extra precaution we ourselves took, and may I repeat that Hattan and Sanborn did not keep any portion of the samples they took at Al Sarena.

While on the subject of samples, there was some discussion regarding whether bags or envelopes were used as containers when we shipped the samples. Let me clarify this point. When the samples are taken in the field they are usually put into canvas sacks, regular sample sacks, for convenience in handling and labeling. When the field samples are reduced to a pulp they are usually put into a paper envelope container of the type I hold up [demonstrating]. That is this one. We followed this standard practice.

When we reduced the samples at the mine Appling had only paper bags of the type I am now holding up, this type [demonstrating].

When we prepared the samples in his office in Grants Pass the next day we transferred the pulps into envelopes. Why? Because the envelopes are stronger, tougher, and less liable to breakage and spillage. They look better and are easier for the assayer to handle.

That's all, except for one thing: In several cases the envelopes were too small to hold all of the pulp representing one sample, so we had to put these oversize pulps into 2 envelopes instead of only 1 envelope, and to fasten the 2 envelopes together to contain 1 sample.

The postscript that was so emphasized at the beginning of the hearings, the one I wrote at the end of my letter to Williams Testing Laboratories advising them that I had shipped them a batch of samples, was only to caution the assayer of the fact that some sample were contained in 2 envelopes fastened together, and instructed him to use all of the pulp contained in 2 envelopes and treat it as 1 sample, not to weigh his assay charge out of 1 envelope only, but to use all of the pulp.

Senator NEUBERGER. Do you have much more, Mr. McCormick? I have to go over on the floor.

Representative HOFFMAN. We might as well have it. It is a fine job counsel has done as to somebody stealing something. I think the witness made it very clear that neither he nor Mr. Appling could profit, anyway. I only wish I had been along on that Rogue River when you stopped to fish.

Senator NEUBERGER. You may proceed.

Mr. McCORMICK. This note or postscript has been twisted around to sound as if there could have been something very mysterious about the instruction; in other words, as instructions to use up all the sample, to destroy it, leave no evidence, et cetera. Sometimes I wonder how stupid some people can get. It so happens that Mr. McDaniel, the assayer, explained on the stand what he thought the message conveyed, and so did Mr. Volin interpret the postscript as it was meant to be; and that is that, nothing so very fantastic as Mr. Redwine would have the newsmen and the public believe.

One reads in the newspapers under large headlines misstatements of facts, like for instance, where the forestry experts and other Government employees who actually cruised the timber on Al Sarena estimated the total value of marketable timber at the time the application for patent was made in 1948 at \$77,000, and possibly as much as \$126,000 or thereabouts in 1950 when reviewed. Senator Neuberger is quoted by the Medford Mail Tribune, date February 19, 1954, when he was campaigning in Oregon, as saying, and I quote:

I believe the public should know about what appears to be the latest giveaway of natural resources by Secretary of the Interior McKay. To do this he has set aside the judgment of forest rangers, mineral examiners, timber cruisers, and other experts in the field of conservation. The Al Sarena mines, a corporation which I understand is owned largely in Alabama, asked for patents of 23 mining claims in the Rogue River National Forest. Once patent is granted to a claimant the mining firm then can cut the timber growing on the land and convert these profits to its own use.

He goes on to say:

Secretary McKay, acting through the Solicitor of his Department, then overruled the Forest Service and the Bureau of Land Management. He granted the 15 controversial patents, and from this ruling there is no appeal.

It is final. The Al Sarena mines come into possession of approximately \$185,000 worth of timber in the Rogue River National Forest, timber which trained mineral examiners believe should still belong to the American public.

It is my understanding that the Government has received from the company only about \$5 an acre for 450 acres of land. It is significant that the Forest Service never desired to remove the Al Sarena Mining Co. from 15 disputed claims. It is noteworthy that all three echelons of investigation, the Forest Service, the Northwest office of the Bureau of Land Management, and the national headquarters of the Bureau of Land Management, were overruled by Mr. McKay.

What are examiners and rangers in the field actually for if not to determine these essential facts?

He forgot to mention the \$77,000. Senator Neuberger is quoted by the Medford Mail Tribune a little later. He blew this thing up to \$250,000. I have it right here.

Representative HOFFMAN. \$600,000.

Mr. McCORMICK. No, a little later. Medford Mail Tribune, December 2, 1955:

A private assay conducted in far-off Mobile, Ala., was made the basis for grant to the Al Sarena Co. of 15 mining claims in which timber is worth in the neighborhood of \$250,000, perhaps more. This assay was used by the Solicitor of the Interior Department, acting for Secretary McKay, to set aside the ruling of experienced mineral examiners.

Then soon after this \$185,000 figure and this \$250,000, the other day in the Washington Post of January 10, the quarter million dollar figure was doubled to \$500,000, and I quote—

Representative HOFFMAN. Get it up to \$600,000.

Mr. McCORMICK. Then I say here that Senator Kerr Scott stretched this \$500,000 figure to \$600,000 here on the floor. How do they get that way?

If they insist on quoting the mineral examiners and using their statements and figures, why not stick with the Forest Service and continue to quote their figure of \$77,000, instead of using \$500,000 or \$600,000; or, on the other hand, why don't they blow up the \$2.06 average assay to the same proportion of seven or eight times to get \$16 ore to talk about? It would be almost in reach of Mr. Holderer's \$20 figure and there might be some economics to be considered and one might stretch his imagination a little.

If one group of Government experts who testified in Portland could be wrong, could not the other group? If the forestry department was wrong, couldn't Messrs. Hattan and Sanborn also have been wrong? Or should we discount all of the following which I quote from Mr. Hattan's report of December 1949, the report that he turned in and in which he recommended that the 15 claims be disallowed?

This is what Mr. Hattan says in his report to the regional director of the Forest Service on Al Sarena, Inc., dated December 19, 1949, and I am quoting under his general heading, "General Geology," which has already been stated this afternoon:

No intensive study of the geology was made except to note the general trend of known veins and determine in general the rock types exposed on or near the surface of the individual claims. From an examination of the present underground development, and the various surface openings and rock outcrops, there appears to be a dome-shaped central mass, roughly 4,000 feet in diameter, which consists of volcanic breccias and rhyolite. Much of this mass of rocks is altered and bleached and pyritized. Some of it, especially in the vicinity of the main vein, contains lead and zinc sulphide mineralization. These sulphides seem to be the carrier minerals for the gold and silver which are the principal values.

Outside of the central mass rhyolite, volcanic breccias, andesite, and other rocks—possibly phenolite-andesite and/or dacite are found outcropping. The geology of the outcrops indicate they consist of flows, dikes, and possibly sills and stocks. There is no known mineralization of value contained in the dacite or andesite rocks found on the surface, but some pyritization was noted in the volcanic breccias and some of the rhyolite.

I comment here that—

Hattan says there is no mineralization in the dacite and andesite, but there is mineralization in the rhyolite and the volcanic breccias which make up the dome-shaped central mass 4,000 feet in diameter. This approximates the area of the 23 claims.

Mr. Hattan goes on, and he says:

Above tunnel No. 1, where mining was carried on many years ago, the apparent higher grade portion of the vein is defined by definite walls which are caused by narrow parallel gouge seams. The distance between walls of this old stoped area was estimated to be 2½ feet. Although the ground in either direction from the higher grade zone is mineralized to an unknown distance, samples indicate that its grade is low.

I comment:

Hattan says that the ground in either direction from the higher grade is mineralized to an unknown distance and that it is low grade.

Senator NEUBERGER. Mr. McCormick, let me ask you one thing, because, as I said, I am supposed to be over on the floor fairly soon. About how much longer do you think your testimony will take?

Mr. McCORMICK. I still have about 3, 4, 5, pages to read.

Representative HOFFMAN. Senator, I am willing that Mr. Redwine should act as chairman. I do not care.

Senator NEUBERGER. Would you be willing to have this put into the record, or would you rather read it?

Mr. McCORMICK. I would just as soon have it put in the record, only it is handwritten. I would have it typed so they can read it.

Senator NEUBERGER. You go ahead and read it.

Mr. McCORMICK (reading):

Mr. D. Ford McCormick, mention of whom was made in the application for patent, states in a report to the applicant company that "Practically the entire mass of so-called rhyolite is mineralized. Pyrite and pyrrhotite with some galena and sphalerite can be detected with a lens occurring as crystals or small grains, sometimes thickly grouped, then again scattered. Where the stringers occur the values rise. Shattered zones and banded structure also show higher values."

"McCormick also reported in a report dated July 15, 1937, to the company, that samples from outcrops from numerous places over the claims showed mineralization without exception. Small crystals of pyrite, pyrrhotite, galena, and sphalerite are present, scattered more or less through the rock. At some locations narrow stringers occur with kaolin gouge containing a higher proportion of small grains of galena, and where this occurs high grade gold and silver samples are found. Where the stringers and fissures are numerous, the enrichment makes milling ore." He went on to say that insufficient developments have been done to prove a large body of milling ore; several blocks of 4 are present; but aside from 1 possible zone (roughly 600 feet long by 400 feet high) with widths varying from 3 to 40 feet or more) only partially developed, practically no other work has been done in, can be established, and says, if the samples assayed and listed as handed to me on the attached sheets and blueprints are correct, there are several excellent showings that should be investigated without delay.

I included that list, and he goes on to say:

He (McCormick) stated that if these locations show good assays, there would be little doubt that important mining operators would show decided interest in the development of the Al Sarena mine. Then goes on to say that there is not suffi-

cient exposure of milling ore present to warrant a mill other than a pilot mill and from a study of the assay map, it does not appear as though there is any hope of operating profitably a 50 or 75 ton mill continuously from ore to be mined at the available stopes at the present time.

This was in 1937.

Hattan says:

The pilot mill was constructed to determine if the ores could be concentrated but no information was available which would show the minimum grade of material which could be mined, concentrated, and sold at a profit. Whether an operation is large or small there is obviously a low point in grade of material which can be handled through any mill at a profit.

My comment is this:

There is nothing in the mining law which requires that, as a basis for patent, the applicant must prove a minimum grade of ore or must prove that he can mine at a profit.

Hattan goes on:

The indications are that the central mass is all mineralized to some extent. If the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined, and milled at a profit by low-cost, large-scale methods. \* \* \*

He goes on to describe that and I say:

On page 2 of the report Hattan refers to the "dome-shaped central mass, roughly 4,000 feet in diameter." Above he stated that the central mass is indicated "all mineralized to some extent and that the possibilities are good that the whole mass could be mined, and milled at a profit by large-scale, low-cost methods." He designates three methods for such operation.

Then under "Pertinent data" Mr. Hattan says:

Of the mining methods mentioned above, the central mass, being a low-grade proposition with suitable topography, could probably best be mined by the best open-pit or caving method. In any event, this method is the cheapest yet devised for large-scale, low-grade deposits.

Then he goes on to about the Alaska mine. There is no use repeating that. He says:

Any future values which might be attached to such low-grade deposits would be purely speculative. If a value of \$0.80 per ton were found in a quartz lens, for instance, there might be a possibility of finding greater values by advancing along the vein and a valid discovery would be indicated. In a disseminated body of low-grade minerals, if the average grade is not sufficient to justify the expense of time and money in its development, the land should necessarily be classed nonmineral in character. If this is not so, then ordinary rock containing the barest trace of precious or semiprecious minerals should be classed mineral in character and a patent granted. \* \* \*

I comment:

Many values shown at the Al Sarena mine are substantially above those shown at the Alaska-Juneau mine. Present (1949) methods do not measure future methods and improvements. Many prudent men speculate on and strive to work to bring about improved methods in mining, milling, transportation, and so on, the development of new uses for the mineral contents of ores not even suggested at the time of discovery or patent.

For example, the Engineering and Mining Journal for December 1955, reports that for the first time a new gold-extraction process is being used in South Africa at a southern Rhodesia mine. It involves passing the gold-cyanide through a mesh made of synthetic resin. It is claimed that a greater extraction of percent gold is achieved.

Low-grade properties and marginal properties will certainly profit in this operation.

Only 50 miles from the Al Sarena mine, the only nickel mine in the United States is being operated. This low-grade deposit was known for many years. Attempts were made to operate, but were unsuccessful. A smelter was built on the property, but it failed. Large and powerful mining groups examined the property and turned it down. Three years ago the Hanna Co. became interested. In excess of \$30 million was invested for a low-grade large-scale operation. The mine is now producing nickel on a large scale and at a profit.

This illustrates the difference of opinion by groups of men—several turning down a mining opportunity, then one speculating and taking it up—and succeeding with what appeared to be too low grade to others. Improved methods, ample financing, changed conditions, changed markets, new uses, and many other factors contribute to what establishes the minimum grade but these facts do not establish the fact as to whether mineralization existed in the first place.

Mr. Hattan says that the mineralization exists throughout the rhyolitic and volcanic breccia, not only in "the dome-shaped central mass (roughly 4,000 feet in diameter)" but that "the possibilities are good that the whole mass could be developed, mined, and milled at a profit by large-scale low-cost mining method."

It also explodes Mr. Holderer's thought that not by the wildest stretch of the imagination could a production of 100 tons per day ever be reached.

Mr. Hattan seemed to get matters all confused. His assays, for instance, 28 in the group, were sent to Annes May 1949. All but one showed a trace; that one only 12 cents. Nine of these samples he took on the noncontested claims and they were all blanks.

A resampling of the 17 claims in July 1949 showed two of these uncontested claims assayed over a dollar. They were the only two uncontested claims resampled. One uncontested claim was never sampled at all.

He concluded that 6 of the 8 he would allow on the basis of Al Sarena assays taken off of the maps, 2 pulps taken from Al Sarena assays that he had sent to Abbot Hanks to check. One went \$13.37, just twice what the Al Sarena assay was, and one went \$7.03, just \$2.21 under the Al Sarena assay. There was nothing consistent in his reasoning.

To further substantiate my beliefs and conclusions regarding mineralization of the Al Sarena rhyolite body I quote from Mr. Sopp's report dated May 19, 1939:

**Geology:** The 2 rocks described above (1 not identified and 1 a rhyolite) covers a roughly circular area about three-quarters of a mile in diameter and are completely surrounded by andesite.

**Widespread mineralization:** The gold and silver in the main vein is known to be associated within a galena, sphalerite, pyrite, and quartz. These minerals, however, are not confined to any one rock or fracture zone. Galena, sphalerite, pyrite, and vein quartz are found abundantly in the rhyolite and the white flow rock.

This widespread mineralization suggests the theory that during the final stage of one period of extrusion, solutions ascended from a deep-seated magma reservoir to permeate and deposit minerals in every type of rock present except the andesite.

Now, in conclusion, the two United States Geological Survey men, Callaghan and Buddington, Mr. George Sopp, Mr. Hattan, the letters that were read by Mr. Davis quoting Mr. Kissok of New York and Capt. Jewell Morrison of Denver, both mining engineers, and myself all have been on the property and have reported as has been quoted above regarding the mineralization of the whole rhyolite body. Yet Mr. Holderer, who has never seen the property, bases his conclusions

cient exposure of milling ore present to warrant a mill other than a pilot mill, and from a study of the assay map, it does not appear as though there is any hope of operating profitably a 50 or 75 ton mill continuously from ore to be mined from the available stopes at the present time.

This was in 1937.

Hattan says:

The pilot mill was constructed to determine if the ores could be concentrated, but no information was available which would show the minimum grade of material which could be mined, concentrated, and sold at a profit. Whether an operation is large or small there is obviously a low point in grade of material which can be handled through any mill at a profit.

My comment is this:

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Hattan goes on:

The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined, and milled at a profit by low-cost, large-scale mining methods. \* \* \*

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On page 2 of the report Hattan refers to the "dome-shaped central mass, roughly 4,000 feet in diameter." Above he stated that the central mass is indicated as "all mineralized to some extent and that the possibilities are good that the whole mass could be mined, and milled at a profit by large-scale, low-cost mining methods." He designates three methods for such operation.

Then under "Pertinent data" Mr. Hattan says:

Of the mining methods mentioned above, the central mass, being a low-grade proposition with suitable topography, could probably best be mined by the block-caving method. In any event, this method is the cheapest yet devised for large-scale, low-grade deposits.

Then he goes on to about the Alaska mine. There is no use repeating that. He says:

Any future values which might be attached to such low-grade deposits would be purely speculative. If a value of \$0.80 per ton were found in a quartz ledge, for instance, there might be a possibility of finding greater values by advancing along the vein and a valid discovery would be indicated. In a disseminated body of low-grade minerals, if the average grade is not sufficient to justify the expenditure of time and money in its development, the land should necessarily be classed nonmineral in character. If this is not so, then ordinary rock containing the barest trace of precious or semiprecious minerals should be classed mineral in character and a patent granted. \* \* \*

I comment:

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For example, the Engineering and Mining Journal for December 1955, reports that for the first time a new gold-extraction process is being used in South Africa at a southern Rhodesia mine. It involves passing the gold-cyanide through a mesh made of synthetic resin. It is claimed that a greater extraction of pure gold is achieved.

Low-grade properties and marginal properties will certainly profit in this operation.

Only 50 miles from the Al Sarena mine, the only nickel mine in the United States is being operated. This low grade deposit was known for many years. Attempts were made to operate, but were unsuccessful. A smelter was built on the property, but it failed. Large and powerful mining groups examined the property and turned it down. Three years ago the Hanna Co. became interested. In excess of \$20 million was invested for a low grade large scale operation. The mine is now producing nickel on a large scale and at a profit.

This illustrates the difference of opinion by groups of men - several turning down a mining opportunity, then one speculating and taking it up - and succeeding with what appeared to be too low grade to others. Improved methods, ample financing, changed conditions, changed markets, new uses, and many other factors contribute to what establishes the minimum grade but these facts do not establish the fact as to whether mineralization existed in the first place.

Mr. Hattan says that the mineralization exists throughout the rhyolite and volcanic breccia, not only in "the dome-shaped central mass (roughly 1,000 feet in diameter)" but that "the possibilities are good that the whole mass could be developed, mined, and milled at a profit by large-scale low cost mining method."

It also explodes Mr. Holderer's thought that not by the wildest stretch of the imagination could a production of 100 tons per day ever be reached.

Mr. Hattan seemed to get matters all confused. His assays, for instance, 28 in the group, were sent to Annes May 1949. All but one showed a trace; that one only 12 cents. Nine of these samples he took on the noncontested claims and they were all blanks.

A resampling of the 17 claims in July 1949 showed two of these uncontested claims assayed over a dollar. They were the only two uncontested claims resampled. One uncontested claim was never sampled at all.

He concluded that 6 of the 8 he would allow on the basis of Al Sarena assays taken off of the maps, 2 pulps taken from Al Sarena assays that he had sent to Abbot Hanks to check. One went \$13.37, just twice what the Al Sarena assay was, and one went \$7.03, just \$2.21 under the Al Sarena assay. There was nothing consistent in his reasoning.

To further substantiate my beliefs and conclusions regarding mineralization of the Al Sarena rhyolite body I quote from Mr. Sopp's report dated May 19, 1939:

**Geology:** The 2 rocks described above (1 not identified and 1 a rhyolite) covers a roughly circular area about three-quarters of a mile in diameter and are completely surrounded by andesite.

**Widespread mineralization:** The gold and silver in the main vein is known to be associated within a galena, sphalerite, pyrite, and quartz. These minerals, however, are not confined to any one rock or fracture zone. Galena, sphalerite, pyrite, and vein quartz are found abundantly in the rhyolite and the white flow rock.

This widespread mineralization suggests the theory that during the final stage of one period of extrusion, solutions ascended from a deep-seated magma reservoir to percolate and deposit minerals in every type of rock present except the andesite.

Now, in conclusion, the two United States Geological Survey men, Callaghan and Buddington, Mr. George Sopp, Mr. Hattan, the letters that were read by Mr. Davis quoting Mr. Kissok of New York and Capt. Jewell Morrison of Denver, both mining engineers, and myself all have been on the property and have reported as has been quoted above regarding the mineralization of the whole rhyolite body. Yet Mr. Holderer, who has never seen the property, bases his conclusions



on assay samples when he has no idea from whence they came, and says, "Rarely have I seen as poor a batch of assays as that," and later, I might add, that after having summarized these assays, "I made no further attempt to discuss the economics of the mine because there are none."

When asked by Mr. Redwine, "There are no economics there?" Holderer replied, "The economics are zero."

Holderer had previously testified that miners' pay was around \$13 per day in the Coeur d'Alene, some eight or nine hundred miles away, the nearest large mine, and that the man shift average was 2 tons per man. Maybe he doesn't know that at the Riddle Nickel mine, only about 85 miles distant, or only one-tenth as far from Al Sarena, one man handles a 30-ton carryall that scrapes up 30 tons in 1 scoop, and fills and discharges this sized load many times an hour; that this low-grade ore is transported by an automatic tramway operated by 2 men. I have been told, who deliver over 2,000 tons per shift, a distance of over a mile to the smelter stockpile.

Has he not seen one man on a bulldozer push hundreds of tons around in a single shift?

I quote from the New York Times of January 27, 1956, just the other day:

#### PAUL BUNYAN'S BIG "CAT"

##### MAKES DIRT FLY IN MICHIGAN BUILDING NEW HIGHWAYS

LANSING, MICH.—It takes huge equipment to make modern highways and the "Paul Bunyan" of them all is a 35-ton caterpillar.

Manufacturers of the big "cat" say it can move up to 10 yards of earth at a time. It is 12 feet wide and 2 feet 6 inches high.

One man operates this.

Does he think that an area nearly a mile across could not be made to yield over 100 tons per 24 hours?

I quote from the testimony:

MR. JONAS. Is your statement to us that this would not be economic, even if it goes \$2 per ton, based on the amount they propose to mine? What if they stepped up the amount?

MR. HOLDERER. They would never get up to 100 tons, to say nothing of the several thousand tons per day. It would be a physical impossibility.

I say that Mr. Holderer seems to be still living in the pick-and-shovel days. What was good enough for grandpappy is still good enough for him.

Mr. Redwine had Mr. McDaniel answer that there are no operating gold mines in Alabama today. Just where in all of the 48 States are there any gold mines operating today, as such? Only the Homestake in South Dakota and probably a few scattered small high-grade mines in Colorado and California. The gold and silver produced in the United States today comes from the copper, lead, and zinc mines as a byproduct from a few dredges which are very low-cost producers.

An interesting fact is that one can step over to the Smithsonian Institution and among the minerals and gems exhibits find some beautiful specimens of gold mines in Alabama, North Carolina, and South Carolina, and right next to Alabama are the once famous Dahlonega gold mines. One of the first, if not the first, gold mines ever built in the United States was built in the town of Dahlonega, and all of the gold that was minted for Uncle Sam was produced in Alabama, the

Carolinas, and Georgia. Dahlonga has been investigated recently as a possible large, low-grade producer when economic conditions warrant such a procedure.

It seems to me that the bottom has dropped out from under every accusation and insinuation that the committee has tried to make.

I might add that I do not like the manner in which my name has been dragged into this whole matter. I call it mud and filth. I do not like what the newspapers have printed as a result of it, for instance, in Drew Pearson's column of December 14, 1955, and in the Nevada State Journal in Reno; again just here the other day, January 10, 1956, in the Washington Post; and prior to these dates, these insinuations, half-truths, and untruths created out of thin air, and never once any attempt or any effort made by the committee or the press to interview me. To say the least, this is very distasteful to me, talking as a red-blooded United States citizen.

The whole matter seems childish and I hope that the truth will prevail and that the whole thing boomerangs and bursts right in the scandalmongers' faces. Let the chips fall where they may, as Senator Kerr Scott said.

I thank you for allowing me to testify even if I have had to wait over 3 weeks, and I am over 3,000 miles away from home.

Mr. REDWINE. Mr. Chairman.

Senator NEUBERGER. Yes, sir, Mr. Redwine.

Mr. REDWINE. In view of part of the statement read by this witness I would like to read from the record at page 251. This is at the very opening of the examination of Mr. McDaniel, assayer for the Williams Co. I said:

Mr. Chairman, in the examination of this witness certain documents will be submitted to him for examination and explanation. They are from the files of the A. W. Williams Inspection Co.

Further down I said:

These documents that will be submitted to the witness for identification and explanation are from the files of the A. W. Williams Inspection Co., for whom he works.

I think it is only fair that the record should show that they are in the possession of the committee through subpoena.

The Williams Co. has not turned anything over to the committee that has not been subpoenaed, in fairness to its clients. It is a professional matter with them.

I further have here, Mr. Chairman, which I think should go in the record, a letter signed by Chairman Murray, addressed to the United States Marshal in Mobile, Ala., attaching thereto a subpoena for the records of the A. W. Williams Inspection Co., the pertinent part which reads:

You are hereby commanded to furnish the Committee on Interior and Insular Affairs all reports of assays and all correspondence now in your possession relating to any and all ore samples submitted to the A. W. Williams Inspection Co. by or on behalf of Al Sarena Mining, Inc., of Trail, Oreg., for and during the period January 1, 1949, up to and including January 1, 1955.

Senator NEUBERGER. That will go in the record.  
(The material referred to follows:)

UNITED STATES MARSHAL,  
*Federal Building, Mobile, Ala.*

JUNE 20, 1955.

DEAR SIR: I will appreciate it if you will serve the enclosed subpoena upon Mr. A. W. Williams, president, A. W. Williams Inspection Co., of Mobile, Ala., so that

this committee may be furnished with certain documents and other material now in the possession of Mr. Williams.

Thank you for your cooperation.

Sincerely yours,

JAMES E. MURRAY, *Chairman.*

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

*To A. W. Williams, president, A. W. Williams Inspection Company, Mobile, Alabama, Greetings:*

Pursuant to lawful authority, you are hereby commanded to furnish the Committee on Interior and Insular Affairs all reports of assays and all correspondence now in your possession relating to any and all ore samples submitted to the A. W. Williams Inspection Company, by or on behalf of Al Sarena Mining, Inc., of Trail, Oreg., for and during the period January 1, 1949, up to and including January 1, 1955.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To United States Marshal, Federal Building, Mobile, Alabama, to serve and return.

Given under my hand, by order of the Committee, this 20th day of June, in the year of our Lord one thousand nine hundred and fifty-five.

*Chairman, Committee on Interior and Insular Affairs.*

Mr. McCORMICK. May I say that is absolutely and probably true, but did you find out where those samples came from, where they were taken? No. Where do you say they were taken, excepting that one group? They are specifically located. These others could have been concrete. They could have been taken in Mexico or sent down by the Al Sarena Mining Co. That doesn't say where they came from.

Representative HOFFMAN. Is that all, Mr. Chairman, at this time?

Senator NEUBERGER. Yes, sir.

I just wanted to ask one question of Mr. McCormick, if I may.

Are you now in the employ of the Al Sarena Mines or the McDonalds?

Mr. McCORMICK. I am not and have not been since I reported to you and testified in Portland.

Senator NEUBERGER. You have not been since you testified in Portland?

Mr. McCORMICK. No.

Senator NEUBERGER. I thank you very much, Mr. McCormick, for coming here. Your statement, of course, will appear in full in the record.

The committee will stand in recess until, as under the previous order I believe, next Tuesday at 10:30 a. m.

Representative HOFFMAN. Let the record show, if you will, please, that the only members of the committee present are the Senator from Oregon, the Congressman from North Carolina, Mr. Jonas, and the Representative from Michigan and the committee staff.

Senator NEUBERGER. And the committee staff also is present.

Representative HOFFMAN. Yes. Mr. Redwine, Mr. Coburn, Mr. Lanigan, and Mr. Perlman.

Senator NEUBERGER. And as the second acting chairman let me say I appreciate the attendance of the distinguished gentleman from Michigan and the gentleman from North Carolina.

Representative HOFFMAN. We are glad to be here.

(Whereupon, at 5:15 p. m. the hearing was adjourned.)

## APPENDIX

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### MATERIAL SUBMITTED FOR INCLUSION IN THE RECORD AFTER TERMINATION OF TESTIMONY

#### MATERIAL SUBMITTED BY UNITED STATES FOREST SERVICE

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
Washington 25, D. C., February 16, 1956.

Re Adjustments, R-6, Rogue River, Al Sarena Mines, Inc.

HON. W. KERR SCOTT,  
*Acting Chairman, Legislative Oversight Subcommittee,  
Committee on Interior and Insular Affairs,  
United States Senate.*

DEAR SENATOR SCOTT: This is in reply to your letter of February 8 concerning mining claim appeal cases involving national forest land.

We have searched our files for the period 1948 through 1955 and find that there have been three cases involving patent application, in which the Forest Service was the contestant, which were appealed to the Secretary of the Interior. For these cases, the average elapsed time between the filing of application for patent and the final decision of the Department of the Interior was 3 years, 11½ months.

Sincerely yours,

EDWARD C. CRAFTS,  
*Assistant Chief.*

FEBRUARY 13, 1956.

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#### STATEMENT

Omitted from page 10 of Under Secretary Davis' testimony is reference to the letter of December 15, 1948 from the assistant regional forester at Portland to the regional administrator of the Bureau of Land Management. A copy of this letter, which requests the services of a qualified mineral examiner, is attached. This is the letter Mr. Leonard B. Netzorg referred to in his letter of April 14, 1949 to the claimants (mentioned on p. 11 of Davis' testimony). Davis' testimony makes it appear that Netzorg's letter of April 14, 1949 to the claimants contained the wrong date when referring to the Forest Service request of BLM for a field examination and report. The date used by Netzorg is correct.

The statement on page 10 of Davis' testimony "that the Forest Service had been notified 3 months before of the filing of these claims and apparently had done nothing about it" does not agree with the record. The first action of the Forest Service was on December 2, 1948 when the forest supervisor wrote the regional forester (copy attached) calling attention to the "notice for publication." On December 7, the regional forester's office requested by phone a copy of the application from BLM and by memorandum of December 9 (copy attached) transmitted a copy to the forest supervisor and made inquiry as to when claims should be examined. The Forest Service had no knowledge of the filing of the patent application until December 2, 1948, and thereafter promptly initiated first steps in arrangements for having the claims examined. Because of snow it was not feasible to examine the claims until the following spring. Hattan's reminder, referred to in the regional forester's letter of March 17, 1949, to the district manager of the Bureau of Land Management, related only to a technicality and did not influence Forest Service decision to examine the claims.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
December 15, 1948

Re adjustments, Rogue River mining claims.

Mr. W. H. HORNING,  
Regional Administrator, Bureau of Land Management,  
Portland, Oreg.

DEAR MR. HORNING: We have recently received a copy of the notice for publication and the application for patent filed by the Al Sarena Mines, Inc., for patent to the following claims in the Rogue River National Forest:

Oro Alto (2)	Mark Applegate (10)	Rainboe (18)
Oro Rico (3)	H. McKenzie (11)	Della McKinnon (19)
Cougar (4)	J. L. Grubb (12)	Sulphide (20)
Oro Real (5)	J. D. McKinnon (13)	Staples (21)
J. W. Merritt (6)	Henry Applegate (14)	Manganese (22)
Peter Applegate (7)	A. W. Dahlberg (15)	La Jolla (23)
Oro Escondido (8)	Telluride (16)	Arroyo Verde (24)
W. C. Leever (9)	Alabama (17)	

Since we do not have a qualified mineral examiner we will appreciate your assistance in examining these claims in accordance with the system which has worked so successfully for us during the past 2 or 3 years.

Word from Supervisor Janouch of the Rogue River indicates that this examination should be deferred until next spring. Recent snows, plus winter conditions, make field work in this area impracticable at this time.

We have only one copy of the notice for publication and application for patent. These can be made available for your use at any time they are needed. In the meantime, however, we will hold them in our files until you request otherwise.

Very truly yours,

FRANK B. FOLSON,  
Assistant Regional Forester  
By K. WOLFE, Acting.

DECEMBER 9, 1948

To: Forest Supervisor, Rogue River.  
From: Recreation and Lands, K. Wolfe, Acting.  
Subject: U-adjustments, Rogue River mining claims.

Reference is made to our memorandum of December 7, and to related correspondence.

Attached are our only copies of the notice for publication and application for patent in this case. Under separate cover we are sending you 2 copies of each of the 3 sheets comprising mineral survey No. 879.

It is presumed that you will want these claims examined by a mineral examiner before recommending whether a protest should be entered by the Forest Service against the patenting of any or all of them. Probably we can secure the assistance of Mr. Hutton, who is somewhat familiar with these claims. If we can, what are the ground conditions at present? Is the area covered with snow? Do you think now is a satisfactory time to make the examination or should we figure on delaying it until early spring? Please let us have your recommendations. With them please return the notice for publication and application for patent. If you feel that copies of these instruments are essential, we will try to have them made as and when opportunity presents.

K. WOLFE

DECEMBER 2, 1948

To: Regional forester.  
From: Forest supervisor, Rogue River.  
Subject: U-adjustment, mining claims.

Attached are (1) clipping from the Medford paper containing a summons and notice for publication and (2) map showing approximately the location of the tract.

Before patent proceedings go too far we wonder if the Forest Service should protest the patent until our mineral examiner determines the validity of the claim.

KARL L. JANOUCH.

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UNITED STATES FOREST SERVICE,  
*Washington 25, D. C., February 1, 1956.*

For the record.

By John Sicker, Chief, Division of Recreation and Land Uses.

Subject: U-Adjustments, R-6, Rogue River, Al Sarena Mines, Inc.

In answer to the question I asked by phone of William Sanborn today "Did the McDonalds request that you split the samples taken at the time you and Hatten made your examination of the claims so that they would have a sample to have assayed," Sanborn stated that to the best of his recollection no such request was made. He further advised that had such a request been made he is certain he would have recollected it and that he would have agreed to splitting the samples providing the crushing and splitting was done under his and Mr. Hattan's supervision. Sanborn further advised that in all his years of mineral claim work he has never been requested by a claimant to split a sample so that the claimant could have the sample assayed as well as the Government.

JOHN SIEKER.

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DECEMBER 7, 1948.

To: Forest supervisor, Rogue River.

From: Recreation and Lands, Frank B. Folsom.

Subject: U-Adjustments, Rogue River, mining claims.

Reference is made to your memorandum of December 2.

On receipt of this memorandum we got in touch with the local land office by telephone, and found that they had overlooked sending us a copy of this application for patent. They will now send the usual notice and we will ask for your report and recommendations as in other applications for mining patent. Thanks for bringing this matter to our attention.

FRANK B. FOLSOM.

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DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT, OREGON DISTRICT LAND OFFICE,  
*Portland, Oreg., December 7, 1948.*

REGIONAL FORESTER,

*Portland, Oreg.*

(Attention: Mr. Wolfe.)

DEAR SIR: As was advised in our telephone conversation today, I am enclosing a copy of the notice for publication, together with a copy of the application for patent, filed by the Al Sarena Mines, Inc., in connection with mineral application 0665.

We trust this will give you the information desired and regret the forwarding of these papers to you was overlooked.

Very truly yours,

CARL F. SPAULDING, *Assistant Manager.*

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DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, NORTH PACIFIC REGION,  
*Portland, Oreg., March 17, 1949.*

Re: Adjustments, Rogue River mining claims.

Mr. CHARLES LEE,

*Manager, Oregon District Land Office,*

*Bureau of Land Management, Portland, Oreg.*

DEAR MR. LEE: Reference is made to Mr. Spaulding's letter of December 7, transmitting a copy of the notice for publication and a copy of the application for patent filed by the Al Sarena Mines, Inc., in connection with mineral application 0665.

Thanks to Mr. Hattan, my attention has been called to the fact that I neglected to ask you to withhold action on this application until the Forest Service had had an opportunity to have these mining claims examined. Mr. Hattan is planning to examine these claims for us as soon as weather conditions will permit. Until his report is received we will appreciate it if action can be withheld in accordance with the provisions of regulation 44LD360.

Very truly yours,

H. J. ANDREWS, *Regional Forester.*  
By FRANK B. FOLSOM, *Acting.*

WASHINGTON, D. C., August 5, 1915.

To: The Commissioner, Chief of Field Service, chiefs of field divisions, registers and receivers, General Land Office, Department of the Interior; the forester, district foresters, Forest Service, the Solicitor, the district assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands within national forests, the following order is made, effective on and after October 1, 1915, superseding order of November 25, 1910 (39 L. D., 374) :

1. Hereafter when a person files application to make an entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the register and receiver will require such person to file with his application a statement under oath, in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the affidavit, in duplicate, of at least one disinterested person, corroborating the statement. The register and receiver will immediately forward the duplicate of such statement and affidavit to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed 6 months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest, as hereinafter provided.

2. The register and receiver in providing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as hereinafter prescribed, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed 6 months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest as hereinafter provided. In each case, however, where the register and receiver, upon examination of the final proof at any time after its submission, find it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

3. The forest supervisor upon receipt of the statement mentioned in paragraph 1, or the notice mentioned in paragraph 2, will at once make investigation of the claim, and will submit to the district forester a report thereon, unless immediate investigation is impossible because of climatic or other conditions, when an extension of time will be requested as provided in paragraphs 1 and 2 hereof, and the investigation will be made and the report submitted as soon as possible within the period of extension. The district forester will promptly consider the report and if of opinion that no protest should be filed will so advise the register and receiver. If the district forester is of opinion that a protest should be made, he will transmit the papers to the district assistant to the Solicitor, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the register and receiver of the proper local land office.

4. Upon receipt of the protest, the register and receiver shall immediately forward a copy thereof to the Commissioner of the General Land Office, in accordance with rule 4 of the Rules of Practice, and in every case immediately issue the notice required by rule 5 thereof, accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within 30 days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the register and receiver shall set a date for a hearing, after consultation with the district assistant to the Solicitor, and notify parties as provided in the Rules of Practice. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in paragraph 2 hereof for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the General Land Office pending determination of the protest.

5. If no protest be filed within the time limit as provided in paragraphs 1 and 2 hereof, the register and receiver shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no-protest notice as hereinabove provided, shall patent issue until the Commissioner of the General Land Office is notified by, or ascertains from, the forester that the claim will not be protested, as provided in paragraph 6 hereof.

6. A protest may be initiated against any claim, mineral or nonmineral, embracing lands within national forests at any time prior to patent, by the solicitor or the district assistant to the Solicitor of the Department of Agriculture filing in the local land office, in triplicate, a complaint signed by the forester or the district forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the register and receiver shall forward a copy thereof to the Commissioner of the General Land Office; issue the notice required by rule 5 of the Rules of Practice, accompanied by a copy of the complaint; and arrange for a hearing, if applied for, as provided in paragraph 4 hereof.

7. In all hearings affecting lands or claims within a national forest the district assistant to the Solicitor will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

8. Forest-lieu and school-selection cases will be handled by the chiefs of field division of the General Land Office in like manner as heretofore. The forest officers will, upon request of the chiefs of field division, render any assistance possible in the making of investigations, and the district assistants to the Solicitor of the Department of Agriculture will cooperate with the chiefs of field division in the conduct of hearings in such cases, and thereafter will take action in like manner as heretofore, including the taking of appeals to the Secretary of the Interior.

9. In all Government cases before registers and receivers involving lands or claims within a national forest, the district assistant to the Solicitor shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper law officers of the Department of Agriculture shall also have a right of appeal from any decision by the Commissioner of the General Land Office and to file motion for rehearing in the Department of the Interior, or take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: Provided, however, that the Department of Agriculture shall not be required to take formal appeals from decisions of registers and receivers.

10. Chiefs of field division and special agents will not hereafter take action in regard to any claims within a national forest, except as provided in paragraph 8 hereof, unless specifically directed by the Commissioner of the General Land Office or the Secretary of the Interior: Provided, that the chiefs of field division may, on request of a district forester, assign mineral examiners to assist in the investigation of cases involving mining claims.

11. Costs of hearings will be paid from the appropriation for expenses of hearings in land entries as now provided for other Government contests. Prior to June 1 of each year the district assistant to the Solicitor will mail to the chief of field division in whose division the lands involved lie an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which imme-



W. L. Freres, under an option, shipped ore in 1912 and 1913, and the Pearl Mining Co. was active in 1914 and 1915. The mine was leased in 1916 to Paul Wright, who drove tunnel 4 on the east side of the ridge and shipped considerable ore. The total production, 1909-18, was nearly \$24,000 chiefly in gold, but it included some silver and lead.

"According to the owners, the mine workings consist of 3,334 feet of drifts and crosscuts, 1,000 feet of raises and winzes, and 75 feet of open cuts and trenches. \* \* \*

"Apparently the veins shown in plate 22 are the only ones found up to the present time, though it seems possible that so large an area of altered rock might contain similar veins."

They go on to state development and more geology, and finally they say:

The outcrop of the ore body is considerably altered. The rhyolite is soft and may be cut easily with a knife. Pyrite has been altered to hematite. On the lower levels the fault zones show alteration but the rhyolite wall rock is relatively unaltered.

So we see that these gentlemen, employees of the United States Government, as far back as 1930 and 1931 believed there could be a large mineralized area in and around the Buzzard or Al Sarena Mine, 6 or 7 years before my first contact with the Al Sarena, 3 years before I moved to Oregon, and 27 or 28 years before the McDonalds made application for patent. The McDonalds made application for patent after determining the line of contact, as nearly as they could, between the rhyolite and the andesite, two different rock formations, in order to outline the rhyolite body which is the host for the mineralization.

They traced this contact in order to delineate the rhyolite in order to stake their mining claims and to try to include the entire, the whole rhyolite body, and to protect their discovery.

Ever since that time obstacle after obstacle has been placed in their way to attempt to deprive them of their findings.

Mr. Hattan during the time of his investigation in 1949 visited me at my home and asked me my opinion of the Al Sarena as a large, low-grade deposit. It was nothing new to me nor to Mr. Hattan, I believe, that the property had possibilities as a large, low-grade mine.

He testified in Portland that he doubted his own sampling and was surprised at the assay reports which showed a trace.

Right here let me clear up Mr. Hattan's statement that he thought that he had taken his examination for his certificate to practice as a professional engineer in Oregon when I was a member of the board of examining engineers in 1920. I was in Cuba in 1920, did not move to Oregon until 1933, and did not join the board of examiners until the late 1940's, so he was mistaken in this assumption.

Furthermore, I am not surprised that Mr. Redwine could go down to Alabama and dig up assay reports of samples sent in by Al Sarena that would show traces. He could also have gone to Abbot Hanks, or to Smith-Emery, the two laboratories so much discussed in these hearings, or checked the assay records of the mine laboratory itself and found hundreds of assays that assayed over \$2 per ton. Nor am I surprised that Messrs. Hattan and Sanborn could have found and sampled places within the 300 acres of even on each of the disputed claims that would show barren spots. Even the McDonalds could do this, I am sure.

But some of the certificates of assays that Mr. Redwine dug out of the files of the Williams testing laboratory that were introduced here and certified to by Mr. McDaniel as being reports on samples received

from and assayed for the Al Sarena mean nothing in this case unless further certified to us to where the samples were taken or what they represent.

Mr. McDaniel could not do this. He does not know where the samples were taken.

These samples, or some of them, might have been samples to test old dumps. They might have been samples to test the overburden, or just blanks to test the accuracy of the Williams testing laboratory. They might have been samples of concrete or samples to check for future roadways over barren ground, or even samples to check barren areas, areas clear off of the claims. Maybe they were samples taken in another district or another State, say Tennessee, or from Mexico. They could all have come off of one of the disputed claims; maybe off of one of the undisputed claims. Who knows where the samples did come from?

We were not told by Mr. Redwine the exact location from whence they come nor what they represented, at least not for any of all the certificates he had McDaniel identify, except for one sheet. That was assay certificate No. 431869, which reported on 28 samples taken by Messrs. Appling and McCormick.

This assay certificate is significant because it reports the results of samples taken on the 15 disputed claims, and the exact location by survey of the area by Mr. Appling's crew, all Government employees, plotted on maps prepared by them and by photographs taken by Mr. Appling.

Mr. Appling and his crew were most careful and conscientious in performing their duty as per instructions, and in the presence of McCormick.

This one certificate is important. All the rest can be thrown out of the window insofar as this case is concerned. This one assay certificate, No. 431869, represents the results of samples taken in areas pointed out on each disputed claim by the McDonalds who guided us to the several claims and showed us areas of 50 by 150 feet, or of an acre or more of outcropping rhyolite formations, formations not covered by overburden, or bulldozer cuts 100 feet or more long and up to 15 feet deep, or creek banks showing exposures of the mineralized rhyolite, or discovery cuts or shafts where mineralization showed.

Mr. Appling and I chose the spots within these areas where we took the samples. On some claims we took 2 or 3 samples, just to doublecheck our own sampling and to determine if the assays would check each other when samples were taken 50 or 60 feet apart on some of these outcrops.

These assays shown on certificate No. 431869, and submitted by Mr. Redwine, by Appling in his report, and by McCormick along with the photostatic copy of his report, requested by Mr. Redwine in Portland, were not blanks or traces, and they all show mineralization in every instance.

This sampling was to test the claims and to show mineralization on each of the 15 claims if it did exist.

It has been stated in these hearings that the average of the 28 samples indicated a value of \$2.06. It is common knowledge and published information that the famous Homestake Gold Mine in South Dakota, now many years old, has operated continuously for

many years, and is one of the few gold mines operating today on the low gold price of \$35 per ounce. It has processed thousands and thousands of tons of ore, much of which did not assay as high as \$2 per ton and on which profits have been made.

Another famous, very famous, gold mine, the Alaska Juneau in Alaska, operated for years on ore lower in value than \$1 per ton and paid handsomely in dividends from profits until the mine was shut down by the War Order L-208.

Dredges are operating in California around Yuba City and Marysville making a profit on 6 cents per cubic yard of gold-bearing material, material that weighs 3,000 pounds per cubic yard, which means only 4 cents per ton of 2,000 pounds.

All this talk of values has little bearing on whether or not the Al Sarena will or will not become a profitable venture. That remains to be proven. Actually, 10,000 tons mined and processed per day at 40 cents per ton profit equals \$4,000 per day or \$120,000 per month profit.

The values of the timber on Al Sarena would soon be erased at this rate, and it is a possibility.

Congressman Chudoff's claim of Al Sarena mining timber instead of mining ore, and that the McDonalds never intended to mine gold, really would be a joke.

As to using all the timber on the claims for mining purposes, yes, if the square set mining method was necessary to win the ore, as in the case of the famous International Nickel mine at Sudbury, Canada, where 12,000 tons of low-grade ore per day is being processed daily, it would not be many weeks before Al Sarena would be buying mature timbers. International uses at times 800 square sets a day, or about 8 million feet of mine timbers per month.

There are many sawmills in the West that cut from 100,000 to 500,000 feet of timber per day. Ten or twelve million feet does not last long at this rate.

If persecuted further, as they have been in the past, Al Sarena will be forced to market more timber to pay the bills and then just have to buy timber for mining purposes later when needed: 10, or 12, or 20 million feet will not last them long once they get underground.

With reference to the insinuations that there was something improper regarding my handwritten postscript to my letter to the Williams testing laboratories and which postscript was so stressed in the opening moments of the hearing taken here in Washington when Mr. Redwine first put Mr. McDaniel on the stand, I wish to explain just why this postscript was added.

When taking samples one never knows what the gross weight of the sample will be. It might amount to 10 pounds or only 5 pounds, 7 pounds, or  $3\frac{1}{2}$  pounds, or have any weight, depending on the circumstances. If we cut a 10-pound sample to start with and make a split, then we would have two 5-pound samples identical to each other, 1 a reject and the other to be split again, and this repeated until one ends with a pulp-size sample from the last split. If one started with a 5-pound sample as the original gross sample he would be starting with the same weight as the first split from a 10-pound sample, and naturally a 5-pound sample split several times to get a pulp sample would not end up with the same weight as if he started a  $3\frac{1}{2}$ -pound gross sample. The splitting is a standard pro-

cedure to reduce the bulky original sample to a pulp from which the assayer takes his weight for the assay charge. In this instance the pulp would be 1 of the 2 halves resulting from the last split, one-half to be shipped to the assay laboratory and the other half would ordinarily just be discarded.

From Mr. Sanborn's testimony it is quite evident that he and Mr. Hattan sent the whole of the bulk samples, or else in several instances split their original sample to reduce the bulk for shipment to the assayer. They kept no splits or umpires.

In Mr. Appling's and my case we did not ship bulk samples, but prepared the samples and reduced them all to a size suitable for the laboratory so that, instead of shipping some 250 pounds of samples, we reduced the weight of the 28 samples to about 21 pounds. This is also standard practice.

In our case Mr. Appling and I elected to preserve one half of the last split instead of discarding all the splits as Messrs. Hattan, Sanborn did, as Mr. Sanborn testified. They kept no duplicates, no splits, just threw away all their discards from any splits they made. We kept all of our discards and, except for the last or duplicate split, used them to pan for any evidence of mineralization.

In the panning operation all of the host rock is discarded, washed away, and only the metallics are saved. Examination of these metallics with a high powered magnifying lens disclosed in this case pyrite, magnetite, sphalerite or galena present in every sample taken. The pyrite indicated the presence of gold and silver; the sphalerite, zinc; and the galena, lead.

This was good evidence of mineralization and an indicator in each case that values were present in the samples, which the assays would prove.

We had decided to preserve one half of the last split as a duplicate or replacement in case the shipment was lost in transit or an accident occurred in the laboratory that would spoil the assay of any sample submitted, such as a broken crucible or beaker, a spill of the pulp, or a lost bead. It was just a precaution or a safety measure on our part. We had no desire to trudge back into those hills on snowshoes to resample one or more or all those claims.

When the safe arrival of the samples was assured, which was when we each had received our copy of the certificate of assay No. 431,869, there was no longer any use for the duplicates we had kept. So they were destroyed.

All this hullabaloo about how they were destroyed has no bearing in the case except that we happened to throw the samples into the river instead of into a wastebasket or onto a garbage heap. It has been dramatized to shock the public of the United States, when all that happened was simply this: After Appling and I got the samples back from the Department of Geology and Mineral Industries Office, where we had left them for safekeeping, we were driving toward Appling's office and talking about fishing.

I live right on the Rogue River and had invited Appling to come down and try his luck at fishing in front of my home. Just about that time, when about 2 blocks from his office, we could see the Caveman's Bridge over the Rogue River in Grants Pass about 2 blocks straight ahead.

I asked Appling if he ever fished the hole in front of the park across the bridge. He replied, "No."

I suggested that he drive down there and I would show him a spot I had noticed years before. He drove there and while talking we remembered the samples and jokingly it was suggested: "Let's feed the fish some gold and silver instead of cluttering up your office with the samples."

So, while talking fishing, we tossed the discards one by one out into the fishing hole.

Was there anything wrong with that? It was as good a way as any to destroy them, and we weren't cluttering up anyone's office.

Out of this little incident, born on the spur of the moment without a second thought, grows this fantastic story of a premeditated plan to swindle Uncle Sam out of a forest; and, oddly enough, neither one of us would benefit 1 cent out of the act. Nor did the McDonalds even know we were destroying the samples; nor did anyone else.

All this spending of our United States taxpayers' money to unravel such a mighty mystery is utterly ridiculous, I would say. There was never any intention of preserving the samples as umpires for check assaying. There were no instructions to do so; nothing irregular in not doing so.

As stated before, Hattan and Sanborn never even kept their splits or any duplicate samples.

As to umpires, this word has been used so loosely during this hearing that it has lost its significance when referring to assay samples, as generally referred to in "smelter parlance," to quote Mr. Hattan. I'm surprised that no mention has been made of a baseball umpire. If it had everyone would probably have known what was being talked about.

At one time Mr. Redwine actually referred to me as an umpire. Let me explain what is meant when an assay goes to umpire. It simply means that when a buyer and a seller of ores, bullion, alloys, matte, concentrates, or what-have-you, make a trade, usually each has his own assayer who is sent his portion of the pulp for assay, and an umpire pulp is preserved in case the two assayers do not check within certain limits as agreed upon, or according to standard practice and established custom.

If the assays agree and settlement is made, the umpire pulp is usually destroyed or maybe kept for a specified limited time and then destroyed.

We kept our replacement samples until they had served their purpose and were no longer needed, and then destroyed them. They were not preserved as an umpire in smelter parlance, just an extra precaution we ourselves took, and may I repeat that Hattan and Sanborn did not keep any portion of the samples they took at Al Sarena.

While on the subject of samples, there was some discussion regarding whether bags or envelopes were used as containers when we shipped the samples. Let me clarify this point. When the samples are taken in the field they are usually put into canvas sacks, regular sample sacks, for convenience in handling and labeling. When the field samples are reduced to a pulp they are usually put into a paper envelope container of the type I hold up [demonstrating]. That is this one. We followed this standard practice.

When we reduced the samples at the mine Appling had only paper bags of the type I am now holding up, this type [demonstrating].

When we prepared the samples in his office in Grants Pass the next day we transferred the pulps into envelopes. Why? Because the envelopes are stronger, tougher, and less liable to breakage and spillage. They look better and are easier for the assayer to handle.

That's all, except for one thing: In several cases the envelopes were too small to hold all of the pulp representing one sample, so we had to put these oversize pulps into 2 envelopes instead of only 1 envelope, and to fasten the 2 envelopes together to contain 1 sample.

The postscript that was so emphasized at the beginning of the hearings, the one I wrote at the end of my letter to Williams Testing Laboratories advising them that I had shipped them a batch of samples, was only to caution the assayer of the fact that some sample were contained in 2 envelopes fastened together, and instructed him to use all of the pulp contained in 2 envelopes and treat it as 1 sample, not to weigh his assay charge out of 1 envelope only, but to use all of the pulp.

Senator NEUBERGER. Do you have much more, Mr. McCormick? I have to go over on the floor.

Representative HOFFMAN. We might as well have it. It is a fine job counsel has done as to somebody stealing something. I think the witness made it very clear that neither he nor Mr. Appling could profit, anyway. I only wish I had been along on that Rogue River when you stopped to fish.

Senator NEUBERGER. You may proceed.

Mr. McCormick. This note or postscript has been twisted around to sound as if there could have been something very mysterious about the instruction; in other words, as instructions to use up all the sample, to destroy it, leave no evidence, et cetera. Sometimes I wonder how stupid some people can get. It so happens that Mr. McDaniel, the assayer, explained on the stand what he thought the message conveyed, and so did Mr. Volin interpret the postscript as it was meant to be; and that is that, nothing so very fantastic as Mr. Redwine would have the newsmen and the public believe.

One reads in the newspapers under large headlines misstatements of facts, like for instance, where the forestry experts and other Government employees who actually cruised the timber on Al Sarena estimated the total value of marketable timber at the time the application for patent was made in 1948 at \$77,000, and possibly as much as \$126,000 or thereabouts in 1950 when reviewed. Senator Neuberger is quoted by the Medford Mail Tribune, date February 19, 1954, when he was campaigning in Oregon, as saying, and I quote:

I believe the public should know about what appears to be the latest giveaway of natural resources by Secretary of the Interior McKay. To do this he has set aside the judgment of forest rangers, mineral examiners, timber cruisers, and other experts in the field of conservation. The Al Sarena mines, a corporation which I understand is owned largely in Alabama, asked for patents of 23 mining claims in the Rogue River National Forest. Once patent is granted to a claimant the mining firm then can cut the timber growing on the land and convert these profits to its own use.

He goes on to say:

Secretary McKay, acting through the Solicitor of his Department, then overruled the Forest Service and the Bureau of Land Management. He granted the 15 controversial patents, and from this ruling there is no appeal.

It is final. The Al Sarena mines come into possession of approximately \$185,000 worth of timber in the Rogue River National Forest, timber which trained mineral examiners believe should still belong to the American public.

It is my understanding that the Government has received from the company only about \$5 an acre for 450 acres of land. It is significant that the Forest Service never desired to remove the Al Sarena Mining Co. from 15 disputed claims. It is noteworthy that all three echelons of investigation, the Forest Service, the Northwest office of the Bureau of Land Management, and the national headquarters of the Bureau of Land Management, were overruled by Mr. McKay.

What are examiners and rangers in the field actually for if not to determine these essential facts?

He forgot to mention the \$77,000. Senator Neuberger is quoted by the Medford Mail Tribune a little later. He blew this thing up to \$250,000. I have it right here.

Representative HOFFMAN. \$600,000.

Mr. McCORMICK. No, a little later. Medford Mail Tribune, December 2, 1955:

A private assay conducted in far-off Mobile, Ala., was made the basis for grant to the Al Sarena Co. of 15 mining claims in which timber is worth in the neighborhood of \$250,000, perhaps more. This assay was used by the Solicitor of the Interior Department, acting for Secretary McKay, to set aside the ruling of experienced mineral examiners.

Then soon after this \$185,000 figure and this \$250,000, the other day in the Washington Post of January 10, the quarter million dollar figure was doubled to \$500,000, and I quote—

Representative HOFFMAN. Get it up to \$600,000.

Mr. McCORMICK. Then I say here that Senator Kerr Scott stretched this \$500,000 figure to \$600,000 here on the floor. How do they get that way?

If they insist on quoting the mineral examiners and using their statements and figures, why not stick with the Forest Service and continue to quote their figure of \$77,000, instead of using \$500,000 or \$600,000; or, on the other hand, why don't they blow up the \$2.06 average assay to the same proportion of seven or eight times to get \$16 ore to talk about? It would be almost in reach of Mr. Holderer's \$20 figure and there might be some economics to be considered and one might stretch his imagination a little.

If one group of Government experts who testified in Portland could be wrong, could not the other group? If the forestry department was wrong, couldn't Messrs. Hattan and Sanborn also have been wrong? Or should we discount all of the following which I quote from Mr. Hattan's report of December 1949, the report that he turned in and in which he recommended that the 15 claims be disallowed?

This is what Mr. Hattan says in his report to the regional director of the Forest Service on Al Sarena, Inc., dated December 19, 1949, and I am quoting under his general heading, "General Geology," which has already been stated this afternoon:

No intensive study of the geology was made except to note the general trend of known veins and determine in general the rock types exposed on or near the surface of the individual claims. From an examination of the present underground development, and the various surface openings and rock outcrops, there appears to be a dome-shaped central mass, roughly 4,000 feet in diameter, which consists of volcanic breccias and rhyolite. Much of this mass of rocks is altered and bleached and pyritized. Some of it, especially in the vicinity of the main vein, contains lead and zinc sulphide mineralization. These sulphides seem to be the carrier minerals for the gold and silver which are the principal values.

Outside of the central mass rhyolite, volcanic breccias, andesite, and other rocks, possibly phenolite andesite and/or dacite are found outcropping. The geology of the outcrops indicate they consist of flows, dikes, and possibly sills and stocks. There is no known mineralization of value contained in the dacite or andesite rocks found on the surface, but some pyritization was noted in the volcanic breccias and some of the rhyolite.

I comment here that —

Hattan says there is no mineralization in the dacite and andesite, but there is mineralization in the rhyolite and the volcanic breccias which make up the dome-shaped central mass 4,000 feet in diameter. This approximates the area of the 23 claims.

Mr. Hattan goes on, and he says:

Above tunnel No. 1, where mining was carried on many years ago, the apparent higher grade portion of the vein is defined by definite walls which are caused by narrow parallel gouge seams. The distance between walls of this old stoped area was estimated to be 2½ feet. Although the ground in either direction from the higher grade zone is mineralized to an unknown distance, samples indicate that its grade is low.

I comment:

Hattan says that the ground in either direction from the higher grade is mineralized to an unknown distance and that it is low grade.

Senator NEUMERER. Mr. McCormick, let me ask you one thing, because, as I said, I am supposed to be over on the floor fairly soon. About how much longer do you think your testimony will take?

Mr. McCormick. I still have about 3, 4, 5, pages to read.

Representative HODGMAN. Senator, I am willing that Mr. Redwine should act as chairman. I do not care.

Senator NEUMERER. Would you be willing to have this put into the record, or would you rather read it?

Mr. McCormick. I would just as soon have it put in the record, only it is handwritten. I would have it typed so they can read it.

Senator NEUMERER. You go ahead and read it.

Mr. McCormick (reading):

Mr. D. Ford McCormick, mention of whom was made in the application for patent, states in a report to the applicant company that "Practically the entire mass of so-called rhyolite is mineralized. Pyrite and pyrrhotite with some galena and sphalerite can be detected with a lens occurring as crystals or small grains, sometimes thickly grouped, then again scattered. Where the stringers occur the values rise. Shattered zones and banded structure also show higher values."

"McCormick also reported in a report dated July 15, 1937, to the company, that samples from outcrops from numerous places over the claims showed mineralization without exception. Small crystals of pyrite, pyrrhotite, galena, and sphalerite are present, scattered more or less throughout the rock. At some locations narrow stringers occur with kaolin gouge containing a higher proportion of small grains of galena, and where this occurs high grade gold and silver samples are found. Where the stringers and fissures are numerous, the enrichment makes milling ore." He went on to say that insufficient developments have been done to prove a large body of milling ore; several blocks of 4 are present; but aside from 1 possible zone (roughly 600 feet long by 400 feet high) with widths varying from 3 to 40 feet or more) only partially developed, practically no other work has been done in, can be established, and says, if the samples assayed and listed as handed to me on the attached sheets and blueprints are correct, there are several excellent showings that should be investigated without delay.

I included that list, and he goes on to say:

He (McCormick) stated that if these locations show good assays, there would be little doubt that important mining operators would show decided interest in the development of the Al Sarena mine. Then goes on to say that there is not suffi-



cient exposure of milling ore present to warrant a mill other than a pilot mill, and from a study of the assay map, it does not appear as though there is any hope of operating profitably a 50 or 75 ton mill continuously from ore to be mined from the available stopes at the present time.

This was in 1937.

Hattan says:

The pilot mill was constructed to determine if the ores could be concentrated, but no information was available which would show the minimum grade of material which could be mined, concentrated, and sold at a profit. Whether an operation is large or small there is obviously a low point in grade of material which can be handled through any mill at a profit.

My comment is this:

There is nothing in the mining law which requires that, as a basis for patent the applicant must prove a minimum grade of ore or must prove that he can make a profit.

Hattan goes on:

The indications are that the central mass is all mineralized to some extent, and if the prospective parallel shear and mineralized zones should prove to be extensive in length and depth, the possibilities are good that the whole mass could be developed, mined, and milled at a profit by low-cost, large-scale mining methods. \* \* \*

He goes on to describe that and I say:

On page 2 of the report Hattan refers to the "dome-shaped central mass, roughly 4,000 feet in diameter." Above he stated that the central mass is indicated as "all mineralized to some extent and that the possibilities are good that the whole mass could be mined, and milled at a profit by large-scale, low-cost mining methods." He designates three methods for such operation.

Then under "Pertinent data" Mr. Hattan says:

Of the mining methods mentioned above, the central mass, being a low grade proposition with suitable topography, could probably best be mined by the block caving method. In any event, this method is the cheapest yet devised for large-scale, low-grade deposits.

Then he goes on to about the Alaska mine. There is no use repeating that. He says:

Any future values which might be attached to such low-grade deposits would be purely speculative. If a value of \$0.80 per ton were found in a quartz vein, for instance, there might be a possibility of finding greater values by advancing along the vein and a valid discovery would be indicated. In a disseminated body of low-grade minerals, if the average grade is not sufficient to justify the expenditure of time and money in its development, the land should necessarily be classed nonmineral in character. If this is not so, then ordinary rock containing the barest trace of precious or semiprecious minerals should be classed mineral in character and a patent granted. \* \* \*

I comment:

Many values shown at the Al Sarena mine are substantially above those shown at the Alaska-Juneau mine. Present (1949) methods do not measure future methods and improvements. Many prudent men speculate on and strive to work to bring about improved methods in mining, milling, transportation, and so on, the development of new uses for the mineral contents of ores not even suspected at the time of discovery or patent.

For example, the Engineering and Mining Journal for December 1955, reports that for the first time a new gold-extraction process is being used in South Africa at a southern Rhodesia mine. It involves passing the gold-cyanide through a mesh made of synthetic resin. It is claimed that a greater extraction of pure gold is achieved.

Low-grade properties and marginal properties will certainly profit in this operation.

Only 50 miles from the Al Sarena mine, the only nickel mine in the United States is being operated. This low grade deposit was known for many years. Attempts were made to operate, but were unsuccessful. A smelter was built on the property, but it failed. Large and powerful mining groups examined the property and turned it down. Three years ago the Hanna Co. became interested. In excess of \$20 million was invested for a low grade large scale operation. The mine is now producing nickel on a large scale and at a profit.

This illustrates the difference of opinion by groups of men—several turning down a mining opportunity, then one speculating and taking it up—and succeeding with what appeared to be too low grade to others. Improved methods, ample financing, changed conditions, changed markets, new uses, and many other factors contribute to what establishes the minimum grade but these facts do not establish the fact as to whether mineralization existed in the first place.

Mr. Hattan says that the mineralization exists throughout the rhyolitic and volcanic breccia, not only in "the dome-shaped central mass (roughly 1,000 feet in diameter)" but that "the possibilities are good that the whole mass could be developed, mined, and milled at a profit by large-scale low-cost mining method."

It also explodes Mr. Holderer's thought that not by the wildest stretch of the imagination could a production of 100 tons per day ever be reached.

Mr. Hattan seemed to get matters all confused. His assays, for instance, 28 in the group, were sent to Annes May 1949. All but one showed a trace; that one only 12 cents. Nine of these samples he took on the noncontested claims and they were all blanks.

A resampling of the 17 claims in July 1949 showed two of these uncontested claims assayed over a dollar. They were the only two uncontested claims resampled. One uncontested claim was never sampled at all.

He concluded that 6 of the 8 he would allow on the basis of Al Sarena assays taken off of the maps, 2 pulps taken from Al Sarena assays that he had sent to Abbot Hanks to check. One went \$13.37, just twice what the Al Sarena assay was, and one went \$7.93, just \$2.21 under the Al Sarena assay. There was nothing consistent in his reasoning.

To further substantiate my beliefs and conclusions regarding mineralization of the Al Sarena rhyolite body I quote from Mr. Sopp's report dated May 19, 1939:

**Geology:** The 2 rocks described above (1 not identified and 1 a rhyolite) covers a roughly circular area about three-quarters of a mile in diameter and are completely surrounded by andesite.

**Widespread mineralization:** The gold and silver in the main vein is known to be associated within a galena, sphalerite, pyrite, and quartz. These minerals, however, are not confined to any one rock or fracture zone. Galena, sphalerite, pyrite, and vein quartz are found abundantly in the rhyolite and the white flow rock.

This widespread mineralization suggests the theory that during the final stage of one period of extrusion, solutions ascended from a deep-seated magma reservoir to percolate and deposit minerals in every type of rock present except the andesite.

Now, in conclusion, the two United States Geological Survey men, Callaghan and Buddington, Mr. George Sopp, Mr. Hattan, the letters that were read by Mr. Davis quoting Mr. Kissok of New York and Capt. Jewell Morrison of Denver, both mining engineers, and myself all have been on the property and have reported as has been quoted above regarding the mineralization of the whole rhyolite body. Yet Mr. Holderer, who has never seen the property, bases his conclusions

cient exposure of milling ore present to warrant a mill other than a pilot mill, and from a study of the assay map, it does not appear as though there is any hope of operating profitably a 50 or 75 ton mill continuously from ore to be mined from the available stopes at the present time.

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For example, the Engineering and Mining Journal for December 1955 reports that for the first time a new gold-extraction process is being used in South Africa at a southern Rhodesia mine. It involves passing the gold-cyanide through a mesh made of synthetic resin. It is claimed that a greater extraction of pure gold is achieved.

Low-grade properties and marginal properties will certainly profit in this operation.

Only 50 miles from the Al Sarena mine, the only nickel mine in the United States is being operated. This low grade deposit was known for many years. Attempts were made to operate, but were unsuccessful. A smelter was built on the property, but it failed. Large and powerful mining groups examined the property and turned it down. Three years ago the Hanna Co. became interested. In excess of \$20 million was invested for a low grade large scale operation. The mine is now producing nickel on a large scale and at a profit.

This illustrates the difference of opinion by groups of men—several turning down a mining opportunity, then one speculating and taking it up—and succeeding with what appeared to be too low grade to others. Improved methods, ample financing, changed conditions, changed markets, new uses, and many other factors contribute to what establishes the minimum grade but these facts do not establish the fact as to whether mineralization existed in the first place.

Mr. Hattan says that the mineralization exists throughout the rhyolite and volcanic breccia, not only in "the dome-shaped central mass (roughly 1,000 feet in diameter)" but that "the possibilities are good that the whole mass could be developed, mined, and milled at a profit by large scale low-cost mining method."

It also explodes Mr. Holderer's thought that not by the wildest stretch of the imagination could a production of 100 tons per day ever be reached.

Mr. Hattan seemed to get matters all confused. His assays, for instance, 28 in the group, were sent to Annes May 1949. All but one showed a trace; that one only 12 cents. Nine of these samples he took on the noncontested claims and they were all blanks.

A resampling of the 17 claims in July 1949 showed two of these uncontested claims assayed over a dollar. They were the only two uncontested claims resampled. One uncontested claim was never sampled at all.

He concluded that 6 of the 8 he would allow on the basis of Al Sarena assays taken off of the maps, 2 pulps taken from Al Sarena assays that he had sent to Abbot Hanks to check. One went \$13.37, just twice what the Al Sarena assay was, and one went \$7.03, just \$2.21 under the Al Sarena assay. There was nothing consistent in his reasoning.

To further substantiate my beliefs and conclusions regarding mineralization of the Al Sarena rhyolite body I quote from Mr. Sopp's report dated May 19, 1939:

**Geology:** The 2 rocks described above (1 not identified and 1 a rhyolite) covers a roughly circular area about three quarters of a mile in diameter and are completely surrounded by andesite.

**Widespread mineralization:** The gold and silver in the main vein is known to be associated within a galena, sphalerite, pyrite, and quartz. These minerals, however, are not confined to any one rock or fracture zone. Galena, sphalerite, pyrite, and vein quartz are found abundantly in the rhyolite and the white flow rock.

This widespread mineralization suggests the theory that during the final stage of one period of extrusion, solutions ascended from a deep-seated magma reservoir to percolate and deposit minerals in every type of rock present except the andesite.

Now, in conclusion, the two United States Geological Survey men, Callaghan and Buddington, Mr. George Sopp, Mr. Hattan, the letters that were read by Mr. Davis quoting Mr. Kissok of New York and Capt. Jewell Morrison of Denver, both mining engineers, and myself all have been on the property and have reported as has been quoted above regarding the mineralization of the whole rhyolite body. Yet Mr. Holderer, who has never seen the property, bases his conclusions

on assay samples when he has no idea from whence they came, and says, "Rarely have I seen as poor a batch of assays as that," and later, I might add, that after having summarized these assays, "I made no further attempt to discuss the economics of the mine because there are none."

When asked by Mr. Redwine, "There are no economics there?" Holderer replied, "The economics are zero."

Holderer had previously testified that miners' pay was around \$13 per day in the Coeur d'Alene, some eight or nine hundred miles away, the nearest large mine, and that the man shift average was 2 tons per man. Maybe he doesn't know that at the Riddle Nickel mine, only about 85 miles distant, or only one-tenth as far from Al Sarena, one man handles a 30-ton carryall that scrapes up 30 tons in 1 scoop, and fills and discharges this sized load many times an hour; that this low-grade ore is transported by an automatic tramway operated by 2 men. I have been told, who deliver over 2,000 tons per shift, a distance of over a mile to the smelter stockpile.

Has he not seen one man on a bulldozer push hundreds of tons around in a single shift?

I quote from the New York Times of January 27, 1956, just the other day:

#### PAUL BUNYAN'S BIG "CAT"

##### MAKES DIRT FLY IN MICHIGAN BUILDING NEW HIGHWAYS

LANSING, MICH.—It takes huge equipment to make modern highways and the "Paul Bunyan" of them all is a 35-ton caterpillar.

Manufacturers of the big "cat" say it can move up to 10 yards of earth at a time. It is 12 feet wide and 2 feet 6 inches high.

One man operates this.

Does he think that an area nearly a mile across could not be made to yield over 100 tons per 24 hours?

I quote from the testimony:

MR. JONAS. Is your statement to us that this would not be economic, even if it goes \$2 per ton, based on the amount they propose to mine? What if they stepped up the amount?

MR. HOLDERER. They would never get up to 100 tons, to say nothing of the several thousand tons per day. It would be a physical impossibility.

I say that Mr. Holderer seems to be still living in the pick-and-shovel days. What was good enough for grandpappy is still good enough for him.

Mr. Redwine had Mr. McDaniel answer that there are no operating gold mines in Alabama today. Just where in all of the 48 States are there any gold mines operating today, as such? Only the Homestake in South Dakota and probably a few scattered small high-grade mines in Colorado and California. The gold and silver produced in the United States today comes from the copper, lead, and zinc mines as a byproduct from a few dredges which are very low-cost producers.

An interesting fact is that one can step over to the Smithsonian Institution and among the minerals and gems exhibits find some beautiful specimens of gold mines in Alabama, North Carolina, and South Carolina, and right next to Alabama are the once famous Dahlonega gold mines. One of the first, if not the first, gold mines ever built in the United States was built in the town of Dahlonega, and all of the gold that was minted for Uncle Sam was produced in Alabama.

Carolinias, and Georgia. Dahlenega has been investigated recently as a possible large, low grade producer when economic conditions warrant such a procedure.

It seems to me that the bottom has dropped out from under every accusation and insinuation that the committee has tried to make.

I might add that I do not like the manner in which my name has been dragged into this whole matter. I call it mud and filth. I do not like what the newspapers have printed as a result of it, for instance, in Drew Pearson's column of December 14, 1955, and in the Nevada State Journal in Reno; again just here the other day, January 10, 1956, in the Washington Post; and prior to these dates, these insinuations, half truths, and untruths created out of thin air, and never once any attempt or any effort made by the committee or the press to interview me. To say the least, this is very distasteful to me, talking as a red-blooded United States citizen.

The whole matter seems childish and I hope that the truth will prevail and that the whole thing boomerangs and bursts right in the scandalmongers' faces. Let the chips fall where they may, as Senator Kerr Scott said.

I thank you for allowing me to testify even if I have had to wait over 3 weeks, and I am over 3,000 miles away from home.

Mr. REDWINE. Mr. Chairman.

Senator NEUBERGER. Yes, sir, Mr. Redwine.

Mr. REDWINE. In view of part of the statement read by this witness I would like to read from the record at page 251. This is at the very opening of the examination of Mr. McDaniel, assayer for the Williams Co. I said:

Mr. Chairman, in the examination of this witness certain documents will be submitted to him for examination and explanation. They are from the files of the A. W. Williams Inspection Co.

Further down I said:

These documents that will be submitted to the witness for identification and explanation are from the files of the A. W. Williams Inspection Co., for whom he works.

I think it is only fair that the record should show that they are in the possession of the committee through subpoena.

The Williams Co. has not turned anything over to the committee that has not been subpoenaed, in fairness to its clients. It is a professional matter with them.

I further have here, Mr. Chairman, which I think should go in the record, a letter signed by Chairman Murray, addressed to the United States Marshal in Mobile, Ala., attaching thereto a subpoena for the records of the A. W. Williams Inspection Co., the pertinent part which reads:

You are hereby commanded to furnish the Committee on Interior and Insular Affairs all reports of assays and all correspondence now in your possession relating to any and all ore samples submitted to the A. W. Williams Inspection Co. by or on behalf of Al Sarena Mining, Inc., of Trail, Oreg., for and during the period January 1, 1949, up to and including January 1, 1955.

Senator NEUBERGER. That will go in the record.

(The material referred to follows:)

JUNE 20, 1955.

UNITED STATES MARSHAL,

*Federal Building, Mobile, Ala.*

DEAR SIR: I will appreciate it if you will serve the enclosed subpoena upon Mr. A. W. Williams, president, A. W. Williams Inspection Co., of Mobile, Ala., so that

on assay samples when he has no idea from whence they came, and says, "Rarely have I seen as poor a batch of assays as that," and later, I might add, that after having summarized these assays, "I made no further attempt to discuss the economics of the mine because there are none."

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Senator NEUBERGER. That will go in the record.

(The material referred to follows:)

JUNE 20, 1955.

UNITED STATES MARSHAL,  
Federal Building, Mobile, Ala.

DEAR SIR: I will appreciate it if you will serve the enclosed subpoena upon Mr. A. W. Williams, president, A. W. Williams Inspection Co., of Mobile, Ala., so that



this committee may be furnished with certain documents and other material now in the possession of Mr. Williams.

Thank you for your cooperation.

Sincerely yours,

JAMES E. MURRAY, *Chairman.*

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To A. W. Williams, president, A. W. Williams Inspection Company, Mobile, Alabama, Greetings:

Pursuant to lawful authority, you are hereby commanded to furnish the Committee on Interior and Insular Affairs all reports of assays and all correspondence now in your possession relating to any and all ore samples submitted to the A. W. Williams Inspection Company, by or on behalf of Al Sarena Mining, Inc., of Trail, Oreg., for and during the period January 1, 1949, up to and including January 1, 1955.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To United States Marshal, Federal Building, Mobile, Alabama, to serve and return.

Given under my hand, by order of the Committee, this 20th day of June, in the year of our Lord one thousand nine hundred and fifty-five.

*Chairman, Committee on Interior and Insular Affairs.*

Mr. McCORMICK. May I say that is absolutely and probably true, but did you find out where those samples came from, where they were taken? No. Where do you say they were taken, excepting that one group? They are specifically located. These others could have been concrete. They could have been taken in Mexico or sent down by the Al Sarena Mining Co. That doesn't say where they came from.

Representative HOFFMAN. Is that all, Mr. Chairman, at this time?

Senator NEUBERGER. Yes, sir.

I just wanted to ask one question of Mr. McCormick, if I may.

Are you now in the employ of the Al Sarena Mines or the McDonalds?

Mr. McCORMICK. I am not and have not been since I reported to you and testified in Portland.

Senator NEUBERGER. You have not been since you testified in Portland?

Mr. McCORMICK. No.

Senator NEUBERGER. I thank you very much, Mr. McCormick, for coming here. Your statement, of course, will appear in full in the record.

The committee will stand in recess until, as under the previous order I believe, next Tuesday at 10:30 a. m.

Representative HOFFMAN. Let the record show, if you will, please, that the only members of the committee present are the Senator from Oregon, the Congressman from North Carolina, Mr. Jonas, and the Representative from Michigan and the committee staff.

Senator NEUBERGER. And the committee staff also is present.

Representative HOFFMAN. Yes. Mr. Redwine, Mr. Coburn, Mr. Lanigan, and Mr. Perlman.

Senator NEUBERGER. And as the second acting chairman let me say I appreciate the attendance of the distinguished gentleman from Michigan and the gentleman from North Carolina.

Representative HOFFMAN. We are glad to be here.

(Whereupon, at 5:15 p. m. the hearing was adjourned.)

## APPENDIX

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### MATERIAL SUBMITTED FOR INCLUSION IN THE RECORD AFTER TERMINATION OF TESTIMONY

#### MATERIAL SUBMITTED BY UNITED STATES FOREST SERVICE

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,

Washington 25, D. C., February 16, 1956.

Re Adjustments, R 6, Rogue River, Al Sarena Mines, Inc.

Hon. W. KERR SCOTT,

Acting Chairman, Legislative Oversight Subcommittee,  
Committee on Interior and Insular Affairs,  
United States Senate.

DEAR SENATOR SCOTT: This is in reply to your letter of February 8 concerning mining claim appeal cases involving national forest land.

We have searched our files for the period 1948 through 1955 and find that there have been three cases involving patent application, in which the Forest Service was the contestant, which were appealed to the Secretary of the Interior. For these cases, the average elapsed time between the filing of application for patent and the final decision of the Department of the Interior was 3 years, 11½ months.

Sincerely yours,

EDWARD C. CRAFTS,  
Assistant Chief.

FEBRUARY 13, 1956.

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#### STATEMENT

Omitted from page 10 of Under Secretary Davis' testimony is reference to a letter of December 15, 1948 from the assistant regional forester at Portland to the regional administrator of the Bureau of Land Management. A copy of this letter, which requests the services of a qualified mineral examiner, is attached. This is the letter Mr. Leonard B. Netzorg referred to in his letter of April 14, 1949 to the claimants (mentioned on p. 11 of Davis' testimony). Davis' testimony makes it appear that Netzorg's letter of April 14, 1949 to the claimants contained the wrong date when referring to the Forest Service request of BLM for a field examination and report. The date used by Netzorg is correct.

The statement on page 10 of Davis' testimony "that the Forest Service had been notified 3 months before of the filing of these claims and apparently had done nothing about it" does not agree with the record. The first action of the Forest Service was on December 2, 1948 when the forest supervisor wrote the regional forester (copy attached) calling attention to the "notice for publication." On December 7, the regional forester's office requested by phone a copy of the application from BLM and by memorandum of December 9 (copy attached) transmitted a copy to the forest supervisor and made inquiry as to when claims could be examined. The Forest Service had no knowledge of the filing of the patent application until December 2, 1948, and thereafter promptly initiated first steps in arrangements for having the claims examined. Because of snow it was not feasible to examine the claims until the following spring. Hattan's reminder, referred to in the regional forester's letter of March 17, 1949, to the district manager of the Bureau of Land Management, related only to a technicality and did not influence Forest Service decision to examine the claims.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
December 15, 1948

Re adjustments, Rogue River mining claims.

Mr. W. H. HORNING,  
Regional Administrator, Bureau of Land Management,  
Portland, Oreg.

DEAR MR. HORNING: We have recently received a copy of the notice for publication and the application for patent filed by the Al Sarena Mines, Inc., for patent to the following claims in the Rogue River National Forest:

Oro Alto (2)	Mark Applegate (10)	Rainboe (18)
Oro Rico (3)	H. McKenzie (11)	Della McKinnon (19)
Cougar (4)	J. L. Grubb (12)	Sulphide (20)
Oro Real (5)	J. D. McKinnon (13)	Staples (21)
J. W. Merritt (6)	Henry Applegate (14)	Manganese (22)
Peter Applegate (7)	A. W. Dahlberg (15)	La Jolla (23)
Oro Escondido (8)	Telluride (16)	Arroyo Verde (24)
W. C. Leever (9)	Alabama (17)	

Since we do not have a qualified mineral examiner we will appreciate your assistance in examining these claims in accordance with the system which has worked so successfully for us during the past 2 or 3 years.

Word from Supervisor Janouch of the Rogue River indicates that this fall examination should be deferred until next spring. Recent snows, plus usual winter conditions, make field work in this area impracticable at this time.

We have only one copy of the notice for publication and application for patent. These can be made available for your use at any time they are needed. In the meantime, however, we will hold them in our files until you request otherwise.

Very truly yours,

FRANK B. FOISOM,  
Assistant Regional Forester.  
By K. WOLFE, Acting.

DECEMBER 9, 1948

To: Forest Supervisor, Rogue River.  
From: Recreation and Lands, K. Wolfe, Acting.  
Subject: U-adjustments, Rogue River mining claims.

Reference is made to our memorandum of December 7, and to related correspondence.

Attached are our only copies of the notice for publication and application for patent in this case. Under separate cover we are sending you 2 copies of each of the 3 sheets comprising mineral survey No. 879.

It is presumed that you will want these claims examined by a mineral examiner before recommending whether a protest should be entered by the Forest Service against the patenting of any or all of them. Probably we can secure the assistance of Mr. Hattan, who is somewhat familiar with these claims. If we can, what are the ground conditions at present? Is the area covered with snow? Do you think now is a satisfactory time to make the examination, or should we figure on delaying it until early spring? Please let us have your recommendations. With them please return the notice for publication and application for patent. If you feel that copies of these instruments are essential, we will try to have them made as and when opportunity presents.

K. WOLFE.

DECEMBER 2, 1948

To: Regional forester.  
From: Forest supervisor, Rogue River.  
Subject: U-adjustment, mining claims.

Attached are (1) clipping from the Medford paper containing a summons and notice for publication and (2) map showing approximately the location of the tract.

Before patent proceedings go too far we wonder if the Forest Service should protest the patent until our mineral examiner determines the validity of the claim.

KARL L. JANOUCH.

UNITED STATES FOREST SERVICE,  
Washington 25, D. C., February 1, 1936.

For the record

By John Sicker, Chief, Division of Recreation and Land Uses.

Subject: U Adjustments, R 6, Rogue River, Al Sarena Mines, Inc.

In answer to the question I asked by phone of William Sanborn today "Did the McDonalds request that you spit the samples taken at the time you and Hatten made your examination of the claims so that they would have a sample to have assayed?" Sanborn stated that to the best of his recollection no such request was made. He further advised that had such a request been made he is certain he would have requested it and that he would have agreed to splitting the samples providing the crushing and spitting was done under his and Mr. Hatten's supervision. Sanborn further advised that in all his years of mineral claim work he has never been requested by a claimant to spit a sample so that the claimant could have the sample assayed as well as the Government.

JOHN SICKER.

DECEMBER 7, 1948.

To: Forest supervisor, Rogue River.

From: Recreation and Lands, Frank B. Folsom.

Subject: U Adjustments, Rogue River, mining claims.

Reference is made to your memorandum of December 2.

On receipt of this memorandum we got in touch with the local land office by telephone, and found that they had overlooked sending us a copy of this application for patent. They will now send the usual notice and we will ask for your report and recommendations as in other applications for mining patent. Thanks for bringing this matter to our attention.

FRANK B. FOLSON.

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT, OREGON DISTRICT LAND OFFICE,  
Portland, Oreg., December 7, 1948.

REGIONAL FORESTER,

Portland, Oreg.

(Attention: Mr. Wolfe.)

DEAR SIR: As was advised in our telephone conversation today, I am enclosing a copy of the notice for publication, together with a copy of the application for patent, filed by the Al Sarena Mines, Inc., in connection with mineral application 0025.

We trust this will give you the information desired and regret the forwarding of these papers to you was overlooked.

Very truly yours,

CARL F. SPAULDING, Assistant Manager.

DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, NORTH PACIFIC REGION,  
Portland, Oreg., March 17, 1949.

Re: Adjustments, Rogue River mining claims.

Mr. CHARLES LEE,

Manager, Oregon District Land Office,

Bureau of Land Management, Portland, Oreg.

DEAR MR. LEE: Reference is made to Mr. Spaulding's letter of December 7, transmitting a copy of the notice for publication and a copy of the application for patent filed by the Al Sarena Mines, Inc., in connection with mineral application 0025.

Thanks to Mr. Hattan, my attention has been called to the fact that I neglected to ask you to withhold action on this application until the Forest Service had had an opportunity to have these mining claims examined. Mr. Hattan is planning to examine these claims for us as soon as weather conditions will permit. Until his report is received we will appreciate it if action can be withheld in accordance with the provisions of regulation 44LD360.

Very truly yours,

H. J. ANDREWS, *Regional Forester.*  
By FRANK B. FOLSOM, *Acting.*

WASHINGTON, D. C., August 5, 1915.

To: The Commissioner, Chief of Field Service, chiefs of field divisions, registers and receivers, General Land Office, Department of the Interior; the forester, district foresters, Forest Service, the Solicitor, the district assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands within national forests, the following order is made, effective on and after October 1, 1915, superseding order of November 25, 1910 (39 L. D., 374):

1. Hereafter when a person files application to make an entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the register and receiver will require such person to file with his application a statement under oath, in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the affidavit, in duplicate, of at least one disinterested person, corroborating the statement. The register and receiver will immediately forward the duplicate of such statement and affidavit to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed 6 months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest, as hereinafter provided.

2. The register and receiver in issuing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as hereinafter prescribed, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed 6 months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest as hereinafter provided. In each case, however, where the register and receiver, upon examination of the final proof at any time after its submission, find it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

3. The forest supervisor upon receipt of the statement mentioned in paragraph 1, or the notice mentioned in paragraph 2, will at once make investigation of the claim, and will submit to the district forester a report thereon, unless immediately investigation is impossible because of climatic or other conditions, when an extension of time will be requested as provided in paragraphs 1 and 2 hereof, and the investigation will be made and the report submitted as soon as possible within the period of extension. The district forester will promptly consider the report and if of opinion that no protest should be filed will so advise the register and receiver. If the district forester is of opinion that a protest should be made he will transmit the papers to the district assistant to the Solicitor, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the register and receiver of the proper local land office.

4. Upon receipt of the protest, the register and receiver shall immediately forward a copy thereof to the Commissioner of the General Land Office, in accordance with rule 4 of the Rules of Practice, and in every case immediately issue the notice required by rule 5 thereof accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within 30 days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the register and receiver shall set a date for a hearing, after consultation with the district assistant to the Solicitor, and notify parties as provided in the Rules of Practice. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in paragraph 2 hereof for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the General Land Office pending determination of the protest.

5. If no protest be filed within the time limit as provided in paragraphs 1 and 2 hereof, the register and receiver shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no protest notice as heretofore provided, shall patent issue until the Commissioner of the General Land Office is notified by, or ascertains from, the forester that the claim will not be protested, as provided in paragraph 6 hereof.

6. A protest may be initiated against any claim, mineral or nonmineral, embracing lands within national forests at any time prior to patent, by the solicitor or the district assistant to the Solicitor of the Department of Agriculture filing in the local land office, in triplicate, a complaint signed by the forester or the district forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the register and receiver shall forward a copy thereof to the Commissioner of the General Land Office, issue the notice required by rule 5 of the Rules of Practice, accompanied by a copy of the complaint, and arrange for a hearing, if applied for, as provided in paragraph 4 hereof.

7. In all hearings affecting lands or claims within a national forest the district assistant to the Solicitor will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

8. Forest lien and school selection cases will be handled by the chiefs of field division of the General Land Office in like manner as heretofore. The forest officers will, upon request of the chiefs of field division, render any assistance possible in the making of investigations, and the district assistants to the Solicitor of the Department of Agriculture will cooperate with the chiefs of field division in the conduct of hearings in such cases, and thereafter will take action in like manner as heretofore, including the taking of appeals to the Secretary of the Interior.

9. In all Government cases before registers and receivers involving lands or claims within a national forest, the district assistant to the Solicitor shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper law officers of the Department of Agriculture shall also have a right of appeal from any decision by the Commissioner of the General Land Office and to file motion for rehearing in the Department of the Interior, or take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: Provided, however, that the Department of Agriculture shall not be required to take formal appeals from decisions of registers and receivers.

10. Chiefs of field division and special agents will not hereafter take action in regard to any claims within a national forest, except as provided in paragraph 8 hereof, unless specifically directed by the Commissioner of the General Land Office or the Secretary of the Interior: Provided, that the chiefs of field division may, on request of a district forester, assign mineral examiners to assist in the investigation of cases involving mining claims.

11. Costs of hearings will be paid from the appropriation for expenses of hearings in land entries as now provided for other Government contests. Prior to June 1 of each year the district assistant to the Solicitor will mail to the chief of field division in whose division the lands involved an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which imme-

diately precedes the other quarters of the fiscal year. Such estimates should be accompanied by a list of cases to be heard, which should include the names of claimants, local land office, and serial number of entry or application, and character of entries or filings. The chief of field division will transmit the lists and estimates received from the district assistant to the Solicitor to the Commissioner of the General Land Office at the same time he submits his estimates for hearings involving lands in his district outside of national forests. When these lists and estimates are received in the General Land Office the appropriation will be allotted for the quarter, and each chief of field division will be advised of the amount which will be allowed for forest cases, and he will advise the district assistant to the Solicitor thereof. Payment for the expenses of hearings from the appropriation so allotted will be made by special disbursing agents upon proper vouchers, as is now provided for Government contests in cases outside of national forests, but such vouchers must be approved by the district assistant to the Solicitor and by the chief of field division before payment is made.

Respectfully,

FRANKLIN K. LANE,  
*Secretary of the Interior.*  
 D. F. HOUSTON,  
*Secretary of Agriculture.*

DECEMBER 15, 1955.

To: For record.

By: W. E. Sanborn, Mining Engineer.

Subject: U-ADJUSTMENTS, R-6, Rogue River, M. A. 0065 Oregon: M. S. 579;  
 Contest No. 38, Al Sarena Mines, Inc.

In memo dated June 14, 1949 (U-ADJUSTMENTS-Mt. Baker, Jumbo Copper Mining Co., M. A. 019916 Spokane) the regional forester of region 6 headquartered in Portland, Oreg., by Frank B. Folsom informed the regional forester of region 5 at San Francisco, Calif., that Mr. Hattan, evaluation engineer for the Bureau of Land Management, had made an examination of 23 claims in the Rogue River National Forest for which the Al Sarena Mines, Inc., had pending a mineral patent application and of Mr. Hattan's proposal for the undertaking of a re-examination beginning July 12 and possible continuing for a 3-day period. The memo asked that Mr. Sanborn, mining engineer for region 5 be present and join in the examination if it was at all possible. Subsequent to receipt of said communication, Regional Forester Andrews was advised that Mr. Sanborn would be available to participate in the further examination and would meet Mr. Hattan in the forest supervisor's office at Medford the morning of July 12.

The writer met Mr. Hattan in Medford, Oreg., about 8:30 the morning of July 12 and continued to Rogue-Elk in the Government vehicle in Mr. Hattan's possession where arrangement for several days lodging was made. We then drove to the Al Sarena mine where Charles and H. P. McDonald, Jr., and a Mr. Aitland were met. Thereafter, in the presence of and in consultation with the two McDonalds, we proceeded with the examination including the work of cutting samples at places designated by them. This work extended over the 3 succeeding days, namely, July 13, 14, and 15.

The samples taken being 18 or so in number were cut either by Mr. Hattan or myself in the presence of one or both of the McDonalds with the numbering and descriptive record kept by Mr. Hattan. Concurrent with the number designation and recording of details as to each sample, a corresponding identification number was placed on a slip of paper and put into a cloth bag along with material comprising the sample and securely tied. The samples were thereafter carried in our possession until they could be conveniently locked in the Government sedan.

Before leaving the property and for the purpose of checking values depicted on the assay map of the main underground workings, three pulp samples were picked at random from a large number of pulps retained in individual paper sacks in storage in the mine assay office.

These pulps were from samples taken during work carried on in past mining operations and carried identifying numbers identical to those appearing on the assay map.

Throughout the entire examination our dealings and discussions with the McDonalds were carried on in an amicable atmosphere of mutual respect, and every consideration was afforded them. They likewise evidenced complete cooperativeness.

We left our Rogue-Elk lodging point the morning of July 16 driving to Medford. There the samples taken during examination were transferred from Mr. Hattan's Bureau of Land Management's sedan to the trunk of the Forest Service open rental sedan which I had picked up at the Redding Equipment Depot upon arrival from San Francisco via train July 7, and in which I had driven to Medford July 12.

Thereafter I drove to Chico, Calif., headquarters of the Magalia ranger district, and spent the following 6 succeeding days on the Lassen National Forest. On July 23 I drove to Quincy, Calif., wherein the headquarters of the Plumas National Forest is situated, and spent July 24, 25, 26, and 27 in and out of there. I arrived at Redding, Calif., at about 6:15 the evening of the 27th in time to catch the Shasta Daylight for San Francisco arriving there about 11:20 p. m.

To the best of my recollection and belief refreshed from review and analysis of my diary entries following my return to San Francisco after appearance before Interior and Insular Affairs joint subcommittee at Portland, November 25, 1955, the samples taken from the Al Sarena property were kept locked in the trunk of the sedan used by me as is my practice until left with the warehouseman, John Gray, at the forest supervisor's headquarters at Quincy, July 26, 1949, with instructions they be boxed and shipped to the regional forester in San Francisco.

In the meantime, Mr. Hattan on July 20, mailed me two pulp samples comprising the remaining fractions of 2 of the samples taken on the occasion of his first examination of the property and which along with 22 additional samples had been submitted to the Annes Engineering Co. of Grants Pass, Oreg. for assay. The 2 pulp samples received in the mail and the samples taken during our July 12 to 15 examination including the 3 pulps previously mentioned were delivered to Abbot A. Hawks, Inc., assayers, engineers and chemists, at 624 Sacramento Street, San Francisco, Calif., by me about August 7, 1949, with a covering Bureau of Land Management purchase order. The assay certificates setting forth the findings of work specified were mailed by Abbot Hawks directly to Mr. Hattan upon completion of their determinations.

Sometime thereafter, either through correspondence or by direct consultation, Mr. Hattan and I reached general agreement as to which claims might reasonably be considered as eligible for patent and which were not. Mr. Hattan thereafter proceeded in the preparation of report covering his initial examination and the joint one made in July, the completion date of which was December 19, 1949.

The original and 1 copy of said report were likewise mailed that same date to the regional forester in Portland who in turn under date of January 16, 1950, mailed 1 copy to the regional forester in San Francisco for my consideration, concurrence and/or comments. Thereafter on February 7, 1950, the said copy was returned to Regional Forester Andrews with advice that I had approved of it and concurred in the recommendations set forth therein. The case file was referred to the attorney in charge of the Portland office of the Solicitor of the Department of Agriculture March 16, 1950, by the Regional Forester's office at Portland with the request that a proper instrument be prepared for the usual signature of the regional forester. The instrument drafted consistent with the recommendations made in the report and pursuant to the request was transmitted to the regional forester by the attorney-in-charge, March 31, 1950, who in turn directed said protest to the manager of the United States Oregon Land Office, Bureau of Land Management, Swan Island Station, Portland 18, Oreg., attached to letter dated April 11, 1950. The letter advised that no objection would be made to issuance of patent to 8 specified claims involved in the entry and further alleged the requirements for patent had not been met as to the remaining 15 claims on the grounds set forth in the attached protest instrument.

The land office mailed notice of charges to the Al Sarena Mines, Inc., Mobile, Ala., April 25, 1950, which company in turn filed an answer May 22, 1950.

On August 21, 1950, the manager of the land office issued a notice of hearing to be held at 10 a. m., September 13, 1950, in room 121, Building I, Swan Island, Portland 18, Oreg., in the matter of Contest No. 38, *United States Forest Service contestant v. Al Sarena Mines, Inc., contestee*.

I was advised of said hearing and in company of Mr. Farr proceeded to Portland where I appeared as a witness in the contest proceedings. The record of such proceedings sets forth my testimony which boiled down was to the effect that as to the claims in question no discovery of mineral had been made within the purview of the mining law and that I concurred with Mr. Hattan's testimony covering the matter of the charge that not sufficient expenditure in development had been made on or for the benefit of 5 of the claims as charged.



Thereafter the particulars of the case with respect to the decisions of the manager of the land office and the Director of the Bureau of Land Management and appeals in connection therewith were not specifically known to me until I received a copy of Solicitor Davis' January 6, 1954, decision attached to a letter Mr. Hattan wrote to me January 28, 1954.

As a result of a telephone conversation between region 6 and region 5, November 21, 1955, I learned that a subcommittee of the Senate Interior and Insular Affairs were holding hearings in Portland and had asked that I be available for questioning relative to my participation in the Al Sarena case. I left the afternoon of the same day arriving in Portland at 9 a. m., November 22, 1955.

I was in attendance at the hearing the afternoon of November 22 and all day 23 and 25. On the latter date at approximately 7:30 p. m. I was called and under oath questioned by the committee. The questions put to me by the committee were in relation to my routine actions that had taken place many years previous. I replied to all questions to the best of my recollection and honest belief.

W. E. SANBORN.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, NORTH PACIFIC REGION,  
*Portland, Oreg., April 11, 1956.*

Re adjustments, Rogue River mineral claims, Al Sarena Mines, Inc.

MANAGER, OREGON LAND OFFICE,  
*Bureau of Land Management, Portland, Oreg.*

DEAR SIR: Reference is made to your letter of December 7, 1948, advising us of the application of the Al Sarena Mines, Inc., for patent to 23 mining claims located in the Rogue River National Forest (mineral application 00057).

These claims have been examined by qualified mineral examiners and on the basis of their findings it seems evident that the following claims meet the requirements of the mining laws and the Forest Service will, therefore, have no objection to their proceeding to patent: Oro Alto, Peter Applegate, H. McKenzie, A. W. Dahlberg, Oro Rico, Oro Real, Mark Applegate, and Telluride. The patents to the Oro Alto, Oro Rico, A. W. Dahlberg, and Telluride claims should reserve the rights-of-way for existing Forest Service roads which now cross parts of these claims.

The remaining 15 claims do not meet the requirements for patenting and I am, therefore, enclosing the original and 2 copies of a protest to the issuance of patents for these claims.

Very sincerely yours,

H. J. ANDREWS, *Regional Forester*

[Handwritten note: 2/9/54—Mr. Sieker advises field office states by long distance phone rights-of-way referred to was after locations, and do not go to patent. LHD N.]

AFFIDAVIT OF MINERALS EXAMINER ELTON M. HATTAN

DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
*Washington, D. C., March 28, 1956.*

HON. JAMES E. MURRAY,  
*Chairman, Committee on Interior and Insular Affairs,  
United States Senate, Washington, D. C.  
(Attention: Mr. Robert Redwine.)*

MY DEAR SENATOR MURRAY: Attached is the affidavit of Elton M. Hattan, dated February 17, 1956, which was requested by Mr. Robert Redwine of the committee staff.

Sincerely yours,

EDWARD WOOLFEY, *Director*

COUNTY OF MULTNOMAH,  
*State of Oregon, ss:*

I, Elton M. Hattan, having first been sworn, depose and say that the United States Senate Committee on Interior and Insular Affairs has transmitted to me a copy of a report, Geophysical Examination, property of Al Sarena Mines, Inc., Trail, Oreg., prepared by Mr. Charles R. McDonald.

The committee, through a member of its professional staff, Mr. Robert W. Redwine, under date of February 6, has called my attention to the last paragraph beginning on page 2 following the table of geophysical readings, which carries over to page 3 and down to a purported assay report. I have been asked to study this paragraph and give the committee my comments on the same. I have also been invited to give my comments on the entire document under oath.

The following are my comments and a statement of pertinent facts as I know and believe them to be true:

Mr. McDonald did not qualify himself as an expert in the use of a Fischer Mescope. Such a machine in the hands of an amateur might lead to very unreliable conclusions. I have never used such an instrument and therefore am not qualified to say anything about it.

Reference is made to the last paragraph on page 2 of the report. I have marked the various sentences with numbers. The sentence read as follows:

(1) "In addition to the foregoing findings, a group of samples was taken and assayed from these claims, later contested, at the direction of Mr. Hattau.

(2) "Specific procedure and requirements were outlined for this sampling and assaying and were fully complied with.

(3) "All samples were assayed and reported upon by reputable commercial laboratories who are recognized and patronized by the United States Government.

(4) "Mr. Hattau directed that this sampling and assaying be done at the expense of Al Sarena Mines, Inc., and that the results thereof be reported to him in his own specific form, admitting at that time the inconclusive nature of his own examination.

(5) "He further agreed that the results reported to him would be used as evidence in determining the outcome of the patent application filed by Al Sarena Mines, Inc.

(6) "Results reported to Mr. Hattau, omitting results reported on uncontested claims, are as follows:"

In reply to (1), I will say that I have never at any time or any place directed any mineral claimant to take a sample and to submit the results to me. In this case I believe that I stated in the presence of Mr. Sanborn and the others of the party during or after the examination of the claims in July 1949, that if the mineral claimants desired to take further samples and submit the assay results to me, I would consider them. In this instance the samples that were submitted prior to the submission of my report to the Forest Service on December 19, 1949, were considered. The samples listed in Mr. McDonald's report beginning AWW2 down to and through AWW26 were all on the assay certificate which was mailed to me and received by me December 30, 1949. This was after I had submitted my report to the Forest Service. May I at this point state that Mr. McDonald's report is incomplete as to one assay which is shown on the assay certificate dated November 18, 1949. This is numbered 23E Oro Alto (dupl. Hattau), and shows the following results:

Ounces gold per ton 0.025, value gold-----	\$0. 870
Ounces silver per ton 0.025, value silver-----	.023
Total-----	.900

Because of the values shown for the samples taken by the claimants' representatives, I considered making a reexamination of the places described. The descriptions given, stating the place from which samples were taken, were inadequate and incomplete and I could not determine exactly where all the samples had been taken. Thereafter, I wrote two letters to the McDonalds and asked them to clear up certain points. The letters of reply arrived January 9 and February 16, 1950. The information given was still not clear as to where all of these samples were taken.

By this time it was known that the Forest Service expected to bring adverse proceedings against 15 of the claims. It was therefore decided to delay any reexamination, a regular procedure, until some convenient date prior to setting of a hearing. Because of demands of the claimants and other persons who interceded for them, a hearing date was scheduled for September 13, 1950. The notice setting the hearing was dated August 21, 1950.

On August 21, 1950, a telegram was sent to me at the Skykomish Ranger Station, Skykomish, Wash., where I was doing fieldwork on a group of mining claims. The telegram stated, "Necessary you appear at hearings on Al Sarena claims at Portland, September 13. Please arrange field schedule accordingly." After that

date I completed my commitments, returned to Portland on the afternoon of August 27, made arrangements to return to the Al Sarena property, traveled by rail to Medford, picked up an automobile there and went on the property on the afternoon of September 5 and again on September 6. I took the minimum number of samples which I considered necessary to show whether the assays shown on the certificates submitted to me subsequent to July 1949 were material or immaterial. I took all of the samples that I could under the circumstances. Because of the very short interval of time, I did not notify the applicants' agents that I was returning to the property to take additional samples since it was understood they were residing in Alabama. I did, however, return and did take seven more samples in the presence of Mr. Fred H. Altland, an employee, who was still on the property and taking care of it for the applicant company. Mr. Altland pointed out the places where the McDonald samples had been taken and which the McDonalds assured me he knew about in their letter of August 19, 1949, quote, "Mr. Altland knows the exact spots from which the samples were taken. The outcrops are distinct and the locations of the samples can be easily seen."

(2) I believe Mr. McDonald is in error in making this assertion. I believe that I outlined to him how I would sample the claims and what I would do with the samples. I don't know how he finally did take his samples.

It has always been my impression that it is up to the applicant for patent to determine how he wants to take his samples. After all, it appears that it is his responsibility to show they were taken in such a way they could be admitted in evidence by his attorney at a hearing.

(3) This statement may be true. Personally I have never sent any samples to the A. W. Williams Inspection Co. for assay and report. I know nothing about the use of this company's services by other Government agencies. I do know that I have sent samples to Abbott A. Hanks, Inc., laboratory from time to time for many years.

(4) As to this statement, I believe Mr. McDonald is mistaken. As stated above, I cannot direct a claimant to do anything. It is the business of the mineral claimant to take samples wherever and whenever he may see fit to do so and likewise he has a free choice of assay laboratories. I may have told the Messrs. McDonald that if they desired to submit additional assays of samples which they took from the claims, the expense would have to be borne by the Al Sarena Mines, Inc., certainly the Government would not foot their assay bill.

Mr. McDonald is also mistaken as to my specifying a particular form on which or how the assay results should be reported. At this time I do not remember clearly the substance of discussions concerning conclusive or inconclusive sampling and assaying. I do know that when I took samples from the claims in May and again in July 1949, there were elements concerning mineral character of the various claims that were inconclusive. However, when all the assay results were brought together and it was shown by check assays that Annes Engineering Co.'s assays were reliable, the samples and results in my mind became quite conclusive. These results I did not have in July 1949.

(5) I have already stated under (1) above that I did consider the assay results shown on those assay certificates sent to me prior to submission of my report on December 19, 1949, and I also commented about the list of assays, (1) above, which appeared on a certificate received after submission of the report to the regional forester, United States Forest Service.

When I returned to the property on September 5 and 6, 1950, I took 7 samples from 7 places that were described in the list of assay results on Mr. McDonald's report. Mr. Altland accompanied me and pointed out the exact places from which he assured me the samples had been previously taken by contestee's agents. These samples were check samples and were taken for the specific purpose of checking the reliability of assay results of samples taken by contestee's agents, that were submitted to me subsequent to July 1949. The assay results of these check samples, assayed by the Bureau of Mines, Albany Branch, conclusively determined my opinion and testimony which I gave at the hearing on September 13, 1950.

If Mr. McDonald is talking about submission of the assay certificates for my information in preparing my report to the Forest Service, I did consider all of them that were received prior to submission of the report. The assay certificates received subsequent to submission of my report was also considered in cooperation with the Forest Service. It was concluded that an amended report would be unnecessary since it is the regular procedure for the mineral examiner to return to a property immediately prior to a hearing and make a reexamination.

take more samples if necessary, and if the facts warrant it, recommend withdrawal of charges. If Mr. McDonald is talking about submitting the assay certificates to me for evidence at a hearing, I must state definitely that I never promised him I would introduce such certificates in evidence. I would not have any right or authority to do such a thing under any circumstances.

I have apparently been criticized because I did not introduce the assay certificates into the hearing that were submitted to me by the McDonalds. I had no foundation of fact concerning those certificates. I was not present when the samples were taken. I had no factual knowledge whatsoever about them and therefore was not qualified to even mention them.

I wish to state that I was in the position of being a witness for the Government. As such, I merely testify before a hearings officer or manager of the land office concerning my examinations of claims in mineral applications how I took my samples and where I had them assayed. The attorneys for the Government and applicant for patent have the responsibility for introducing assay certificates for evidence at a hearing.

I might state that I have not been back on the property since my final examination on September 5 and 6, 1950. Between September 1950 and December 1953, when the Bureau of Mines and the Al Sarena's representatives went to the property and took samples which were assayed by A. W. Williams Inspection Co., the Al Sarena Mines, Inc., could have made any number of improvements on the claims by trenches, sinking shafts, and exposing cliffs wherein there may now be exposed valid discoveries of minerals on each of the claims contested. I have heretofore testified to only those things which I found on the claims up to the date of September 6, 1950. If anything has happened or has been done on the claims since that time, I know nothing about it.

As far as I have been able to determine from articles in the papers, very little has been said about work being done on the claims since September 1950. However, the testimony of Mr. D. Ford McCormick in Washington, D. C., indicates to me that bulldozer work was done on the claims. I have never had opportunity to examine the Bureau of Mines' report by Mr. Appling, consequently, I do not know where the sampling was done. The samples may have been taken from the places designated by the McDonald Bros. when Mr. Sanborn and I were on the property in July 1950, or they may have been taken at other places. If taken at other places, which were not specified during the dates of my examination in May and our examination in July 1949, I would conclude that a discovery was not known on the locations at that date and that the locations were invalid at that time for want of a discovery.

On page 4 of the report Mr. McDonald indicates there are enormous quantities of iron pyrite present. From my inspection of the property, I would be inclined to say that the available iron sulfide on this property, probably not in excess of 3 percent, is very small as compared to many other properties throughout the West. I doubt very much if payment would be made by any smelter for the sulfur which was shipped as a sulfide in a concentrate. It is possible, however, that a small credit would be given because of the iron content of such concentrates.

Mr. Charles R. McDonald has signed the report as a registered professional engineer, Alabama certificate 1693. There is nothing in the report to show that he is a mining engineer, a geologist, a public land surveyor, or a civil engineer. The information given in the report from the last paragraph on page 2 through to "Conclusions and recommendations," seems to be a criticism of myself rather than being support for mineral showings on the various claims.

The matters beginning on page 4 under "Conclusions and recommendations" are things that it seems to me Mr. McDonald should take under advisement and do, since it is reported that he is a member of the corporation and an officer in it.

In the last paragraph on page 5, Mr. McDonald seems to be under the impression that I have condemned the property. I was not employed by the Al Sarena Mines, Inc., and consequently did not express an opinion as to how to develop the property or exploit it—that was not the purpose of my examination. As everyone knows, eight of the claims were recommended for clear listing and the Forest Service did not bring adverse proceedings against these claims. My report submitted to the Forest Service was not a professional report recommending certain kinds of work or how work should be performed. It had an altogether different purpose. Its purpose was to inform the Forest Service, the administrative agency, about the conditions found on the claims embraced in the mineral application for patent and whether compliance had been met with the

United States mining laws relative to patenting a mining claim. The Forest Service did not condemn the property, it caused charges to be brought against 15 of the 23 lode claims on the allegation of noncompliance with the United States mining laws. Thereafter, it was the right and privilege of the mineral claimant, contestee, to refute and disprove the charges in a hearing before an officer prescribed by regulations.

ELTON M. HATTAN.

STATE OF OREGON,

*County of Multnomah, ss:*

Subscribed and sworn before me this 17th day of February 1956.

[SEAL]

GRAYDON E. HOLT,

*Notary for Oregon.*

My commission expires December 7, 1957.

MATERIAL SUBMITTED BY HON. WAYNE MORSE, UNITED STATES SENATOR FROM THE STATE OF OREGON

UNITED STATES SENATE,  
COMMITTEE ON FOREIGN RELATIONS.

*March 27, 1956.*

HON. JAMES E. MURRAY,

*Chairman, Joint Committee on Federal Timber,  
Senate Office Building, Washington, D. C.*

DEAR SENATOR MURRAY: Thank you for your note of February 18 enclosing a copy of a letter from the Secretary of the Interior to Clare Hoffman on the questions I asked on the Al Sarena matter.

It was most kind of Congressman Hoffman to secure a statement from the Department.

I am glad we agree that this letter alone is hardly adequate for me to rely upon as an answer to the questions raised on January 9, 1956, in my letter to you.

I shall await the completion of the deliberation of your committee on this matter for your reply to my questions.

Accordingly, as you request, I am returning the correspondence.

Sincerely,

WAYNE MORSE.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT OPERATIONS.

*Washington, D. C. February 17, 1956.*

HON. JAMES E. MURRAY.

*Chairman, Joint Committee on Federal Timber,  
Senate Office Building, Washington, D. C.*

MY DEAR SENATOR MURRAY: At the executive session of the Joint Committee, held on February 7, it was agreed that the Department of the Interior should furnish answers, for inclusion in the printed record of the Al Sarena hearings, to the some 13 questions propounded during the course of the hearings to the committee by Senator Morse, and read into the record.

Accordingly, enclosed herewith please find the answers of the Department of the Interior to those questions, embodied in a letter dated February 17, 1956, addressed to me and signed by Mr. Edmund T. Fritz, Acting Solicitor of the Department.

Sincerely yours,

CLARE E. HOFFMAN.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR.

*Washington, D. C., February 17, 1956.*

HON. CLARE HOFFMAN,

*House of Representatives, Washington, D. C.*

MY DEAR MR. HOFFMAN: Pursuant to your oral request, we submit answers to certain questions propounded by Senator Wayne Morse in his letter to Senator James Murray dated January 9, 1956, with regard to the Al Sarena Mines, Inc. hearings. The questions and our answers follow:

1. In what ways do the procedures used in this case differ from other mining appeal cases in the Department of the Interior?

The procedures used in this case differ from those used in other cases in several instances:

(a) In 1949, the Bureau of Land Management, the adjudicating agency, conducted the mineral examination for the contestant, the Forest Service. The Forest Service has its own mineral examiners and it was able to furnish one to accompany B. L. M. Examiner Hattan after he had reason to distrust his first set of samples.

(b) Assays submitted by the mining claimant in 1949 as a supplement to its patent application were not placed in the case record by the mineral examiner. Normally such documents are placed in the record to be considered along with all other documents and reports submitted by the mineral examiner and the applicants.

(c) In 1950 the Solicitor of the Department requested that a field hearing be expedited over the objection of the Acting Regional Administrator of the Bureau of Land Management and the Director of the Bureau of Land Management, who later acceded to Solicitor White's request. This is not normal procedure.

(d) In the 1950 hearings, the mining claimant, by its attorney, claimed that the Solicitor had agreed to waive the rules of practice of the Department and that the hearing should be conducted according to the rules of procedure used in the Federal courts. This, of course, was denied by Solicitor White and insofar as we know, it is the only case wherein such a claim has been made.

(e) The applicant filed a motion to dismiss which it referred to as a demurrer and which was denied by the hearing examiner along with other motions. The attorney for the applicant elected to stand on the motion without submitting evidence and to appeal to the Bureau of Land Management in Washington. He stated as his reason the purported agreement with Solicitor White. Within the recollection of the experienced career personnel of the Department, this is the only instance in which a mining claimant appeared for a hearing, elected to stand on procedural motions, and appealed to the Department without putting on evidence at the hearing.

(f) On October 2, 1950, the hearing examiner sent the record to the Bureau of Land Management in Washington with a request that the decision be made in Washington. He felt that as the record stood he was in no personal position to make the decision. The case was then reviewed in the Bureau of Land Management. During this period there were more outside requests that the decision be expedited. The case was referred back to the Land Office Manager for his decision on November 24, 1950, with the direction to allow the right of appeal to the applicants when his decision was rendered. This was unusual, particularly in view of the fact that the Bureau of Land Management in Washington, which had already reviewed the case, was to be the next appellate step for the applicants.

The matter was decided against the applicants on December 14, 1950, and appealed to the Bureau of Land Management in Washington shortly afterwards. A decision was rendered by the Washington office on April 27, 1951. This was unusually expeditious handling but it probably can be attributed to the fact that the case had been considered in Washington before the field decision was rendered.

(g) Appeal was made from the April 27 1951, decision and the matter then rested in the Office of the Solicitor for 18 months. The pleadings of the Forest Service were filed and it rested its case. In 1953 the Solicitor reviewed the file and decided that three alternatives were possible to terminate the proceedings. They were:

The first and most obvious alternative would be to remand the case to the Land Office manager for the making of supplementary record and the acceptance of evidence offered by the applicants. However, after very serious consideration of this method, the Solicitor decided that in view of the case history of unusual procedure, accusations and counter-accusations, the strong distrust of the forum entertained by the claimants, and the fact that the forum had felt the need for personal disqualification in the first place, this solution would be infeasible and would unnecessarily prolong any decision, favorable or unfavorable, which would eventually be made.

The second alternative would be to decide the case adversely so that it would be appealed to the courts. This would call for a finding of fact by the Solicitor and such a finding of fact would be conclusive on the courts. This would obviously not be a fair remedy because the claimants had not yet submitted evidence. The Department has long recognized the principle of fair treatment. *Dawkins v. Hedlin*, 44 L. D. 371.

The third alternative and that chosen by the Solicitor was to determine the key issue of mineralization by calling for an independent sampling of the contested claims under the general delegated supervisory powers of the Secretary. The Solicitor selected this as the fairest and most expeditious means of terminating the controversy one way or the other. The selection of an independent examining body outside of the rules of practice is not unique. In the record of the hearings there appears a copy of a letter dated January 9, 1911, wherein Secretary Harlinger asked that a Geological Survey team conduct an independent investigation of certain mining claims on the Bright Angel Trail of the Grand Canyon. The examination resulted in an adverse report on which the Secretary decided that no reconsideration should be allowed. The decision in the case was eventually sustained by the Supreme Court of the United States, *Cameron v. United States*, 252 U. S. 450. This investigation was prompted by conflicting evidence in the record with respect to the mineral or nonmineral character of the mining locations. Although the case is an old one it dealt with conflicting evidence as to mineralization of mining claims and the Secretary requested an independent survey. Since the survey resulted in a decision against the mining claims no one seems to have questioned its propriety.

More recently, 1952, the Department had before it a right-of-way controversy involving certain Alaska coal lands on which leases were held by the Usibelli Mines, Inc., and the Cripple Creek Coal Co. This, too, was a highly controversial record of long standing. The Cripple Creek Co. had made application for a right-of-way across the Usibelli lease. The Usibelli Co. protested the application and appealed to the Secretary from a decision of the Bureau of Land Management granting the right-of-way. The Assistant Secretary directed a special investigation of the controversy to be conducted by the Bureau of Mines. The report on the special investigation was submitted to the Secretary on June 25, 1952. The matter remained pending until November 5, 1954, at which time the Usibelli Co. withdrew its protest and the Secretary granted the right-of-way. In 1955 the right-of-way controversy was renewed when the Cripple Creek Co. applied for an amended access right-of-way across the Usibelli lease. Again in view of the conflicting claims of the parties the Secretary appointed an engineer advisory group representing the Bureau of Mines, Geological Survey, the Alaska Road Commission, and the Bureau of Land Management to go to Alaska and make an on-the-ground investigation of the controversy. The report of the advisory group was submitted to the Secretary on September 27, 1955. A new right-of-way has been granted and an appeal is presently pending before the Secretary.

These matters are only partial illustrations of independent examinations ordered by the Secretary or his delegates. They are offered only as illustrations of other instances in which the Secretary has felt that the record demanded a departure from ordinary procedures in order to obtain a fresh look at the facts. The record here discloses that when the Solicitor exercised his authority to depart from the rules of practice, he designated the Bureau of Mines to go upon the property with a representative of the mining claimant in order to take samples, the integrity of which could not be questioned, and to submit them to a mutually acceptable assayer. Those, in essence were the instructions of the Solicitor. The Bureau of Mines executed the instructions using its technical knowledge, on which the Solicitor relied. The technical knowledge of that Bureau has been made available in other independent surveys and investigations and in this instance it was made available for mineral sampling of a mining claim.

2. Is the Government usually the contestant in mining patent appeal cases? In such cases, how is the public interest protected by the Department of the Interior and were adequate steps taken in this case to protect it?

In the event the examination of the claims by a Bureau of Land Management mineral examiner indicates that, in his opinion, the requirements of the mining laws have not been met, the Bureau may initiate a contest against the mineral entry under 43 Code of Federal Regulations, part 222. Specific charges against the entry are made and served on the claimant. In all these types of cases the Government is the contestant. In cases involving national forests the Forest Service ordinarily initiates a protest against the claims and that protest is used by the Department as the basis of its adverse charges. The charges are then served on the parties and a hearing is ordered (Circular 435, September 4, 1915; 44 L. D. 360). The majority of mining contests are filed by the Government.

In these mining cases the public interest is protected by the Department by—

(a) Certifying the mineral surveyors who prepare the mineral survey.

(b) Providing for an on-the-ground examination of each claim by Government mineral examiners in the event a contest is indicated (in forest cases, the examination is conducted by Forest Service mineral examiners).

(c) By bringing adverse charges against mineral entries which it believes to be invalid.

(d) In forest cases, by having attorneys for the Forest Service represent the Government at the hearing (Circular 435, supra).

In the Al Sarena case all of these steps were taken but for the reasons stated in answer to the first question it was considered necessary to obtain further evidence. This further evidence was taken by the United States Bureau of Mines which exercised the technical judgment required in carrying out the request for independent sampling and analysis.

3 and 4. By years, how many dollars' worth of minerals were removed from the contested claims as distinguished from the uncontested claims? Also please segregate by periods before and since the patent was issued. What are the periods when active mining operations were conducted on these claims and particularly the periods since issuance of patent?

Prior to 1935 the mining property in question was held in diverse ownership. Records are unavailable to show the value of mineral produced from the various claims. With the formation of Al Sarena Mines, Inc., in 1935, the claims were consolidated under a single management. The contested and noncontested claims have never been separated in the available production records. The categories of "contested" and "noncontested" were not attached until 1950. We can assume that some of the ores processed through the pilot mill were from contested claims; however, we cannot tell how much. Since there are no underground workings on the contested claims, the amount involved would be very small.

The United States Geological Survey Bulletin 893, published in 1938, shows that production in the mine, then known as the Buzzard mine, as of that date had been \$24,000, from 4,400 feet of drifts, crosscuts, raises, and winzes. Mineral Examiner Hattan reported in 1949 that \$30,000 to \$40,000 had been produced on the premises and at that time the drifts, crosscuts, raises, and winzes amounted to 6,281.81 feet, according to the totals computed by the Bureau of Mines from the report of the mineral surveyor. These figures are not broken down into particular claims. We do not have production figures since the granting of patent and we believe that there has been no commercial production since about 1945.

The owners state that no major development can be undertaken without proper financing and that the constant publicity attack on the property since the granting of patent has prevented the acquisition of such financing.

In reporting these production figures, it should also be mentioned that it is a matter of general knowledge to lawyers familiar with the mining law that commercial production is by no means a prerequisite to the issuance of a mining patent. Many mining patents have been issued on claims on which there was no record of commercial production. This accords with the rule announced by the United States Supreme Court in *Chrisman v. Miller* (197 U. S. 313), which has never been overruled and which is followed to this day by both Federal and State courts. That rule is that if a miner can show such evidence of mineralization that would justify him in spending further time, money, and effort in the hope of developing a paying mine, he has met the discovery requirement for patent.

The Department has held that the evidence of mineralization on the contested Al Sarena claims met the legal standard announced by the Supreme Court. The matter of commercial production is, as a matter of law, immaterial in measuring compliance with this standard. It would, therefore, be inaccurate and misleading to cite the lack of commercial production on the contested claims as in any way affecting the compliance with the discovery or development requirements of the law or the bona fides of the applicants.

5. What was the extent of actual mining or discovery work at the time application for patent was filed?

The extent of actual mining and discovery work on the date of patent application appears in the certified and approved report of the mineral surveyor, who, with his crew, spent 3 months on the property in the preparation of the report,



a copy of which is in the possession of the committee. The Bureau of Mines has totaled the survey figures, and they are attached hereto as exhibit 1.

6. If mining is now in progress, are the contested claims under active operation?

We are informed that no mining is presently in progress on the premises and that snows have made any kind of commercial access to the property infeasible.

7. What are the theoretical advantages of securing a patent over mining without a patent? Which of these theoretical advantages have actually been exercised by the patentee in this case since issuance of the patent?

The advantages of securing a patent to a mining claim over mining it without a patent are more than theoretical.

The advantages are:

(a) A patentee is the fee simple owner of the entire claim from the center to the core of the earth, whereas the owner of an unpatented claim can use only so much of the surface and its products as is required to his mining operation and the surface resources can at any time be removed by the Government.

(b) There is no question that the possession of full title increases the value of the claim and facilitates the raising of money for development purposes. Lenders do not want to take as security a title which could bear the possibility of defeat by claim jumpers, adverse proceedings, or contest proceedings. The fee simple provides the necessary security of title required by investors.

(c) Assessment work is necessary to hold an unpatented claim. No assessment work is required after patent. A patent also precludes claim of conflicting locators, either prior or subsequent.

The patentee in the Al Sarena case no longer needs to perform assessment work and in ordinary circumstances it would have a sufficient title for financing. In its exercise of complete ownership it has conducted limited logging operations mostly on noncontested claims and following Forest Service cutting practices.

8. Is it true that the contestant was allowed to select the assay firm?

The United States [the contestant] through the Department, having initiated the examination of the claims by the Bureau of Mines for its own information, selected an assay firm satisfactory both to the Bureau of Mines and the claimant. The applicant and the Bureau each could refuse the suggestions of the other; however, the Bureau of Mines checked on the qualifications of the assayer suggested by the applicant and thereafter accepted it as being mutually satisfactory.

9. If so, why was not the protestant, the Forest Service, allowed to participate in the selection of an assay firm or send portions of the samples to a Government laborer or other assayer?

The Bureau of Mines is a specialist organization in the field of minerals. Because of the character of the work it does and its experience it is well qualified to determine the capability of assaying firms. The Solicitor, in requesting the assistance of the Bureau of Mines to investigate the claims and to have samples of the ore assayed, wanted to obtain expert, independent information on the claims. Since the dispute was between the United States and the claimant, and the claimant had continually contested assays made by companies selected by the Government without the consent or knowledge of the claimant, sound judgment indicated that the claimant should be given a voice in the selection of a competent assaying house. The Bureau of Mines, as a technical organization, accepted as qualified the assayer suggested by the claimant.

The Forest Service assays on their samples were already in the record. The fact that the claimants were not consulted in the selection of the assayers used in procuring the Forest Service reports is no more important than the omission of the Forest Service in the selection of the final assayer. This was an omission made by the Solicitor with an eye to achieving a just and impartial result.

10. Were the results of two western-performed assays earlier submitted by the Forest Service ignored in the final decision? Was there any basis for believing these two assays were inaccurate as compared to the one performed in Alabama?

The results of the two western-performed assays earlier submitted by the Forest Service were not ignored at the time of the final decision. At the time

that the final decision was made the Solicitor had before him varying and conflicting evidence which he carefully weighed in considering the whole record. He followed the evidence, which, in his judgment, had the greater weight and probative value.

There could be some question as to the accuracy or probative value of the two original assays submitted by the Forest Service. The Solicitor also realized that assays taken from the same claim often vary depending upon where the samples are taken and the assaying procedures used (and while values cannot be added in assaying, the amount of value which is shown depends on the accuracy of the assay).

The first sampling made by Mr. Hattan was submitted to the Annes Engineering Co. and reported by that company on May 31, 1949. Those samples, Nos. 1911 through 1934, showed traces only on all samples except for 14 cents in silver on the Manganese claim, a contested claim, and blanks on silver on Mark Applegate and Sulphide. Mark Applegate is a noncontested claim.

In this first sampling the following noncontested claims showed no values other than traces: Oro Alto, Oro Real, Oro Rico, Peter Applegate (2 samples), Mark Applegate (2 samples), Dahlberg, and Telluride. The H. McKenzie claim was not sampled. Mark Applegate and Sulphide were reanalyzed by Abbott Hanks when Mr. Hattan submitted the Annes reject pulps to Abbott Hanks for check sampling. These assays checked, showing trace and zero in each case, rather than trace and trace as shown by Annes.

The first group of samples was the one which Mr. Hattan stated he distrusted.

The second sampling was done by Mr. Hattan and Mr. Sanborn in July of 1949, and submitted to the Abbott A. Hanks Co. of San Francisco, Calif. It was reported by that company on August 10, 1949. Of the noncontested claims no samples were taken on Oro Rico, Mark Applegate, Dahlberg, Telluride, and McKenzie. Two of the noncontested claims, Oro Alto and Oro Rico, showed values of \$3.37 and \$1.04, respectively. Of the contested claims J. W. Merritt showed 35-cent value and Cougar showed 18-cent value, as did Arroyo Verde.

On August 10, 1949, Hanks also reported on 3 old sample pulps, Nos. 679, 695, and 699, the values of which appear on the Al Sarena sampling map. These pulps were taken from the assay office on the Al Sarena property by Mr. Hattan; 699 and 679 showed values of \$6.92 and \$9.34, respectively; 695 showed 70 cents. These sample pulps were evidently taken from underground in the mine and, therefore, on noncontested claims.

The samplings actually taken by Messrs. Hattan and Sanborn were all surface samplings. In all of their sampling only two claims, Oro Alto and Oro Rico, showed values. They accepted 6 additional claims on the basis of the 3 underground samplings taken years before and selected by them at random. While these claims showed nothing to them on the surface other than the traces common to all of the claims, they showed considerable values underground. This showed some faith in the undefined ore body; wherever there were underground workings, mineral values were accepted. The exact extent of the mineral mass had not been determined, but it had been demonstrated by Hattan and Sanborn that wherever there were traces on the surface and a tunnel beneath, the values were good. The Hattan and Sanborn samples, therefore, neither proved nor disproved the mineralization of any of the claims; the accuracy of their "trace" assays or their sampling, however, appears to be open to question.

The Hattan-Sanborn group taken in July of 1949, was one on which there was an apparent lapse in the chain of evidence. Mr. Sanborn's memory was not clear on the shipment of the samples in 1950. This was pointed up on pages 172, 173, and 176 of the record of the congressional hearings, wherein Mr. Sanborn stated that he did not know with whom he left the samples for shipment or what that person did with them. We understand that he later decided that the samples were left with a warehouseman in California.

Incidentally, it has never been made clear whether or not split samples of all of the Hattan-Sanborn samples were or are in existence. Mr. Hattan testified that he kept splits from his first sampling "for years" (p. 55, record of hearings, November 25, 1955), but he does not say where they are now. If he did keep them for years, however, he would probably have kept them well into the period of controversy in the case; but they do not appear to be in existence today.

As you know, the record of the hearings and the record of the Department shows that the claimants submitted favorable assays to the mineral examiner, but he did not consider them or put them into the case record. These would have

been helpful because in such a diffused deposit it is possible to get different results from samples taken only a few feet apart.

The Bureau of Mines samples were taken in a meticulous fashion; 28 samples were taken from 15 claims; Government engineers surveyed, identified, and photographed each sample spot. The crusher was cleaned out after each sample was pulped. The samples were mechanically split. Part of each sample was panned on the spot. Mineralization was shown and witnessed in each sample. Splits from the samples were put into sealed bags and shipped by express. These procedures were described to the Solicitor before his decision, along with the O. K. report as to the assayer and a verification of the assay results. The record does not disclose the use of these precautionary measures with respect to the Hattan and Sanborn samples.

When these values were shown on the Bureau of Mines samples and considered with the rest of the evidence, particularly the values shown wherever there was underground work, the Solicitor was justified in finding that the discovery rule in *Chrisman v. Miller*, supra, and *Castle v. Womble* (19 L. D. 455), was complied with.

11. The Forest Service and the Secretary of Agriculture have long tried to protect our forests from questionable mining claims. Is it true that they were not consulted as to the final action being taken on this matter?

I would first like to comment on the statement made prior to the question. The Forest Service and the Department of Agriculture and, I might add, the Department of the Interior have long sought to protect our forests and our public domain from the location and patenting of questionable mining claims. The two Departments cooperated to submit and support a bill which was the first major amendment of the mining laws since 1872 and which was aimed specifically at the location of mining claims for other than mining purposes. The bill passed and became Public Law 167 of the 84th Congress. This law provides the deterrent to those who would locate bad-faith claims by ending the possibility of holding the surface and minerals in an endless "location" status merely by doing the required \$100 per year of assessment work. The law recognized that the incentives of the mining laws should remain and that a legitimate miner should receive the historical fee simple patent once his claim meets the requirements of the mining law.

The patent requirements of the mining laws remained. As we have mentioned, the standard for patenting a mining claim is that a miner should be justified in the further expenditure of time, money, and effort in the hope of developing a paying mine. No commercial production is required and the presence or absence of timber is immaterial. When a national forest is created the area remains open to mineral prospecting and location and the same standards of the mining laws, including discovery, apply as are applicable to the open public domain. Congress made its intent clear in this respect in the National Forests Act of 1897 (30 Stat. 36, 16 U. S. C. 487), which expressly provides that nothing in the act shall prohibit the prospecting and locating of mining claims. It is our belief that our protection of the forests and the public domain should conform to the intent of Congress and the decisions of the Supreme Court.

In answer to the question: At the time the now Solicitor assumed office in 1953, the Forest Service, acting as an advocate for the United States, the sole and only party plaintiff, had submitted its evidence, filed its briefs, and rested its case. The record was before the Solicitor for his consideration and decision. It became apparent to him that the record was incomplete and that it should be made complete. It was completed without notice to the Forest Service, which had completed its record. The Solicitor, acting in this behalf as agent of the United States, the plaintiff in the case, to protect its interest and to do justice to the claimants, requested the Bureau of Mines, an impartial agency, to investigate and to report to him on the question of mineralization. As is customary in mineral sampling, the claimants were to be contacted to point out their discovery locations. The Bureau of Mines was instructed to select an assayer known to it to be competent and who was acceptable to the claimants. This was a matter within the delegated authority and power of the Solicitor and he could have done it without notice either to the Forest Service or to the claimants. "The rules prescribed are designed to facilitate the Department in the dispatch of business, not to defeat the supervision of the Secretary" (*Public of San Francisco*, 5 L. D. 483, 494; quoted with approval; *Knight v. U. S. Land Association*, 142 U. S. 161, 179).

12. What are the species volume and value (at bid rates for the area at the time of application) of the timber on the contested claim? For the uncontested claims? What are the values on the same basis at the time when the various appeals were filed? What are today's values?

The information called for in this question is peculiarly within the province of the Forest Service. We understand that all of this information has been submitted to the committee by the Department of Agriculture. The only figure for the valuation of the timber which was before this Department at the time the decision was rendered was the testimony of Mr. Leavengood of September 13, 1950. In his testimony at that time Mr. Leavengood stated that by his ocular estimate there was an average of 25,000 net merchantable board feet per acre on the premises, consisting largely of second growth and understory of Douglas fir with about 10 to 15 percent of sugar pine. He stated that, according to Forest Service cutting practice, the timber on the contested claims was then worth \$77,000 to the Government. As I have stated, that was the only valuation before the Solicitor at the time of his decision.

In this respect it should be urged that present-day timber valuations or valuations arrived at in the heat of the present controversy should not be used to infer what the values were at the time the patents were applied for or at the time the claims were located. The purchase price of Manhattan Island should be considered in relation to real-estate prices of that day. One of the political statements of value was a generous \$600,000, which would give the timber an increment of 800 percent within 5 years.

Most of the claims in question were purchased in 1935 at considerable expense. The last two claims were located in 1939. It should be remembered that during this same period timberlands in Oregon were being sold for delinquent taxes at prices below \$5 per acre. A person who was interested in acquiring cheap timberlands could do so without purchasing mining properties and improvements, performing annual assessment work, and conducting expensive exploration operations (with the eventual requirement of still paying \$5 per acre and getting a patent before he could touch the timber). When the majority of these claims were located, timberlands were being cleared for farming, and that idea persisted well into the 20th century.

13. Has timber been cut from the claims since patent was issued? If so, from which claims (contested or uncontested) and in what amounts from each?

We understand that timber has been cut from some of the claims since patent has issued, but we are not informed as to the amounts for each of the claims. We have asked the owners to submit copies of their Oregon severance tax returns, copies of which are attached hereto as exhibit 2. These returns show that in 1954, 2,008,260 board feet were removed from the premises, almost entirely from noncontested claims.

We thank you for this opportunity to answer Senator Morse's questions. We share his concern over smear attacks and we feel that this case has been a classical example of such an attack. The intentional repetition of inaccuracies has been misleading to the public. Among the most often repeated are—

(a) That the claims were located for the purpose of getting the timber. The fact is that the timber values were negligible between 1897 and 1939, when the claims were located.

(b) That Secretary Chapman or one of his assistants decided the case adversely and that it was closed, only to be reopened by Solicitor Davis. This was repeated only this past week by a former Assistant Secretary. The fact is that the case was open and pending before Secretary Chapman and his Solicitor, and it had not been decided when they left office. It was in that status when it was brought to Solicitor Davis' attention.

(c) That commercial production is required to meet the patent requirements of the mining law or to show good faith under the mining laws. The law is clear that commercial production is not required to meet the patent standards or good-faith standards of the mining law. Repetition of this misstatement is a deliberate play on the lack of information of the general public as to the terms of the mining law and the necessary and time-honored economics of the mining industry.

(d) That Secretary McKay somehow negotiated a purchase price of \$5 per acre with the mining claimants. The fact is that the price was paid, final certificates were issued, and the land went on the tax rolls during Sec-

retary Chapman's administration of the Interior Department. However, the price was never negotiated, because it is the standard regulatory price which must be paid when final certificate is issued.

(e) That mining claims should not be patented in national forests. The fact is that the National Forest Act itself is specific in stating that mining claims are to be allowed in national forests.

(f) That the Solicitor acted without authority or precedent in calling for an independent examination of the property. The fact is that his authority to do this was clear and that it has been done by Secretaries and their delegates over the years in several different types of cases.

Other misstatements have been made which are too numerous to mention here. I hope that this letter fully answers your inquiry.

Sincerely yours,

EDMUND T. FRITZ, *Acting Solicitor.*

# EXHIBIT 1

DEPARTMENT OF THE INTERIOR,  
BUREAU OF MINES,  
OFFICE OF THE DIRECTOR,  
Washington, D. C., January 25, 1956

## Summary of Development, Al Sarena Mines

	Linear feet
Tunnels.....	2,766.00
Drifts.....	1,200.00
Crosscuts.....	704.18
Raises.....	385.00
Cuts.....	913.00
Shafts.....	200.00
Winze.....	23.00
Total.....	6,281.28
	Cable feet
Stopes.....	150,000

MATERIAL SUBMITTED FOR RECORD BY HON. CLARE HOFFMAN OF MICHIGAN ON BEHALF OF MINORITY

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT OPERATIONS,  
Washington, D. C., February 17, 1956

Hon. JAMES E. MURRAY,

*Chairman, Joint Committee on Federal Timber,  
Senate Office Building, Washington, D. C.*

MY DEAR SENATOR MURRAY: In behalf of the minority, in accordance with the statements made at the executive session of the joint committee on February 7 where it was agreed that certain documents would be included in the record herewith please find the following documents which we are requesting be included in—and which it was agreed would be put in—the printed record of the so-called Al Sarena matter:

(1) Certified copy of—

Teletype dated August 18, 1950, to Director, BLM, from manager, BLM Portland.

Telegram dated October 13, 1950, to manager, Land Office, Portland, from J. A. DeLany, Acting Chief, Branch of Minerals.

Letter dated September 25, 1950, to Mr. Marion Clawson, Director, BLM from Kenneth W. Miller, Bureau of Reclamation.

Letter dated April 27, 1951, to Hon. Frank W. Boykin, from Zimmerman, Assistant Director, BLM.

Teletype, dated August 9, 1950, to manager, Land Office, Portland, from Marion Clawson, Director, BLM.

Wire, dated August 15, 1950, to Director "Personal Attention" BLM, W.C. from Leonard B. Netzorg, acting regional administrator, Portland, Oregon and bearing handwritten notation at bottom, signed with initials "MGW"

Letter dated August 3, 1951, to Al Sarena Mines, Inc., from Mastin G. White, Solicitor, Department of Interior.

(2) Document entitled "Assignment of Error—*United States v. Al Sarena Mines, Inc.*—Mineral, Contest No. 38, Rogue River National Forest (75 pages)—duly certified as true copy.

(3) Application for patent by Al Sarena Mines, Inc.—duly certified as true copy (20 pages).

(4) Certified copy of "Field Notes of the Survey of the Mining Claim of Al Sarena Mines, Inc., known as the Al Sarena Group," of the Bureau of Land Management, Department of the Interior, Mineral Survey No. 879, 40 pages).

(5) Covering letter from Richard E. McArdle, Chief, United States Forest Service, dated February 15, 1956, forwarding memoranda, and the memoranda, viz:

(a) Copy of memo from Frank B. Folsom, dated June 3, 1955, to Division of Timber Management.

(b) Copy of memo from George W. Kansky, district ranger, Union Creek, dated July 14, 1955, to forest supervisor.

(6) Statement entitled "Two Timber Sales Adjacent to Al Sarena Mines," etc., and accompanying maps, viz:

(a) Map of Township 31 S., Range 2 E. W. M., Douglas and Jackson Counties, Oreg., with information relative to timber sales printed thereon.

(b) Topographic map of Geological Survey, Department of the Interior, of the subject area—including the reverse side thereof as indicated. (Topographic map could not be reproduced.)

(7) Statement entitled "Twin Cheria Sale."

(8) Bulletin of the American Council of Independent Laboratories, Inc., entitled "ACIL Bulletin," August 1955, all pages of which it is desired be included (see p. 233).

(9) Affidavit of Phillip Gabriel, sworn to on February 9, 1956.

(10) Letter dated February 7, 1956, to Congressman Clare E. Hoffman, from A. W. Williams Inspection Co., signed by Morris Miller (3 pages), with accompanying documents as follows:

(a) Document entitled "Statements of Morris Miller, Laboratory Manager, A. W. Williams Inspection Co., Mobile, Ala." (16 pages).

(b) Photostat of letter dated February 1, 1952, to A. W. Williams Inspection Co., from W. W. Binford, manager, Hurricane Creek Operations, Reynolds Metals Co., Bauxite, Ark.

(c) Photostat of letter dated January 18, 1952, to A. W. Williams Inspection Co., signed by B. A. Jarrett, plant accountant, Reynolds Metals Co. (Hurricane Creek plant, Bauxite, Ark.).

(d) Statement entitled "Chromite," signed by Morris Miller, laboratory manager, A. W. Williams Inspection Co. (6 pp.).

(e) Photostat of letter dated August 16, 1950, to Hon. Frank W. Boykin and signed by Clifton E. Mack, Commissioner, Federal Supply Service, General Services Administration.

(f) Photostat of letter dated May 11, 1951, to A. W. Williams Inspection Co., signed by O. W. Teckemeyer, Chief, Inspection Branch, Federal Supply Service, General Services Administration.

(g) Photostat of letter dated February 10, 1954, to Mr. A. W. Williams, A. W. Williams Inspection Co., signed by H. M. Neale, Assistant Chief, Inspection Branch, Federal Supply Service, General Services Administration.

(11) Original affidavit signed by Charles R. McDonald and Herbert P. McDonald, Jr., sworn to on February 14, 1956 (4 paragraphs).

(12) Original affidavit signed by Charles R. McDonald, sworn to on February 14, 1956 (6 paragraphs).

(13) Original affidavit signed by Charles R. McDonald and Herbert P. McDonald, Jr., sworn to on February 14, 1956 (6 paragraphs).

It is our understanding that the Department of the Interior has previously furnished to the committee staff photostatic or carbon copies of certain other documents, and it is the request of the minority that, if they are not already in the record, the following listed documents be printed as part of the record, viz: (the numbers given correspond to the exhibit numbers assigned the documents at the time the copies were furnished).

No. 35: Letter from Mastin G. White to W. O. McMahon dated November 16, 1950—in which White advises that the agreement for the rules of civil procedure to apply was not so (see pp. 642-643);

No. 47: Letter dated June 6, 1950, to "Oscar" from Boykin;

No. 49: Letter dated March 14, 1950, to Manager of the Land Office from Bell, Regional Administrator, BLM, instructing Manager to withdraw

adverse proceedings filed on February 10, 1950, because procedure was improper;

No. 51: Letter dated March 17, 1949, from Folsom, Acting Regional Forester to Charles Lee, Manager, Land Office, stating that Hattan had reminded him of necessity for mineral examination (see pp. 731-732);

No. 52: Letter dated November 24, 1950, from Bradshaw, Acting Director, BLM, returning records to Rice and instructing him to make decision, giving right of appeal;

No. 56: Affidavit of January 1949, of H. P. McDonald, Jr., relative to publication and expenditures;

No. 71: Letter of February 8, 1949, from Spaulding, BLM, to McDonald, stating price of \$2,375 for 474.119 acres;

No. 84: Letter dated November 2, 1950, from Zimmerman, BLM, to Boykin, advising that Solicitor White had requested decision be expedited;

No. 85: Letter of June 23, 1951, from McDonald to White—stating their conference with him on June 15, 1951, was not the oral argument they had requested;

No. 89: A geophysics and assay report by McDonald to Mastin White, dated June 21, 1951;

No. 95: Telegram dated March 19, 1951, from Boykin to McMahon, reference to talk had with Mastin White;

No. 96: Default demand on Clawson, dated March 10, 1951;

No. 99: Note from White to Clawson relative to Representative Boykin's call from Mobile, Ala., asking that the Al Sarena decision be expedited;

No. 104: Clawson's letter to White, advising him that the matter set for hearing; do not like idea of making it special for Boykin (see p. 642).

It is the understanding of the minority that the following listed documents have already been included in the record, but, if not, it is our request that they be printed as part thereof, viz:

A. Views of Pierce M. Rice, Manager, BLM office at Portland, dated October 2, 1950;

B. Decision of Portland office, BLM, of December 14, 1950;

C. Decision of William Zimmerman, Assistant Director, BLM, of April 27, 1951;

D. Decision of Solicitor Clarence Davis of January 6, 1954. See p. 10.

Sincerely yours,

CLARE E. HOFFMAN.

4-207 (May 1954)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C. February 16, 1956.

I hereby certify that the annexed photostatic copies of papers, from File No. 0665, Oregon, are true and literal exemplifications of the records on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

OSCAR E. COLLINS,  
Certifying Officer.

CONFIRMATION

[PBA teletype]

BUREAU OF LAND MANAGEMENT,  
Portland, Oreg., August 18, 1959.

The DIRECTOR, BUREAU OF LAND MAGEMENT,  
Department of the Interior, Washington, D. C.

R—— 9th and 17th contest No. 38 U. S. versus Al Sarena Mines, Inc., Mineral application Oregon 0665. Forest Service and company contacted. Hearing set September 13th before Land Office. Forest Service and company will be notified Monday. Please return record for use at hearing.

\_\_\_\_\_  
Manager.

(This is a message telephoned to E. S. on 10/13/50 at 3:32 p. m. General Services Administration, Public Buildings Service. Message telephoned by Lo.)

WASHINGTON, 10-13-50.

To: Manager Land Office.

Subject: Calling for missing papers.

In the matter of mineral contest number 38 Forest Service versus Al Sarena Mines, Incorporated, Oregon 0665 transmit copies of answer, demurrer and motions filed in defendants behalf in this case and any other papers in your files that may be of assistance in rendering a decision in the matter.

J. A. DELANY,  
*Acting Chief Branch of Minerals.*

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BUREAU OF RECLAMATION,  
*Salem, Oreg., September 25, 1950.*

MR. MARION CLAWSON,  
*Director, Bureau of Land Management,*  
*Washington, D. C.*

DEAR MARION: We heard you were to be in Burns, Oreg., a couple of weeks ago but could not find an excuse to be in that part of the State at that time. Hope you had an enjoyable trip to the west coast.

If I had anticipated what has developed since you were in Oregon, I would probably have arranged some way to see you and save myself the task of writing about something that could be better handled orally.

For several years I have observed the events concerning the application for patent of property of Al Sarena Mines, Inc., of Trail, Oreg. It now appears that questions pertaining to patenting of this property are being appealed to you. What started out to be the best of relationship between owners of the mines and the Bureau of Land Management has degenerated to the point where good faith and fairness are being questioned.

After being informed by H. P. and C. R. McDonald that this case is being forwarded for your decision, I assured them that you would give a just and fair decision. The McDonald boys have been friends of mine since 1945 when I left Berkeley to work for the Bureau of Reclamation in Oregon. They are honest, understanding gentlemen, and are coming to you with faith in your judgment. It is hoped that in regard to your meetings in Washington I have assisted in overcoming a feeling of distrust that the boys had developed out here because of a series of unfortunate events.

Sincerely,

KENNETH W. MILLER.

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UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
*Washington 25, D. C., April 27, 1951.*

HON. FRANK W. BOYKIN,  
*House of Representatives,*  
*Washington 25, D. C.*

MY DEAR MR. BOYKIN: Further reply is made to your letter and our reply thereto dated June 20 regarding the proceedings instituted against mineral entry Oregon 0665 made by the Al Sarena Mines, Inc.

There is enclosed a copy of our decision of even date which is self-explanatory and will advise you of the action taken in the matter.

Sincerely yours,

WILLIAM ZIMMERMAN, Jr.,  
*Assistant Director.*



UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,

August 9, 1950.

Appro.: 1411109 Adj.

MANAGER, LAND OFFICE,

Portland, Oreg.:

Please set early date prior to September 23 for hearing re charges of Forest Service on mineral application, Oregon 0665, of Al Sarena Mines, Inc. Kindly notify me of date set. (AD: FF)

MARION CLAWSON,  
Director.

Authorized: Confirmation copy.

PORTLAND, OREG., August 15, 1950.

DIRECTOR (Personal attention):

Retel 9th AD-FF hearing date charges of Forest Service on mineral application, Oregon 0665. Hattan, our only mineral examiner, apparently necessary witness for Forest Service. Hattan's time completely committed until end of October to field examinations on backlog pending cases, principally mineral patent applications. Scheduling hearing as suggested your teletype will disrupt his schedule and violate numerous commitments already made to other agencies and private persons for field examinations during current field season. In absence of compelling reason seriously urge hearing Oregon 0665 be postponed until conclusion field season. Teletype reply.

LEONARD B. NETZORG,  
Acting Regional Administrator.

[Handwritten note: I believe we ought to set the hearing before the end of September. I told Representative Boykin that the Department would make every effort to obtain an early initial decision. M. G. W., AUGUST 17, 1950.]

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,

Washington 25, D. C., August 3, 1951.

AL SARENA MINES, INC.,  
Mobile, Ala.

GENTLEMEN: It appears, upon the basis of your letter dated June 23, 1951, as supplemented by information received from the manager of the land office to the effect that the reporter failed to obtain a complete transcript of the earlier portion of the proceedings at the hearing on September 13, 1950, that if you desire a further opportunity to submit evidence bearing on the question whether valuable mineral deposits have been discovered on the claims involved in your appeal (A-26248), it would be appropriate to remand the case for a supplemental hearing with respect to that issue.

It will be appreciated if you will inform me promptly whether you desire that the case be remanded for the purpose mentioned in the preceding paragraph.

In the event of a further hearing in this case, the supplemental hearing and all subsequent proceedings will be conducted in accordance with the applicable regulations of this Department.

Very truly yours,

MASTIN G. WHITE,  
Solicitor.

4-207  
(May 1954)

DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C., February 16, 1956.

I hereby certify that the annexed copy of document entitled "Assignment of Error" filed in case No. 0665, Oregon, is a true and literal exemplification of the record on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

OSCAR E. COLLINS, *Certifying Officer.*

### ASSIGNMENT OF ERROR

UNITED STATES V. AL SARENA MINES, INC.

MINERAL CONTEST NO. 38, ROGUE RIVER NATIONAL FOREST

Comes now the Contestee, Al Sarena Mines, Inc., and files this, its Assignment of Error, Answer, Brief and Argument in answer to the decision of the Bureau of Land Management, Mineral Contest No. 38, Rogue River National Forest, Oregon 0065, made under date of April 27, 1951 and signed by William Zimmerman, Jr., as Assistant Director of the Bureau of Land Management, and on appeal from said decision to the Secretary of the Interior, Attention: Mr. Mastin G. White, Solicitor and Acting Assistant Secretary of the Interior. In refuting the contentions of the Bureau of Land Management in its decision, or in refuting any findings or rulings contained therein, Contestee specifically waives no rights, right of action or other procedure and submits this assignment of error, answer, brief and argument without prejudice to any rights of the Contestee. In every assignment of error, Contestee specifically challenges the sufficiency, credibility, legality, constitutionality or admissibility of the evidence, whether specifically attacked therein or not; in every assignment of error Contestee specifically demurs to the discrimination and/or discriminatory enforcement present, whether cited or specifically attacked or not, giving as its authority the decision of the United States Supreme Court in the case of *Yick Wo v. Hopkins* (118 U. S. 356), whether said decision is cited or not. References to the vesting of equitable title in the purchaser or to his rights after having made final proofs and paid the purchase price in full have as their authority the decision in the case of *Benson Mining Company v. Alta Mining Company* (145 U. S. 428, 431) whether specifically cited or not, said precedent being set out in the brief and argument portion hereof under the showing in support of the first demurrer, being quoted on pages 7 and 21 hereof. All references to the procedural agreement of August 9, 1950, or to any agreement with Mr. White refer to an agreement between the United States Government, made on its behalf by Hon. Mastin G. White, Solicitor and Acting Assistant Secretary of the Interior and W. O. MacMahon as Special Counsel for Al Sarena Mines, Inc. made in the presence of H. P. McDonald, Jr. and C. R. McDonald and confirmed by Mr. White to Hon. Frank W. Boykin, M. C., reciting said agreement. The agreement is and shall be construed to mean: "The rules of evidence and the rules of practice and procedure as obtain in Federal and State Courts are the rules, and the only rules, agreed upon for the handling of this matter, including the hearing thereof in Portland, Oregon, the date of which hearing had not at that time been set, and all proceedings in connection with said hearing or any and all appeals involved." All statements herein, whether expressed or implied, to the effect that Al Sarena Mines, Inc. had and/or has a legal right to obtain a patent have as their authority the decision of the United States Supreme Court in the case of *Noyes v. Mantle* (127 U. S. 348), the specific ruling whereof is set out on pages 7 and 21 hereof. The withholding of said patent is specifically challenged in each and every assignment of error, whether so stated or not. In filing this Assignment of Error, Answer, Brief and Argument, Contestee herewith notes, assigns, answers, and argues each and every error, whether specifically noted and argued or not, waiving nothing, and refutes all statements, evidence and other corroborative material in support thereof, including the patent application, final certificate, etc., answer, arguments, appeals, legal demands and other communications heretofore filed by Contestee.

In regard to the Decision of the Bureau of Land Management, Mineral Contest No. 38, Rogue River National Forest, under date of April 27, 1951, containing the file memorandum Oregon 0065 ADM: ANC:

The Bureau of Land Management erred in that:

1. It failed or refused, after demanding and receiving the final proofs and purchase money in full, for the claims for patent to issue the patent as prayed for, the final proofs having been filed by Al Sarena Mines, Inc., on January 13, 1949, and the payment of the purchase money demanded being evidenced by a

Final Receipt (Bill No. 324, dated February 17, 1949) issued by the Oregon District Land Office.

2. It gave credence to an alleged protest of the Forest Service against a nonexistent mining company and not against Al Sarena Mines, Inc.

3. It cited and compelled Al Sarena Mines, Inc., to appear as a contestee at an illegal hearing, under duress, by threats of discriminatory confiscatory default judgment.

4. At the illegal hearing held at Portland, Oregon, on September 13, 1950, the Manager insisted upon holding said hearing in accordance with the Code of Federal Regulations, when in truth and in fact, under an agreement with Hon. Mastin G. White, his superior, made August 9, 1950, it had been agreed with contestee that the rules of evidence and the rules of practice and procedure as obtain in Federal and State courts should be the procedure and the only procedure in this cause.

5. The hearing was conducted in an illegal manner, prejudicial to the rights of the contestee, and that after the hearing was legally closed under the rules agreed upon with Mr. White, his superior, the Manager proceeded illegally to take inadmissible and illegal "testimony" from Messrs. Hattan, Sanborn and Leavengood, whose credibility is herewith attacked.

6. The Manager of its Oregon District Land Office sent an appeal to Washington, D. C., a so-called "record" of the hearing, which "record" said Manager admitted in the presence of witnesses was not "worthy of the name" at its office at 11:45 A. M. on September 14, 1950.

7. When legal demand was made for a copy of the "record" upon Manager Pierce M. Rice, of the Oregon District Land Office, and upon other officials of the Bureau of Land Management, contestee was invariably advised that a copy of said "record" would be furnished contestee only upon receipt of \$5.00 or \$1.00 per page therefor, which charge violates 43 CFR: 216.18; 216.19; 216.23 is not in accordance with the recognized charges reported by the Administrator of the Judicial Conference of the United States, September 25 and 26, 1950 (U. S. Gov't. Printing Office), and is a violation of Titles 18 and 43 of the United States Code, regardless of the alleged authority cited by Mr. Rice.

8. While the matter was still on appeal, the Bureau of Land Management willfully, knowingly, and without notice to contestee, returned the "record" to the court of original jurisdiction with orders to render a "decision" based upon the illegal and inadmissible "testimony" adduced after the hearing had been legally closed, and based upon a "record" admittedly not "worthy of the name."

9. The Bureau of Land Management or those in authority in the Department of the Interior caused or appear to have caused, on November 16, 1950, the recantation by Solicitor Mastin G. White of his agreement of August 9, 1950, with contestee as to the rules of evidence, practice, and procedure agreed upon with the contestee in this cause.

10. It attempted to capitalize upon the recantation, rendered worthless for that it was apparently obtained by coercion and duress.

11. The Manager willfully and knowingly rendered a decision, which apparently was dictated by his superior, upon a fragmentary and practically non-existent record, which has been heretofore attacked, and is herewith attacked, which decision predicated upon illegal and inadmissible testimony taken after the hearing was legally closed, in violation of the rules of evidence and rules of practice and procedure as agreed upon with Mr. White on August 9, 1950.

12. Being fully aware of the nature of the record, of the illegal and inadmissible testimony upon which it was based, and after having failed or refused to hear an unbiased mechanical recording of the exact truth, it deliberately, willfully, arbitrarily, and prejudicially overruled and denied the demurrers and motions of contestee and upheld the Manager's findings in his decision.

13. It confirmed, upheld, and advised contestee of the illegal and oppressive charge for the record made by Manager Rice for his record.

14. It persisted and persists in using the highly discriminatory, oppressive, illegal, and unconstitutional Joint Regulations of the Departments of the Interior and Agriculture, contained in the Code of Federal Regulations as a basis of the justice it dispenses.

15. It made and/or upheld any and all rulings, findings, judgments, etc., against contestee by the Manager or anyone else, in violation of statute law, decisions, and the Constitutional Rights of the Contestee.

16. It accepted and gave credibility to the alleged testimony of Messrs. Hattan, Sanborn, and Leavengood, such testimony being illegal and inadmissible.

17. It based its conclusions in this cause upon inapplicable decisions of the Department of the Interior.

18. It based its entire alleged cause of action on the unconstitutional, invalid, and illegal provisions of the Joint Regulations of the Departments of the Interior and Agriculture, contained in 43 CFR 205.5 and 205.6, attempting, after the Forest Service had defaulted three times, and almost a year after its third default on the deadlines provided by 43 CFR 205.1; 205.2; 205.3, to authorize the illegal and unconstitutional withholding of the patent and the filing of an illegal protest.

#### ANSWER, BRIEF, AND ARGUMENT

(Numbers correspond to like numbered assignments of error)

1. The United States Supreme Court has ruled:

A. "The certificate of purchase issued by a receiver after submission of final proof and payment of the purchase price entitles the applicant to a patent, the United States holding the title in trust for the holder of the certificate." *Doffe-back v. Hawke* (115 U. S. 392).

B. "In a case involving applicant's rights, he must be treated as though the patent had been issued and delivered, and any delay in the administration of affairs in the land department does not diminish the rights flowing from such purchase, nor cast any additional burdens on the purchaser or expose him to the assaults of third parties." *Benson Mining Co. v. Alta Mining Co.* (145 U. S. 428, 431).

C. "Where full price has been paid, or all conditions of entry performed the mining claimant can obtain at any time at patent upon proof." *Noyes v. Mantle* (127 U. S. 348); *El Paso Brick Co. v. McKnight* (233 U. S. 250, 257).

D. "Even though a final receipt for mineral land issued upon an application for patent was obtained by fraud, it would be valid until avoided; the fraud only rendering it voidable." *McKnight v. El Paso Brick Co.* (233 U. S. 250).

E. "By the purchase and entry of a mining claim, the equitable title vests in the purchaser, high right to a patent is thereby established and duty to perform assessment work ceases." *Benson Mining Co. v. Alta Mining Co.* (145 U. S. 428).

In view of the foregoing decisions of the United States Court, it is quite obvious from the ruling of that Court set out above as C, which states that an applicant may secure a any time a patent upon proof that he has paid his purchase money or has complied with all conditions of entry, and since final proofs were made January 13, 1949, and since Al Sarena Mines, Inc. paid the purchase money in full on February 14, 1949. Contestee rightfully contends that the right to a patent was at that time clearly established and that it made every effort to obtain said patent, writing letter after letter to the Oregon District Land Office requesting that the papers be transmitted to Washington for the issuance of the patent, but found it impossible even to get replies from said land office to official correspondence, and almost invariably had to resort to long-distance telephone calls to get any communication with that office whatsoever, none of which was to any particular avail, presenting prima facie evidence of bad faith and laches on the part of the Portland Office. When final proofs were made, when the Forest Service had already had its 60 days' Notice as of September 27 to November 26, 1948 and had defaulted, as Al Sarena Mines, Inc. was advised by Mr. Carl F. Spaulding of the Portland Land Office, by said Forest Service having failed either to protest the patent or to request any longer time in which to make an examination, as required if any additional time be needed, and when Al Sarena Mines, Inc. made full payment of its purchase money on February 14, 1949, the transaction was complete, and the failure of the Bureau of Land Management to issue the patent after all conditions had been met by the applicant must of necessity lead only to the conclusion either of laches in the handling of the matter or of possible bad faith, and collusion involving officials of the Portland Land Office.

The fact that the applicant had the right clearly established to a patent and could not obtain it because its correspondence was ignored by the Land Office, and because the Portland Land Office failed to send the completed papers to Washington at the proper time can in no wise diminished the rights (chiefly the right to a patent then and there as described in Supreme Court ruling O hereinabove set forth) flowing from the purchase which the applicant had made. This is borne out by the following ruling of the United States Supreme Court:

"In a case involving applicant's rights, he must be treated as though the patent had been issued and delivered, and any delay in the administration of affairs in

the Land Department does not diminish the rights flowing from such purchase, nor cast any additional burdens on the purchaser or expose him to the assaults of third persons." *Menson Mining Co. vs. Alta Mining Co.* (145 U. S. 428, 431).

It is conclusive from a detailed study of the provisions of 43 CFR 205.1; 2; 3 that those regulations provide definite deadlines for the Forest Service in which to make its examinations and to file its protests. Moreover, if there were no intent to impose any time limit upon the filing of protests, there would be no reason for imposing time limits upon the examinations upon which said protests are predicated. It is quite evident that none of the prescribed time limits were observed in this case, the last possible deadline being six months after the making of final proofs, which made any protest due in the land office by July 13, 1949. The obvious fact is that instead of filing a protest within the 60 days after the Forest Service was notified on or about September 27, or by special request, six months later, it filed its illegal protest approximately one year and seven months later, and exactly one year and three months after the making of final proofs. Mr. Hattan admitted in a letter to contestee that he did not submit his report until December, 1949, thereby violating 43 CFR 205.3. This subject is treated fully in this brief under the subject of demurrers, corresponding to the third topic in the Assignment of Error.

Regardless of the foregoing paragraph, and of its implications, the fact remains as hereinabove set out, the right to a patent has been clearly established, that failure to issue said patent is chargeable to laches in the Bureau of Land Management, that after that right has been established, such laches can do nothing to diminish said rights of the applicant, which rights consist of full equitable title to the property, as has been ruled many times by the Supreme Court, and that laches in the Forest Service permitted by the Bureau of Land Management to interfere with those rights already accrued to the applicant are not only laches of the Interior Department as well, but also constitute discrimination and/or discriminatory enforcement, and is in effect encouraging an attack by a third party.

The Supreme Court has ruled in certain extreme cases that a contest may be initiated by the Government to destroy an owner's title by canceling his entry, and its policy is quite clearly defined in its doctrine that such action may be deemed justifiable in cases of fraud or the encroachment of an applicant upon other citizens having a greater equitable interest in fact than the entryman, his behavior toward said citizens being tantamount to fraud, or in cases of mistake, where the same land is sold twice, etc. *McKnight v. El Paso Brick Co.* (233 U. S. 250, 257); *Doffback v. Hauke* (115 U. S. 404); *Crisman v. Miller* (197 U. S. 313).

The aforesaid doctrine is shown clearly in the Supreme Court's policy that a patent, once having been issued, should and can only be attacked in cases of fraud or mistake, as aforesaid, where such an element is present as would make it necessary to ask the Attorney General to institute annulment proceedings for such fraud or mistake, which is the only reason for cancellation of a fully proven and paid entry. *Grillim v. Donnellan* (115 U. S. 45, 49, 29); *Orchard v. Alexander* (157 U. S. 372); *Benson Mining Co. v. Alta Mining Co.* (145 U. S. 428, 431).

There is obviously neither fraud nor mistake present in this case. The claims involved are an integral part of a large intrusive mass, all mineralized and lying within clearly defined boundaries of the neighboring rock, which is not mineralized, making this ore body what is defined as a broad lode or broad zone. The claims are clearly mineral in character, as they have sufficient promise to warrant recommendations for large expenditures in development work for the mass of low-grade ore lying within their boundaries by well-known professional mining engineers and geologists who have studied them carefully and are willing to back their recommendations with their professional reputations. Moreover, Contestee has had negotiations in process for large sums of money for this purpose and for the construction of facilities for handling such ore at low cost per ton, and the negotiations are still in process. However, it is extremely difficult to secure heavy capital without full legal title to the property. Needless to say, further withholding of said patent would only delay the completion of necessary negotiations, which negotiations will also make possible the production of lead and zinc in significant quantities, needed for the defense of the United States. Contestee and its legal grantors have already expended approximately a quarter-million dollars in improvements, and Contestee rightfully avers that all claims have valid discoveries and requisite expenditures on or for their benefit, properly evaluated and apportioned in accordance with Bureau of Land Management requirements and in accordance with its own specific instructions by Mr. G. Cleveland Taylor, E. M., a mining

engineer of some 40 years' experience and a U. S. Mineral Surveyor, a highly competent and impartial public official detailed to the property for some 3 or 4 months by the Bureau of Land Management to make a survey and appraisal of the true facts. His findings are in the record of this application and cause under his bond to the Government and under oath. Findings of many other recognized authorities are quoted verbatim and used in corroboration of the statements made under oath in the application, which was refiled in this cause for the record. What impartial and honorable judge would set aside this wealth of prima facie evidence of bona fides to consider only a few samples, the identity of which samples cannot be proven, left in the unsupervised custody of the Forest Service, which agency had the vast majority of the samples assayed, and which samples were obtained by two apparently hostile men, who threatened an officer of this corporation with summary confiscation and attempted to intimidate him, "Advising" him to withdraw the patent application, already perfected by a final certificate and fully paid for, warning of certain defeat and automatic confiscation of land, buildings, and equipment if Al Sarena Mines, Inc., dared go into open hearing and attempt to defend itself in the event of a contest, which contest they averred could under no circumstances be won by a contestee? This would appear to place considerable additional burden of proof upon the owners, who have already proven their right to a patent on recognized mineral claims of merit and of record now for fourteen to fifty-four years. The Federal Court has ruled that it should take "evidence so clear and persuasive as to satisfy the mind that the discovery was in fact false" to dispute any claim or to attack the validity of any claim of long standing; and the Supreme Court has ruled that no additional burdens should be placed on the purchaser after he has made his final proofs and paid his purchase money to the Government; as was done here. *Cheesman v. Shreve* (40 F. 787, 791); *Benson Mining Co. v. Alta Mining Co.* (145 U. S. 428, 431).

In regard to the merits of the property, new and additional merit is now showing in the form of hitherto unconsidered value of sulphur from the vast quantities of iron pyrite present. It is common knowledge that the rich sulphur deposits of Texas and Louisiana are being depleted by the serious strain on the nation's sulphur resources, and that attention of those seeking to develop new sources of sulphur are turning to a search for plentiful supplies of iron pyrite, which the property contains in quantities, but which was formerly not considered in any sense commercially feasible, except for the gold and silver held in association with the pyrite.

Inasmuch as the property and the applicant have been adequately shown to have the bona fides necessary for patenting, regardless of allegations to the contrary by the Forest Service, which agency would apparently be willing to see a concern with already about a quarter million dollar investment and a 190,000,000-ton low-grade potential fail in its attempt to expand and produce the minerals needed in the Nation's current effort, simply to lay an adverse claim to the land, a paltry and insignificant acreage of well-known mineral ground, admittedly for an alleged \$77,000 worth of timber, which is quite obviously but a mere bagatelle, it is established that this cause falls within the category subject to the Supreme Court rulings cited on page 7 hereof. The ruling designated as D., on page 7 shows conclusively that public policy and the Supreme Court are in favor of patenting and of private ownership by industry having even a small fraction of the bona fides obviously present in both the applicant and the property involved in this cause.

An analysis of the matter herein involved shows that the entire alleged cause of action is predicated upon the theory that law, justice, and public policy and the Constitution are not violated or in any wise undermined by an interdepartmental policy between an accuser and a judge or potential accuser and potential judge, which policy can be used to deny forever the legal title to a property owner's land after he has bought and paid for that land. Said theory makes it appear proper to allow a third party, the Forest Service, to intervene in a transaction between the owner and the Land office which has long since been completed, where full equitable title has passed, to attack an innocent landowner long after the expiration of the deadlines for raising questions as to the owner's rights, and not only attempt to deny the owner his legal title but also to strike down and destroy and confiscate from him, even the equitable title which has already passed, which he has bought in all good faith, which was sold to him, and which the Supreme Court has ruled entitles him to his full legal title "at any time."

the Land Department does not diminish the rights flowing from such purchase, nor cast any additional burdens on the purchaser or expose him to the assaults of third persons." *Menson Mining Co. vs. Alta Mining Co.* (145 U. S. 428, 431).

It is conclusive from a detailed study of the provisions of 43 CFR 205.1; 2; 3 that those regulations provide definite deadlines for the Forest Service in which to make its examinations and to file its protests. Moreover, if there were no intent to impose any time limit upon the filing of protests, there would be no reason for imposing time limits upon the examinations upon which said protests are predicated. It is quite evident that none of the prescribed time limits were observed in this case, the last possible deadline being six months after the making of final proofs, which made any protest due in the land office by July 13, 1949. The obvious fact is that instead of filing a protest within the 60 days after the Forest Service was notified on or about September 27, or by special request, six months later, it filed its illegal protest approximately one year and seven months later, and exactly one year and three months after the making of final proofs. Mr. Hattan admitted in a letter to contestee that he did not submit his report until December, 1949, thereby violating 43 CFR 205.3. This subject is treated fully in this brief under the subject of demurrers, corresponding to the third topic in the Assignment of Error.

Regardless of the foregoing paragraph, and of its implications, the fact remains as hereinabove set out, the right to a patent has been clearly established, that failure to issue said patent is chargeable to laches in the Bureau of Land Management, that after that right has been established, such laches can do nothing to diminish said rights of the applicant, which rights consist of full equitable title to the property, as has been ruled many times by the Supreme Court, and that laches in the Forest Service permitted by the Bureau of Land Management to interfere with those rights already accrued to the applicant are not only laches of the Interior Department as well, but also constitute discrimination and/or discriminatory enforcement, and is in effect encouraging an attack by a third party.

The Supreme Court has ruled in certain extreme cases that a contest may be initiated by the Government to destroy an owner's title by canceling his entry, and its policy is quite clearly defined in its doctrine that such action may be deemed justifiable in cases of fraud or the encroachment of an applicant upon other citizens having a greater equitable interest in fact than the entryman, his behavior toward said citizens being tantamount to fraud, or in cases of mistake where the same land is sold twice, etc. *McKnight v. El Paso Brick Co.* (223 U. S. 250, 257); *Doffeback v. Hawke* (115 U. S. 404); *Crisman v. Miller* (197 U. S. 313).

The aforesaid doctrine is shown clearly in the Supreme Court's policy that a patent, once having been issued, should and can only be attacked in cases of fraud or mistake, as aforesaid, where such an element is present as would make it necessary to ask the Attorney General to institute annulment proceedings for such fraud or mistake, which is the only reason for cancellation of a fully proven and paid entry. *Girillim v. Donnellin* (115 U. S. 45, 49, 50); *Orchard v. Alexander* (157 U. S. 372); *Benson Mining Co. v. Alta Mining Co.* (145 U. S. 428, 431).

There is obviously neither fraud nor mistake present in this case. The claims involved are an integral part of a large intrusive mass, all mineralized and lying within clearly defined boundaries of the neighboring rock, which is not mineralized, making this ore body what is defined as a broad lode or broad zone. The claims are clearly mineral in character, as they have sufficient promise to warrant recommendations for large expenditures in development work for the mass of low-grade ore lying within their boundaries by well-known professional mining engineers and geologists who have studied them carefully and are willing to back their recommendations with their professional reputations. Moreover, Contestee has had negotiations in process for large sums of money for this purpose and for the construction of facilities for handling such ore at low cost per ton, and the negotiations are still in process. However, it is extremely difficult to secure heavy capital without full legal title to the property. Needless to say, further withholding of said patent would only delay the completion of necessary negotiations, which negotiations would also make possible the production of lead and zinc in significant quantities needed for the defense of the United States. Contestee and its legal grantors have already expended approximately a quarter-million dollars in improvements, and Contestee rightfully avers that all claims have valid discoveries and requisite expenditures on or for their benefit, properly evaluated and apportioned in accordance with Bureau of Land Management requirements and in accordance with its own specific instructions by Mr. G. Cleveland Taylor, E. M., a mining

engineer of some 40 years' experience and a U. S. Mineral Surveyor, a highly competent and impartial public official detailed to the property for some 3 or 4 months by the Bureau of Land Management to make a survey and appraisal of the true facts. His findings are in the record of this application and cause under his hand to the Government and under oath. Findings of many other recognized authorities are quoted verbatim and used in corroboration of the statements made under oath in the application, which was relied in this cause for the record. What impartial and honorable judge would set aside this wealth of prima facie evidence of bona fides to consider only a few samples, the identity of which samples cannot be proven, left in the unsupervised custody of the Forest Service, which agency had the vast majority of the samples assayed, and which samples were obtained by two apparently hostile men, who threatened an officer of this corporation with summary confiscation and attempted to intimidate him, "Advising him to withdraw the patent application, already perfected by a final certificate and fully paid for, warning of certain defeat and automatic confiscation of land, buildings, and equipment if Al Sarena Mines, Inc., dared go into open hearing and attempt to defend itself in the event of a contest, which contest they averred could under no circumstances be won by a contest?" This would appear to place considerable additional burden of proof upon the owners, who have already proven their right to a patent on recognized mineral claims of merit and of record now for fourteen to fifty-four years. The Federal Court has ruled that it should take "evidence so clear and persuasive as to satisfy the mind that the discovery was in fact false" to dispute any claim or to attack the validity of any claim of long standing, and the Supreme Court has ruled that no additional burdens should be placed on the purchaser after he has made his final proofs and paid his purchase money to the Government, as was done here. (*Chesman v. Shreve* (40 F. 787, 791); *Bowson Mining Co. v. Alta Mining Co.* (145 U. S. 428, 431).

In regard to the merits of the property, new and additional merit is now showing in the form of hitherto unconsidered value of sulphur from the vast quantities of iron pyrite present. It is common knowledge that the rich sulphur deposits of Texas and Louisiana are being depleted by the serious strain on the nation's sulphur resources, and that attention of those seeking to develop new sources of sulphur are turning to a search for plentiful supplies of iron pyrite, which the property contains in quantities, but which was formerly not considered in any sense commercially feasible, except for the gold and silver held in association with the pyrite.

Inasmuch as the property and the applicant have been adequately shown to have the bona fides necessary for patenting, regardless of allegations to the contrary by the Forest Service, which agency would apparently be willing to see a concern with already about a quarter million dollar investment and a ~~thirteen-million~~ low-grade potential fail in its attempt to expand and produce the minerals needed in the Nation's current effort, simply to buy an adverse claim to the land, a paltry and insignificant acreage of well known mineral ground, admittedly for an alleged \$77,000 worth of timber, which is quite obviously but a mere hazatelle, it is established that this cause falls within the category subject to the Supreme Court rulings cited on page 7 hereof. The ruling designated as D, on page 7 shows conclusively that public policy and the Supreme Court are in favor of patenting and of private ownership by industry having even a small fraction of the bona fides obviously present in both the applicant and the property involved in this cause.

An analysis of the matter herein involved shows that the entire alleged cause of action is predicated upon the theory that law, justice, and public policy and the Constitution are not violated or in any wise undermined by an interdepartmental policy between an accuser and a judge or potential accuser and potential judge, which policy can be used to deny forever the legal title to a property owner's land after he has bought and paid for that land. Said theory makes it appear proper to allow a third party, the Forest Service, to intervene in a transaction between the owner and the Land office which has long since been completed, where full equitable title has passed, to attack an innocent landowner long after the expiration of the deadlines for raising questions as to the owner's rights, and not only attempt to deny the owner his legal title but also to strike down and destroy and confiscate from him, even the equitable title which has already passed, which he has bought in all good faith, which was sold to him, and which the Supreme Court has ruled entitles him to his full legal title "at any time."



Thus the code of Federal Regulations as applied in this cause would set at naught Federal Statutes, the decisions of the Supreme Court as to the law and public policy, and the Constitutional rights of the contestee.

It is therefore respectfully submitted that Contestee has clearly established its rights to a patent, that it has been illegally attacked and has had its rights once placed in jeopardy illegally, that the alleged charges preferred were preferred illegally so as to have no force or effect, that there has been no sufficient testimony to disprove the validity of contestee's right to a patent, to which it was and is entitled "at any time," that the alleged charges would have been impossible except for laches on the part of the Departments of the Interior and/or Agriculture (See Supreme Court ruling B, page 7 hereof), that even when there were neither charges nor official questions of any description said patent was not issued though repeatedly demanded by applicant who was entitled to it "at any time," and that the patent should issue forthwith, nullifying and reversing the adverse decision of the Bureau of Land Management. (Also see answers and arguments set out in the argument of demurrers, corresponding to the assignment of error No. 3, pages 16-50.)

2. The Forest Service is forbidden by the Act of February 1, 1905, from acting in the execution of the mining laws. This is fully treated on pages 27-29; 51.

3. To prevent repetition, this is fully treated on pages 16 through 50.

3. The answer, brief, and argument section corresponding to assignment of error No. 3 is given in the following showing in support of the demurrers and motions in the original answer of Al Sarena Mines, Inc., which demurrers and motions were reproduced and set forth in pages 2, 3, and 4 of the decision of the Bureau of Land Management, dated April 27, 1951:

1. This demurrer was to any alleged right to the Forest Service to file a protest, under the circumstances, against the issuance of a patent to mining claims of record and in process before they were included in a national forest, covering the following claims: Henry Applegate, J. W. Merritt, Delia McKinnon, W. C. Leever, J. L. Grubb, and J. D. McKinnon.

Even the regulations of the Interior and Agriculture Departments (43 CFR 205.1) provide for no action to contest such claims located and in process before inclusion in a national forest unless the regional forester complies with the following procedure within 60 days from the filing of an application for patent:

a. Has a field examination made, secures the report back in his office, and files a protest, if any, or

b. Makes official request of the land office manager for a longer time than 60 days, but not to exceed 6 months, within which he must have the examination made and make any protest he intends to make.

The Regional Forester was therefore guilty of laches, and of violating his own 43 CFR 205.1, in that:

a. He failed either to have an examination made during the 60 days following application for patent, which period ended on or about November 27, 1948, or during the publication period, which ended January 7, 1949.

b. He failed to request an extension of time during the periods set forth above, the "record" showing that said request was not filed until March 18, 1949. Even if said request had been made, the six-month period following that application for patent expired March 27, 1949, or thereabouts, at which time it was mandatory that the report be in the hands of the Regional Forester (sec. 205.3) and the protest filed. Sec. 205.5 states clearly that if no protest be filed within the time limit prescribed in sec. 205.1, 2, the manager shall take appropriate action on the final proofs, meaning, of course, to forward the papers to the Bureau of Land Management, collect the purchase money, transmitting purchase receipt and duplicate final certificate to the purchaser and sending the original final certificate to Washington as authority for the Director of the Bureau of Land Management to execute the patent certificate.

c. Even if the Manager of the Portland land office and the Bureau of Land Management had been relying upon the provisions of sec. 205.2, the deadlines set thereby expired without the filing of a protest, or even of a report, as required by sec. 205.3, which Mr. Hattan admitted in a letter to contestee that he failed to file until December 1949.

d. The obvious purpose of setting a deadline is that it limits the time in which to do certain acts or things without losing any rights or privileges, if any there are. The facts are that if the Forest Service had intended

to protest this matter, the affairs were handled in such manner as to render them ineffective within the eyes of the law and of all justice. Moreover, it was known definitely to the Portland office of the Forest Service that the application was in fact filed for that Mr. Wolfe, of the office of the Regional Forester, was notified personally by the applicant at his office in the Post Office Building on the day of filing the patent application.

e. The Forest Service having repeatedly defaulted in the requirements of the time limits set out in its own 43 CFR 205.2, 205.3, 205.1, is entitled to no consideration. Furthermore, negotiations between the office of the Regional Forester and the Portland land office should have come to an end, as required, when the final proofs were executed and filed on January 13, 1949. Section 205.5 states clearly that the matter of whether the claims will be protested after the Forest Service has defaulted is a matter between the Director of the Bureau of Land Management and the Chief, Forest Service, Washington, D. C. The Forest Service having nothing upon which to base a protest, and having failed within the deadlines provided to obtain any such evidence, should have been compelled by the Director of the Bureau of Land Management to file a statement of no protest, as there was ample evidence in the application for patent, which was and is refilled in evidence in this cause, to prove beyond reasonable doubt to any man the mineral character, valid discoveries and requisite expenditures necessary to patent each and every claim.

f. The provision of sec. 205.5 prohibiting action on a patent application after the Forest Service has repeatedly defaulted is no defense for the Bureau of Land Management, for that in this case with obvious and ample proof of the satisfaction of all requirements, setting forth the best professional opinions of foremost authorities in corroboration of the statements made by the applicant, the Director of the Bureau of Land Management has authority to cause the issuance of patents, regardless of 43 CFR 205.5, the Forest Service being excepted and prohibited from exercising administrative powers in mining law by the Act of February 1, 1905 (16 U. S. C. 472), and being already in default.

g. In enforcing 43 CFR 205.5 and 205.6 simultaneously, as has been done here, the Forest Service has assumed unconstitutional and dictatorial powers not within the scope of authority, rights or powers granted to any person, Governmental Department, the President of the United States, the Congress, or the Supreme Court. Simultaneous application of these two regulations would intend to empower the Forest Service to deny landowners with full equitable title the right to its full and perfected legal title forever and without cause, simply by declining to state, even when repeatedly in default itself, whether it would or would not protest a perfectly legitimate mineral entry, which entry is a right of the citizen under the Constitution and under the United States Code. Moreover, it would appear that these regulations purport to give the Forest Service the "right" to remain impervious to the consequences of its own default and would allow it to retain the "right", as long as it remained noncommittal, to hail innocent landowners into hearings, placing upon them the additional burden of defending themselves against unwarranted attacks upon them, made irresponsibly by said Forest Service in "charges" without foundation in fact and so precarious that its joint regulations prohibit their being under oath; but those "charges" must be answered under oath by the landowner, who as already bought, paid for, and owns the land, who had thought himself secure in his ownership and equity but who suddenly finds himself faced with a jail sentence if he should answer the "charges" in the same irresponsible manner in which they were preferred.

*These are the literal powers which the Forest Service has already assumed and been upheld in by the Bureau of Land Management.*

In regard to the laches hereinbefore mentioned, both on the part of the Department of the Interior and on the part of the Department of Agriculture, the regulations have been sorely abused in attempting to justify laches which intend to deny property rights to the citizens. If those regulations must be invariably obeyed by the Departments, then those regulations must fall from their oppressive and tyrannical level. The laches of which the Department of the Interior was guilty, either within itself or by reason of its improper administration of affairs with the Forest Service in having failed to issue the patent on this application is well dealt with by the following decisions of the United States Supreme Court:

"In a case involving applicant's rights, he must be treated as though no patent had been issued and delivered, and any delay in the administration of affairs in the land department does not diminish the rights flowing from sale, purchase, nor cast additional burdens on the purchaser or expose him to the assaults of third persons."

*Benson Mining etc. Co. v. Alta Mining Co.* (145 U. S. 428, 431).

"Where full price has been paid, or all conditions of entry performed by mining claimant can obtain at any time a patent, upon proof." *Noyes v. Har* (127 U. S. 348).

"If no adverse claim is filed with the register *within 60 days from the filing of the application*, the law assumes that the applicant is entitled to a patent." *Grillman v. Donnellan* (115 U. S. 45, 49).

In connection with the foregoing decisions of the United States Supreme Court, it is respectfully submitted that Al Sarena Mines, Inc., was not counter-acted by any adverse claim or protest whatsoever during the 60-day period following the date of application for patent, that the full purchase price had been paid or that all conditions of entry had been performed, that the applicant submitted his final proofs, which were accepted and approved, and that the applicant could, under the law, obtain a patent "at any time." It is further respectfully submitted that, in the eyes of the law, since the applicant was entitled to a patent "at any time," and since the Forest Service and/or the Bureau of Land Management were guilty of laches, involving jeopardy of full equitable title already vested in the applicant, the action of the Bureau of Land Management in upholding the laches of the Forest Service after said Forest Service had lost or forfeited all its rights to protest, if any it had, is in itself laches in the land department, the land department only making such laches possible, thereby adversely affecting the interests of the applicant. It is further submitted that any delays in the administration of affairs in the land department did not diminish the rights of the applicant flowing from the purchase already made, and that the right to a patent still exists. It is further submitted that the basis for the act of withholding patent from the applicant was a regulation stating that the United States may contest an application or entry at any time prior to patent, that the precedent cases cited by the Bureau of Land Management and the Forest Service do not apply in this cause, and that any legal or moral right to invoke said regulation is predicated only upon extreme cases such as were cited, wherein an applicant had been sold land of mistaken identity, attempts to eject inhabitants in previous possession of a town because of his mining claim, obtained an entry on mineral lands without equitable interest where other mineral developers had expended substantial time and money, attempting to appropriate the land and developments to his own use, thereby adversely affecting the interests of the bona fide mineral developers, or where the applicant attempted to patent "mineral claims" for the purpose of operating a livery stable and controlling the trail leading from the rim to the bottom of the Grand Canyon. Contestee rightfully contends that the citing of such cases with the implication of any parallelism whatsoever was not only a grave and gross miscarriage of justice, but was also an insulting affront, indignity, and abuse, which no self-respecting citizen would submit from a fellow man and to which he need not submit from constituted Governmental authority. Contestee reiterates that it is a legitimate mining corporation, equipped as the second largest producer in the State of Oregon, and that it intends, as set forth in the patent application, to institute an expansion program for the production of gold, silver, and the metals sorely needed for the defense of the United States on a scale larger than has heretofore been seen in the Pacific Northwest, processing ore for each and every claim. Contestee respectfully submits that the attempt to invoke such a measure arbitrarily, as was done here, after the right to a patent had been clearly established, on a known producing property of over a half-century production and development record was but a means of attack of the Forest Service after it had slept on its rights, if any it had, to attempt to strike down arbitrarily a private industry within its "domain," attempting to confiscate its property, both real and personal, that it might lay claim to the paltry and insignificant acreage of well-known mineral ground to control and dispose of a mere amount of \$77,000 worth of timber. For this purpose, the Forest Service would appear willing to doom a private investment already made by the claimant and its co-grantors of approximately three times the alleged value of the aforesaid property computed at the highest and most inflated prices in history. Thus, in attempting to invoke the drastic measure provided by 43 CFR 205.5; 205.6 for the purpose

just outlined, the Forest Service, without equitable title or interest, which equitable title and interest are the property of the entryman, *has placed itself in the exact position of the offender which that regulation was designed to apprehend*, as in the case of *Chrisman v. Miller* (197 U. S. 313). In that case, the Supreme Court invoked the doctrine of absolute authority against a man who attempted to use the rights conferred upon him by his receipt for the purpose of adversely affecting the interests of others with greater equitable interest and for the purpose of appropriating their assets to his own use. (See also *Doffeback v. Hawke* (115 U. S. 404).)

The abuse by Government of the law and regulations, as aforesaid, in invoking a drastic measure attempting to authorize the Forest Service to contest after its own default, is clearly demonstrated by the following Supreme Court decision covering the contention of contestee that this attack upon contestee was attempted only on conjectural technicalities, highly opinionated, highly prejudiced, and without any sufficient evidence whatsoever:

"Even though a final receipt for mineral lands issued upon an application was obtained by fraud, it would be valid until avoided; *the fraud only making it voidable.*" *El Paso Brick Co. v. McKnight* (233 U. S. 250).

It is quite obvious from the record that there was and is no fraud on the part of the applicant for patent, that its application was predicated upon sound mining and business principles, well corroborated, and that the evidence submitted by the applicant is good and sufficient in any court in the United States.

In making its attack, the Forest Service disregarded completely the intent and purpose of the law in its inference that the patent applicant was applying for patent to substantially worthless mineral lands merely to obtain the timber thereon for commercial disposition. The facts are that the land has previously and for a number of years been established as mineral in character by a number of qualified experts, and is generally recognized as such; that the claims are perfected by valid discoveries and requisite expenditures many times over during a period of fifteen years to fifty-four years; that the applicant had and has a perfect legal right to sell every piece of timber on the property since the issuance of the final receipt and submission of final proofs, and that the applicant has not only failed to sell said timber, but that it has repeatedly gone on record as having refused to sell the same. The attack by the Forest Service, even if it had been timely, which it was not, was completely unwarranted, being backed by no sufficient evidence and being made in the very face of prima facie evidence of bona fides, both of the claims and of the patent applicant. The Federal Court has ruled adequately in regard to such attacks on valid mineral claims of many years' standing in the case of *Cheesman v. Shrecre* (40 F. 787, 791). Conversely, the prosecution of such an action as was brought in this cause, in the eyes of the law, wilfully and knowingly bringing such an action with full knowledge of the facts and the law, as aforesaid, would appear prima facie evidence of selfishness to the extent of attempted justifiable maliciousness, which is never justifiable, and of general bad faith on the part of the Forest Service. Such a preposterous attack should never have been entertained by the Bureau of Land Management from the Forest Service or from anyone else. The obvious fact that the Forest Service was allowed by the Bureau of Land Management to bring an action of this kind in open violation of Rules 2 and 3 of the Interior Department Rules of Practice, while enforcing said rules strictly on other parties bringing actions on similar charges is prima facie evidence and constitutes an admission of gross discrimination and/or discriminatory enforcement to the detriment of a contestee and to the detriment of a contestant required to obey the aforesaid Rules of Practice, but for the benefit of the Forest Service. The aforesaid Rules of Practice are likewise enforced in such manner as to be to the detriment of a contestant claiming an equitable interest but for the benefit of the Forest Service, which by law and as decided by the Supreme Court as herein set out, has neither equitable title nor interest and is therefore without even a cause of action although in other respects the Forest Service is in like circumstances with other contestants. Furthermore, the attempt by the Bureau of Land Management to enforce its so-called Rules of Practice upon a party called upon to defend such an action while refusing to enforce said Rules of Practice against or upon the party bringing said action, using said Rules of Practice as a means for taking the equivalent of a default judgment against the defendant is prima facie an admission of discrimination and/or discriminatory enforcement and an attempt to take property rights from citizens without due process of law. The Fourteenth Amendment to the Constitution secures equal protection of the law as administered. See *Yick Wo v. Hopkins* (118 U. S. 356).

In special regard to the principle that the Forest Service had no right, under the circumstances, to attack claims which were located and in process prior to their inclusion in a national forest, wherein reference was made to *ex post facto* laws, etc., meaning retroactivity involving a citizen's rights, including civil, criminal, administrative, enforcement, and miscellaneous matters, the principle of retroactivity in basic law is well settled. The Congress recognized this principle in passing the Acts of June 4, 1897 (30 Stat. 36), and February 1, 1905 (16 U. S. C. 472). The former law states that the rules and regulations applying to such claims before said inclusion in a national forest shall continue to apply, notwithstanding the forest reservation. The Joint Regulations of the Departments of the Interior and Agriculture, however, impose additional regulations at the direction of the Secretary of Agriculture, which regulations are illegal for that under the administration of the Forest Service and its joint regulations, these same claims are allegedly not under the same set of rules and regulations, thus constituting a direct violation of said former law and of the Constitution, which that law upheld, and an admission both by the Departments of the Interior and Agriculture of their own violations thereof. Moreover, said joint regulations are a direct violation of the Act of February 1, 1905 (16 U. S. C. 472), in that they provide specific executive and administrative procedures to be executed by the Secretary of Agriculture or his officials, representatives, agents, employees and/or servants in the administration of the mining laws, which he is specifically forbidden and excepted from by said Act of February 1, 1905 and/or by the Constitution, which that law recognized. These statements are further substantiated in the ruling of the United States Supreme Court in the case of *U. S. v. Dart* (132 U. S. 334), which states: "Regulations cannot have retroactive effect." In addition to the retroactivity demurred to, while the retroactive effect is nevertheless present in such instance, the joint regulations impose or attempt to impose additional restrictions, not provided by law or by its corresponding regulations upon claims located and placed in process before their inclusion in a national forest without imposing like restrictions upon claims located and placed in process under the same laws and regulations on the same date, but which latter claims were never included in a national forest. The Joint Regulations, therefore, have attempted to extend the law and corresponding regulations so that it would appear that there are two classes of claims, located under the same laws and regulations on the same date, but to which the law applies differently to the two classes of claims, the enforcement of the law also being different and unequal so as to make unjust discriminations between persons in similar circumstances, material to their rights. Said Joint Regulations are therefore illegal and unconstitutional for that they violate the two aforesaid Acts of Congress of 1897 and 1905 and by reason of discrimination and/or unconstitutional discriminatory enforcement, attempted class legislation, attempted legislation by regulation, and retroactivity. The Supreme Court has ruled in the case of *Williamson v. U. S.* (207 U. S. 425): "Regulations must be consistent with law; they may not be extended so as to alter, amend, or defeat a law already passed by Congress."

Further in support of the demurrer is the fact that even the Forest Service obviously admits, by its adoption of 43 CFR 205.1, a distinct difference between claims located prior to any inclusion in a national forest by binding itself to its 60-day procedure, as in the case of all other adverse claimants. The regulation itself, while applicable to the aforesaid six claims as in the case of an agricultural entry (*Tyce Consol. Min. Co. v. Langstedt*, 136 F. 124) is in illegal and unconstitutional way, it fails for that its provision granting additional time to the Forest Service for a field examination while not granting a like additional time to a private citizen wishing to contest the entry or application on the same ground is discriminatory and attempts to justify forcibly the discriminatory enforcement of the law, thereby denying its equal protection as administered, in violation of the Fourteenth Amendment to the Constitution.

Inasmuch as contestee has shown herein that the first demurrer reproduced on page 2 of the Bureau of Land Management decision has great legal and Constitutional merit, and inasmuch as Contestee has proven beyond reasonable doubt that no possible grounds can be or could possibly have been given legally or Constitutionally either for overruling said demurrer or for the affirmation of its overruling, contestee avers that said demurrer was in truth and in fact a charge preferred by contestee, legally and under oath, against the Department of the Interior and/or the Department of Agriculture and against the validity of the proceeding, challenging the right of either the Forest Service or the Bureau of Land Management to cite or to have cited Al Sarena Mines, Inc. as contestee and that failure of the Manager of the Al

land Land Office, or his refusal, to rule upon said demurrer or to make suitable arrangements for its argument, as is customary when a demurrer is filed, constituted an admission of the truth and validity of said demurrer by the Bureau of Land Management and/or the Forest Service. Contestee therefore avers that the manager had defaulted in his own duty and that contestee had rightfully assumed the demurrer to have been taken as confessed, as it was in truth and in fact confessed in accordance with the established 30 day procedure. Contestee further avers that both Manager Rice's ruling and Mr. Zimmerman's affirmation thereof were in error after contestee had in effect pleaded *res adjudicata* in favor of contestee by reason of default or by the Bureau of Land Management and/or the Forest Service, and/or by reason of the obvious merit of the demurrer.

Contestee further avers that the right to demur to any complaint whatsoever (regardless of statements to the contrary by the Forest Service and/or the Bureau of Land Management in subsequent conference and correspondence), is an inherent Constitutional Right of a defendant to demand specific knowledge of the charges preferred against him in complete detail, and to demand strict proof and evidence of any alleged right to bring him to trial. Said defendant is bound to no duty to be tried because of alleged constituted authority alone, as was attempted in this cause, whether the action involving his rights be civil, criminal, administrative, or otherwise.

Contestee therefore respectfully submits that the foregoing showing constitutes a valid support of the subject demurrer, and that it is likewise applicable to all of the demurrers filed by demurrers filed by contestee in this cause to the full extent that said showing applies also to claims located and placed in process after the establishment of a national forest around them, and that the ruling of Manager Rice and the affirmation thereof by the Bureau of Land Management should be reversed in favor of contestee, thereby sustaining said demurrer.

2. The second demurrer was to the form and the manner and the lack of notice of the illegal protest on the separate and several grounds, to-wit:

a. First, the protest (Contest No. 38) stamped "Received April 13, 1950" is not properly dated by Mr. Andrews and appears but the conclusion of the pleader.

In regard to demurrer 2a, it is always customary to date all legal papers, especially when the rights and interests of a citizen are involved, just as it is always customary to sign all such legal papers. If contestee can allegedly be compelled to appear at a hearing to defend from unwarranted attack the property rights which it has earned, bought and paid for, which property rights under the Constitution are sacred, the owner of those rights has a perfect right to demand, did demand, and does demand the strictest adherence to each and every formality and other requirement of due process before allowing those property rights to be tampered with by any judicial or administrative tribunal assuming authority or jurisdiction over said rights. Contestee further has the right to demand the foregoing and also the right to refuse to be bound by any adverse decision of said tribunal, which tribunal alleges that it is exercising due process, unless the strictest conformity with each and every detail of due process is invariably kept, and Contestee did refuse and does refuse to be bound by the adverse decisions and actions taken against it in this cause.

Regardless of the requirements of 43 CFR 205.3, which states that the grounds upon which the illegal protest was allegedly based must be stated briefly and clearly, the contestee is entitled to more than the mere conclusion of the pleader, for that sufficient evidence is a prerequisite to the issuance of any process. Contestee demurred to the sufficiency of the evidence, demanding also a bill of particulars, to which it was and is obviously and admittedly entitled. Although counsel and other representatives of contestee made a diligent effort to obtain said bill of particulars, they were unsuccessful in their effort, as aforesaid. Instead of furnishing the required bill of particulars, the Bureau of Land Management advised contestee officially that contestee had received all of the particulars it was going to receive, and that the aforesaid conclusion of the pleader, backed by no facts, evidence, oath, or corroboration was sufficient information to be given a contestee in regard to the charges allegedly preferred against it or its interests. This, again, is a flagrant violation of the Constitutional Rights of the contestee and in itself is sufficient to render the entire proceeding utterly arbitrary and therefore judicially void,

and to cause its dismissal for that after contestee had demurred and gives the Bureau of Land Management and/or the Forest Service every opportunity to comply with a reasonable and Constitutionally mandatory request, it willfully, knowingly, and prejudicially brought the defendant to trial with no specific knowledge of the charges which had been allegedly preferred against it. In the absence of the required bill of particulars, contestee made a diligent attempt to ascertain from the Bureau of Land Management the results of the alleged sampling of the "field examination" before going to trial, but from the actions and attitude of the officials of said Bureau, it was obvious that said results were considered material of a privileged or confidential nature and were not to be divulged to those whose interests said results affected. *Those assay results were public records, made at the taxpayers' expense, and as such should be subject to the inspection of any citizen.* However, it appears that the Bureau of Land Management, which refers to itself as "fair and impartial," found it necessary to treat as classified matter that information which the Constitution says belongs to any defendant. While on the subject of assay results as referred to here, it is interesting to note that Mr. Hattan reported mere traces of mineral and/or values in the samples reported upon, and that contestee checked Mr. Hattan's sampling before hand, before the alleged charges were preferred, by obtaining identical samples from Mr. Hattan's own channel cuts which he left and determined, for instance, that an identical sample from the Alabama Claim ran instead of the mere trace reported by Mr. Hattan in his "testimony," a value of \$2.10, as reported by Smith-Emery Company, of Los Angeles, California. Facts such as this, which contestee is prepared to prove, offer a possible explanation for the secrecy as to the bill of particulars, as well as for the extreme reluctance and refusal of any of the officials to go under oath, which together would have rendered the "charges" legal evidence, but which would have placed the same burden upon the accuser-judge as was placed upon the contestee in regard to the oath and its implications. It is also obvious from such procedure that the intent is not to place the burden of proof upon the party making the charges, but rather such procedure clearly attempts in effect to compel the defendant to prove that the charges brought against it are in fact false, thereby placing the burden of proof in effect where it does not belong, besides the obvious discrimination and unconstitutional discriminatory enforcement present.

It is therefore respectfully submitted that demurrer 2a has both legal and Constitutional merit for that the illegal protest does not meet the legal and technical requirements for due process, which contestee had and has a right to demand and which contestee did and does demand; that the absence of the required bill of particulars and the subsequent refusal to furnish the same to contestee, though demanded, were flagrant violations of the Constitutional right of the contestee to be advised of the detailed specifications and/or particulars, that Manager Rice defaulted in his rulings under the established 30-day period for procedure and that all of the demurrers should therefore have been taken as confessed, and that his subsequent overruling of this demurrer and the affirmation of said overruling should be reversed in favor of the contestee and that the demurrer should be sustained.

b. (See text of demurrer 2b, reproduced on page 2 of the Bureau of Land Management decision dated April 27, 1951.)

It is obvious from the face of the illegal protest itself that the "charges," though not made legally and properly, were preferred against the nonexistent Al Sarena Mining Company, and from the face of the contest citation that the party cited is not the same party against whom the "charges" of noncompliance with the mining laws were preferred. Furthermore, neither the illegal protest nor the contest citation was a proceeding in rem, for that a proceeding in rem must be so styled. It is obvious from the foregoing that Al Sarena Mines, Inc., was illegally cited without a protest against it. In order to conform to the requirements, it is well settled that no public officer has a right to cite a citizen or to hear his case in the absence of previously preferred legal charges against the citizen cited or having his case heard. Since the face of the illegal protest itself is prima facie an admission that the "charges" were improperly and illegally preferred against a nonexistent company and not against a mineral entry, and since there is no protest of record against Al Sarena Mines, Inc. or against its mineral entry, the face of the illegal protest itself is prima facie an admission that the contest citation was in fact issued without authority

or right, as was the notice of hearing, which in addition falsely cited said illegal protest as being "a sufficient contest affidavit," said "sufficient contest affidavit" being also cited as authority for ordering the aforesaid hearing. Thus, the illegal protest or "sufficient contest affidavit," drawn neither against Al Sarena Mines, Inc., nor against the entry itself, which clearly, distinctly, and illegally preferred charges of noncompliance with the mining law against a nonexistent company, was willfully, knowingly, and illegally used as a basis for ordering a "hearing" of this cause. Furthermore, said illegal protest contained a prayer for confiscatory action, which confiscatory action technically would have involved not only the land, but also all improvements thereon, including buildings and equipment, which buildings and equipment alone have an estimated replacement value far greater than the entire purchase price of all of the land in question. This is a demurrer which objected to having the capital investment of contestee in the form of land, buildings, equipment, and other improvements made subject to summary confiscation on the basis of an illegal document which did not meet the legal and technical requirements of due process. *The Honorable Pierce M. Rice overruled this demurrer on the ground that such an illegal and confiscatory protest did not adversely affect the interests of the contestee.* Later, at the close of the hearing and only after Mr. Rice had made the fantastically absurd ruling just cited, and after contestee's property rights had been placed in full and complete confiscatory jeopardy, Mr. Jesse R. Farr, counsel for the Forest Service, apparently aware that such a ruling could never survive an impartial appellate adjudication in the face of his confiscatory prayer, requested that he be allowed to withdraw said confiscatory prayer, attempting to deny the original intent of the Forest Service. Contestee assented to said withdrawal in order to protect its interests from further full confiscatory jeopardy, but rightly avers that the intent of the Forest Service was very clearly defined by said confiscatory prayer, which confiscatory prayer was an exact execution of the confiscatory threats made against an officer of Al Sarena Mines, Inc., if he dared prosecute the subject patent application and entry toward completion or to defend the interests of said corporation in this cause. The aforesaid confiscatory threats were made in the presence and hearing of a competent witness by Mr. Elton M. Hattan, of the Bureau of Land Management, and Mr. William C. Sanborn, of the United States Forest Service.

A further erroneous point stated by the Forest Service and/or the Bureau of Land Management was an allegation to the effect that the fact that the illegal protest was illegally and improperly drawn, preferring "charges" against a nonexistent company, etc., was immaterial with respect to who was cited thereby or thereupon, so long as the party to whom the contest citation was addressed received said contest citation and responded thereto. This is obviously a fallacy, as hereinbefore stated, for that no contest citation can be legally issued without a legal protest of record against the party cited. The illegal protest being the legal equivalent of no protest at all, the reasoning employed by Mr. Farr, Mr. Rice, and the entire Bureau of Land Management would infer that the Land Office is at liberty to issue contest citations indiscriminately to all patent applicants in national forests on its own initiative without any protests whatsoever. It is further illegal and without justification to impose the aforesaid erroneous principle, as was done, for that it attempts to impose the consequences of an admission and answer upon Al Sarena Mines, Inc., when in fact Al Sarena Mines, Inc., responded only to prevent its suffering a confiscatory default judgment, making this point the subject of a demurrer, clearly set out in its answer. Again contestee avers that regulations or usage mean nothing unless they are consistent with the Constitution and laws of the United States. The multitude of illegal and unconstitutional features which have been pointed out by contestee is certainly sufficient to prove that the illegal protest and a contest citation without basis and therefore illegal itself do not meet the legal and technical requirements of due process; also that the contestee had a right to refuse, did refuse and does hereby refuse to be bound thereby, pleading its Constitutional Rights against an illegal instrument designed to confiscate without due process and against a citation illegally issued to enforce said confiscatory and illegal instrument against a party other than the party against whom the illegal and confiscatory protest was drawn. There are therefore two Constitutional violations here: (1) The illegal protest made by the Forest Service was an attempt to confiscate without due process, (1a) The issuance of an unsupported contest citation constituted the citation of an innocent citizen without cause, in violation of the citizen's Constitutional Rights, (1b) The issuance of a contest citation against a citizen other than the one against whom the illegal and confiscatory protest



was drawn, willfully and knowingly, for the purpose of enforcing said illegal and confiscatory protest renders the Bureau of Land Management a party to and an accomplice in the aforesaid Constitutional violations, and (2) The Bureau of Land Management, acting as an allegedly impartial judge between the Forest Service and the aforesaid Corporation, knowingly and unconstitutionally discriminated by the aforesaid acts for the benefit of the former and to the detriment of the latter, also violating the specifically applicable statute(s).

It is therefore respectfully submitted that regardless of usage and regardless of regulations which require violations of the Constitution and laws of the United States, a citizen need not be bound by said usage and/or regulations involuntarily. In this connection, the following court decision is respectfully submitted: "Usage cannot extend the power of the head of a department. An illegal practice prevailing among officers of the Government, no matter how long continued or extensive, can never ripen into a binding usage." *Pierce vs. U. S.* (1 Ct. Cl. 270).

In regard to the state of facts set out in support of demurrer No. 2, including both parts (a) and (b), the following irregularities, illegalities, and unconstitutionality are present in the proceeding to warrant the filing and sustaining said demurrer:

1. An attempt to cite Al Sarena Mines, Inc., irregularly, illegally, and unconstitutionally without a legal protest of record, without right or authority, and consequently without cause.

2. The illegal protest was an irregular, illegal, and unconstitutional attempt to confiscate without due process.

3. The issuance of a contest citation by the Manager of the Land Office after having read the illegal, irregular, and unconstitutional protest, though the aforesaid protest was illegal and ineffective, was an attempt by the Manager of the Land Office to enforce a Constitutional violation, also rendering him a party to said violation.

4. The continued attempt to enforce said Constitutional violations and to make illegal attempted justifications therefor and the failure or refusal to take legal means for their correction between the filing of the demurrers pointing out said violations and the hearing, and the failure or refusal to correct said violations at all render all officials involved apparently guilty of knowingly and willfully attempting to enforce a Constitutional violation.

5. The attempt to bring citizens of the United States to trial of a matter involving their rights, or of any matter, without a specification or bill of particulars is a Constitutional violation.

6. The willful and deliberate bringing of citizens of the United States to trial without specification or bill of particulars, having refused the same to the defendants or their counsel, though demanded, is a willful, deliberate and flagrant violation of the Constitution and of the Constitutional Rights of the defendants.

7. The ordering of a hearing involving property rights of U. S. Citizens, placing the same in jeopardy without a legal protest of record, and the attempt to prosecute an action designed to confiscate without due process is a willful and deliberate Constitutional violation.

8. The ordering of a hearing as set forth in 7, just recited, citing as authority a "sufficient contest affidavit" when in fact the original, which is in the possession of the contestee, is neither sufficient nor in any wise an affidavit, constitutes the use of false and/or misleading statements for the purpose of committing a willful Constitutional violation.

9. The instruments and/or documents of the Forest Service and/or the Bureau of Land Management do not meet the legal and technical requirements for due process.

Ample opportunity was afforded for amendment or correction of the foregoing abuses is compliance with demurrers filed by contestee. The officials of the Forest Service and the Bureau of Land Management, rather than employ legal means for correcting the aforesaid illegalities, irregularities, and unconstitutionality demurred to, arbitrarily, willfully, and knowingly committed the remainder of the violations just enumerated. Said officials committed the latter of the aforementioned acts after having failed or refused to correct such irregularities, illegalities, and unconstitutionality, all of which violated the Constitutional rights of the contestee and at the same time adversely affected its interests. The fact that the officials involved may have been acting under the regulations of their departments in committing the aforesaid acts and/or deeds is no defense.

for said officials, for that they have taken an oath to uphold the Constitution of the United States as a prerequisite to their appointment, regardless of regulations to the contrary. The failure of said officials to show regard and respect for the Constitution can hardly be deemed ignorance and appears therefore but a deliberate disregard of its requirements. Said officials cannot continue to abuse the citizens, who are their employers, and must therefore bear the consequences of their own acts. The following opinion of the Court is particularly applicable in this connection:

"We have no officer in this Government from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the Legislature and the Judiciary exercise powers in some sense left to the more general definitions necessarily incident to the fundamental law found in the Constitution, the larger part are the creation of statutory law, with duties and powers prescribed and limited by that law (*Pierce vs. U. S.*, 1 Ct. Cl. 270).

It is therefore respectfully submitted that the Constitutional Rights of the contestee and/or the applicable statutes have been violated by reason of the irregularities, illegalities and unconstitutionality heretofore referred to, thereby adversely affecting the interests of the contestee, and that the overruling of Demurrer No. 2 by Manager Rice and the affirmation of said overruling by the Bureau of Land Management should be reversed in favor of contestee and the demurrer sustained.

3. Demurrer No. 3 was to the illegality, unconstitutionality and irregularity of the practice of attempting to cite Al Sarena Mines, Inc., as contestee, demanding an answer under oath when neither the contest citation nor the illegal protest, upon which it was based, was executed under oath.

The points at issue here are (1) The illegal protest and/or the contest citation did not meet the technical and legal requirements for due process, (2) In the absence of charges and bill of particulars under oath there is not only an insufficiency of evidence but also an absence of evidence which would warrant the citation of a citizen of the United States on this or any other charge, and (3) The demanding of the oath from contestee, under pain of perjury punishment, when the citation of a contestee is predicated upon a notice and a protest, though illegal and without force or effect, neither of which is under oath, constitutes discrimination and/or discriminatory enforcement of the law in that said practice denies contestee equal protection of the law as administered. See *Yick Wo vs. Hopkins* (118 U. S. 356).

(1) It is well settled in basic law that the property rights conferred by the full equitable title in the property are sacred under the Constitution, under which the owner of full equitable title has the right to demand, and contestee did and does demand, that each and every legal and technical requirement of due process by strictly adhered to in accordance with the Constitution and laws of the United States and all rules and customs of the courts, including their rules of evidence practice and procedure, and in accordance with their accepted form, manner and notice of legal processes, before allowing said property rights to be tampered with by any judicial or administrative body claiming jurisdiction over said rights in accordance with due process. No official holding office under the laws and Constitution of the United States has any right or authority to refuse the equal protection of the law as administered, to deny said protection, or to withdraw said protection from a citizen, regardless of conflicting regulations, which are themselves unconstitutional and require any official obeying those regulations to breach his Oath of Office. Any denial, refusal or withdrawal of protection of the law to one property owner or class of property owners equal to the protection of the law afforded other property owners with corresponding equitable title purchased under the Federal and State Court jurisdiction rather than under the alleged jurisdiction of the executive branch of the Government is an obvious violation of the Fourteenth Amendment to the Constitution. See *Yick Wo vs. Hopkins* (118 U. S. 356).

(2) The contention herein set out is that due to insufficiency of evidence and/or bill of particulars there is an absence of charges, and since an utter absence of charges exists, there is nothing upon which to predicate any citation or cause of action.

(3) This point, in its very recitation, has been adequately established and supported. It is basic that under the Constitution, a defendant required to answer under oath has the right to demand that those citing him or having him cited also be under oath.

4. The fourth demurrer, which is not numbered, is reproduced in the Bureau of Land Management decision, beginning with the second paragraph originating on p. 3 of said decision, beginning with the phrase "Contestee further demurs \* \* \*", and ending near the top of page 4 of said decision with the phrase " \* \* \* within the time required by law."

This demurrer is to the highly irregular and illegal manner in which the affairs surrounding the matter were handled by the Government officials from the filing of the patent application to the issuance of the final certificate of entry which handling is material to the alleged cause of action, reciting repeated evidence of bad faith, gross negligence of which the Portland Land Office was apparently guilty at that time, and calling special attention to the inconsistency of the allegations made by the officials involved. For the reason that the Department of the Interior is charged with the duty of the administration of such matters, any laches of which the Forest Service may be guilty is directly chargeable to the Land Office and/or the Bureau of Land Management for tolerating such laches. The Supreme Court has ruled, as set out in section (g) page 21 hereof that submission of final proofs and/or payment of the purchase price entitles a mining claimant to a patent "at any time", that if an adverse claim is filed within 60 days from the filing of a patent application, the law assumes that the mining claimant is entitled to a patent, and that any delay in the administration of affairs in the land department does not diminish the rights flowing from the claimant's purchase, nor cast additional burdens upon him or expose him to the attacks of third parties, but rather that the applicant must be treated in every respect as though the patent had been issued and delivered. In making such a decision, it is quite clear that the Supreme Court was establishing a precedent designed to protect citizens from jeopardy of their property rights brought about by delays of whatsoever nature in the land department, whether said delays were caused by negligence, by acceptance of bribes against the applicant from outside the land office from any source whatsoever from corrupt motives, adverse claims or otherwise, and the aforesaid last decision leaves no doubt when it states that an applicant, though he has not yet received his patent, must be treated as though his patent had been issued. In this case, the Forest Service is admittedly seeking the striking down of an already established title to the land in the applicant, which the law and the Supreme Court have held is a sufficient title to enable the applicant to demand a patent "at any time", which applicant demanded on February 14, 1949, and which patent has been consistently demanded since that time, but to no avail. This arbitrary, illegal, and unconstitutional behavior on the part of the Bureau of Land Management and/or the Forest Service is utterly indefensible for that the applicant filed its final proofs, as aforesaid, on January 13, 1949, and made payment in full February 14, 1949, in response to a letter demanding payment of such letter being dated February 8, 1949. It is common knowledge that the Forest Service was notified immediately upon the filing of the patent application on or about September 27, 1948, as such notification was mandatory in the case of the claims established before the establishment of the National Forest or the inclusion therein of the subject claims (43 CFR 205.1). Since all of the claims were included in a single application, it is conclusive that said Forest Service had due notice concerning all of the claims, which would make the proceeding outlined under 43 CFR 205.2 superfluous, the Forest Service having already had its 60 days' notice in which to file a protest or an official request for a longer time limit, but not to exceed 6 months, which 6 months would have expired on or about March 27, and constituted an absolute default and loss of any right to protest, if any there was, on the part of said Forest Service in regard to any of the claims established before their inclusion in a national forest, and in truth and in fact should have constituted a like default on the other claims. Even so, the Forest Service having once defaulted was apparently given a second chance, to the detriment of the applicant, when the final proofs were filed January 13, 1949, giving the Forest Service another 60-day period in which to protest or request an extension to six months, upon which second chance said Forest Service also defaulted in that said agency failed to do either of these acts which were specifically required of it before March 13, 1949. It was alleged that the Portland Land Office accepted a request to withhold action on the application March 18, 1949, five days after the second default, which definitely had no right to accept under such dilatory circumstances, which circumstances were also prejudicial to the rights of the applicant, which applicant the Supreme Court ruled was already entitled to a patent and whose rights could

not at that time be diminished by such delays. However, even though the Portland Land Office allegedly accepted said notice or request from the Forest Service on March 18, 1949, said agency was limited to six months after the date of making and filing final proofs, which deadline for the field examination report and protest was thereby fixed at July 13, 1949. To reduce the entire matter to the absurdity which it really in truth and in fact is, if it were assumed that a six-month deadline had been set for examination and protest as of the issuance of the final certificate, said six-month deadline would have expired October 6, 1949. It is obvious that the Forest Service defaulted on its third possible deadline, which was July 13, 1949, and in fact it defaulted on its examination report (43 CFR 205.3) even on the hypothetical case of a fourth deadline under that section for that Mr. Hattan advised Al Sarena Mines, Inc., in a letter January 4, 1950, that he admittedly did not file his report until December 1949. The obvious fact which may be ascertained from perusing 43 CFR 205.1; 205.2; 205.3 is that in each case any protest filed must be based upon a valid report. The intent is quite clear that the protest must be filed within 60 days or, by special permission granted within the aforesaid period, six months. A deadline having been imposed upon the filing of reports upon which to base protests constitutes the forfeiture of the basis for a protest if a default be made in the filing of said report, which, according to the regulations, would make such a belated report void and of no consequence. The issuance of a protest, then, based upon a report which was illegally accepted contrary to regulations, constitutes an ultra-vires and illegal act within itself.

The default admitted in Mr. Hattan's letter by implication is not only an admission that the so-called "protest" was in itself an illegal and ultra-vires act, but there is also present an admission of unconstitutional discrimination and/or discriminatory enforcement due to the manner in which the Land Office enforced its deadline upon the Forest Service and/or Mr. Hattan, who according to the Joint Regulations of the Department of the Interior and the Department of Agriculture, was in this case responsible to the Department of Agriculture, which latter department was also guilty of an illegal and ultra-vires act in accepting the aforesaid report from Mr. Hattan after his default and in filing its illegal protest based upon such a default. Therefore, both the Department of Agriculture and the Department of the Interior were guilty of laches. As aforesaid, the Department of the Interior being charged with the duty of administering the law and having tolerated such laches to the detriment of a patent applicant, must assume the responsibility for the laches of both departments. As aforesaid, the discriminatory, and therefore unconstitutional, enforcement of deadlines is evidence on the part of the Bureau of Land Management by a comparison of the foregoing gross negligence and laches described in this showing in support of Demurrer No. 4 (not numbered but the fourth demurrer) and the following statement of decline enforcement policy as applied not to the Forest Service but to the patent applicant: said quotation being extracted from official Bureau of Land Management Publication No. 11,343: "Applications must be completed within a reasonable time and failure to do so will result in their rejection." There is the admission—its own indictment of itself—that the Bureau of Land Management enforces deadlines rigidly upon the citizen who buys and pays for his land, but allows a third party, the Forest Service to intervene in a completed transaction, setting aside all deadlines provided for the protection of citizens of the United States, and aids and abets attacks made against those same citizens who have bought their land from the Bureau of Land Management in all good faith, but who cannot, in spite of all law and justice on their side, induce said Bureau of Land Management to issue the proper conveyance which the law has guaranteed to the citizen. Contestee reiterates herewith what has been heretofore stated, that a private citizen who behaves in such manner as has been demonstrated by said Bureau must answer charges for obtaining money under false pretenses. All of the above has been sanctioned by said bureau after three defaults.

However the other circumstances may be, the fact remains that no legal protest of record has been filed against either Al Sarena Mines, Inc., or against Mineral Entry Oregon 0665, and the contest citation issued thereupon is therefore void and of no force or effect. Although the illegal addenda inserted upon the final certificate was placed there by an illegal and ultra vires act and although said illegal addenda is an unconstitutional attempt to take and/or withhold property rights without due process, thereby rendering such illegal addenda worthless and of no force and/or effect, it is further technically illegal and void for that it is not over the signature of the official inserting it.

The conclusive showing of bad faith by the Portland Land Office and/or the Forest Service officials herein set forth and shown to have been committed by said officials by the showing in support of the fourth demurrer and by that on demurrer No. 1 in its entirety, the explanations of which elsewhere in this brief are made a part of this demurrer and/or the showing in support thereof the same as if set out herein. The showing of discriminatory enforcement made in the brief and argument of demurrer No. 4 is also applicable to the showing in support of demurrer No. 1, and is hereby made a part thereof the same as if set out therein.

It is therefore submitted that demurrer No. 4 has great legal, equitable and Constitutional merit, and that its overruling by Manager Rice and the affirmation of said overruling by the Bureau of Land Management should be reversed in favor of the contestee and the demurrer sustained.

The following motion was denied by Manager Rice and said denial affirmed by the Bureau of Land Management:

"Wherefore, the above premises considered, the contestee moves the court, commission, or other representative of Government acting as a court or sitting in judgment of this cause, that the contest be dismissed and the patent certificate issue forthwith as in all truth and verity it should."

It is respectfully submitted that the obvious merit of all four of the foregoing demurrers, as shown heretofore and herein, have great legal and constitutional merit and that the foregoing motion is appropriate to the premises, as aforesaid. It is therefore respectfully submitted that the affirmation of Manager Rice's denial of said motion and Manager Rice's denial thereof be found for naught and the motion allowed.

4. At the time of said agreement with Mr. White, Contestee challenged the legality and right of the Bureau of Land Management to hold such a hearing using the Code of Federal Regulations, or to hear the case at all. Contestee offered Mr. White's two alternatives; to settle the aforesaid matter: (1) Contestee would go immediately into the Federal Court and have the legality of such a hearing judicially determined, or (2) Contestee would assent to having the matter handled by the Department of the Interior on the condition that the matter, including any hearing, would be conducted only under the rules of evidence and the rules of practice and procedure as obtained in Federal and State courts. Mr. White agreed to the latter alternative.

It is therefore respectfully submitted that this matter should be adjudicated in accordance with the aforesaid rules of evidence and rules of practice as obtain in Federal and State Courts and as agreed with Solicitor White on August 9, 1950.

5. The Manager's attitude was openly hostile, as is evidenced by a tape recording made by contestee, which recording is an impartial mechanical reproduction of the exact facts, evidencing the exact truth, all voices being recognizable, together with the exact language used. This mechanical record has been offered to the Department for its hearing, but contestee has yet to find anyone in authority in the Bureau of Land Management who is interested in the truth. At the hearing, Manager Rice openly signified to the stenographer to omit recording pertinent facts for the record and he admitted in the presence of competent witnesses that he had no record "worthy of the name," and that without contestee's tape recording, his "record" was so fragmentary as to be valueless. As was stated in the foregoing answer and brief (No. 4, which relates the circumstances under which the procedural agreement of August 9, 1950, with Mr. White was made) contestee reiterates that the determination of the legality or validity of the proceeding was of prime importance before going into the alleged "merits" of the case. Manager Rice refused to admit his own default on the demurrers and motions which had theretofore been filed for some four months, the established period for procedure before default being 30 days. He further evaded and attempted to refuse to consider the legality of the proceeding, but counsel for contestee declined to proceed further until the Manager assented to consider this question, which was set out in the demurrers and motions to dismiss which had been filed in contestee's original answer. Counsel for contestee then proceeded to read the first demurrer into the record. The Manager then, instead of allowing the customary argument of said demurrer, allowed opposing counsel to attack said demurrer and immediately ruled without allowing argument, attempting to make one blanket ruling at that time to cover all of the demurrers and both motions. Contestee's counsel then demanded that Manager Rice not proceed on the merits of the case as Manager Rice had ordered, but that separate rulings be given

with grounds therefor, on each demurrer and motion. Manager Rice repeated the procedure over and over as was described in the case of his ruling on the first demurrer, each time ruling adversely—regardless, without sufficient argument of the demurrers and completely at a loss for grounds for the rulings which he had already made, stammering and pausing for an estimated full 30 seconds, and finally giving such absurd grounds, as he did in one instance, that the interests of the contestee were not adversely affected by such a confiscatory proceeding, and by giving as his grounds for overruling a demurrer containing a Constitutional objection the utterly irrelevant and immaterial reason that the patenting laws have not been decentralized by the Secretary of the Interior. From such a performance of obvious hostility and prejudice, there was no alternative for contestee but to appeal in open hearing from the rulings on the demurrers and motions under the terms of contestee's agreement, thereby legally closing the hearing, which hearing was plainly not legitimate, but which hearing appeared to be only a means of claiming later that contestee's property had been confiscated only after "due process," which some would infer means "notice" and a "hearing." Counsel for contestee, accordingly, then and there appealed after the ruling on the last demurrer and the denial of the latter motion, which Manager Rice acknowledged and accepted, announced the hearing legally closed pending appellate adjudication of the demurrers and motions, and notified the court that under the terms of the aforesaid agreement of August 9, 1950, with Mr. White, both the contestee and the contestant were barred from introducing further evidence or testimony at that time. Counsel for contestant acknowledged the appeal and admitted that under the rules agreed upon counsel for contestee was correct but asked Manager Rice to allow the taking of testimony regardless, to which violation of the agreed practice and procedure counsel for contestee rightfully declined to be a party, being forbidden under the agreed rules to proceed further. In making his admission, counsel for contestant explained that his request was merely a convenience measure and made a statement to the effect that he did not agree that the position taken by contestee to protect its property rights would warrant the expense to the Government of conducting another hearing in the event that the appellate authorities should decide that the proceeding was valid and should be heard on its "merits" at a later date. This statement was regardless of the fact that contestee would be put to considerably greater expense in such event. Counsel for contestant then read rule 53, regarding the costs of taking testimony. Counsel for contestee explained that the hearing had already been legally closed, that contestee had therefore incurred no costs, having taken no new testimony and having cross-examined no Forest Service witnesses, but agreed to pay the usual and customary charge for its carbon copy of the "record." No attempt was made by Manager Rice to collect charges or costs in advance by deposit as provided by Rule 60. At the close of the hearing, as contestee's witnesses and counsel were preparing to depart, counsel for contestant, realizing that the grounds given by Manager Rice for his rulings would be fatal to contestant's cause in an impartial appellate adjudication of the appeal on demurrers and motions only, as the appeal was taken, requested that he be allowed to withdraw the confiscatory prayer in the illegal protest. Although counsel for contestant attempted to deny the intent of the aforesaid confiscatory prayer, the fact remains that contestee was in complete confiscatory jeopardy during the entire hearing and the fact also remains that said prayer was an exact confirmation of the verbal threats, in the presence of a competent witness, made during the so-called field examination by Mr. Elton M. Hattan and Mr. William O. Sanborn. As soon as it became apparent that the intent of the Forest Service and the Portland Land Office had failed and that the matter was out of the hands of the Portland Office and in the hands of the Washington officials, Mr. Sanborn and Mr. Rice became quite obviously frightened and the remainder of the Forest Service and Bureau of Land Management officials appeared highly uncomfortable. Mr. Sanborn, who together with Mr. Elton M. Hattan, had made the confiscatory threats previously, which threats were confirmed by the aforesaid confiscatory prayer, followed contestee's Secretary-Treasurer and witnesses from the building as they departed, obviously severely frightened, voluntarily apologizing and attempting to deny any knowledge of the aforesaid confiscatory prayer, confirming his threats. Written notice of appeal, together with a formal written legal demand for a copy of Mr. Rice's "record" were served upon Mr. Rice as soon as they could be typed and served upon him, being served at 11:45 A. M. on September 14, 1950, with carbon copies and the usual confirmation to Washington immediately. To date, after several legal demands for a copy of the "record" of the hearing, and after having offered to pay the usual charge therefor, commensurate with charges for similar

official records in the courts, contestee still does not have a copy of the "record," and Manager Rice has been completely backed by others in the Washington office of the Bureau of Land Management, who fixed an outrageous charge for the illegal "record" by which contestee has consistently refused to be bound, apparently in order that (a) contestee would not be willing to pay the exorbitant charge for a worthless and illegal "record," (b) contestee would have no way of knowing what was said in the illegal and inadmissible "testimony," and (c) contestee would not have both the tape recording and the "record" to compare for officials who might be interested in ascertaining that citizens of the United States had not had a fair trial. The subject of the "record" is treated in error Nos. 6 and 7 hereof, and sets forth further in the corresponding numbers in the answer, brief, and argument.

The "testimony," which is entirely illegal and inadmissible, was taken after the hearing had been legally closed and was taken without the right of cross-examination for the "convenience" of the Government, but has been subsequently used by the Bureau of Land Management as "Vox Dei," setting aside or attempting to set aside all of the bona fide evidence upon which the certificate of entry was based, all of which was refiled, restated and resubmitted in evidence for the record of this cause in the original answer of contestee. The applicable statute (30 U. S. C. 29) states: "If no adverse claim shall have been filed with the manager of the proper land office at the expiration of the 60 days of publication it shall be assumed that the applicant is entitled to a patent \* \* \* and thereafter no objection from third parties to the issuance of a patent shall be allowed, except it be shown that the applicant has failed to comply with the terms of this chapter." The Supreme Court has ruled many times as follows: "If no adverse claim is filed with the register within 60 days from the filing of the application, the law assumes that the applicant is entitled to a patent." (*Guillim v. Donnellan*, 115 U. S. 45, 49, 29). The Forest Service has been elsewhere herein shown to be a third party, whether represented by Government agents or by other agents, that it has attempted, without any showing, to intervene in a completed transaction between the Land Office and Al Sarena Mines, Inc., after all of its deadlines had passed, which in truth and in fact is the deadline for the filing of adverse claims, which its claim is, for that the Forest Service has no apparent reason for wanting this patent denied except to take by intimidation, by confiscation, or by any other means at its disposal, by fair means or foul, the land belonging to Al Sarena Mines, Inc., which is that corporation's means of existence, regardless of the investment and mineral potential of private industry, for the admitted purpose that the Forest Service desires the alleged mere \$77,000 worth of timber, as was evidenced by Mr. Leavengood's "testimony." There is no difference between this principle and that of a rival mining claimant who wants the same ground for the mineral; they are both attempting to take what the patent applicant has. Since the Forest Service is forbidden by the Act of February 1, 1905 (16 U. S. C. 472) to exercise authority in the administration or execution of the mining laws, reducing the status of its representatives to the status of private citizens in the eyes of the law, the Forest Service is in the position of a rival claimant with an alleged timber claim on the same ground as that covered by the mineral claims, but is without a cause of action for that, as previously and hereinafter stated, it has no equitable interest, the full equitable title having passed from the Government. An adverse claim filed by a claimant for agricultural purposes involves no rights different from the rights of another mineral claimant (*Type Consol. Min. Co. v. Langstedt*, 136 F. 124). In view of its indefensible position in the eyes of the law, it is obvious that this subterfuge of an illegal and unwarranted "contest," predicated upon allegations without foundation in fact, without evidence in any wise sufficient to refute the evidence established by the entryman or, in fact, with no evidence whatsoever, and whose allegations are immaterial to the facts and the law, appeared the only means whereby the Forest Service could destroy the owner's property rights, which it was determined to do, and which rights the owner was and is determined that the Forest Service shall not destroy.

As aforesaid, the Government had detailed Mr. G. Cleveland Taylor, E. M., a registered professional mining engineer of some 40 years' experience, qualified as a United States mineral surveyor, an impartial and highly competent licensed public official and expert, to the property for some three to four months for the purpose of making a survey and appraisal of the true facts affecting patentability of the property. The Supreme Court has ruled in the case of *Wabcock v. Hammer* (233 U. S. 85) that such work as was done by Mr. Taylor is the work of the Government; said Supreme Court has also ruled in the same case that

a United States mineral surveyor alone has the opportunity to observe the situation and character, the extent and nature of the work done, and the improvements made upon the land. The report of the aforesaid work of the Government is of record, is further evidenced in this cause by the refile of the findings of Mr. Taylor, and consequently of the Government, for the record of this cause by contestee in its original answer. That is evidence, under oath, and is part of the Government's record. The attempt by the Forest Service, by the means employed in this cause, to refute the aforesaid evidence, which is legal and prima facie evidence belonging to the Government, and which evidence is in the record of this cause; the denial or setting aside, the attempted refutation, or the failure or refusal to consider said evidence and/or its overpowering validity or sufficiency relative to the illegal, inadmissible and apparently untrue "testimony," places the government in the impossible position of impeaching its own witness, the Bureau of Land Management's own impartial expert, which every lawyer knows, under the rules of evidence, that it has no right to do. As aforesaid, and as is reiterated here, the evidence of the bona fides in favor of the contestee is unrefuted and the error of the Bureau of Land Management is therefore its failure to recognize unrefuted evidence when presented.

In regard to the illegal, inadmissible and apparently untrue "testimony," introduced after the hearing had been legally closed and without the right of cross-examination or of introducing further opposing evidence or testimony, covering the so-called field examination, allegedly made by Elton M. Hattan and William C. Sanborn, said "testimony" was based upon assay reports from samples admittedly left in the unsupervised custody of the Forest Service, which agency allegedly and admittedly had said samples assayed, and whose interests would be served by substitution. Furthermore, on or about August 11, 1949, at San Francisco, California, the aforesaid Mr. Sanborn admitted in the presence of a competent witness that said samples were out of the dominion and custody of both Mr. Hattan and Mr. Sanborn for some three weeks prior to their assay. From the foregoing, it is obvious that neither Mr. Hattan nor Mr. Sanborn can possibly warrant, as they apparently attempted to do, that the samples reported upon in the illegal and inadmissible "testimony" were in truth and in fact the same samples taken from the property. As a matter of fact, after the threats and coercion imposed by these two men upon an officer of Al Sarena Mines, Inc., said corporation obtained immediately thereafter a number of samples from the identical channel cuts left by said two men in their sampling and had them assayed in commercial laboratories recognized and patronized by the United States Government. The "testimony" reported mere traces of value, according to the decision of the Bureau of Land Management, but the samples obtained by contestee showed, for example, that the samples cut by Mr. Hattan and Mr. Sanborn assayed \$2.10 on the Alabama claim, \$0.90 on the Manganese claim, etc., which fact contestee is prepared to prove by competent evidence. Mr. Hattan admitted to contestee in the presence of witnesses that his sampling was inadequate. At that time Mr. Hattan specified procedures and requirements to be used by contestee to obtain samples to be obtained in accordance therewith, and reported to him over the signature of an official of a recognized commercial laboratory assaying the same, and advising said Al Sarena Mines, Inc., that the samples so obtained were to be made a part of the evidence in his official report, and consequently in this cause. A large number of samples were therefore obtained in good faith, assayed and reported to Mr. Hattan as he had directed. Samples from the poorest of the contested claims so reported to Mr. Hattan assayed \$0.92, and one of the claims, an 1897 claim named Delia McKinnon, produced a sample which Abbot A. Hanks, Inc., of San Francisco, reported was worth \$4.20 per ton, all values reported being in addition to any lead and/or zinc which the samples might contain. For the reason that the Forest Service was allowed the unsupervised custody of the samples used against contestee, contestee must insist and demand that equal credibility and weight be assigned to all samples reported by contestee for the report and record of this cause, which has obviously not been done, and which has also prejudiced the rights of one party to the proceeding, to the point of attempted confiscation, for the benefit of the other party to said proceeding by willfully and knowingly discriminating against contestee and by willfully and knowingly withholding pertinent facts of record from consideration in the adjudication of this cause. In the absence of the "record," which has been refused contestee repeatedly, apparently in violation of the terms of the applicable statute, contestee is not in a position to know whether Mr. Hattan withheld



this important data from his "testimony," or whether the obviously prejudiced and hostile officials who have thus far adjudicated the matter have ignored the aforementioned facts. If Mr. Hattan failed to report said samples cut by contestee for the report and record, or if he discounted the credibility of said samples without also discounting the samples of the Forest Service, he is also highly prejudiced for the benefit of the Forest Service and to the detriment of the contestee, and it would appear that he was using his qualification as an expert witness as a means to introduce highly prejudiced and hostile opinion under the guise of professional interpretation of existing facts. In any event, it is obvious that neither Mr. Hattan nor Mr. Sanborn, after having attempted by coercion to compel Al Sarena Mines, Inc. to withdraw an already valid mineral entry fully proven and paid for, under threats of utter confiscation, after having attempted to enforce those threats just mentioned, and after having either distorted or withheld impartial facts, material to contestee's rights, apparently by the abuse of their privileges as expert witnesses, their testimony, even if it had not been illegal and inadmissible under the agreed rules of practice and procedure, as agreed with Mr. White appears utterly without foundation in fact. It is therefore respectfully submitted that their "testimony," apparently prejudiced, should be stricken from the "record," and not considered in the adjudication of this cause.

In regard to the "testimony" of Mr. Leavengood, it is first of all illegal and inadmissible under the terms of the procedural agreement of August 9, 1950, as aforesaid. Mr. Leavengood is also an employee of the Forest Service, and cannot therefore be considered completely unprejudiced. In addition to the above, if Mr. Leavengood were on the property at all on the days alleged, he was there without the knowledge or consent of the owner of the property and was technically a trespasser. Furthermore, if he were there at all on the days of his alleged presence, as he was never in evidence or seen by any of the contestees' personnel, who were on and all over the property on the aforesaid days, he could hardly have been there for a sufficient time to make any intelligent estimate of the alleged value of standing timber without his presence being known.

It is therefore respectfully submitted that Mr. Leavengood's "testimony" deserves no credibility, that it should be stricken from the "records," and not considered in this cause.

6. Since he had no "record worthy of the name," and since was never allowed to have contestee's tape recording for reference, the inescapable inference is that his "record" was largely manufactured, and therefore worthless. The continued allegation, though obviously false, that contestee failed "to participate in the hearing," appears to be a vain and worthless effort to justify the transmission of an erroneous and incomplete "record," obviously manufactured, to the appellate authorities with no certification known to contestee as to its correctness. There is also a high degree of correlation between this fact just mentioned and a letter dated September 27, 1950, from Mr. Jesse R. Farr, Regional Attorney, U. S. D. A., to Manager Rice, appearing in the "record," presumably, containing allegations to the effect that contestee did not appear at the hearing, that contestee did not answer, and that contestee did not appear and offer evidence. Contestee has a tape recording which proves every one of these allegations false, and respectfully submits that the real purpose of such a fantastically absurd letter appears but an attempt to assist Manager Rice in protecting himself from the consequences of his own acts. It is further noted that Mr. Farr, after having acknowledged contestee's appeal and right to appeal under the terms of the procedural agreement of August 9, 1950, from rulings on demurrers and motions only, and after having made a statement to the effect that he wished to take testimony merely as a measure of convenience and economy to the Government, and after contestee departed from the hearing which had been legally closed, Mr. Farr then and there without apparent verification of the validity or invalidity of said agreement moved the Manager to take the "charges" against contestee as confessed. These facts are evidenced partially by the tape recording and partially by the letter of September 26, 1950, from Mr. Farr to Mr. Rice, which letter recites that it is a showing in support of the motion made by Mr. Farr as outlined in the foregoing sentence, further evidencing the apparent intent and purpose of Mr. Farr, as hereinabove stated.

7. Interior Department Rule of Practice No. 53 was read by Mr. Farr at the hearing "so that there will be no misunderstanding" as to costs, which reading of said Rule 53 was outlined in Mr. Zimmerman's decision as having been made of record. That rule provides that each party will pay the costs of examining its

own witnesses, of cross-examination of opposing witnesses, and of noting motions, objections and exceptions made on its behalf. Having incurred no such costs, contestee is in no wise obligated to pay any part of the cost of taking the illegal, inadmissible "testimony" against it, which alleged obligation Mr. Zimmerman used in his decision as a reason for failure or refusal to supply contestee with a copy of the "record" of its own proceedings, for which copy contestee had agreed at the hearing and thereafter to pay the usual and customary reasonable charge, which charge is quoted by 43 CFR 221.18 at \$0.05 per page for a carbon copy. Having made formal, written legal demand for a copy of said "record" before the same was typed, contestee was eligible to have such a carbon copy, as demanded and at the rate heretofore cited. Mr. Zimmerman should have heeded said rule, read for the "record" as aforesaid, and Mr. Zimmerman, as well as Mr. Rice, should also have heeded the applicable statute and his own regulations in his review and apparent confirmation of said illegal charge and basis for charge made by Mr. Rice. It would appear that his statement in this connection is designed to render immaterial the illegal and prejudicial acts surrounding the making, employment and withholding of the "record" against the interests of contestee and apparently further designed to make immaterial his obvious inferences in his decision, which inferences are in fact admissions of policy that the burden of proof in this cause is definitely cast upon the purchaser, which purchaser is the defendant, and whose final proofs were accepted and of record, both in the Land Office and in the record of this cause, all such material having been relied and resubmitted in evidence in the original answer of contestee, and whose purchase money had been demanded and accepted by the Government in confirmation of said final proofs one year and seven months earlier. The obvious inferences and admissions of said illegal and inapplicable policy are evidenced clearly by the language used by Mr. Zimmerman in his decision in lines 16-20 on page 9 and in lines 1-4 on page 8 thereof, which is direct violation of the law as interpreted by the United States Supreme Court in the case of *Benson Mining Co. v. Alta Mining Co.* (145 U. S. 428, 431), which ruling is set out as B. on page 7 hereof and accompanied four other Supreme Court rulings to the same general effect, all of which make Mr. Zimmerman's position in admitting that said additional burden of proof was and/or is on contestee utterly indefensible, as are his attempts to justify such position, such as his position in attempting to uphold said "record" and the manner in which it has been handled, as aforesaid. As has been heretofore stated, contestee incurred no costs in the taking of testimony, objections, exceptions or motions but did agree to pay the usual charge for its copy as aforesaid. It is mandatory upon all officials and employees concerned, under 43 CFR 221.18, to charge for original transcripts only on the basis of words actually counted. It is provided in 43 CFR 216.19 for a charge of \$0.10 per 100 words for original transcripts (43 U. S. C. 82, 83). At the illegal rate and upon the illegal basis of the charges demanded by Manager Rice and other officials of the Bureau of Land Management, which rate and basis Mr. Zimmerman's decision confirmed, there must be exactly 1,000 words on each and every page to justify such charge. That is obviously impossible and apparently lays the party or parties making such excess charge subject to summary dismissal and other punitive action as provided in Title 18 of the United States Code, as is clearly set forth in Title 43, Section 221.28 of the Code of Federal Regulations. It is also noted that Manager Rice gave as his authority for such charge an alleged pricelist published by the Associate Director of the Bureau of Land Management, allegedly pursuant to Public Law 644, 81st Congress, 2d Session, which law amends only the Act of August 24, 1912 (37 Stat. 497), (5 U. S. C. 488), which Act of 1912 corresponds to the fees and charges set out in Title 43, Section 2.4 of the Code of Federal Regulations. The last-mentioned section in turn clearly states that said section does not apply to fees and charges specifically stipulated by law. Said Public Law 644, therefore, has no apparent effect upon the fees and charges set by law for reducing testimony to writing and for transcripts and copies of such reductions, which are clearly stated in Sections 82 and 83, Title 43, of the United States Code, and in sections 216.18 and 216.19, Title 43, of the Code of Federal Regulations, all of which laws and regulations appear at this time to be in full force and/or effect.

It is therefore respectfully submitted that apparently the contestee was charged, but refused to pay, an illegal charge or fee for a copy of the "record," that contestee was misled by the statements of the officials of the Bureau of Land Management regarding the legal charges or fees for such copy of the "record," that contestee was illegally denied thereby a copy of said "record" in

an apparent attempt to prejudice the interests and rights of the contestee, and that apparently Mr. Rice and other officials of the Bureau of Land Management have violated Title 43 and are subject to the punishment provided by Title 43 of the United States Code.

8. To save repetition, this is fully answered on pages 51-64, 65-66 of this brief.

9. Mr. White, having made the agreement, as aforesaid, with contestee September 9, 1950, in the presence of two competent witnesses, recited and confirmed it to a third. This makes a total of four competent witnesses ready, able, and willing to testify in a court of record that the Hon. Mastin G. White agreed with contestee, and assented to said agreement by his silence from August 9, 1950. November 16, 1950, that the rules of evidence and the rules of practice and procedure in this cause would be the rules of evidence and the rules of practice and procedure as obtain in Federal and State Courts, and only those rules. Knowing Mr. White as we do and considering him an honorable and truthful man, as well as an astute attorney, we cannot conceive of Mr. White's voluntary recantation for the record, of the aforesaid agreement. He, therefore, must have been subjected to extreme pressure, coercion, and duress beyond his ability to bear, and his aforesaid recantation is therefore worthless.

10. This was obviously done in order to take the equivalent of a default judgment against the contestee. The illegal procedure denied forever the right of the contestee to examine into the "testimony" comprising the so-called "record" or any cross-examination of those purportedly making it. It is, therefore, respectfully submitted that the contestee, while having been placed in jeopardy, has not had accorded its those rights and privileges to which it is entitled under the law, but rather had a judgment rendered against it predicated upon procedure denying its rights and worthy only of the "People's Courts" of Europe.

11. This perversion of justice by the Bureau of Land Management violated the procedural agreement of August 9, 1950, had with Hon. Mastin G. White, and was done evidently upon the basis that the end justifies the means. An upright law enforcing official could in good conscience deny the demurrers and motions as made. This despicable trick—substituting its own rules for the old procedure agreed upon, making such substitution in the middle of the proceeding—was resorted to and evidences the lengths to which some officials will go to gain their own ends.

12. Since the Bureau of Land Management upheld the Manager, as is recited in the assignment of error, it evidences that, beyond question, the Bureau of Land Management is the one responsible for the illegal, prejudicial, and otherwise discriminatory procedure to abuse its authority and to take unfair advantage of a contestee brought before it.

13. It confirmed, upheld, and advised contestee of the illegal and oppressive charge for the "record" made by Manager Rice. It appears that the officials of the Bureau of Land Management who upheld Manager Rice in his excessive charge for the "record" are either heedless or unaware that 43 CFR 221.2, heretofore named herein, is all inclusive in its terms and that they themselves are subject to summary dismissal and to other punishment under their own "blessed" Code of Federal Regulations.

14. Contestee has evidenced many times in its former correspondence, communications, and briefs heretofore submitted, and reiterates them all the same as if set out herein, that as to the Joint Regulations of the Departments of the Interior and Agriculture, contestee refuses to be bound by said joint regulations of its accuser and its judge, made for their joint benefit and definitely to the detriment of any contestee brought before them. For the reason that they obviously attempt to nullify the intent of the law and to defeat its purpose violating it flagrantly, and for the reason that they have been enforced and constitute an agreement between two or more persons for the purpose of denying citizens their rights and confiscating their property, the aforesaid set of regulations is hereby designated and proven by definition to be an enforced conspiracy.

15. Contestee herewith specifically answers and denies each and every finding, judgment, ruling, holding or other evidence of adverse action taken against it by the Manager, the Bureau of Land Management, or anyone else in the Department of the Interior and/or Agriculture and herewith replies specifically the same as if set out herein, every answer, protest, argument, demurrer, motion, or other communication heretofore filed by it and specifically states at this point in agreeing at the close of the hearing after contestee had already appealed from the rulings on its demurrers and motions to Washington that the Forest Service be allowed to withdraw its confiscatory prayer. To this, contestee

assented in order to prevent further confiscatory jeopardy in the degree which had formerly existed, but maintains that the interest and purpose of the Forest Service was not altered thereby.

16. See the showing in regard to credibility of witnesses Hattan, Sanborn, and Leavengood, pages 58 through 63, which treats both credibility and admissibility. Also see pp. 32-33; 53-56; 12-13.

17. The Supreme Court has ruled in the case of *Smith v. U. S.* (170 U. S. 372, 380) that a decision of a Department in a particular case is in no sense a valid regulation and is therefore not binding. In addition to the foregoing Supreme Court ruling, the decisions cited are not predicated upon the facts and circumstances in and/or applicable to this cause and said decisions therefore cannot apply or obtain therein. The attempt to bind contestee to precedents in alleged unreported cases is not worthy of comment, but demonstrates only that degree of contempt for law and justice which has previously been shown to exist in the Bureau of Land Management. The continued reiteration of the case *U. S. v. Dawson* (58 L. D. 670) is likewise but a reiteration of its discriminatory policies, for that even though the allegations of the Forest Service are utterly false, the fact remains that the Bureau of Land Management has granted a patent on an extremely large property, the plat of which it would not furnish Al Sarena Mines, Inc., to introduce in evidence, at Round Mountain, Nevada, with an overall ore showing on most of the claims of some 10¢ per ton. Al Sarena Mines, Inc., has proven a meritorious and extensive potential as a large low-grade ore producer with excellent commercial possibilities, but has been adversely ruled against twice, simply because there happens to be a small amount of timber on the property. It is further respectfully submitted that the appellate authorities should consider whether a relatively worthless property without timber is eligible under the mining law for patent when a meritorious property with timber is not eligible for such patent. If, as the Supreme Court has ruled in the case of *Smith v. U. S.* (170 U. S. 372, 380), a decision is not binding, then all regulations which have been used against contestee, obviously inconsistent with the law but consistent only with isolated decisions upon which said regulations are based, are therefore not binding and are not valid regulations. It is obvious that decisions are not consistent with each other; therefore it is obvious that there are as many contradictory regulations as there are consistent ones. It is time to change policy now and to obey and uphold the law and the Constitution, consequently repealing or ignoring all such conflicting regulations and decisions. As in the case of contestee's property versus the aforementioned property at Round Mountain, Nevada, the discrimination is clear and the discriminatory enforcement of the law is an accomplished fact by the Bureau of Land Management. The law is impartial on its face, but it is not enforced on *all* the mining companies alike; it is enforced in such manner as to permit unjust discrimination to persons in similar circumstances (the two mining companies), material to their rights (the right to own the means of their existence), and the equal protection of the law *as administered* has been flagrantly denied, thereby violating the 14th Amendment to the Constitution. The entire set of Joint Regulations also comes into the same category. See *Yick Wo v. Hopkins* (118 U. S. 356).

18. In addition to the obvious unconstitutional discrimination and/or discriminatory enforcement present, those provisions of 43 CFR 205.5 and 205.6 referred to in the Assignment of Error are obviously not predicated upon the law as written, but upon opinions and decisions, which were but opinions of the law as it applied to particular cases or sets of circumstances. The Supreme Court has held in the case of *Smith v. U. S.* (170 U. S. 372, 380) to the effect that such opinions cannot be binding as valid regulations. The Supreme Court has also ruled that regulations must be consistent with law and that they may not be extended so as to alter, amend or defeat a law already passed by Congress (*Williamson v. U. S.* 207 U. S. 425). From the foregoing citations in point, it is obvious that the regulations are not consistent with law and that they alter, amend, and/or defeat the law as passed by Congress, besides being definitely against Public Policy. The aforesaid regulations are so obviously illegal and unconstitutional that they are not worthy of consideration and constitute no basis for any cause of action.

From the showings made and submitted in the foregoing 71 pages, it is obvious that the issuance of the patent prayed for is a mere ministerial duty of the Secretary of the Interior and/or the Director of the Bureau of Land Management, and demand is again herewith made for the issuance of said patent, as demanded in Mineral Application Oregon #0665.

The following motion was denied by Manager Rice and his denial thereof was affirmed by the Bureau of Land Management:

"Wherefore, the premises considered, the contestee moves the commission or other representative of Government acting as a court or sitting in judgment of this cause, that this contest be dismissed forthwith, the contestee so advised, and that the patent certificate issue immediately, as in all truth and verity it should."

It is respectfully submitted that the foregoing motion was appropriate to the premises of the original answer, that said motion is appropriate to the showings made and submitted in the foregoing 71 pages hereof, and that Manager Rice's denial of said motion and the affirmation of said denial by the Bureau of Land Management should be found for naught and that the aforesaid motion should be allowed.

Wherefore, the premises considered, contestee prays that the Secretary of the Interior (Attention: Hon. Mastin G. White, Solicitor), Appellate Authority, will reverse and nullify all adverse findings and decisions against contestee heretofore had or made by any officer, member, agent, employee, or servant of the Department of the Interior and/or the Department of Agriculture and find for contestee, upholding contestee's contentions and, in accordance with Public Policy and private necessity (Rule 69), take summary action to cause the issuance forthwith of the patent for these claims specifically denied by the decision herein appealed from, and to do all other acts and things necessary to accomplish the aforesaid ends.

Respectfully submitted.

AL SARENA MINES, INC.,  
H. P. McDONALD,  
*President.*  
W. O. MACMAHON,  
*Special Counsel.*

MOBILE, ALABAMA, May 25, 1951.

Wherefore, the premises considered, contestee moves the Secretary of the Interior (Attention: Hon. Mastin G. White, Solicitor), Appellate Authority, that if any reasonable doubt should perchance exist that contestee's prayer should be granted, that counsel for contestee be allowed oral argument of this cause, preferably without time limit, and that contestee be allowed to play into the record the true facts, as outlined herein and as are contained on the tape recording of the hearing had on September 13, 1950, at Portland, Oregon.

W. O. MACMAHON, *Special Counsel*

MOBILE, ALABAMA, May 25, 1951.

I hereby certify that I have this date sent and served a true and correct copy of the foregoing document by mail upon the opposing counsel.

W. O. MACMAHON, *Special Counsel*

[SEAL]

4-207  
(May 1954)

DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington 25, D. C., February 16, 1956.

I hereby certify that the annexed copy of application for patent filed in case No. 0665, Oregon, is a true and literal exemplification of the record on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

OSCAR E. COLLINS,  
*Certifying Officer.*

## EXHIBIT B

## APPLICATION FOR PATENT

Application is hereby made for U. S. Mineral Patents covering the following claims, embraced in Mineral Survey No. 879:

Oro Alto (2)	Mark Applegate (10)	Rainboe (18)
Oro Rico (3)	H. McKenzie (11)	Della McKinnon (19)
Cougar (4)	J. L. Grubb (12)	Sulphide (20)
Oro Real (5)	J. D. McKinnon (13)	Staples (21)
J. W. Merritt (6)	Henry Applegate (14)	Manganese (22)
Peter Applegate (7)	A. W. Dahlberg (15)	La Jolla (23)
Oro Escondido (8)	Telluride (16)	Arroyo Verde (24)
W. C. Lasver (9)	Alabama (17)	

This application is supported by the following documents, which are attached hereto and made a part hereof:

- Exhibit A Copy of Field Notes and Plat of Survey
- Exhibit B Proof of Posting Plat and Notice on Claims
- Exhibit C Proof of Possessory Right
- Exhibit D Proof of Citizenship (Certified copy of Articles of Incorporation)
- Exhibit E Payment of Filing Fee (Check for \$10.00 marked "Exhibit E")
- Exhibit F Publisher's Agreement
- Exhibit G Notice for Publication
- Exhibit H Notice for Posting in District Land Office
- Exhibit I Assays from low grade intrusive showing dissemination of values

Possessory right is based upon purchase of the following claims from the Pearl Mining Company:

J. W. Merritt, Peter Applegate, W. C. Lasver, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, and Della McKinnon.

Said purchase of the above ten claims is by virtue of purchase contract dated May 11, 1935 as amended December 11, 1945, which contract is in full force and effect, Al Sarena Mines, Inc., has been in continuous possession since 1935.

The Oro Rico and Oro Alto claims were located by the corporation in 1939 and have been in continuous possession of the corporation since that time.

The other eleven claims were purchased by the corporation from their individual owners and have been in possession of the corporation continuously for a period of over nine years.

The basis of right to patent is compliance with the requirements outlined and the total expenditure in improvements of at least ten times that required by statute for patenting. We have further complied with all local laws, rules, regulations, and customs of the State and Mining district as apply to mining claims.

Due to the widespread mineralization prevalent in this deposit, the ore is not confined to any one vein, fault fissure, or zone, but is exposed in numerous places both above and underground.

The ore may be observed underground in tunnels on the following claims: Peter Applegate, Tunnel No. 1; Cougar, Tunnel No. 7; Mark Applegate, Tunnels Nos. 1, 2, 5, and 6; H. McKenzie, Tunnels Nos. 1, 2, 3, and 6; A. W. Dahlberg, Tunnel No. 2; Telluride, Tunnel No. 4; Oro Sics, Tunnel No. 9; Oro Real, Tunnel No. 8. In addition to those shafts and cuts on these and all other claims designated in Survey No. 879 as discoveries, the exact locations of which, with respect to the public surveys, are given in the Plat and Field Notes thereof, the intrusive may be observed in an infinite number of outcrops, ledges, cliffs, and surface workings. Since the property has been intensively prospected for over fifty years, the entire area is spotted with surface pits.

In addition to the improvements evaluated in Mineral Survey 879, we have also installed on the property a flotation, gravity concentration, and cyanidation mill of 100 tons daily capacity. A timber shop, blacksmith shop, and change and shower room has been erected at the portal of No. 2 Tunnel. A snow shed leads over the tracks from the portal of that tunnel to the coarse ore bin. A modern laboratory and assay office is located near the mill building. Complete camp facilities are also provided for a full complement. Two flumes from Elk Creek supply the camp and mill with adequate water. Also, a building for the drying and storage of concentrates and ore has been erected on the property. Two

Fairbanks-Morse Diesel engines supply power, electricity, and air for mine, mill, and camp.

The mineral character of the ground is one of a large hydrothermally altered rhyolite intrusion containing essentially uniformly disseminated values throughout, showing enriched areas along the numerous faults, fissures, veins, and slips. It is our intention to develop this entire low-grade orebody through a systematic program of geophysical and exploratory work with core drills and such additional tunnels, adits, shafts, winzes, and other openings as may be deemed appropriate and in accordance with further recommendations by eminent mining authorities. Thus far, ore and concentrates of higher value have been shipped from one series of enriched areas, originally discovered by Mark and Peter Applegate during the 1890's. Although the records do not state how much ore was extracted and shipped from each claim in the group, there have been smelter shipments in amount of some \$30,000.00 to \$40,000.00, chiefly from stopes in the blocked areas on the A. W. Dahlberg, Mark Applegate, Peter Applegate, and H. McKenzie claims.

Our objective is and has been primarily one of developing the large low-grade balloon-shaped mass of mineralized rhyolite within the intrusion, the chief values of which are carried primarily in the pyrite, apatite, and gelsina disseminated in the mass in varying quantities, but notably present in the hundreds of samples taken in various localities on the property. Accordingly, prior to 1935 we began a program of exploratory work toward the development of the low-grade orebody. As a result of this work, and of conferences with various mining engineers and geologists, including Milnor Roberts, Dean of the College of Mines, University of Washington, we reached the conclusion that claims held at the time and those adjoining group of claims held by the Pearl Mining Company.

Immediately thereafter we built a pilot mill and began carrying on exploratory operations aimed to give us some idea of the probable size and content of the ore body, and to learn the most profitable methods of extraction and treatment. By the summer of 1937 we had advanced to the point where we felt justified in calling in outside authorities to check our findings and to advise what further steps to take. Besides the laboratory tests made by Dean Roberts, we had similar tests made<sup>1</sup> by two other specialists. While each expressed different views concerning the treatment phase of the ore, all three agreed that it was easy to treat and lent itself to several methods of recovery.

An interesting metallurgical observation of the mineral content is made by Mr. Henderson,<sup>2</sup> whose report states:

"The sulphides on the west side of the fault have a higher gold content than the sulphides on the east side. The ratio of silver to gold on the east side of the fault was approximately 17 ounces of silver to 1 ounce of gold, while that on the west side was 4.5 ounces of silver to 1 ounce of gold. \* \* \* An excellent separation of the sulphides into a galena, lead sulphide concentrate of high gold content, and a pyrite, iron sulphide concentrate of low-gold content, was made. \* \* \* The jig, located between the ball mill and classifier, gave excellent results. On a test run it produced a concentrate containing 55 ounces of gold per ton. \* \* \* Cyanidation of the ore as a whole has given excellent results in the laboratory, but the slimy nature of the ore would require very expensive equipment. \* \* \*

In addition to this, we sought the advice of D. Ford McCormick,<sup>3</sup> who advised that we continue our program. His report states:

"The indications are excellent that a large tonnage of low grade ore may exist within the mass which could be milled at a profit. \* \* \* The deposit has important potential value, because of its size, nature of mineralization, and favorable economical aspects. \* \* \* There exist shattered and fissured zones, altered rock and every indication on the lowest tunnel (No. 2) to point toward continued mineralization with depth. If ascending thermal waters contributed to its mineralization, then the zone explored by the present workings may be only one

<sup>1</sup> The Pan-American Engineering Corporation, Berkeley, California, reported by D. A. Vendensky, and the H. A. Perez Company, Los Angeles, California, reported by one Ellerman.

<sup>2</sup> Harry B. Henderson, member, American Institute of Mining & Metallurgical Engineers, B. S., University of California; M. S., in Metallurgical Engineering, Montana School of Mines. Mr. Henderson was resident Metallurgical Engineer at Al Sarena for several years and is recognized as an eminent authority on flotation.

<sup>3</sup> D. Ford McCormick, member, American Institute of Mining & Metallurgical Engineers, graduate of the University of Texas with C. E. degree, of the Colorado School of Mines with M. M. degree, and having a long experience in important mining activities, bearing full-charge responsibility of the development of the Metahombre mine in Cuba.

of several zones radiating out from a large central mass more uniformly mineralized. \* \* \* It is noted that most of the major problems connected with mining operations are found to be favorable at Al Sarena \* \* \* there is an excellent location for a mill site close to the south end of the contact, with ample room for tailings disposal \* \* \* sufficient water flows from Elk Creek throughout the year for milling on a large scale \* \* \* water rights are protected \* \* \* high tension line passes within less than five miles of the property and is capable of supplying power for a large operation \* \* \* mining labor is available and satisfactory due to the fact that mining has been followed in Southwest Oregon for many years. \* \* \* Mining by gravity is possible for a depth of approximately 200 feet below the present tunnel (No. 2) for delivery of ore to the mill site claims, which would give over 700 feet of vertical distance to the crest and allow the volume of ore to be mined without the necessity of pumping. \* \* \* The rock is loose and breaks easily."

The importance of the above may be easily realized when it is considered that an estimated 190,000,000 tons of possible milling ore lie above the millsite claims referred to by Mr. McCormick, which ore could be handled by gravity. This, plus the ease of breaking and grinding the ore, plus our minimum tailings costs, will contribute most substantially toward the low costs necessary for the successful low-grade, large scale mining operations. From our knowledge of the Alaska-Juneau,<sup>4</sup> a notable low-grade producer, we believe our costs will be considerably less than theirs, which have averaged \$0.635 per ton. It is interesting to note the scarcity of assays on our property which run less than the Alaska-Juneau average of \$0.872.

In following the recommendations, additional geological research was instituted, together with extensive sampling. The work revealed interesting observations with respect to extent and character, as shown in the report of George P. Sopp,<sup>5</sup> who conducted this work. In describing the mine, Mr. Sopp's report states:

"There is considerable H. W.-S. H. faulting in the Rhyolite. These faults are part of a sheer zone at least 800 feet wide and are all mineralized to some extent. To date the main vein has been the only productive fault fissure but other parallel faults have shown possibilities.

"One strong north-south fault has been noted which is later than and offsets the main vein. This fault, shown on the surface map as the 'North Drift Vein', is mineralized. 'Macroscopically the rock is aphanitic porphyrite. The Phonocrysts are quartz and saradine. Pyrite is found uniformly disseminated throughout the rock.

#### "LIGHT COLORED FLOW ROCK

"A microscopic study has not been made of this rock. Macroscopically it is aphanitic porphyritic. The phonocrysts are feldspar and in a very few specimens, scattered grains of quartz were noted.

"This rock commonly shows flow banding and on the hill top approximately 800 feet southwest of #5 Tunnel, bands of pure quartz about ¼" wire are found alternating with bands of the flow rock.

#### "VEINS AND MINERALIZATION

"Practically the total production of the Al Sarena Mine has been from one vein. The vein has a strike of N45° West and is practically vertical.

"The rock in the main vein is highly brocciated and there are usually one or two gouge layers in the vein. The gouge layers are generally found near one or both walls of the vein. They are from ½ inch to 1 inch or more in width and contain abundant sulfides and quartz.

"The average width of the vein is about 2½ feet, however, there is considerable variation of width. This variation is partially due to the rock cut by the vein.

"In Tunnel No. 6 the vein cuts an exceedingly hard, fine-grained white rock, which may be either a minor intrusion in rhyolite, a type of flow rock, or a

<sup>4</sup>The Alaska-Juneau ore, which is understood to be relatively hard compared to ours, reportedly was trammed and hand sorted. In addition to this cost, they had a tailings-disposal problem which necessitated the operation of marine equipment to carry at least a portion of the tailings out to sea. In spite of those disadvantages, which we do not have, Alaska-Juneau's operating costs over a 44-year period averaged only \$0.635 per ton and the value of the ore trammed for the same period averaged only \$0.872 per ton.

<sup>5</sup>George P. Sopp, Bachelor's and Master's Degrees in Mining Engineering and Geology, Colorado School of Mines and The University of Arizona. Formerly with the Department of Interior, United States Geological Survey, and later resident Geologist at Al Sarena Mine.



silicified zone in the rhyolite. Where the vein cuts this white rock it becomes very narrow and there is little or no brecciation. The vein becomes an extremely narrow seam of gouge containing abundant sulphides. (This rock may be later than the original fissure.)

"As previously stated, the vein is composed of brecciated rhyolite and one or more narrow gouge seams. No vein material was observed under the microscope, however, the following minerals were observed in the gouge: galena, sphalerite (variety-black-jack) quartz, and pyrite. All these minerals may be found in natural crystal form.

"Although production has largely been from the vein already described, there is another very prominent vein, best exposed in the north drift, which has been considered as a potential producer.

"The north drift vein has a strike of approximately N. 8° W. and appears to be practically vertical. Because this vein intersects and apparently offsets the productive vein, it seems fairly conclusive that it is a fault fissure.

"The north drift vein is composed of 3 to 3½ feet of brecciated rhyolite and a very consistent narrow gouge streak. Its walls are not as definite as the walls of the productive vein, and the gouge does not contain such an abundance of sulphides.

"The main vein is part of a wide shear zone with a northwest southeast trend. Within this zone there are numerous fractures, some of which probably have a small displacement and could be termed faults.

"Fissures in the shear zone are generally mineralized, and samples taken on these veins assayed sufficiently high to warrant further investigation.

#### "LARGE BRECCIA ZONES

"There is a zone of extensive brecciation in No. 5 Tunnel, starting about 75 feet from the portal and extending for 100 feet or more in a southeasterly direction; the west crosscut of No. 6 Tunnel is driven into this zone and its wall rock is brecciated throughout its length of 50 feet.

"Below this zone there is extensive brecciation in the No. 2 South crosscut.

#### "ALTERATION

"In the near surface working such as No. 6 and No. 5 Tunnels, the effects of alteration are very apparent. The pyrite is largely altered to hematite and the pyrolite (?) \* itself is soft and porous. Pieces of brecciated rhyolite from the main vein and from the No. 6 Tunnel breccia zone have become so altered that they may be easily carved with a knife—feldspar is apparently kaolinized.

"Alteration has affected the rock on the lower levels along the fault zones, but the rhyolite wall rock (in the hand specimen) is relatively unaltered.

#### "VOLCANIC SERIES

"A vesicular gray flow rock was found at the base of the andesite on the ridge about 1500' southwest of Tunnel No. 5. The same rock was found underlying the andesite about a mile north of the mine. The rock is extremely fine grained and has been termed a felsite by the writer. Some specimens are extremely vesicular and contain muscovite and pyrite.

#### "WIDESPREAD MINERALIZATION

"The gold and silver on the main vein is known to be associated with galena, sphalerite, pyrite, and quartz. These minerals, however, are not confined to any one rock or fracture zone.

"Galena, sphalerite, pyrite, and vein quartz are found abundantly in the Rhyolite and the white flow rock. Galena and pyrite have been observed sparingly in the felsite."

In conclusion, Mr. Sopp states:

"This widespread mineralization suggests the theory that during the final stage of one period of extrusion solutions ascended from a deep seated magma reservoir to permeate and deposit minerals in every type rock present except the Andesite."

Mr. Sopp's report further reveals blocked high-grade milling ore in one area of the mine alone to supply the mill for several years and having a gross value

\* At the time Mr. Sopp's report was written, he had not made microscopic determination of the rhyolite.

in excess of a quarter million dollars. All of the ore referred to is above the No. 2 level. Due to the nature of mineralization and the shape of the ore body it is believed that the same blocks projected downward will yield several times that tonnage and value. All of the authorities who have studied the property point to the probability of the development of similar enriched areas. This is in addition to the primary objective—the institution of a large-scale, low-cost, low-grade mining-and-milling operation in connection with the mineralized mass. The work done by Messrs. Sopp and Morrison<sup>7</sup> in evaluating the possibilities of large-scale, low-grade commercial mining was conducted in such manner as to exclude any enriched material from veins, seams, or fracture zones. Sulfides were panned from samples taken from each of the claims, and it is significant to note that of the hundreds of samples taken by the management and by the authorities mentioned above, no sample has failed to assay at least a trace of gold or silver. From a series of random samples taken from each of the claims, descriptions and values of which are shown in exhibit I attached hereto and made a part hereof, the existence of essentially uniformly disseminated mineral and values is obvious.

An interesting report on this deposit was made by Mr. P. J. Shenon, of the U. S. Geological Survey, who visited the mine in 1930 and is reported in the U. S. Department of the Interior Bulletin "Metalliferous Mineral Deposits of the Cascade Range in Oregon." This bulletin shows in Plate 3 an illustration of Dendritic gold, removed from Tunnel No. 3, which specimen is now on display in the Smithsonian Institute.

AL SARENA MINES, INC.,  
By H. P. McDONALD, Jr.,  
Secretary-Treasurer.

STATE OF OREGON,

County of Jackson, ss:

I, H. P. McDonald, Jr., being first duly sworn on oath, depose and say that I am the Secretary-Treasurer of Al Sarena Mines, Inc., an Oregon corporation; that I have read the foregoing application for patent, know the contents thereof, and that the same is true as I verily believe, and that I make this verification for and on behalf of said Al Sarena Mines, Inc.

Subscribed and sworn to before me this 25th day of September 1948.

Notary Public for Oregon.

My Commission Expires —.

### EXHIBIT I

Claim	Description	Value
Telluride	At turn E. wall #1 Tunnel	\$1.92
H. McKenzie	S. X cut No. 6 Tunnel, X cut 2 on Band. Rhy.	1.85
Oro Real	W. wall No. 8 Tunnel N. 2'	1.21
M. Applegate	S. X cut #2 Tunnel, 12' S. of Sta. 502.	3.31
P. Applegate	Tunnel #1, 150' E. of Sta. 203.	3.19
A. W. Dahlberg	15' W. of Sta. 20, Tun. #2.	3.38
Manganese	Creek Bluff near most westerly corner	2.42
M. Applegate	Banded rhyolite capping 150' S. W. of N. W. end line and 75' S. E. of N. W. side line (#21).	1.44
Oro Escondido	Cut near S. W. corner	3.50
J. L. Grubb	Cut 380 Ft. S. W. of N. E. Center end	2.80
Arroyo Verde	Cut 680 Ft. S. W. of N. E. Center End	1.75
Oro Rico	Tunnel #9, N. Wall 10' from face	2.80
Oro Alto	Cut near S. E. corner	1.75
J. D. McKinnon	Creek bank Approximately 500' N. of bridge	3.50
J. W. Merritt	Cut from bank along Bitterlick Road	1.75
Rainbow	Pit 280 Ft. above Sta. F. on centerline	2.80
Alabama	Outcrop approximately 200 Ft. S. E. of N. W. corner	3.50
Cougar	Large cut on trail between #1 & #8 Tunnels	1.75
Della McKinnon	Cut on main road 375' S. of Dahlberg S. E. Center End	2.80
Sulphide	Pit on Mill Road 190' to 200' N. E. of Assay Office	4.90
Stables	East branch of Elk Creek, 40 Ft. from S. W. Corner	1.75
La Jolla	Cut 130 Ft. S. W. of N. E. Center End	1.75
W. C. Leover	Outcrop on Elk Creek Approximately 500 Ft. south of N. E. Center End.	2.80

<sup>7</sup> Col. J. E. Morrison, Mining Geologist, graduate Colorado School of Mines, former Field Geologist, Oregon Department of Geology and Mineral Industries, later Resident Engineer at Al Sarena Mine.

## IMPROVEMENTS

No. 1 The discovery schaft of the Oro Alto lode, the center of which being the discovery point, is on the lode line 1,131.10 ft. from the center of line 1-2; 6 x 11 ft., 6 ft. deep, partly caved. Value \$100.00.

No. 2 A cut, the mouth of which bears S. 69° W., 120 ft. from Cor. No. 3 Oro Alto lode; 4 ft. wide, 5 ft. face, running N. 65° W., 13 ft. to face. Value \$50.00.

No. 3 A cut, the mouth of which bears S. 56° W., 100 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 10 ft. face, running N. 64° W., 20 ft. to face, partly caved. Value \$100.00.

No. 4 A cut, the mouth of which bears S. 70° W., 35 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 6 ft. face, running N. 10° W., 20 ft. to face, partly caved. Value \$75.00.

No. 1 The discovery shaft of the Oro Rico lode, the center of which being the discovery point, is on the lode line 1,265.10 ft. from center of line 1-2; 6 x 5 ft.; 10 ft. deep, partly caved. Value \$125.00.

No. 2 A tunnel, 6 x 7 ft. in size, the portal of which bears N. 33° 21' E. 321.08 ft. from Cor. No. 4 Oro Rico lode; running N. 31° W.; 30 ft. to pt. A, and 50 ft. to breast. At pt. A is a drift 5 x 7 ft. in size, running N. 60° W. 31 ft. to pt. B; thence N. 30° W., 6 ft. to breast. Value of tunnel and drift \$1,200.00.

No. 3 A shaft, the center of which bears N. 23° 30' W., 310 ft. from Cor. No. 4 Oro Rico lode; 6 x 20 ft., 10 ft. deep. Value \$150.00.

No. 4 A cut, the mouth of which bears N. 9° 30' W., 322 ft. from Cor. No. 4 Oro Rico lode; 8 ft. wide, 7 ft. face, running S. 82° W., 17 ft. to face. Value \$100.00.

No. 5 A cut, the mouth of which bears N. 50° 40' E., 260 ft. from Cor. No. 1 Oro Rico lode; 6 ft. wide, 6 ft. face, running N. 5° E. 25 ft. to face, partly caved. Value \$100.00.

No. 1 Discovery shaft of the Cougar lode, the center of which being the discovery point, is one the lode line 900 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 4 x 7 ft., 9 ft. deep, partly caved. Value \$100.00.

No. 2 A cut, the mouth of which is on the lode line of the Cougar lode 835 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 5 ft. wide, 4 ft. face, running W. 14 ft. to face. Value \$50.00.

No. 3 A cut, the mouth of which bears N. 63° 50' E., 855 ft. from Cor. No. 1 Cougar lode; 5 ft. wide, 4 ft. face, running N. 80° E., 10 ft. to face, partly caved. Value \$35.00.

No. 4 A cut, the mouth of which bears N. 60° 40' E., 922 ft. from Cor. No. 1, Cougar lode; 4 ft. wide, 4 ft. face, running N. 60° E., 10 ft. to face, partly caved. Value \$35.00.

No. 5 A cut, the mouth of which bears S. 32° 50' E., 295 ft. from Cor. No. 2 Cougar lode; 5 ft. wide, 6 ft. face, running N. 70° W., 13 ft. to face, partly caved. Value \$40.00.

No. 6 A cut, the mouth of which bears S. 35° 15' E., 275 ft. from Cor. No. 2 Cougar lode; 4 ft. wide, 6 ft. face, running N. 77° W. 10 ft. to face. Value \$35.00.

No. 7 A cut, the face of which is on the lode line of the Cougar lode 110 ft. from a point on line 2-3, 280.36 ft. from Cor. No. 2; 6 ft. wide, 6 ft. face, running N. 45° W., 16 ft. to face. Value \$100.00.

No. 8 A cut, the mouth of which bears N. 50° 15' W., 280 ft. from Cor. No. 3 Cougar lode; 5 ft. wide, 10 ft. face, running N. 65° W., 14 ft. to face, partly caved. Value \$75.00.

No. 9 A tunnel, 5x7 ft. in size, the portal of which bears N. 46° E., 400 ft. from Cor. No. 4 Cougar lode; running S. 80° W., 40 ft. to breast, partly caved. Value \$350.00.

No. 1 Discovery shaft of the Oro Real lode, the center of which being the discovery point, is on the lode line 976.59 ft. from a point on line 1-2, 280.36 ft. from Cor. No. 1; 6x12 ft., 8 ft. deep. Value \$100.00.

No. 2 A cut, the mouth of which bears N. 76° E., 500 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 8 ft. face, running N. 45° E., 20 ft. to face, partly caved. Value \$100.00.

No. 3 A tunnel, 6x7 ft. in size, and known as No. 8, the portal of which bears No. 17° 59' W.; 209.35 ft. from Cor. No. 3 Oro Real lode; running No. 52° E., 135 ft. to breast, partly caved. Value \$2,000.00.

No. 4 A cut, the mouth of which bears S. 57° 30' E., 265 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 10 ft. face, running S. 46° W. 10 ft. to face. Value \$125.00.

No. 5 A cut, the mouth of which bears S. 39°30' E. 110 ft. from Cor. No. 1 Oro Real lode; 6 ft. wide, 4 ft. face, running S. 5° W., 20 ft. to face. Value \$50.00.

No. 1 Discovery cut of the J. W. Merritt lode, the face of which being the discovery point, is on the lode line 290 ft. from a point on line 1-2, 293.02 from Cor. No. 1; 4 ft. wide, 8 ft. face, running N. 45° W. 12 ft. to face. Value \$100.00.

No. 2 A cut, the mouth of which is on the lode line of the J. W. Merritt lode 185 ft. from a point on line 1-2, 293.02 ft. from Cor. No. 1; 4 ft. wide, 7 ft. face running N. 40 14 ft. to face. Value \$75.00.

No. 3 A shaft, the center of which bears S. 27°15' E., 290 ft. from Cor. No. 1 J. W. Merritt lode; 4x5 ft., 4 ft. deep, partly caved. Value \$35.00.

No. 4 A shaft, the center of which is on the lode line of the J. W. Merritt lode 80 ft. from a point on line 1-2, 293.02 from Cor. No. 1; 4x6 ft., 5 ft deep. Value \$50.00.

No. 1 Discovery shaft of the Peter Applegate lode, the south side of which being the discovery point, is on the lode line 22 ft. from a point on line 4-1, 293.02 ft. from Cor. No. 1; 4x6 ft., 4 ft. deep. Value \$40.00.

No. 2 A shaft, the center of which bears S. 86°10' E., 380 ft. from Cor. No. 1 Peter Applegate lode; 4x6 ft., 4 ft. deep. Value \$35.00.

No. 3 A shaft, the center of which bears S. 51° 30' E., 270 ft. from Cor. No. 1 Peter Applegate lode; 4x5 ft., 4 ft. deep. Value \$35.00.

No. 4 A shaft, the center of which bears N. 54° 25' E., 1380 ft. from Cor. No. 1 Peter Applegate lode; 4x8 ft., 6 ft. deep. Value \$100.00.

No. 5 A cut, the face of which bears N. 86° E., 200 ft. from Cor. No. 1 Peter Applegate lode; 5 ft. wide, 6 ft. face, running N. 83° W., 15 ft. to face. Value \$70.00.

No. 6 A cut, the mouth of which bears N. 6° 10' W., 350 ft. from Cor. No. 4 Peter Applegate lode; 5 ft. wide, 4 ft. face, running N. 5° E., 16 ft. to face, partly caved. Value \$60.00.

No. 1 Discovery cut of the Oro Escondido lode, the center of which being the discovery point, is on the lode line, 1,258.41 ft. from a point on line 4-1, 293.02 ft. from Cor. No. 1; 12 ft. wide, 8 ft. face, running S. 70° E., 7 ft. to mouth and N. 70° W. 7 ft. to face. Value \$150.00.

No. 2 A cut, the mouth of which bears N. 38° E., 45 ft. from Cor. No. 4 Oro Escondido lode; 8 ft. wide, 5 ft. face, running N. 65° W., 12 ft. to face. Value \$100.00.

No. 1 Discovery cut of the W. C. Leever lode, the face of which being the discovery point, is on the lode line, 83 ft. from a point on line 1-2, 300 ft. from Cor. No. 1; 5 ft. wide, 6 ft. face, running W., 15 ft. to face. Value \$85.00.

No. 2 A cut, the mouth of which bears N. 42° W., 182 ft. from Cor. No. 1 W. C. Leever lode; 4 ft. wide, 6 ft. face, running N. 55° 30' E., 10 ft. to face. Value \$60.00.

No. 3 A cut, the face of which bears N. 28° W., 360 ft. from Cor. No. 1 W. C. Leever lode; 12 ft. wide, 8 ft. face, running S. 53° W., 15 ft. to face. Value \$200.00.

No. 1 Discovery tunnel of the Mark Applegate lode, the center of which being the discovery point is on the lode line, 1,499 ft. from the center of line 4-1; 6x7 ft. in size and known as No. 5, the portal of which bears N. 46° 36' W., 175.46 ft. from Cor. No. 3, Mark Applegate lode, running N. 41° 35' W., 51.25 ft. to Sta. 2; thence N. 40° 05' W., 49.7 ft. to Sta. 3, and N. 61° 30' E., 70.4 ft. to breast. At Sta. 3 a tunnel, 5x7 ft. in size, runs N. 41° 04' W., 49.15 ft. to Sta. 4 and S. 43° 32' W., 53.15 ft. to breast. At Sta. 4 the tunnel runs N. 3° 41' E. 21.45 ft. to breast, partly caved. Value \$3,500.00.

No. 2 A shaft, the center of which bears S. 11° 6' E., 291.68 ft. from Cor. No. 2, Mark Applegate lode; 4x6 ft., 10 ft. deep. Value \$100.00.

No. 1 Discovery shaft of the H. McKenzie lode, the center of which being the discovery point is on the lode line 1,481.59 ft. from the center of line 1-2; 4x6 ft., 6 ft. deep. Value \$75.00.

No. 2 A shaft, the center of which bears S. 62° 30' E., 280 ft. from Cor. No. 4, H. McKenzie lode; 4x10 ft., 8 ft. deep. Value \$100.00.

No. 3 A tunnel, 5 x 7 ft. in size, known as No. 3, the portal of which bears N. 9° 16' E., 321.81 from Cor. No. 3 H. McKenzie lode; running N. 43° W., 12 ft. to Sta. A; thence S. 44° W., 9 ft. to breast and N. 44° E., 10 ft. to breast. At Sta. A a winze with an inclination of 35° runs N. 40° W., 23 ft. to bottom. Value of tunnel and winze \$700.00.

No. 1 Discovery out of the J. L. Grubb lode, the center of which being the discovery point is on the lode line, 388 ft. from the center of line 4-1; 5 ft. wide, 10 ft. face, running S. 10 ft. to the mouth and N. 10 ft. to face. Value \$200.00.

No. 2 A shaft, the center of which bears S. 84° W. 450 ft. from Cor. No. 1 J. L. Grubb lode; 5 x 8 ft., 6 ft. deep. Value \$75.00.

No. 3 A cut, the mouth of which bears S. 65° 20' W., 587 ft. from Cor. No. 1, J. L. Grubb lode; 5 ft. wide, 6 ft. face, running S. 65° W., 20 ft. to face. Value \$150.00.

No. 4 A shaft, the center of which bears S. 63° 50' W., 550 ft. from Cor. No. 1 J. L. Grubb lode; 4 x 10 ft. deep. Value \$75.00.

No. 5 A cut, the mouth of which bears N. 4° 10' W., 265 ft. from Cor. No. 2 J. L. Grubb lode; 16 ft. wide, 12 ft. face, running N. 6 ft. to face. Value \$125.00.

No. 1 Discovery shaft of the J. D. McKinnon lode, the center of which being the discovery point is on the lode line 233 ft. from the center of line 1-2; 4x6 ft., 8 ft. deep. Value \$75.00.

No. 2 A cut, the face of which bears N. 3° 10' W., 363 ft. from Cor. No. 1 J. D. McKinnon lode; 5 ft. wide, 10 ft. face, running N. 80° W., 24 ft. to face Value \$175.00.

No. 3 A cut, the mouth of which bears No. 30° 15' W., 242 ft. from Cor. No. 1 J. D. McKinnon lode; 4 ft. wide, 4 ft. face, running N. 21° W., 16 ft. to face Value \$50.00.

No. 1 Discovery shaft of the Henry Applegate lode, the center of which being the discovery point is on the lode line, 1,495 ft. from the center of line 4-1; 4x5 ft., 7 ft. deep. Value \$75.00.

No. 2 A cut, the face of which bears N. 79° E., 372 ft. from Cor. No. 1 Henry Applegate lode; 5 ft. wide, 8 ft. face, running N. 24° E., 27 ft. to face. Value \$100.00.

No. 3 A cut, the mouth of which bears N. 73° 45' E., 140 ft. from Cor. No. 1 Henry Applegate lode; 4 ft. wide, 5 ft. face, running N. 77° E. 38 ft. to face. Value \$200.00.

No. 1 Discovery cut of the A. W. Dahlberg lode, the face of which being the discovery point is on the lode line 260 ft. from the center line 1-2; 6 ft. wide, 6 ft. face, running N. 19 ft. to face. Value \$125.00.

No. 2 A cut, the face of which bears S. 16°05' E., 365 ft. from Cor. No. 4 A. W. Dahlberg lode; 5 ft. wide, 8 ft. face, running N. 61°30' W., 22 ft. to face. At the face of cut is the portal of a tunnel, 5x7 ft. in size, running N. 9° W., 15 ft. to breast. Value of cut and tunnel \$300.00

No. 3 A cut, the face of which bears N. 83° W., 90 ft. from Cor. No. 1, A. W. Dahlberg lode; 6 ft. wide, 5 ft. face, running N. 31° E., 12 ft. to face. Value \$75.00.

No. 1 Discovery cut of the Telluride lode, the face of which being the discovery point is on the lode line 1,306.93 ft. from the center of line 1-2; 4 ft. wide, 10 ft. face, running N. 14° W., 10 ft. to face. Value \$100.00.

No. 2 A Tunnel 5x7 ft. in size, known as No. 4, the portal of which bears N 68° 54' E., 118.97 ft. from Cor. No. 4 Telluride lode, running N. 12 ft. to Sta. 1; thence N. 30°15' E., 15 ft. to Sta. 2; thence N. 3° E., 20 ft. to Sta. 3; thence N. 85° W. 5 ft. to breast. Value \$830.00.

No. 3 A cut, the face of which bears S. 33°30' E., 238 ft. from Cor. No. 1 Telluride lode; 6 ft. wide, 5 ft. face, running N. 75°15' W., 12 ft. to face. Value \$50.00.

No. 4 A Cut, the face of which bears S. 52°10' W., 415 ft. from Cor. No. 2 Telluride lode; 5 ft. wide, 10 ft. face, running N. 50° W., 12 ft. to face. Value \$60.00.

No. 1 Discovery cut of the Alabama lode, the center of which being the discovery point is on the lode line 1,452 ft. from the center of line 1-2; 4 ft. wide, 6 ft. face, running N. 15° W., 5 ft. to face and S. 15° E., 5 ft. to mouth. Value \$75.00.

No. 2 A cut, the face of which bears S. 31°25' W., 930 ft. from Cor. No. 1 Alabama lode; 5 ft. wide, 7 ft. face, running N. 51°15' W., 16 ft. to face. Value \$100.00.

No. 1 Discovery cut of the Rainboe lode, the face of which being the discovery point, is on the lode line 320 ft. from center of line 1-2; 8 ft. wide, 8 ft. face, running N. 63°30' W., 15 ft. to face. Value \$100.00.

No. 2 A shaft, the center of which bears N. 7° W., 455 ft. from Cor. No. 1 Rainboe lode; 4x6 ft., 3 ft. deep. Value \$35.00.

No. 3 A shaft, the center of which bears N. 15°30' W., 462 ft. from Cor. No. 1 Rainboe lode; 8x8 ft., 4 ft. deep. Value \$70.00.

No. 4 A shaft, the center of which bears S. 86° W., 320 ft. from Cor. No. 1 Rainboe lode; 4x6 ft., 5 ft. deep, partly caved. Value \$60.00.

No. 5 A cut, the mouth of which bears N. 49° 15' W., 574 ft. from Cor. No. 1 Rainboe lode; 5 ft. wide, 10 ft. face, running N. 44° W., 20 ft. to face. Value \$125.00.

No. 6 A shaft, the center of which bears N. 51° 20' W., 624 ft. from Cor. No. 1 Rainboe lode; 10 x 8 ft., 6 ft. deep, partly caved. Value \$100.00.

No. 1 Discovery cut of the Delia McKinnon lode, the center of which being the discovery point, is on the lode line 390 ft. from the center of line 1-2; 5 ft. wide, 10 ft. face, running S. 71° E., 12 ft. to mouth and N. 71° W. 12 ft. to face. Value \$165.00.

No. 2 A shaft, the center of which bears N. 84° W., 450 ft. from Cor. No. 1 Delia McKinnon lode; 6 x 6 ft., 5 ft. deep. Value \$60.00.

No. 3 A cut, the face of which bears S. 80° W., 310 ft. from Cor. No. 1 Delia McKinnon lode; 4 ft. wide, 4 ft. face, running N. 5° W., 20 ft. to face, partly caved. Value \$75.00.

No. 4 A shaft, the center of which is on the lode line 134 ft. from the center of line 1-2 Delia McKinnon lode; 4 x 8 ft., 4 ft. deep. Value \$50.00.

No. 5 A cut, the face of which bears N. 48° 15' W., 410 ft. from Cor. No. 1 Delia McKinnon lode; 8 ft. wide, 10 ft. face, running N. 76° W., 15 ft. to face. Value \$75.00.

No. 6 A cut, the mouth of which bears N. 56° W., 582 ft. from Cor. No. 1 Delia McKinnon lode; 5 ft. wide, 10 ft. face, running N. 74° W., 22 ft. to face. Value \$100.00.

No. 1 Discovery shaft of the Sulphide lode, the center of which being the discovery point, is on the lode line 643 ft. from the center of line 4-1; 4x11 ft., 4 ft. deep. Value \$50.00.

No. 2 A shaft, the center of which bears N. 16° 10' E. 526 ft. from Cor. No. 2 Sulphide lode; 5 x 8 ft., 10 ft. deep. Value \$100.00.

No. 3 A shaft, the center of which bears N. 67° E., 700 ft. from Cor. No. 3 Sulphide lode; 4 x 10 ft., 6 ft. deep. Value \$75.00.

No. 4 A shaft, the center of which bears N. 65° 45' E., 742 ft. from Cor. No. 3 Sulphide lode; 6 x 9 ft., 7 ft. deep. Value \$75.00.

No. 5 A shaft, the center of which bears S. 22° W., 724 ft. from Cor. No. 4 Sulphide lode; 4 x 8 ft., 3 ft. deep, partly caved. Value \$35.00.

No. 6 A shaft, the center of which bears N. 0° 32' W., 287.51 ft. from Cor. No. 2 Sulphide lode; 5 x 10 ft., 10 ft. deep. Value \$125.00.

No. 7 A cut, the face of which bears S. 18° 05' W., 780 ft. from Cor. No. 4 Sulphide lode; 4 ft. wide, 5 ft. face, running N. 5° E., 20 ft. to face. Value \$60.00.

No. 8 A cut, the face of which bears S. 18° 15' W., 847 ft. from Cor. No. 4 Sulphide lode; 5 ft. wide, 6 ft. face, running N. 16 ft. to face. Value \$60.00.

No. 9 A cut, the face of which bears S. 20° E., 73 ft. from Cor. No. 4 Sulphide lode; 5 ft. wide, 10 ft. face, running S. 83° 30' E., 7 ft. to face, partly caved. Value \$50.00.

No. 1 Discovery cut of the Staples lode, the face of which being the discovery point, is on the lode line 1,150 ft. from the center of line 1-2; 6 ft. wide, 10 ft. face, running N. 64° E., 12 ft. to face. Value \$100.00.

No. 2 A cut, the face of which bears S. 61° W., 718 ft. from cor. No. 2 Staples lode; 6 ft. wide, 5 ft. face, running N. 45° E., 12 ft. to face, partly caved. Value \$75.00.

No. 3 A cut, the face of which bears S. 55° E., 75 ft. from cor. No. 4, Staples lode; 12 ft. wide, 10 ft. face, running S. 72° E., 7 ft. to face. Value \$100.00.

No. 1 Discovery cut of the Manganese lode, the face of which being the discovery point, is on the lode line 1070.93 ft. from the center of line 4-1; 5 ft. wide, 9 ft. face, running N. 7 ft. to face. Value \$60.00.

No. 2 A cut, the face of which is on the lode line 1010 ft. from the center of line 4-1 Manganese lode, 5 ft. wide, 4 ft. face, running N. 88° W., 8 ft. to face. Value \$40.00.

No. 3 A cut, the face of which is on the lode line 818 ft. from the center line 4-1 Manganese lode, 5 ft. wide, 7 ft. face, running N. 5° W., 12 ft. to face. Value \$75.00.

No. 4 A cut, the face of which bears S. 61° 30' W., 860 ft. from Cor. No. 1 Manganese lode; 5 ft. wide, 2 ft. face, running N. 34° W., 15 ft. to face. Value \$35.00.

No. 1 Discovery cut of the La Jolla lode, the face of which being the discovery point, is on the lode line 1,330 ft. from the center of line 1-2; 8 ft. wide, 6 ft. face running N. 46° E., 12 ft. to face. Value \$100.00.

No. 2 A cut, the face of which is on the lode line 90 ft. from the center of line 3-4 La Jolla lode; 12 ft. wide, 5 ft. face, running N. 46° E., 6 ft. to face. Value \$65.00.

No. 3 A shaft, the center of which bears S. 31°30' E., 82 ft. from cor. No. 3 La Jolla lode; 5 x 6 ft., 8 ft. deep. Value \$75.00.

No. 1 Discovery out of the Arroyo Verde lode, the center of which being the discovery point, is on the lode line 780 ft. from the center of line 1-2, 8 ft. wide, 10 ft. face, running S. 5° W., 8 ft. to mouth and N. 5° E., 8 ft. to face. Value \$150.00.

A common improvement described as follows:

No. 1. A tunnel, 6 x 7 feet, in size, known as No. 2, the portal of which bears N. 53°39' W., 772.12 ft. from Cor. No. 1 A. W. Dahlberg lode, running N. 51°17' W., 28 ft. to Sta. A1; thence N. 33°32' W., 24 ft. to pt. AX and 40.44 ft. to Sta. A2, and North 25 ft. to pt. X. At pt. X a drift 5 x 7 ft. in size, runs N. 40° W. 30 ft. to breast. At pt. AX a crosscut, 5 x 7 ft. in size, runs W. 20 ft. to breast. At Sta. A2 a tunnel, 6 x 7 ft. in size, runs N. 39°35' W., 66.26 ft. to Sta. A3; thence N. 59°49' W. 38.82 ft. to Sta. A4; thence N. 66°37' W., 121.45 ft. to Sta. A5; thence N. 78°38' W., 170.33 ft. to Sta. A6; thence N. 41°45' W., 179.05 ft. to Sta. A7; thence N. 39°4' W., 71.22 ft. to Sta. A8; thence N. 33°40' W., 62.05 ft. to Sta. A9; thence N. 44°52' W., 129.74 ft. to Sta. A10; thence N. 44°52' W. 141.09 ft. to pt. X1 and 215.56 ft. to Sta. A15. At Sta. A10 a crosscut, 10 x 7 ft. in size, runs N. 42°09' E., 9.73 ft. to Sta. A16 and a crosscut, 6 x 7 ft. in size, runs S. 38° W., 13 ft. to Sta. A11; thence S. 72° W., 25 ft. to Sta. A12; thence S. 60° W., 105 ft. to Sta. A13; thence S. 48° W. 61 ft. to breast. At Sta. A16 a drift, 6 x 7 ft. in size, runs N. 39°51' W., 10 ft. to pt. D and 140 ft. to Sta. Y. This drift also runs S. 54°45' E., 23 ft. to breast. A crosscut, 6 x 7 ft. in size, beginning at Sta. A16 runs N. 52°30' E. 30 ft. to breast. Pt. D is at the beginning of No. 1 stope which averages 38 ft. long, 5 ft. wide, and 125 ft. high. At pt. X1 a crosscut, 8 x 7 ft. in size, runs N. 40° E., 25 ft. and connects with the drift at Sta. Y. At Sta. A15 a drift, 7 x 7 ft. in size, runs N. 50°30' W., 21.22 ft. to Sta. A18, and a crosscut, 10 x 7 ft. in size, runs N. 27°27' E. 15 ft. to Sta. A17. At Sta. A17 a drift, 8 x 7 ft. in size, runs N. 45° W., 15 ft. to breast; a crosscut, 6 x 7 ft. in size, runs N. 41° E., 24 ft. to a caved breast, and a drift, 6 x 7 ft. in size, runs S. 38° E., 15 ft. to breast. Sta. A17 is below a two compartment raise, 5 x 10 ft. in size, running up 30 ft. to Stope #4, which averages 30 ft. long, 5 ft. wide, and 30 ft. high. Sta. Y is in the center of stope 2-3 which averages 35 ft. long, 5 ft. wide, and 150 ft. high. At Sta. Y a drift, 7 x 7 ft. in size, runs N. 4° W., 44 ft. to Sta. Z; thence N. 70° W., 30 ft. to Sta. A17. At Sta. A18 a drift, 6 x 7 ft. in size, runs N. 25°31' W., 36.29 ft. to Sta. A19; thence N. 38° W., 22 ft. to Sta. A20, and N. 16°35' E., 40 ft. to the breast of a crosscut, 5 x 7 ft. in size. Sta. A19 is the beginning of stope No. 5, which averages 35 ft. long, 5 ft. wide, and 50 ft. high. At Sta. A20 a drift, 6 x 7 ft. in size, runs N. 40°11' W. 62.85 ft. to Sta. A21; thence N. 30°30' W., 60.29 ft. to Sta. A22. A crosscut, 5 x 7 ft. in size which begins at Sta. A21 runs S. 57° W., 50 ft. to breast, partly following Sta. A21 is the beginning of Stope 6-7 which averages 30 ft. long, 5 ft. wide, and 110 ft. high. Sta. A22 is below the center of stope No. 8, which averages 40 ft. long, 5 ft. wide, and 55 ft. high. At Sta. A22 a drift, 6 x 7 ft. in size, runs N. 25°15' W. 38.92 ft. to Sta. A23; thence N. 32° W., 80.82 ft. to Sta. A24; thence N. 36°25' W., 53.6 ft. to breast. Sta. A23 is at the beginning of stope No. 9 which averages 22 ft. long, 5 ft. wide, and 55 ft. high.

No. 2. A tunnel, 6 x 7 ft. in size known as No. 1, the portal of which bears S. 29°3' W., 521.02 ft. from Cor. No. 2 Peter Applegate lode, running S. 74° E., 176 ft. to Sta. B3; thence S. 73° 57' E., 112.73 ft. to Sta. B4; thence N. 30° E., 527.43 ft. to Sta. B5; thence N. 77°37' E., 53.5 ft. to breast. At Sta. B5 a drift, 7 x 7 ft. in size, runs N. 47° 16' W., 20 ft. to pt. A and 87.5 ft. to Sta. B6. Pt. A is at the top of a rise, 5 x 8 ft. in size, which comes up from Sta. No. 4 and connects with No. 2 tunnel at Sta. A17. The raise has a length of 290 ft. and partly timbered. At Sta. B5 a drift, 7 x 7 ft. in size, runs N. 33° W., 29.91 ft. to Sta. B7, thence N. 46° 00' W., 27.6 ft. to Sta. B8, thence N. 2° 19' W., 19 ft. to breast. At Sta. B5 a drift, 7 x 7 ft. in size, runs S. 37° 17' E. 45 ft. to pt. B and 100 ft. to breast. A stope, the center of which is above pt. B averages 80 ft. long, 5 ft. wide and 60 ft. high. Pt. B is also the center of a stope, below the level, which averages 43 ft. long, 5 ft. wide, 50 ft. deep and connects with the raise between tunnels No. 1 and No. 2.

No. 3 A tunnel, 5 x 7 ft. in size, known as No. 6, the portal of which bears N. 49° 41' E., 9.37 ft. from Cor. No. 4, H. McKenzie lode, running S. 66° 20' E., 52 ft. to pt. 1 and 107 ft. to Sta. 2. At pt. 1 a crosscut, 5 x 7 ft. in size, runs S. 25° E., 22 ft. to breast. At 8th, 2 a crosscut, 5 x 7 ft. in size, runs N. 33° E., 11 ft. to the top of a raise, 5 x 7 ft. in size, which connects with the top of the stope above tunnel No. 1. The raise has a length of 65 ft. At Sta. 2 a 5 x 7 ft. drift runs S. 47° 05' E., 65 ft. to Sta. 3; thence S. 30° E., 30 ft. to Sta. 4; thence S. 40° E., 46 ft. to Sta. 5. At Sta. 4 a crosscut 5 x 7 ft. in size, runs S. 69° W., 48 ft. to breast. At Sta. 5 a cross, 5 x 7 ft. in size runs W. 38° 45' E., 115 ft. to breast; another 5 x 7 ft. crosscut runs N. 83° 55' E., 31 ft. to breast, and a drift, 5 x 7 ft. in size, runs S. 4° W., 16 ft. to breast.

Value of tunnels, drifts, raises, crosscuts and stopes, \$63,500.00.

#### OTHER IMPROVEMENTS

A frame assay office, the east corner of which bears N. 43° 02' W., 511.08 ft. from Cor. No. 1, A. W. Dahlberg lode; 14 x 17 ft. in size, the long side bears S. 31° 30' W.

A frame tank shed, the east corner of which bears N. 47° 08' W., 478.8 ft. from Cor. No. 1, A. W. Dahlberg lode; 10 x 38 ft. in size, the long side bears N. 58° 30' W. A frame building which houses a flotation mill and a diesel power plant. The east corner of the building bears N. 49° 14' W., 523.42 ft. from Cor. No. 1, A. W. Dahlberg lode; 56 x 80 ft. in size, the long side bears N. 58° 30' W.

A frame concentrates drying shed, the south corner of which bears N. 52° 28' W., 497.36 ft. from Cor. No. 1, A. W. Dahlberg lode; 12 x 16 ft. in size, the long side bears N. 31° 30' W.

A frame shop and timber shed, the south corner of which bears N. 55° 24' W. 726.02 ft. from Cor. No. 1, A. W. Dahlberg lode, 30 x 42 ft. in size; the long side bears N. 37° 30' E.

A frame and log office and storehouse, the NE. Cor. of which bears N. 57° 40' W., 187 ft. from Cor. No. 1, A. W. Dahlberg lode; 18 x 52 ft. in size; the long side bears S. 25° 15' W.

A frame boarding house, the NE. Cor. of which bears N. 83° 30' W., 192 ft. from Cor. No. 1, A. W. Dahlberg lode; 18 x 38 ft. in size; the long side bears S. 25° W.

A frame bunk house the N.E. Cor. of which bears S. 85° W. 210 ft. from Cor. No. 1 A. W. Dahlberg lode; 17 x 32 ft. in size; the long side bears S. 25° W.

A frame bunk house, the N. E. Cor. of which bears S. 63° 50' W. 212 ft. from Cor. No. 1, A. W. Dahlberg lode; 14 x 20 ft. in size; the long side bears S. 20° W.

A frame bunk house, the N. E. Cor. of which bears S. 56° W., 265 ft. from Cor. No. 1 A. W. Dahlberg lode; 14 x 15 ft. in size; the long side bears S. 38° W.

4-207 (May 1954)

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C., February 16, 1956.

I hereby certify that the annexed photostatic copy of the field notes for Mineral Survey No. 879 in the Elk Creek Mining District, Oregon, is a true and literal exemplification of the record on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

OSCAR E. COLLINS,  
Certifying Officer.

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT  
MINERAL SURVEY No. 879—OREGON DISTRICT (LAND DISTRICT)

FIELD NOTES OF THE SURVEY OF THE MINING CLAIM OF AL SARENA MINES, INC., KNOWN  
AS THE AL SARENA GROUP

Elk Creek (unorganized) Mining District, Jackson County, Oregon, Sections 19, 20, 21, 28, 29, 30, Township 31 S., Range 2 E., W. M.

Surveyed under instructions dated October 15, 1946, by G. Cleveland Taylor, Mineral Surveyor.



Claim located, 5/11, 5/12, 5/14, 5/28, 6/6, 9/7; 10/20, 32; 12/9, 33; 5/25, 9/21, 34; 8/29, 10/26, 11/20, 36; 9/16, 39; 7/8, 44.

Survey commenced May 12, 1947.

Survey completed August 6, 1947.

Address of claimant: H. P. McDonald, Jr., Sec'y., Trail, Oregon.

Dates of amended locations: 8/31/97; 10/2/46; 7/3/47.

H. McKenzie lode, located May 11, 1897, amended July 3, 1947.

Mark Applegate lode, located May 11, 1897, amended July 3, 1947.

Peter Applegate lode, located May 11, 1897, amended July 3, 1947.

Delia McKinnon lode, located June 6, 1897, amended July 3, 1947.

J. L. Grubb lode, located May 11, 1897, amended July 3, 1947.

J. D. McKinnon lode, located May 11, 1897, amended July 3, 1947.

A. W. Dahlberg lode, located May 11, 1897, amended July 3, 1947.

W. C. Leever lode, located May 11, 1897, amended July 3, 1947.

Henry Applegate lode, located May 11, 1897, amended July 3, 1947.

J. W. Merritt lode, located May 11, 1897, amended July 3, 1947.

Sulphide lode, located Sept. 21, 1934, amended July 3, 1947.

Telluride lode, located Oct. 20, 1932, amended July 3, 1947.

Manganese lode, located Oct. 20, 1932, amended July 3, 1947.

Staples lode, located June 25, 1934, amended July 3, 1947.

Arroyo Verde lode, located Aug. 27, 1936, amended July 3, 1947.

Alabama lode, located May 25, 1934, amended July 3, 1947.

Oro Escondido lode, located Aug. 29, 1936, amended July 3, 1947.

Cougar lode, located Nov. 20, 1936, amended July 3, 1947.

Oro Real lode, located Nov. 20, 1936, amended July 3, 1947.

La Jolla lode, located Aug. 26, 1936, amended July 3, 1947.

Rainbow lode, located Dec. 9, 1933, amended July 3, 1947.

Oro Rico lode, located July 28, 1939, amended July 3, 1947.

Oro Alto lode, located July 28, 1939, amended July 3, 1947.

Ram lode, located July 8, 1944, amended July 3, 1947.

#### SURVEY NO. 879

##### Feet

Mineral Survey No. 879 was made with a Lietz Universal Transit No. 5426, with horizontal limb 5.75 ins. diam., having a double vernier, and full vertical circle 4.25 ins. diam., having one double vernier; the verniers read to one minute of arc; the eye piece is equipped with a colored glass shade set in the dust shutter for making direct observations upon the sun. The instrument was in good condition at the time of the survey and all adjustments were in good order. An a. m. altitude observation of the sun for time and azimuth, and at noon on the meridian for latitude, were made at the point of beginning, the details of which observation are shown in the calculation sheets herewith submitted for examination. All azimuths in this record are referred to the true meridian thus determined, by the method of deflection angles and calculated courses. The lines were measured with a Pioneer steel tape 300 feet in length, graduated every foot; and a K. & E. steel tape 6 feet in length, graduated to feet, tenths and hundredths; both tapes were compared with a K. & E. standard at the time of beginning the survey and found to be correct. All lines and connections of this survey were run by direct methods where the lines are accessible; the inaccessible lines were run by traverse methods, as shown by the calculation sheets herewith submitted.

The magnetic variation observed at each corner of the survey gave a uniform value of 20° 00' E.

#### RAM LODGE

Beginning at Cor. 1 of the Ram Lode, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked R-1-0 Ri-1-0 A-2-879; from which

The cor. of secs. 19, 20, 29, and 30, T. 31 S., R. 2 E., W. 11 Mer. bears N. 75° 57' W., 592.25 ft. dist.; a gray stone 8×10×12 ins. firmly set, marked and witnessed as described in the official record. A white fir, 12 ins. diam., bears N. 5° W., 16.0 ft. dist., m&d R-1-0 Ri-1-0 A-2-879 B T.

A chinquapin, 9 ins. diam., bears S. 17° E., 19.0 ft. dist., m&d

	<b>R-1-0 Ri-1-0 A-2-879 B T.</b>
	Thence N. 42°34' W.
<b>1, 451. 84</b>	Cor. No. 2.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. R-2-879; from which
	A white fir, 12 ins. diam., bears S. 34° E., 8.0 ft. dist., mkd. R-2-879 B T.
	Thence N. 45°50' E.
<b>300. 00</b>	Intersect lode line.
<b>600. 00</b>	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, marked R-3-879; from which
	A hemlock, 11 ins. diam., bears S. 3° E., 23.5 ft. dist., mkd. R-3-879-B T.
	A white fir, 8 ins. diam., bears N. 45° E., 13.5 ft. dist., mkd. R-3-879-B T.
	Thence S. 42°34' E.
<b>1, 200. 00</b>	West Fork of Swanson Creek, 3 feet wide, course S. 15° E.
<b>1, 451. 84</b>	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground, and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. R-4-0 Ri-2-879; from which
	A yew, 13 ins. diam., bears N. 79° E., 21.0 ft. dist., mkd. R-4-0 Ri-2-879-B T.
	A red fir, 24 ins. diam., bears S. 12° E., 12.5 ft. dist., mkd. R-4-0 Ri-2-879 B T.
	Thence S. 45°50' W.
<b>110. 00</b>	West Fork of Swanson Creek, 3 feet wide, course S. 5° E.
<b>300. 00</b>	Intersect lode line.
<b>600. 00</b>	Cor. No. 1 and place of beginning.

## ORO ALTO LODGE

Beginning at Cor. No. 1 of the Oro Alto lode, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked OA-1-879; from which

The cor. of secs. 19, 20, 29, and 30, T. 31 S., R. 2 E., Wil Mer., bears N. 14°22' W., 579.97 ft. dist.; previously described.

A white fir, 6 ins. diam., bears N. 67° W., 9.0 ft. dist., mkd. OA-1-879-BT.

A white fir, 6 ins. diam., bears N. 34° E., 11.0 ft. dist., mkd. OA-1-879-BT.

Thence N. 45°50' E.

**300. 00** Intersect lode line.

**600. 00** Cor. No. 2, which is identical with Cor. No. 1 of the Ram lode of this survey.

Thence S. 44°31' E.

**500. 00** West Fork of Swanson Creek, 3 feet wide, course south.

**1, 210. 00** Bitterlick road, bears N. 5° E. and S. 5° W.

**1, 435. 10** Cor. No. 3.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. OA-3-0 Ri-4-0 Re-4-C-2-879; from which

A red fir, 17 ins. diam., bears N. 59° E., 20.5 ft. dist., mkd. OA-3-0 Ri-4-0 Re-4-C-2-879-BT.

A red fir, 5 ins. diam., bears E., 21.0 ft. dist., mkd. O-A-3-0 Ri-4-0 Re-4-C-2-879-BT.

Thence S. 45°50' W.

**300. 00** Intersect lode line.

**600. 00** Cor. No. 4.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. OA-4-879; from which

Feet

A madrone, 8 ins. diam., bears N. 80° W., 13.0 ft. dist., mkd OA-4-879 BT.

A red fir, 10 ins. diam., bears S. 12° E., 5.5 ft. dist., mkd OA-4-879-BT.

Thence N. 44° 31' W.

- 30.00 Bitterlick road, bears northeast and southwest.
- 358.00 Bitterlick road, bears N. 25° W. and S. 25° E.
- 565.00 West Fork of Swanson Creek, 3.5 feet wide, course south.
- 585.00 Bitterlick road, bears northeast and southwest.
- 1,435.10 Cor. No. 1, and place of beginning.

## ORO RICO LODE

Beginning at Cor. No. 1 of the Oro Rico Lode, which is identical with Cor. No. 1 of the Ram lode and Cor. No. 2 of the Oro Alto lode of this survey.

Thence N. 45° 50' E.

- 300.00 Intersect lode line.
- 490.00 West Fork of Swanson Creek, 3 feet wide, course S. 5° E.
- 600.00 Cor. No. 2, which is identical with Cor. No. 4 of the Ram lode of this survey.
- Thence S. 44° 31' E.
- 710.00 Bitterlick road, bears north and south.
- 1,190.00 Swanson Creek, 5 feet wide, course S. 5° E.
- 1,240.00 Trail, bears N. 5° W. and S. 5° E.
- 1,435.10 Cor. No. 3.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and a mound of stone 18 ins. high, for Cor. No. 3, mkd. O Ri-3-879; from which

A red fir, 10 ins. diam., bears S. 68° W., 13.0 ft. dist., mkd O Ri-3-879-B T.

A red fir, 5 ins. diam., bears N. 42° E., 5.0 ft. dist., mkd O Ri-3-879-B T.

Thence S. 45° 50' W.

- 300.00 Intersect lode line.
- 335.00 Trail, bears N. 20° E. and S. 20° W.
- 425.00 Swanson Creek, 5 feet wide, course south.
- 600.00 Cor. No. 4, which is identical with Cor. No. 3 of the Oro Alto lode of this survey.
- Thence N. 44° 31' W.
- 225.10 Bitterlick road, bears N. 5° E. and S. 5° W.
- 885.10 West Fork of Swanson Creek, 3 feet wide, course south.
- 1,435.10 Cor. No. 1 and place of beginning.

## COUGAR LODE

Beginning at Cor. No. 1 of the Cougar Lode, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and a mound of stone 18 ins. high, for Cor. No. 1, marked C-1-879; from which

The ¼ sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., W. 1/4 Mer., bears S. 49° 01' W., 659.90 ft. dist.; a gray stone 8x10x14 ins. firmly set, marked and witnessed as described in the official record.

A white fir, 10 ins. diam., bears N. 45° W., 23.0 ft. dist., mkd C-1-879-B T.

A cedar, 5 ins. diam., bears N. 60° E., 10.0 ft. dist., mkd C-1-879-B T.

Thence N. 45° 50' E.

- 200.00 Bitterlick road, bears N. 8° W. and S. 10° E.
- 490.00 West Fork of Swanson Creek, 4 feet wide, course S. 10° E.
- 900.00 Corner No. 4 of the Oro Alto lode of this survey.
- 1,500.00 Cor. No. 2, which is identical with Cor. No. 3 of the Oro Alto lode and Cor. No. 4 of the Oro Rico lode, of this survey.
- Thence S. 45° 25' E.
- 280.36 Intersect lode line.
- 350.00 Swanson Creek, 5 feet wide, course S. 26° W.
- 390.00 Trail, bears N. 25° E. and S. 25° W.

Feet

580.36	Cor. No. 3. Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. C-3-O Re-3-P A-2-879; from which A hemlock, 12 ins. diam., bears S. 82° W., 14.0 ft. dist., mkd. C-3-O Re-3-P A-2-879-B T. A white fir, 9 ins. diam., bears N. 35° E., 17.5 ft. dist., mkd. C-3 O Re-3-P A 2-879-B T. Thence S. 45°50' W.
510.00	Swanson Creek, 5 feet wide, course S.; West Portal Road, bears N. 23° E. and S. 23° W.
1,220.00	West Fork Swanson Creek, 4 feet wide, course S. 30° E.
1,360.00	Bitterlick road, bears north and south.
1,500.00	Cor. No. 4. Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. C-4-JWM-1-P A-1-879; from which A white fir, 8 ins. diam., bears N. 32° E., 44.0 ft. dist., mkd. C-4-JWM-1-P A-1-879-B T. A cedar, 18 ins. diam., bears E., 32.0 ft. dist., mkd. C-4-JWM-1-P A-1-879-B T. Thence N. 45°25' W.
300.00	Intersect lode line.
580.36	Cor. No. 1 and place of beginning.

## ORO REAL LODE

Beginning at Cor. No. 1 of the Oro Real Lode, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked O Re-1-879; from which

The ¼ sec. cor., between secs. 20 and 29, T. 31 S., R. 2 E., Wil. Mer., bears S. 10°26' E., 67.10 ft. dist.; a dark stone, 10 x 12 x 16 ins., firmly set, marked and witnessed as described in the official record.

A white fir, 11 ins. diam., bears N. 30° W., 6.0 ft. dist., mkd. O Re-1-879-B T.

A white fir, 9 ins. diam., bears N. 65° E., 7.0 ft. dist., mkd. O Re-1-879-B T.

Thence S. 45°25' E.

280.36 Intersect lode line.

550.00 Summit of ridge, bears N. and S.

580.36 Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. O Re-2-OE-1-879; from which

A red fir, 40 ins. diam., bears S. 45° W., 9.5 ft. dist., mkd. O Re-2-OE-1-879-B T.

A red fir, 48 ins. diam., bears N. 20° E., 24.0 ft. dist., mkd. O Re-2-OE-1-879-B T.

Thence S. 45°50' W.

35.00 Summit of ridge, bears north and south.

1,486.59 Cor. No. 3, which is identical with Cor. No. 3 of the Cougar lode of this survey.

Thence N. 45°25' W.

190.36 Trail, bears N. 25° E. and S. 25° W.

230.36 Swanson Creek, 5 feet wide, course S. 26° W.

300.00 Intersect lode line.

580.36 Cor. No. 4, which is identical with Cor. No. 3 of the Oro Alto lode, Cor. No. 4 of the Oro Rico lode, and Cor. No. 2 of the Cougar lode, of this survey.

Thence N. 45°50' E.

175.00 Swanson Creek, 5 feet wide, course S.

265.00 Trail, bears N. 20° E. and S. 20° W.

600.00 Cor. No. 3 of the Oro Rico lode of this survey.

1,486.59 Cor. No. 1 and place of beginning.

## J. W. MERRITT LODE

## Feet

	Beginning at Cor. No. 1 of the J. W. Merritt Lode, which is identical with Cor. No. 4 of the Cougar lode, of this survey, from which
	The $\frac{1}{4}$ sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., Wil Mer., bears S. $88^{\circ}24'$ W., 911.85 ft. dist., previously described.
	Thence S. $46^{\circ}38'$ E.
120.00	Bitterlick road, bears N. $9^{\circ}$ E. and S. $14^{\circ}$ W.
293.02	Intersect lode line.
390.00	West Portal road, bears N. $25^{\circ}$ E. and S. $24^{\circ}$ W.
450.00	Swanson Creek, 5 feet wide, course S. $25^{\circ}$ W.
593.02	Cor. No. 2.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. JWM-2-PA-4-MA-1-879; from which
	A hemlock, 9 ins. diam., bears S. $58^{\circ}$ W., 27.0 ft. dist., mkd. JWM-2-PA-4-MA-1-879-B T.
	A hemlock, 12 ins. diam., bears N. $49^{\circ}$ W., 32.0 ft. dist., mkd. JWM-2-PA-4-MA-1-879-B T.
	Thence S. $45^{\circ}50'$ W.
290.00	Swanson Creek, 5.5 ft. wide, course S. $18^{\circ}$ W.
395.00	West Portal road, bears N. $16^{\circ}$ E. and S. $16^{\circ}$ W.
1,500.00	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. JWM-3-879; from which
	A white fir, 10 ins. diam., bears N. $17^{\circ}$ W., 34.0 ft. dist., mkd. JWM-3-879-B T.
	A red fir, 30 ins. diam., bears S. $20^{\circ}30'$ W.; 7.0 ft. dist., mkd. JWM-3-879-B T.
	Then N. $46^{\circ}38'$ W.
260.00	Bitterlick road, bears northeast and southwest.
300.00	Intersect lode line.
593.02	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground, and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. JWM-4-879; from which
	A chinquapin, 7 ins. diam., bears N. $3^{\circ}$ E., 35.0 ft. dist., mkd. JWM-4-879-B T.
	A red fir, 10 ins. diam., bears S. $84^{\circ}$ E., 17.5 ft. dist., mkd. JWM-4-879-B T.
	Thence N. $45^{\circ}50'$ E.
1,500.00	Cor. No. 1 and place of beginning.

## PETER APPLGATE LODE

	Begining at Cor. No. 1 of the Peter Applegate Lode, which is identical with Cor. No. 4 of the Cougar lode and Cor. No. 1 of the J. W. Merritt lode, of this survey.
	Then No. $45^{\circ}50'$ E.
140.00	Bitterlick road, bears north and south.
380.00	West Fork of Swanson Creek, 4 feet wide, course S. $30^{\circ}$ E.
990.00	Swanson Creek, 5 feet wide, course N. and S.; West Portal road, bears N. $23^{\circ}$ E., and S. $23^{\circ}$ W.
1,500.00	Cor. No. 2, which is identical with Cor. No. 3 of the Cougar lode and Cor. No. 3 of the Oro Real lode, of this survey.
	Thence S. $46^{\circ}38'$ E.
293.02	Intersect lode line.
593.02	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. PA-3-MA-2-HMcK 4-879; from which
	A red fir, 36 ins. diam., bears S. $17^{\circ}30'$ W., 22.0 ft. dist., mkd. PA-3-MA-2-HMcK 4-879-B T.
	A hemlock, 8 ins. diam., bears S. $88^{\circ}$ W., 32.0 ft. dist., mkd. PA-3-MA-2-HMcK 4-879-B T.
	Thence S. $45^{\circ}50'$ W.

**Feet**

- 1, 500. 00 Cor. No. 4, which is identical with corner No. 2 of the J. W. Merritt lode, of this survey.  
Thence N. 46° 38' W.
143. 02 Swanson Creek, 5 feet wide, course S. 25° W.
203. 02 West Portal road, bears N. 25° E. and S. 25° W.
300. 00 Intersect lode line.
473. 02 Bitterlick road, bears N. 9° E. and S. 14° W.
593. 02 Cor. No. 1 and place of beginning.

**ORO ESCONDIDO LODE**

Beginning at Cor. No. 1 of the Oro Escondido Lode, which is identical with Cor. No. 2 of the Oro Real lode, of this survey, from which

The ¼ sec. cor. between secs. 20 and 29, T. 31 S., R. 2 E., Wil. Mer., bears N. 49° 36' W., 526.74 ft. dist., previously described.

Thence N. 45° 50' E.

- 1, 448. 41 Cor. No. 2.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. OE-2-WCL-2-879; from which

A madrone, 9 ins. diam., bears N. 41° E., 20.0 ft. dist., mkd. OE-2-WCL-2-879-B T.

A cedar, 24 ins. diam., bears S. 60° E., 43.0 ft. dist., mkd. OE-2-WCL-2-879-B T.

Thence S. 46° 38' E.

293. 02 Intersect lode line.

593. 02 Cor. No. 3.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. OE-3-WCL-1-JLG-4-JDMcK-2-879; from which

A madrone, 8 ins. diam., bears S., 19.0 ft. dist., mkd. OE-3-WCL-1-JLG-4-JDMcK-2-879-B T.

A madrone, 9 ins. diam., bears S. 80° W., 24.0 ft. dist., mkd. OE-3-WCL-1-JLG-4-JDMcK-2-879-B T.

Thence S. 45° 50' W.

- 1,448.41 Cor. No. 4.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. OE-4-HMcK-1-JLG-3-879; from which

A red fir, 18 ins. diam., bears N. 47° E., 19.0 ft. dist., mkd. OE-4-HMcK-1-JLG-3-879-B T.

A red fir, 14 ins. diam., bears S. 17° E., 7.0 ft. dist., mkd. OE-4-HMcK-1-JLG-3-879-B T.

Thence N. 46° 38' W.

300. 00 Intersect lode line.

593. 02 Cor. No. 1 and place of beginning.

**W. C. LEEVER LODE**

Beginning at Cor. No. 1 of the W. C. Leever lode, which is identical with Cor. No. 3 of the Oro Escondido lode of this survey, from which

The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., Wil. Mer., bears S. 58° 14' E., 890.85 ft. dist.; a gray stone, 8 x 12 x 20 ins., firmly set, marked and witnessed as described in the official record.

Thence S. 46° 38' W.

300. 00 Interest lode line.

593. 02 Cor. 2, which is identical with Cor. No. 2 of the Oro Escondido lode of this survey.

Thence N. 45° 50' E.

- 1,500. 00 Cor. No. 3.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. WCL-3-879; from which

A hemlock, 12 ins. diam., bears N. 72° W., 17.0 ft. dist., mkd. WCL-3-879-B T.

A hemlock 12 ins. diam., bears S. 35° E., 22.0 ft. dist., mkd.

<b>Feet</b>	<b>WCL-3-879-B T.</b>
	Thence S. 46° 38' E.
293.02	Interest lode line.
300.00	Elk Creek, 10 feet wide, course S. 24° W.
593.02	Cor. No. 4
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. <b>WCL-4-JDMcK-3-879</b> ; from which
	A red fir, 30 ins. diam., bears S. 8° E., 23.0 ft. dist., mkd. <b>WCL-4-JDMcK-3-879-B T.</b>
	A red fir, 30 ins. diam., bears N. 75° W., 21.0 ft. dist., mkd. <b>WCL-4-JDMcK-3-879-B T.</b>
	Thence S. 45° 50' W.
570.00	Elk Creek, 10 feet wide, course S. 10° W.
1,500.00	Cor. No. 1 and place of beginning.

## MARK APPLGATE LODE

	Beginning at Cor. No. 1 of the Mark Applegate Lode, which is identical with Cor. No. 2 of the J. W. Merritt lode and Cor. N. 4 of the Peter Applegate lode of this survey, from which
	The ¼ sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., W. Mer., bears N. 74° 07' 34" W., 1,395.82 ft. dist.; previously described.
	Thence N. 45° 50' E.
1,500.00	Cor. No. 2, which is identical with Cor. No. 3 of the Peter Applegate lode of this survey.
	Thence S. 44° 10' E.
300.00	Intersect lode line; summit of ridge, bears N. 30° E. and S. 30° W
600.00	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Co. No. 3, mkd. <b>MA-3-HMcK-3-879</b> ; from which
	A red fir, 8 ins. diam., bears N. 76° E., 20.0 ft. dist., mkd. <b>MA-3-HMcK-3-879-B T.</b>
	A white fir, 12 in. diam., bears N. 65° W., 11.0 ft. dist., mkd. <b>MA-3-HMcK-3-879-B T.</b>
	Thence S. 45° 50' W.
1,500.00	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. <b>MA-4-879</b> ; from which
	A red fir, 36 ins. diam., bears N. 43° 40' W., 24.0 ft. dist., mkd. <b>MA-4-879-B T.</b>
	A chinquapin, 6 ins. diam., bears N. 67° 30' E., 2.0 ft. dist., mkd. <b>MA-4-879-B T.</b>
	Thence N. 44° 10' W.
60.00	Summit of ridge, bears northeast and southwest.
300.00	Intersect lode line.
600.00	Cor. No. 1 and place of beginning.

## H. M'KENZIE LODE

	Beginning at Cor. No. 1 of the H. McKenzie lode, which is identical with Cor. No. 4 of the Oro Escondido lode of this survey, from which
	The ¼ sec. cor. between secs. 29 and 29, T. 31 S., R. 2 E., W. Mer., bears N. 48° 02' W., 1,119.47 ft. dist.; previously described
	Thence S. 44° 10' E.
300.00	Intersect lode line.
600.00	Cor. No. 2.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. <b>HMcK-2-JLG-2-879</b> ; from which
	A red fir, 14 ins. diam., bears S. 20° W., 33.0 ft. dist., mkd. <b>HMcK-2-JLG-2-879-B T.</b>
	A red fir, 12 ins. diam., bears N. 5° W., 10.0 ft. dist., mkd.

<b>Feet</b>	<b>HMcK-2-JLG-2-879-B T.</b>
	Thence S. 45°50' W.
<b>1, 486. 59</b>	Cor. No. 3, which is identical with Cor. No. 3 of the Mark Applegate lode of this survey.
	Thence N. 44°10' W.
<b>300. 00</b>	Intersect lode line; summit of ridge, bears N. 80° E. and S. 30° W.
<b>600. 00</b>	Cor. No. 4, which is identical with Cor. No. 3 of the Peter Applegate lode and Cor. No. 2 of the Mark Applegate lode of this survey.
	Thence N. 45°50' E.
<b>600. 00</b>	Summit of ridge, bears N. 12° E. and S. 12° W.
<b>1, 486. 59</b>	Cor. No. 1 and place of beginning.

**J. L. GRUBB LODGE**

Beginning at Cor. No. 1 of the J. L. Grubb Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked JLG-1-JDMcK-1-879; from which

	The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. Mer., bears S. 83°30' E., 341.51 ft. dist.; previously described.
	A white fir, 32 ins. diam., bears S. 78° E., 12.0 ft. dist., mkd. JLG-1-JDMcK-1-879-B T.
	A hemlock, 18 ins. diam., bears N. 80° W., 31.0 ft. dist., mkd. JLG-1-JDMcK-1-879-B T.
	Thence S. 45°50' W.
<b>1, 448. 41</b>	Cor. No. 2, which is identical with Cor. No. 2 of the H. McKenzie lode of this survey,
	Thence N. 44°10' W.
<b>300. 00</b>	Intersect lode line.
<b>600. 00</b>	Cor. No. 3, which is identical with Cor. No. 4 of the Oro Escondido lode and Cor. No. 1 of the H. McKenzie lode of this survey.
	Thence N. 45°50' E.
<b>1, 448. 41</b>	Cor. No. 4, which is identical with Cor. No. 3 of the Oro Escondido lode and Cor. No. 1 of the W. C. Leever lode of this survey.
	Thence S. 44°10' E.
<b>300. 00</b>	Intersect lode line.
<b>600. 00</b>	Cor. No. 1 and place of beginning.

**J. D. M'KINNON LODGE**

Beginning at Cor. No. 1 of the J. D. McKinnon Lode, which is identical with Cor. No. 1 of the J. L. Grubb lode of this survey.

	Thence N. 44°10' W.
<b>300. 00</b>	Intersect lode line.
<b>600. 00</b>	Cor. No. 2, which is identical with Cor. No. 3 of the Oro Escondido lode Cor. No. 1 of the W. C. Leever lode, and Cor. No. 4 of the J. L. Grubb lode of this survey.
	Thence N. 45°50' E.
<b>930. 00</b>	Elk Creek, 10 feet wide, course S. 10° W.
<b>1, 500. 00</b>	Cor. No. 3, which is identical with Cor. No. 4 of the W. C. Leever lode of this survey.
	Thence S. 44°10' E.
<b>300. 00</b>	Intersect lode line.
<b>600. 00</b>	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. JDMcK-4-879; from which
	A white fir, 1 5ins. diam., bears N. 52° W., 9.0 ft. dist., mkd. JDMcK-4-879-B T.
	A white fir, 15 ins. diam., bears N. 52° W., 9.0 ft. dist., mkd. JDMcK-4-879-B T.
	Thence S. 45°50' W.
<b>1, 080. 00</b>	Elk Creek road, bears north and south.
<b>1, 260. 07</b>	Elk Creek, 10 feet wide, course S. 10° W.
<b>1, 450. 00</b>	Elk Creek road, bears north and south.
<b>1, 500. 00</b>	Cor. No. 1 and place of beginning.



## THE AL SARENA CASE

## HENRY APPLEGATE LODE

Feet

- Beginning at Cor. No. 1 of the Henry Applegate Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and  
a mound of stone 18 ins. high, for Cor. No. 1, marked HA-1-879; from  
which
- The  $\frac{1}{4}$  sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., W.  
Mer., bears N.  $56^{\circ}32'36''$  W., 1,852.36 ft. dist.; previously described.  
A red fir, 24 ins. diam., bears N.  $85^{\circ}$  W., 90 ft. dist., mkd. HA-  
879-B T.  
A cedar, 10 ins. diam., bears S.  $55^{\circ}$  E., 8.0 ft. dist., mkd., HA-  
879-B T.  
Thence N.  $45^{\circ}50'$  E.
- 300.00 Cor. No. 4, of the Mark Applegate lode of this survey.  
1,500.00 Cor. No. 2, on line 3-4 Mark Applegate lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and  
a mound of stone 18 ins. high, for Cor. No. 2, mkd. HA-2-AWD-3-879;  
from which  
A madrone, 9 ins. diam., bears S.  $18^{\circ}$  W., 8.5 ft. dist., mkd. HA-  
AWD-3-879-BT.  
A hemlock, 10 ins. diam., bears N.  $56^{\circ}$  W., 14.5 ft. dist., mkd. HA-  
2-AWD-3-879-BT.  
Thence S.  $44^{\circ}10'$  E.
- 300.00 Intersect lode line.  
600.00 Cor. No. 3.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and  
a mound of stone 18 ins. high, for Cor. No. 3, mkd. HA-3-DMcK-4-  
879; from which  
A cedar, 24 ins. diam., bears S.  $80^{\circ}$  E., 20.4 ft. dist., mkd. HA-3-  
DMcK-4-879-BT.  
A madrone, 10 ins. diam., bears N.  $19^{\circ}$  W., 24.0 ft. dist., mkd.  
HA-3-DMcK-4-879-BT.  
Thence S.  $45^{\circ}50'$  W.
- 1,500.00 Cor. No. 4.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and  
a mound of stone 18 ins. high, for Cor. No. 4, mkd. HA-4-879; from  
which  
A chinquapin, 12 ins. diam., bears N.  $15^{\circ}$  E., 13.0 ft. dist., mkd.  
HA-4-879-BT.  
A hemlock, 12 ins. diam., bears S.  $20^{\circ}$  E., 16.0 ft. dist., mkd. HA-  
4-879-BT.  
Thence N.  $44^{\circ}10'$  W.
- 300.00 Intersect lode line.  
600.00 Cor. No. 1 and place of beginning.

## A. W. DAHLBERG LODE

- Beginning at Cor. No. 1 of the A. W. Dahlberg Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in  
a mound of stone 18 ins. high, for Cor. No. 1, marked AWD-1-879; from  
which
- The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., W.  
Mer., bears N.  $78^{\circ}37'45''$  E., 1,194.31 ft. dist.; a stone, 8 x 10 x 12  
ins. firmly set, marked and witnessed as described in the official  
record.  
A white fir, 8 ins. diam., bears N.  $21^{\circ}$  W., 9.0 ft. dist., mkd.  
AWD-1-879-BT.  
A white fir, 24 ins. diam., bears N.  $55^{\circ}30'$  E., 30.5 ft. dist., mkd.  
AWD-1-879-BT.  
Thence S.  $45^{\circ}50'$  W.
- 220.00 Elk Creek road, bears N.  $10^{\circ}$  W. and S.  $10^{\circ}$  E.  
300.00 Intersect lode line.  
600.00 Cor. No. 2.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in  
a mound of stone 18 ins. high, for Cor. No. 2, marked AWD-2-879;  
from which  
A red fir, 11 ins. diam., bears S.  $81^{\circ}40'$  W., 11.0 ft. dist., mkd.

feet

## AWD-2-879-B T.

A red fir, 20 ins. diam., bears S. 55°15' E., 22.0 ft. dist., mkd.

## AWD-2-879-B T.

Thence N. 44°10' W.

900.00 Cor. No. 3 of the Henry Applegate lode of this survey.

1,500.00 Cor. No. 3, which is identical with Cor. No. 2 of the Henry Applegate lode of this survey.

Thence N. 45°50' E.

300.00 Intersect lode line; Cor. Nos. 3 of the Mark Applegate and H. McKenzie lodes of this survey.

600.00 Cor. No. 4 on line 2-3 H. McKenzie lode of this survey.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. AWD-4-T-4-879; from which

A red fir, 10 ins. diam., bears S. 5° W., 9.5 ft. dist., mkd. AWD-4-T-4-879-B T.

A cedar, 36 ins. diam., bears N. 55° W., 23.0 ft. dist., mkd. AWD-4-T-4-879-B T.

Thence S. 44°10' E.

1,320.00 Road, bears northeast and southwest.

1,370.00 Elk Creek road, bears N. 16° E. and S. 16° W.

1,500.00 Cor. No. 1 and place of beginning.

## TELLURIDE LODE

Beginning at Cor. No. 1 of the Telluride Lode, on line 1-2 J. L. Grubb lode of this survey, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked T-1-A-4-879; from which

The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W11. Mer., bears N. 56°22' E., 1,444.83 ft. dist.; previously described.

A sugar pine, 11 ins. diam., bears E., 17.0 ft. dist., mkd. T-1-A-4-879-B T.

A red fir, 11 ins. diam., bears N., 17.0 ft. dist., mkd. T-1-A-4-879-B T.

Thence S. 44°10' E.

300.00 Intersect lode line.

380.00 Elk Creek road, bears N. 30° E. and S. 30° W.

585.00 Elk Creek, 10 feet wide, course S. 15° W.

600.00 Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. T-2-A-3-Su-4-St-4-879; from which

A red fir, 14 ins. diam., bears S. 27° E., 34.0 ft. dist., mkd. T-2-A-3-Su-4-St-4-879-B T.

A hemlock, 16 ins. diam., bears N. 3° W., 18.0 ft. dist., mkd. T-2-A-3-Su-4-St-4-879-B T.

Thence S. 45°50' W.

40.00 Elk Creek, 8 ft. wide, course south.

425.00 Elk Creek road, bears N. and S.

1,430.93 Cor. No. 3, on line 4-1 A. W. Dahlberg lode of this survey.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. T-3-Su-3-879; from which

A white fir, 10 ins. diam., bears N. 37° E., 7.5 ft. dist., mkd. T-3-Su-3-879-B T.

A madrone, 9 ins. diam., bears S. 5° E., 8.5 ft. dist., mkd. T-3-Su-3-879-B T.

Thence N. 44°10' W.

300.00 Intersect lode line.

600.00 Cor. No. 4, which is identical with Cor. No. 4 of the A. W. Dahlberg lode of this survey.

Thence N. 45°50' E.

1,186.59 Cor. Nos. 2 of the H. McKenzie and J. L. Grubb lodes of this survey.

1,430.93 Cor. No. 1 and place of beginning.

## ALABAMA LODGE

Feet

Beginning at Cor. No. 1 of the Alabama Lode, on line 4-1, J. I. McKinnon lode of this survey, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked A-1-879; from which

The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. 1/2 Mer. bears S. 35°40' E., 267.09 ft. dist.; previously described.

A white fir, 11 ins. diam., bears S. 71° E., 20.0 ft. dist., mkd A-1-879-B T.

A red fir, 36 ins. diam., bears S. 45° W., 27.0 ft. dist., mkd A-1-879-B T.

Thence S. 44°10' E.

180.00 Elk Creek road, bears north and south.

300.00 Intersect lode line.

480.00 Elk Creek road, bears N. 70° E. and S. 70° W.

600.00 Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in mound of stone 18 ins. high, for Cor. No. 2, mkd. A-2-St-1-879 from which

A white fir, 26 ins. diam., bears S. 65° E., 46.0 ft. dist., mkd A-2-St-1-879-B T.

A white fir, 12 ins. diam., bears S. 49° W., 22.0 ft. dist., mkd A-2-St-1-879-B T.

Thence S. 45°50' W.

1,460.00 Cor. No. 3, which is identical with Cor. No. 2 of the Telluride lode of this survey.

Thence N. 44°10' W.

15.00 Elk Creek, 10 ft. wide, course S. 15° W.

220.00 Elk Creek road, bears N. 30° E. and S. 30° W.

300.00 Intersect lode line.

600.00 Cor. No. 4, which is identical with Cor. No. 1 of the Telluride lode of this survey.

Thence N. 45°50' E.

1,204.07 Cor. No. 1 of the J. L. Grubb and the J. D. McKinnon lodes of this survey.

1,254.07 Elk Creek road, bears N. S.

1,444.00 Elk Creek, 10 ft. wide, course S. 10° W.

1,460.00 Cor. No. 1 and place beginning.

## RAINBOW LODGE

Beginning at Cor. No. 1 of the Rainbow Lode, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked Ra-1-DMcK-2-879; from which

The 1/4 sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., W. 1/2 Mer., bears N. 47°03'07'' E., 2,204.43 ft. dist.; previously described. This is the most accessible corner that could be found after diligent search.

A sugar pine, 6 ins. diam., bears N. 6°30' W., 18.0 ft. dist., mkd Ra-1-DMcK-2-879-B T.

A red fir, 9 ins. diam., bears S. 8°30' S., 3.5 ft. dist., mkd Ra-1-DMcK-2-879-B T.

Thence S. 45°50' W.

150.00 Elk Creek road, bears N. 43° E. and S. 28° W.

300.00 Intersect lode line.

600.00 Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. Ra-2-879; from which

A white fir, 10 ins. diam., bears S. 78° W., 11.0 ft. dist., mkd Ra-2-879-B T.

A madrone, 15 ins., diam., bears N. 1°10' W., 11.0 ft. dist., mkd Ra-2-879-B T.

Thence N. 44°10' W.

*Feet*

- 1,500.00 Cor. No. 3, on line 3-4 Henry Applegate lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. Ra-3-879; from which  
A cedar, 10 ins. diam., bears N. 20° E., 47.0 ft. dist., mkd. Ra-3-879-B T.  
A madrone, 8 ins. diam., bears S. 28° 30' E., 27.0 ft. dist., mkd. Ra-3-879-B T.  
Thence N. 45° 50' E.  
300.00 Intersect lode line.  
600.00 Cor. No. 4, on line 3-4 Henry Applegate lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. Ra-4-DMcK-3-879; from which  
A madrone, 11 ins. diam., bears N. 55° E., 18.0 ft. dist., mkd. Ra-4-DMcK-3-879-B T.  
A red fir, 30 ins. diam., bears S. 2° E., 19.0 ft. dist., mkd. Ra-4-DMcK-3-879-B T.  
Thence C. 44° 10' E.  
1,480.00 Elk Creek road, bears N. 33° E. and S. 33° W.  
1,500.00 Cor. No. 1 and place of beginning.

## DELIA M'KINNON LODGE

- Beginning at Cor. No. 1 of the Delia McKinnon Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked DMcK-1-879; from which  
The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., W11. Mer., bears N. 47° 30' 27'' E., 1,604.61 ft. dist.; previously described.  
A maple, 8 ins. diam., bears N. 48° W., 9.5 ft. dist., mkd. DMcK-1-879-B T.  
A white fir, 6 ins. diam., bears S. 56° 30' E., 19.0 ft. dist., mkd. DMcK-1-879-B T.  
Thence S. 45° 50' W.  
300.00 Intersect lode line.  
600.00 Cor. No. 2, which is identical with Cor. No. 1 of the Rainboe lode of this survey.  
Thence N. 44° 10' W.  
20.00 Elk Creek road, bears N. 33° E. and S. 33° W.  
1,500.00 Cor. No. 3, which is identical with Cor. No. 4 of the Rainboe lode of this survey.  
Thence N. 45° 50' E.  
300.00 Intersect lode line.  
600.00 Cor. No. 4, which is identical with Cor. No. 3 of the Henry Applegate lode of this survey.  
Thence S. 44° 10' E.  
900.00 Corner No. 2 of A. W. Dahlberg lode of this survey.  
1,105.00 Elk Creek road, bears N. 16° E. and S. 7° E.  
1,500.00 Corner No. 1 and place of beginning.

## SULPHIDE LODGE

Beginning at Cor. No. 1 of the Sulphide Lode, which falls in the East Ford of Elk Creek where a monument could not be established. From this point—

- The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., W11. Mer., bears S. 19° 53' 36'' E., 1,038.70 ft. dist.; previously described.  
Thence S. 45° 50' W.  
510.00 East Fork of Elk Creek, 5 ft. wide, course S. 75° W.  
1,005.00 Elk Creek, 10 ft. wide, course south.  
1,240.00 Elk Creek road, bears N. 7° E. and S. 7° W.

## Feet

- 1,430.98 Cor. No. 2, on line 4-1 A. W. Dahlberg lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. Su-2-M-3-879; from which  
A cedar, 11 ins. diam., bears S. 77° 30' E., 9.0 ft. dist., mkd. Su-2-M-3-879-B T.  
A madrone, 8 ins. diam., bears S. 22° 30' W., 32.0 ft. dist., mkd. Su-2-M-3-879-B T.  
Thence N. 44° 10' W.  
300.00 Intersect lode line.  
600.00 Cor. No. 8, which is identical with Cor. No. 8 of the Telluride lode of this survey.  
Thence N. 45° 50' E.  
1,005.93 Elk Creek road, bears N. and S.  
1,390.93 Elk Creek, 8 feet wide, course south.  
1,430.93 Cor. No. 4, which is identical with Cor. No. 2 of the Telluride lode and Cor. No. 3 of the Alabama lode of this survey.  
Thence S. 44° 10' E.  
300.00 Intersect lode line.  
583.12 Witness Cor. No. 1.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for witness Cor. No. 1, mkd. WC-St-1-St-3-M-4-LJ-2-879; from which  
An alder, 16 ins. diam., bears N. 75° W., 40.0 ft. dist., mkd. Su-1-St-3-M-4-LJ-2-879-B T.  
A cedar, 32 ins. diam., bears N. 14° E., 5.0 ft. dist., mkd. Su-1-St-3-M-4-LJ-2-879-B T.  
600.00 Cor. No. 1 and place of beginning.

## STAPLES LODE

- Beginning at Cor. No. 1 of the Staples Lode, which is identical with Cor. No. 2 of the Alabama lode of this survey, from which  
The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. 1/2 Mer. bears N. 50° 52' W., 338.14 ft. dist.; previously described.  
Thence S. 44° 10' E.  
210.00 East Fork of Elk Creek 3 feet wide, course S. 15° W.  
300.00 Intersect lode line.  
600.00 Cor. No. 2.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. St-2-LJ-3-879; from which  
A cedar, 32 ins. diam., bears N. 4° E., 53.0 ft. dist., mkd. St-2-LJ-3-879-B T.  
A red fir, 20 ins. diam., bears S. 86° W., 12.5 ft. dist., mkd. St-2-LJ-3-879-B T.  
Thence, S. 45° 50' W.  
1,460.00 Cor. No. 3, which is identical with Cor. No. 1 of the Sulphide lode of this survey, and falls in the East Fork of Elk Creek where a monument could not be established.  
Thence N. 44° 10' W.  
16.88 Witness Cor. No. 3, which is identical with Witness Cor. No. 1 of the Sulphide lode of this survey.  
300.00 Intersect lode line.  
600.00 Cor. No. 4, which is identical with Cor. No. 2 of the Telluride lode, Cor. No. 3 of the Alabama lode, and Cor. No. 4 of the Sulphide lode of this survey.  
Thence N. 45° 50' E.  
1,460.00 Cor. No. 1 and place of beginning.

## MANGANESE LODE

Beginning at Cor. No. 1 of the Manganese Lode, where I-  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked M-1-879; from which

Feet

The  $\frac{1}{4}$  sec. cor. between secs 28 and 29, T. 31 S., R. 2 E., Wil. Mer., bears S.  $6^{\circ}44'$  W., 550.13 ft. dist.; previously described.

A sugar pine, 38 ins. diam., bears S.  $78^{\circ}$  E., 22.0 ft. dist., mkd. M-1-879-BT.

A madrone, 9 ins., diam, bears N.  $44^{\circ}$  W., 23.0 ft. dist., mkd. M-1-879-B T.

Thence S.  $45^{\circ}50'$  W.

1, 430.93

Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. M-2-879; from which

A sugar pine, 10 ins. diam., bears N.  $65^{\circ}$  W., 12.0 ft. dist., mkd.

M-2-879-B T.

A madrone, 10 ins. diam., bears N.  $15^{\circ}$  E., 25.0 ft. dist., mkd.

M-2-879-B T.

Thence N.  $44^{\circ}10'$  W.

110.00 Elk Creek, 10 feet wide, course S.

300.00 Intersect lode line, Cor. No. 1 of the A. W. Dahlberg lode of this survey.

430.00 Elk Creek road, bears N.  $16^{\circ}$  E. and S.  $16^{\circ}$  W.

480.00 Road, bears northeast and southwest.

600.00 Cor. No. 3, on line 4-1 A. W. Dahlberg lode and identical with Cor. No. 2 of the Sulphide lode of this survey.

Thence N.  $45^{\circ}50'$  E.

190.93 Elk Creek road, bears N.  $7^{\circ}$  E. and S.  $7^{\circ}$  W.

425.93 Elk Creek, 10 feet wide, course S.

920.93 East Fork of Elk Creek, 5 feet wide, course S.  $75^{\circ}$  W.

1,430.93 Cor. No. 4, which is identical with Cor. No. 1 of the Sulphide lode and Cor. No. 3 of the Staples lode of this survey, and falls in the East Fork of Elk Creek, previously described, where a monument could not be established.

Thence S.  $44^{\circ}10'$  E.

300.00 Intersect lode line.

600.00 Cor. No. 1 and place of beginning.

## LA JOLLA LODE

Beginning at Cor. No. 1 of the La Jolla lode, on line 4-1 of the Manganese lode of this survey, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked LJ-1-AV-2-879; from which

The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., Wil. Mer., bears S.  $10^{\circ}44'$  E., 775.10 ft. dist.; previously described.

A chinquapin, 8 ins. diam., bears N.  $62^{\circ}$  E., 16.0 ft. dist., mkd. LJ-1-AV-2-879-B T.

A madrone, 12 ins. diam., bears S.  $15^{\circ}$  E., 17.5 ft. dist., mkd.

LJ-1-AV-2-879-B T.

Thence N.  $44^{\circ}10'$  W.

150.00 Intersect lode line.

300.00 Cor. No. 2, which is identical with Cor. No. 1 of the Sulphide lode, Cor. No. 3 of the Staples lode and Cor. No. 4 of the Manganese lode of this survey, and falls in a creek, previously described, where a monument could not be established.

Thence N.  $45^{\circ}50'$  E.

1,460.00 Cor. No. 3, which is identical with Cor. No. 2 of the Staples lode of this survey.

Thence S.  $44^{\circ}10'$  E.

150.00 Intersect lode line.

300.00 Cor. No. 4.

Set a cedar post, 48 ins. long 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. LJ-4-AV-3-879; from which

A white fir, 18 ins. diam., bears S.  $70^{\circ}$  E., 33.0 ft. dist., mkd. LJ-4-AV-3-879-B T.

*Feet*                      A hemlock, 13 ins. diam., bears S.53°W., 6.5 ft. dist., mkd.  
                                  LJ-4-AV-3-879-B T.  
                                  Thence S.45°50'W.  
 1,460.00              Cor. No. 1 and place of beginning.

## ARROYO VERDE LODE

Beginning at Cor. No. 1 of the Arroyo Verde Lode, where I—  
 Squared a cedar stump, 20 ins. diam., 18 ins. high, to 6x12 in.  
 marked AV-1-879; from which  
     The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T 31 S., R. 2 E., W. 11 Mer., bears S.39°34'W., 429.55 ft. dist., previously described.  
     A red fir, 30 ins. diam., bears N.3°W., 28.0 ft. dist., mkd AV-1-879-B T.  
     A cedar, 14 ins. diam., bears S.13°W., 44.0 ft. dist., mkd AV-1-879-B T.  
     Thence N.44°10'W.  
 300.00              Intersect lode line; Cor. No. 1 of the Manganese lode of this survey.  
 600.00              Cor. No. 2, on line 4-1 of the Manganese lode and identical with Cor. No. 1 of the La Jolla lode of this survey.  
     Thence N. 45°50'E.  
 1,460.00              Cor. No. 3, which is identical with Cor. No. 4 of the La Jolla lode of this survey.  
     Thence S.44°10'E.  
 300.00              Intersect lode line.  
 600.00              Cor. No. 4.  
     Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. AV-4-879; from which  
     A red fir, 40 ins. diam., bears N.40°W., 20.0 ft. dist., mkd AV-4-879-B T.  
     A hemlock, 18 ins. diam., bears S.53°E., 16.0 ft. dist., mkd AV-4-879-B T.  
     Thence S.45°50'W.  
 1,460.00              Cor. No. 1 and place of beginning.

## LODE LINES

The presumed course of the vein of each of the several lode locations embraced in this survey, counted from the respective points of discovery, is as follows:

Ram lode, S.42°34'E., 20 ft.; and N.42°34'W., 1,431.84 ft.  
 Oro Alto lode, S.44°31'E., 304 ft.; and N.44°31'W., 1,131.10 ft.  
 Oro Rico lode, S.44°31'E., 170 ft.; and N.44°31'W., 1,265.10 ft.  
 Cougar lode, S.45°50'W., 900 ft.; and N.45°50'E., 600 ft.  
 Oro Real lode, S.45°50'W., 510 ft.; and N.45°50'E., 976.59 ft.  
 J. W. Merritt lode, S.45°50'W., 1,240 ft.; and N.45°50'S., 260 ft.  
 Peter Applegate lode, S.45°50'W., 22 ft.; and N.45°50'E., 1,478.00 ft.  
 Oro Escondido lode, S.45°50'W., 1,258.41 ft.; and N.45°50'E., 190.00 ft.  
 W. C. Leever lode, S.45°50'W., 83 ft.; and N.45°50'E., 1,417.00 ft.  
 Mark Applegate lode, S.45°50'W., 1,499.00 ft.; and N.45°50'E., 1.00 ft.  
 H. McKenzie lode, S.45°50'W., 5.00 ft.; and N.45°50'E., 1,481.59 ft.  
 J. L. Grubb lode, S.45°50'W., 1,060.41 ft.; and N.45°50'E., 388 ft.  
 J. D. McKinnon lode, S.45°50'W., 233 ft.; and N.45°50'E., 1,267.00 ft.  
 Henry Applegate lode, S.45°50'W., 1,495.00 ft.; and N.45°50'E., 5.00 ft.  
 A. W. Dahlberg lode, S.44°10'E., 260.00 ft.; and N.44°10'W., 1240.00 ft.  
 Telluride lode, S.45°50'W., 70 ft.; and N.45°50'E., 1,360.93 ft.  
 Alabama lode, S.45°50'W., 8 ft.; and N.45°50'E., 1,452 ft.  
 Rainboe lode, S.44°10'E., 320 ft.; and N.44°10'W., 1,180 ft.  
 Della McKinnon lode, S.44°10'E., 390.00 ft.; and N.44°10'W., 1,110.00 ft.  
 Sulphide lode, S.45°50'W., 787.93 ft.; and N.45°50'E., 643.00 ft.  
 Staples lode, S.45°50'W., 310.00 ft.; and N.45°50'E., 1,150.00 ft.  
 Manganese lode, S.45°50'W., 360 ft.; and N.45°50'E., 1,070.93 ft.  
 La Jolla lode, S.45°50'W., 1,310.00 ft.; and N.45°50'E., 130.00 ft.  
 Arroyo Verde lode, S.45°50'W., 780 ft.; and N.45°50'E., 680.00 ft.

## AREAS

	Acres
Total area, Ram lode.....	19.990
Total area, Oro Alto lode.....	19.767
Total area, Oro Rico lode.....	19.767
Total area, Cougar lode.....	19.980
Total area, Oro Real lode.....	19.801
Total area, J. W. Merritt lode.....	20.402
Total area, Peter Applegate lode.....	20.402
Total area, Oro Escondido lode.....	19.700
Total area, W. C. Leever lode.....	20.402
Total area, Mark Applegate lode.....	20.661
Total area, H. McKenzie lode.....	20.478
Total area, J. L. Grubb lode.....	19.951
Total area, J. D. McKinnon lode.....	20.661
Total area, Henry Applegate lode.....	20.661
Total area, A. W. Dahlberg lode.....	20.661
Total area, Telluride lode.....	19.710
Total area, Alabama lode.....	20.110
Total area, Rainboe lode.....	20.661
Total area, Delia McKinnon lode.....	20.661
Total area, Sulphide lode.....	19.710
Total area, Staples lode.....	20.110
Total area, Manganese lode.....	19.710
Total area, La Jolla lode.....	10.055
Total area, Arroyo Verde lode.....	20.110

## LOCATION

This survey is located in the SE $\frac{1}{4}$  sec. 19, SE $\frac{1}{4}$  and SW $\frac{1}{4}$  sec. 20, SW $\frac{1}{4}$  sec. 21, NW $\frac{1}{4}$  sec. 28, NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , SE $\frac{1}{4}$  and SW $\frac{1}{4}$  sec. 29, and SE $\frac{1}{4}$  sec. 30, of T. 31 S., R. 2 E., of the Willamette Meridian.

The survey of the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes is identical with the respective location or amended location as marked on the ground.

## EXPENDITURE OF \$500.00

I certify that the value of the labor and improvements made upon or for the benefit of each of the lode locations embraced in said mining claim by the claimant or its grantors is not less than \$500.00, with the exception of the Ram lode, and that said improvements consist of:

No. 1 The discovery cut of the Ram lode, the face of which being the discovery point, is on the lode line 20.00 ft. from the center of line 4-1; 4 ft. wide, 8 ft. face, running N. 42° W., 10 ft. to face.

Value \$100.00

No. 2 A shaft, the center of which bears S. 75°15' E., 395.00 ft. from Cor. No. 2 Ram lode; 4 x 8 ft., 4 ft. deep.

Value \$50.00

No. 3 A cut, the east end of which bears S. 5°30' E., 100.00 ft. from Cor. No. 3 Ram lode; 3 ft. wide, 4 ft. face, running West 18 ft., partly caved.

Value \$50.00

No. 1 The discovery shaft of the Oro Alto lode, the center of which being the discovery point, is on the lode line 1,131.10 ft. from center of line 1-2; 6 x 11 ft., 6 ft. deep, partly caved.

Value \$100.00

No. 2 A cut, the mouth of which bears S. 69° W., 120 ft. from Cor. No. 3 Oro Alto lode; 4 ft. wide, 5 ft. face, running N. 65° W., 13 ft. to face.

Value \$50.00

No. 3 A cut, the mouth of which bears S. 56° W., 100 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 10 ft. face, running N. 64° W., 20 ft. to face, partly caved.



Value \$100.00

No. 4 A cut, the mouth of which bears S. 70° W., 35 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 6 ft. face, running N. 10° W., 20 ft. to face, partly caved.

Value \$75.00

No. 1 Discovery shaft of the Oro Rico lode, the center of which being the discovery point, is on the lode line 1,265.10 ft. from center of line 1-2; 6 x 8 ft. 10 ft. deep, partly caved.

Value \$125.00

No. 2 A tunnel, 6 x 7 ft. in size, the portal of which bears N. 33° 21' E. 321.08 ft. from Cor. No. 4 Oro Rico lode; running N. 81° W., 30 ft. to pt. A, and 50 ft. to breast. At pt. A is a drift 5 x 7 ft. in size, running N. 60° W., 31 ft. to pt. B; thence N. 30° W., 6 ft. to breast.

Value of tunnel and drift \$1,200.00

No. 3 A shaft, the center of which bears N. 23° 30' E., 310 ft. from Cor. No. 4 Oro Rico lode; 6 x 20 ft., 10 ft. deep.

Value \$150.00

No. 4 A cut, the mouth of which bears N. 9° 30' W., 322 ft. from Cor. No. 4 Oro Rico lode; 8 ft. wide, 7 ft. face, running S. 82° W., 17 ft. to face.

Value \$100.00

No. 5 A cut, the mouth of which bears N. 50° 40' E., 280 ft. from Cor. No. 1 Oro Rico lode; 6 ft. wide, 6 ft. face, running N. 5° E., 25 ft. to face, partly caved.

Value \$100.00

No. 1 Discovery shaft of the Cougar lode, the center of which being the discovery point, is on the lode line 900 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 4 x 7 ft., 9 ft. deep, partly caved.

Value \$100.00

No. 2 A cut, the mouth of which is on the lode line of the Cougar lode 835 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 5 ft. wide, 4 ft. face, running west 14 ft. to face.

Value \$50.00

No. 3 A cut, the mouth of which bears N. 63° 50' E., 835 ft. from Cor. No. 1 Cougar lode; 5 ft. wide, 4 ft. face, running N. 80° E., 10 ft. to face, partly caved.

Value \$35.00

No. 4 A cut, the mouth of which bears N. 60° 40' E., 922 ft. from Cor. No. 1 Cougar lode; 4 ft. wide, 4 ft. face, running N. 60° E., 10 ft. to face, partly caved.

Value \$35.00

No. 5 A cut, the mouth of which bears S. 32° 50' E., 295 ft. from Cor. No. 2 Cougar lode; 5 ft. wide, 6 ft. face, running N. 70° W., 13 ft. to face, partly caved.

Value \$40.00

No. 6 A cut, the mouth of which bears S. 35° 15' E., 275 ft. from Cor. No. 2 Cougar lode; 4 ft. wide, 6 ft. face, running N. 77° W., 10 ft. to face.

Value \$35.00

No. 7 A cut, the face of which is on the lode line of the Cougar lode 110 ft. from a point on line 2-3, 280.36 ft. from Cor. No. 2; 6 ft. wide, 6 ft. face, running N. 45° W., 16 ft. to face.

Value \$100.00

No. 8 A cut, the mouth of which bears N. 50° 15' W., 280 ft. from Cor. No. 3 Cougar lode; 5 ft. wide, 10 ft. face, running N. 65° W., 14 ft. to face, partly caved.

Value \$75.00

No. 9 A tunnel, 5x7 ft. in size, the portal of which bears N. 46° E., 400 ft. from Cor. No. 4 Cougar lode; running S. 80° W., 40 ft. to breast, partly caved.

Value \$350.00

No. 1 Discovery shaft of the Oro Real lode, the center of which being the discovery point, is on the lode line 976.59 ft. from a point on line 1-2, 280.36 ft. from Cor. No. 1; 6x12 ft., 8 ft. deep.

Value \$100.00

No. 2 A cut, the mouth of which bears N. 76° E., 500 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 8 ft. face, running N. 45° E., 20 ft. to face, partly caved.

Value \$100.00

No. 3 A tunnel, 6x7 ft. in size, and known as No. 8, the portal of which bears N. 17° 59' W.; 209.35 ft. from Cor. No. 3 Oro Real lode; running N. 52° E., 135 ft. to breast, partly caved.

Value \$2,000.

No. 4 A cut, the mouth of which bears S.  $57^{\circ}30'$  E., 265 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 10 ft. face, running S.  $46^{\circ}$  W., 19 ft. to face.

Value \$125.

No. 5. A cut, the mouth of which bears S.  $30^{\circ}30'$  E., 110 ft. from Cor. No. 1 Oro Real lode; 6 ft. wide, 4 ft. face, running S.  $5^{\circ}$  W., 20 ft. to face.

Value \$50.

No. 1 Discovery cut of the J. W. Merritt lode, the face of which being the discovery point, is on the lode line 260 ft. from a point on line 1-2, 293.02 ft. from Cor. No. 1; 4 ft. wide, 8 ft. face, running N.  $45^{\circ}$  W., 12 ft. to face.

Value \$100.

No. 2 A cut, the mouth of which is on the lode line of the J. W. Merritt lode 185 ft. from a point on line 1-2, 293.02 ft. from Cor. No. 1; 4 ft. wide, 7 ft. face, running N.  $40^{\circ}$  W., 14 ft. to face.

Value \$75.

No. 3 A shaft, the center of which bears S.  $27^{\circ}15'$  E., 290 ft. from Cor. No. 1 J. W. Merritt lode; 4x5 ft., 4 ft. deep, partly caved.

Value \$35.

No. 4 A shaft, the center of which is on the lode line of the J. W. Merritt lode 80 ft. from a point on line 1-2, 293.02 ft. from Cor. No. 1; 4x6 ft. 5 ft. deep.

Value \$50.

No. 1 Discovery shaft of the Peter Applegate lode, the south side of which being the discovery point, is on the lode line 22 ft. from a point on line 4-1, 293.02 ft. from Cor. No. 1; 4x6 ft., 4 ft. deep.

Value \$40.

No. 2 A shaft, the center of which bears S.  $86^{\circ}10'$  E., 380 ft. from Cor. No. 1 Peter Applegate lode; 4x6 ft., 4 ft. deep.

Value \$50.

No. 3 A shaft, the center of which bears S.  $51^{\circ}30'$  E., 270 ft. from Cor. No. 1 Peter Applegate lode; 4x5 ft., 4 ft. deep.

Value \$35.

No. 4 A shaft, the center of which bears N.  $54^{\circ}25'$  E., 1,380 ft. from Cor. No. 1 Peter Applegate lode; 4x8 ft., 6 ft. deep.

Value \$100.

No. 5 A cut, the face of which bears N.  $85^{\circ}$  E., 200 ft. from Cor. No. 1 Peter Applegate lode; 5 ft. wide, 6 ft. face, running N.  $83^{\circ}$  W., 15 ft. to face.

Value \$70.

No. 6 A cut, the mouth of which bears N.  $6^{\circ}10'$  W., 350 ft. from Cor. No. 4 Peter Applegate lode; 5 ft. wide, 4 ft. face, running N.  $5^{\circ}$  E., 16 ft. to face, partly caved.

Value \$60.

No. 1 Discovery cut of the Oro Escondido lode, the center of which being the discovery point, is on the lode line, 1,258.41 ft., from a point on line 4-1, 293.02 ft. from Cor. No. 1; 12 ft. wide, 8 ft. face, running S.  $70^{\circ}$  E., 7 ft. to mouth and N.  $70^{\circ}$  W., 7 ft. to face.

Value \$150.

No. 2 A cut, the mouth of which bears N.  $38^{\circ}$  E., 45 ft. from Cor. No. 4 Oro Escondido lode; 8 ft. wide, 5 ft. face, running N.  $65^{\circ}$  W., 12 ft. to face.

Value \$100.

No. 1 Discovery cut of the W. C. Leever lode, the face of which being the discovery point, is on the lode line, 83 ft. from a point on line 1-2, 300 ft. from Cor. No. 1; 5 ft. wide, 6 ft. face, running W., 15 ft. to face.

Value \$85.

No. 2 A cut, the mouth of which bears N.  $42^{\circ}$  W., 182 ft. from Cor. No. 1 W. C. Leever lode; 4 ft. wide, 6 ft. face, running N.  $55^{\circ}30'$  E., 10 ft. to face.

Value \$60.

No. 3 A cut, the face of which bears N.  $28^{\circ}$  W., 360 ft. from Cor. No. 1 W. C. Leever lode; 12 ft. wide, 8 ft. face, running S.  $53^{\circ}$  W., 15 ft. to face.

Value \$200.

No. 1 Discovery tunnel of the Mark Applegate lode, the center of which being the discovery point is on the lode line, 1,499 ft. from the center of line 4-1; 6 x 7 ft. in size and known as No. 5, the portal of which bears N.  $46^{\circ}36'$  W., 175.46 ft. from Cor. No. 3, Mark Applegate lode, running N.  $41^{\circ}35'$  W., 51.25 ft. to Sta. 2; thence N.  $40^{\circ}05'$  W., 49.7 ft. to Sta. 3, and N.  $61^{\circ}30'$  E., 70.4 ft. to breast. At Sta. 3 a tunnel, 5 x 7 ft. in size, runs N.  $41^{\circ}04'$  W., 49.15 ft. to Sta. 4 and S.  $43^{\circ}32'$  W., 53.15 ft. to breast. At Sta. 4 the tunnel runs N.  $3^{\circ}41'$  E., 21.45 ft. to breast, partly caved.

Value \$3,500.

No. 2 A shaft, the center of which bears S. 11°06' E., 291.63 ft. from Cor. No. 2, Mark Applegate lode; 4 x 6 ft., 10 ft. deep.

Value \$100.

No. 1 Discovery shaft of the H. McKenzie lode, the center of which being the discovery point is on the lode line 1,481.59 ft. from center of line 1-2; 4 x 6 ft., 6 ft. deep.

Value \$75.

No. 2 A shaft, the center of which bears S. 62°30' E., 280 ft. from Cor. No. 4, H. McKenzie lode; 4 x 10 ft., 8 ft. deep.

Value \$100.

No. 3 A tunnel, 5 x 7 ft. in size, known as No. 3, the portal of which bears N. 9°16' E., 321.81 ft. from Cor. No. 3 H. McKenzie lode; running N. 43° W., 12 ft. to Sta. A; thence S. 44° W., 9 ft. to breast, and N. 44° E., 10 ft. to breast. At Sta. A a winze with an inclination of 35° runs N. 40° W., 23 ft. to bottom.

Value of tunnel and winze \$700.

No. 1 Discovery cut of the J. L. Grubb lode, the center of which being the discovery point is on the lode line, 388 ft. from the center of line 4-1; 5 ft. wide, 10 ft. face, running S. 10 ft. to the mouth and N. 10 ft. to face.

Value \$200.

No. 2 A shaft, the center of which bears S. 84° W., 450 ft. from Cor. No. 1, J. L. Grubb lode; 5 x 8 ft., 6 ft. deep.

Value \$75.

No. 3 A cut, the mouth of which bears S. 65°20' W., 587 ft. from Cor. No. 1, J. L. Grubb lode; 5 ft. wide, 6 ft. face, running S. 65° W., 20 ft. to face.

Value \$150.

No. 4 A shaft, the center of which bears S. 63°50' W., 550 ft. from Cor. No. 1, J. L. Grubb lode; 4 x 10 ft., 6 ft. deep.

Value \$75.

No. 5 A cut, the mouth of which bears N. 4°10' W., 265 ft. from Cor. No. 2, J. L. Grubb lode; 16 ft. wide, 12 ft. face, running N. 6 ft. to face.

Value \$125.

No. 1 Discovery shaft of the J. D. McKinnon lode, the center of which being the discovery point is on the lode line 233 ft. from the center of line 1-2; 4 x 6 ft., 8 ft. deep.

Value \$75.

No. 2 A cut, the face of which bears N. 3°10' W., 363 ft. from Cor. No. 1, J. D. McKinnon lode; 5 ft. wide, 10 ft. face, running N. 80° W., 24 ft. to face.

Value \$175.

No. 3 A cut, the mouth of which bears N. 30°15' W., 242 ft. from Cor. No. 1, J. D. McKinnon lode; 4 ft. wide, 4 ft. face, running N. 21° W., 16 ft. to face.

Value \$50.

No. 1 Discovery shaft of the Henry Applegate lode, the center of which being the discovery point is on the lode line, 1,495 ft. from the center of line 4-1; 4 x 6 ft., 7 ft. deep.

Value \$75.

No. 2 A cut, the face of which bears N. 79° E., 372 ft. from Cor. No. 1, Henry Applegate lode; 5 ft. wide, 8 ft. face, running N. 24° E., 27 ft. to face.

Value \$100.

No. 3 A cut, the mouth of which bears N. 73°45' E., 140 ft. from Cor. No. 1, Henry Applegate lode; 4 ft. wide, 5 ft. face, running N. 77° E., 38 ft. to face.

Value \$200.

No. 1 Discovery cut of the A. W. Dahlberg lode, the face of which being the discovery point is on the lode line 260 ft. from the center of line 1-2; 6 ft. wide, 6 ft. face, running N. 19 ft. to face.

Value \$125.

No. 2 A cut, the face of which bears S. 16°05' E., 365 ft. from Cor. No. 4, A. W. Dahlberg lode; 5 ft. wide, 8 ft. face, running N. 61°30' W., 22 ft. to face. At the face of cut is the portal of a tunnel, 5x7 ft. in size, running N. 9° W., 15 ft. to breast.

Value of cut and tunnel \$300.

No. 3 A cut, the face of which bears N. 83° W., 90 ft. from Cor. No. 1, A. W. Dahlberg lode; 6 ft. wide, 5 ft. face, running N. 31° E., 12 ft. to face.

Value \$75.

No. 1 Discovery cut of the Telluride lode, the face of which being the discovery point is on the lode line 1,360.93 ft. from the center of line 1-2; 4 ft. wide, 10 ft. face, running N. 14° W., 10 ft. to face.

Value \$100.

No. 2 A tunnel, 5x7 ft. in size, known as No. 4, the portal of which bears N. 68°54' E., 118.97 ft. from Cor. No. 4 Telluride lode, running north 12 ft. to Sta. 1; thence N. 30°15' E., 15 ft. to Sta. 2; thence N. 3° E., 20 ft. to Sta. 3; thence N. 85° W., 5 ft. to breast, and S. 85° E. 15 ft. to breast.

Value \$830.

No. 3 A cut, the face of which bears S. 33°30' E., 238 ft. from Cor. No. 1 Telluride lode; 6 ft. wide, 5 ft. face, running N. 75°15' W., 12 ft. to face.

Value \$50.

No. 4 A cut, the face of which bears S. 52°10' W., 415 ft. from Cor. No. 2 Telluride lode; 5 ft. wide, 10 ft. face, running N. 50° W., 12 ft. to face.

Value \$60.

No. 1 Discovery cut of the Alabama lode, the center of which being the discovery point is on the lode line 1,452 ft. from the center of line 1-2; 4 ft. wide, 6 ft. face, running N. 15° W., 5 ft. to face and S. 15° E., 5 ft. to mouth.

Value \$75.

No. 2 A cut, the face of which bears S. 31°25' W., 930 ft. from Cor. No. 1 Alabama lode; 5 ft. wide, 7 ft. face, running N. 51°15' W., 16 ft. to face.

Value \$100.

No. 1 Discovery cut of the Rainboe lode, the face of which being the discovery point, is on the lode line 320 ft. from center of line 1-2; 8 ft. wide, 8 ft. face, running N. 63°30' W., 15 ft. to face.

Value \$100.

No. 2 A shaft, the center of which bears N. 7° W., 455 ft. from Cor. No. 2 Rainboe lode; 4x6 ft., 3 ft. deep.

Value \$35.

No. 3 A shaft, the center of which bears N. 15°30' W., 462 ft. from Cor. No. 2 Rainboe lode; 8x8 ft., 4 ft. deep.

Value \$70.

No. 4 A shaft, the center of which bears S. 86° W., 320 ft. from Cor. No. 1 Rainboe lode; 4x6 ft., 5 ft. deep, partly caved.

Value \$60.

No. 5 A cut, the mouth of which bears N. 49°15' W., 574 ft. from Cor. No. 1 Rainboe lode; 5 ft. wide, 10 ft. face, running N. 44° W., 20 ft. to face.

Value \$125.

No. 6 A shaft, the center of which bears N. 51°20' W., 624 ft. from Cor. No. 1 Rainboe lode; 10x8 ft., 6 ft. deep, partly caved.

Value \$100.

No. 1 Discovery cut of the Delia McKinnon lode, the center of which being the discovery point, is on the lode line 390 ft. from the center of line 1-2; 5 ft. wide, 10 ft. face, running S. 71° E., 12 ft. to mouth and N. 71° W., 12 ft. to face.

Value \$165.

No. 2 A shaft, the center of which bears N. 84° W., 450 ft. from Cor. No. 1 Delia McKinnon lode; 6x6 ft., 5 ft. deep.

Value \$60.

No. 3 A cut, the face of which bears S. 80° W., 310 ft. from Cor. No. 1 Delia McKinnon lode; 4 ft. wide, 4 ft. face, running N. 5° W., 20 ft. to face, partly caved.

Value \$75.

No. 4 A shaft, the center of which is on the lode line 134 ft. from the center of line 1-2 Delia McKinnon lode; 4x8 ft., 4 ft. deep.

Value \$50.

No. 5 A cut, the face of which bears N. 48°15' W., 410 ft. from Cor. No. 1 Delia McKinnon lode; 8 ft. wide, 10 ft. face, running N. 76°30' W., 15 ft. to face.

Value \$75.

No. 6 A cut, the mouth of which bears N. 56° W., 582 ft. from Cor. No. 1 Delia McKinnon lode; 5 ft. wide, 10 ft. face, running N. 74° W., 22 ft. to face.

Value \$100.

No. 1 Discovery shaft of the Sulphide lode, the center of which being the discovery point, is on the lode line 643 ft. from the center of line 4-1; 4x11 ft., 4 ft. deep.

Value \$50.

No. 2 A shaft, the center of which bears N. 16°10' E., 528 ft. from Cor. No. 2 Sulphide lode; 5x8 ft., 10 ft. deep.

Value \$100.

No. 3 A shaft, the center of which bears N. 67° E., 700 ft. from Cor. No. 3 Sulphide lode; 4x10 ft., 6 ft. deep.

Value \$75.

No. 4 A shaft, the center of which bears N.65°45'E., 742 ft. from Cor. No. 3 Sulphide lode; 6x9 ft., 7 ft. deep.

Value \$75.

No. 5 A shaft, the center of which bears S.22°W., 724 ft. from Cor. No. 4 Sulphide lode; 4x8 ft., 3 ft. deep, partly caved.

Value \$35.

No. 6 A shaft, the center of which bears N.0°32'W., 287.51 ft. from Cor. No. 2 Sulphide lode; 5x10 ft., 10 ft. deep.

Value \$125.

No. 7 A cut, the face of which bears S.18°05'W., 780 ft. from Cor. No. 4 Sulphide lode; 4 ft. wide, 5 ft. face, running N.5°E., 20 ft. to face.

Value \$60.

No. 8 A cut, the face of which bears S.18°15'W., 847 ft. from Cor. No. 4 Sulphide lode; 5 ft. wide, 6 ft. face, running North 16 ft. to face.

Value \$60.

No. 9 A cut, the face of which bears S. 20° E., 73 ft. from Cor. No. 4, Sulphide lode; 5 ft. wide, 10 ft. face, running S. 83° 30' E., 7 ft. to face, partly caved.

Value \$50.

No. 1 Discovery cut of the Staples lode, the face of which being the discovery point, is on the lode line 1,150 ft. from the center of line 1-2; 6 ft. wide, 10 ft. face, running N. 64° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which bears S. 61° W., 718 ft. from Cor. No. 2, Staples lode; 6 ft. wide, 5 ft. face, running N. 45° E., 12 ft. to face, partly caved.

Value \$75.

No. 3 A cut, the face of which bears S. 55° E., 75 ft. from Cor. No. 4, Staples lode; 12 ft. wide, 10 ft. face, running S. 72° E., 7 ft. to face.

Value \$100.

No. 1 Discovery cut of the Manganese lode, the face of which being the discovery point, is on the lode line 1,070.98 ft. from the center of line 4-1; 5 ft. wide, 9 ft. face, running North 7 ft. to face.

Value \$60.

No. 2 A cut, the face of which is on the lode line 1,010 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 4 ft. face, running N. 88° W., 8 ft. to face.

Value \$40.

No. 3 A cut, the face of which is on the lode line 818 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 7 ft. face, running N. 5° W., 12 ft. to face.

Value \$75.

No. 4 A cut, the face of which bears S. 61° 30' W., 860 ft. from Cor. No. 1, Manganese lode; 5 ft. wide, 2 ft. face, running N. 34° W., 15 ft. to face.

Value \$35.

No. 1 Discovery cut of the La Jolla lode, the face of which being the discovery point, is on the lode line 1,330 ft. from the center of line 1-2; 8 ft. wide, 6 ft. face, running N. 46° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which is on the lode line 90 ft. from the center of line 3-4, La Jolla lode; 12 ft. wide, 5 ft. face, running N. 46° E., 6 ft. to face.

Value \$65.

No. 3 A shaft, the center of which bears S. 31° 30' E., 82 ft. from Cor. No. 3, La Jolla lode; 5 x 6 ft., 8 ft. deep.

Value \$75.

No. 1 Discovery cut of the Arroyo Verde lode, the center of which being the discovery point, is on the lode line 780 ft. from the center of line 1-2; 8 ft. wide, 10 ft. face, running S. 5° W., 8 ft. to mouth and N. 5° E., 8 ft. to face.

Value \$150.

A common improvement described as follows:

No. 1 A tunnel, 6x7 ft. in size, known as No. 2, the portal of which bears N. 53°39' W., 772.12 ft. from Cor. No. 1 A. W. Dahlberg lode, running N. 51°17' W., 28 ft. to Sta. A1; thence N. 33°32' W., 24 ft. to pt. AX and 40.44 ft. to Sta. A2, and North 25 ft. to pt. X. At pt. X a drift, 5x7 ft. in size, runs N. 40° W., 30 ft. to breast. At pt. AX a crosscut, 5x7 ft. in size, runs West 20 ft. to breast. At Sta. A2 a tunnel, 6x7 ft. in size, runs N. 39°35' W., 66.26 ft. to Sta. A3; thence N. 59°49' W., 38.82 ft. to Sta. A4; thence N. 66°37' W., 121.45 ft. to Sta. A5; thence N. 78°38' W., 170.33 ft. to Sta. A6; thence N. 41°45' W., 179.05 ft. to Sta. A7; thence N. 39°04' W., 71.22 ft. to Sta. A8; thence N. 33°40' W., 62.05 ft. to Sta. A9; thence N. 44°52' W., 129.74 ft. to Sta. A10; thence N. 44°52' W., 141.00

ft. to pt. X1 and 215.56 ft. to Sta. A15. At Sta. A10 a crosscut, 10x7 ft. in size, runs N. 42°09' E., 9.73 ft. to Sta. A16 and a crosscut, 6x7 ft. in size, runs S. 38° W., 13 ft. to Sta. A11; thence S. 72° W., 25 ft. to Sta. A12; thence S. 60° W., 105 ft. to Sta. A13; thence S. 48° W., 61 ft. to breast. At Sta. A16 a drift, 6x7 ft. in size, runs N. 39°51' W., 10 ft. to pt. D and 140 ft. to Sta. Y. This drift also runs S. 54°45' E., 23 ft. to breast. A crosscut, 6x7 ft. in size, beginning at Sta. A16 runs N. 52°30' E., 30 ft. to breast. Pt. D is at the beginning of No. 1 stope which averages 38 ft. long, 5 ft. wide and 125 ft. high. At pt. X1 a crosscut, 8x7 ft. in size, runs N. 40° E., 25 ft. and connects with the drift at Sta. Y. At Sta. A15 a drift, 7x7 ft. in size, runs N. 50°30' W., 21.92 ft. to Sta. A18, and a crosscut, 10x7 ft. in size, runs N. 27°27' E., 15 ft. to Sta. A17. At Sta. A17 a drift, 8x7 ft. in size, runs N. 45° W., 15 ft. to breast; a crosscut, 6x7 ft. in size, runs N. 41° E., 24 ft. to a caved breast, and a drift, 6x7 ft. in size, runs S. 38° E., 15 ft. to breast. Sta. A17 is below a two compartment raise 5x10 ft. in size, running up 30 ft. to stope No.4, which averages 30 ft. long, 5 ft. wide and 30 ft. high. Sta. Y is in the center of stope 2-3 which averages 55 ft. long, 5 ft. wide and 150 ft. high. At Sta. Y a drift, 7x7 ft. in size, runs N. 40° W., 44 ft. to Sta. Z; thence N. 70° W., 30 ft. to Sta. A17. At Sta. A18 a drift, 6x7 ft. in size, runs N. 25°31' W., 36.29 ft. to Sta. A19; thence N. 38° W., 22.34 ft. to Sta. A20, and N. 16°35' E., 40 ft. to the breast of a crosscut, 5x7 ft. in size. Sta. A19 is the beginning of stope No. 5, which averages 35 ft. long, 5 ft. wide, and 50 ft. high. At Sta. A20 a drift, 6x7 ft. in size, runs N. 40°11' W., 62.85 ft. to Sta. A21; thence N. 30°30' W., 60.29 ft. to Sta. A22. A crosscut, 5x7 ft. in size, which begins at Sta. A21 runs S. 57° W., 50 ft. to breast, partly filled. Sta. A21 is at the beginning of stope 6-7 which averages 30 ft. long, 5 ft. wide and 110 ft. high. Sta. A22 is below the center of stope No. 8, which averages 40 ft. long, 5 ft. wide, and 55 ft. high. At Sta. A22 a drift, 6x7 ft. in size, runs N. 25°15' W., 38.92 ft. to Sta. A23; thence N. 32° W., 80.82 ft. to Sta. A24; thence N. 36°25' W., 53.6 ft. to breast. Sta. A23 is at the beginning of stope No. 9 which averages 22 ft. long, 5 ft. wide, and 55 ft. high.

No. 2. A tunnel, 6x7 ft. in size, known as No. 1, the portal of which bears S.29°03'W., 521.02 ft. from Cor. No. 2 Peter Applegate lode, running S.74°48'E., 176 ft. to Sta. B3; thence S.73°57'E., 112.73 ft. to Sta. B4; thence N.75°13'E., 527.43 ft. to Sta. B5; thence N.77°37'E., 53.5 ft. to breast. At Sta. B5 a drift, 7x7 ft. in size, runs N.47°16'W., 20 ft. to pt. A and 87.5 ft. to Sta. B6. Pt. A is at the top of a raise, 5x8 ft. in size, which comes up from stope No. 4 and connects with No. 2 tunnel at Sta. A17. The raise has a length of 290 ft. and partly timbered. At Sta. B6 a drift, 7x7 ft. in size, runs N.33°07'W., 29.91 ft. to Sta. B7; thence N.46°00'W., 27.6 ft. to Sta. B8; thence N.28°19'W., 19 ft. to breast. At Sta. B5 a drift, 7x7 ft. in size, runs S.37°17'E., 45 ft. to pt. B and 100 ft. to breast. A stope, the center of which is above pt. B, averages 80 ft. long, 5 ft. wide and 60 ft. high. Pt. B is also the center of a stope, below the level, which averages 43 ft. long, 5 ft. wide, 50 ft. deep and connects with the raise between tunnels No. 1 and No. 2.

No. 3. A tunnel, 5x7 ft. in size, known as No. 6, the portal of which bears N.49°41'E., 9.37 ft. from Cor. No. 4, H. McKenzie lode, running S.66°20'E., 52 ft. to pt. 1 and 107 ft. to Sta. 2. At pt. 1 a crosscut, 5x7 ft. in size, runs S.25°E., 22 ft. to breast. At Sta. 2 a crosscut, 5x7 ft. in size, runs N.33°E., 11 ft. to the top of a raise, 5x7 ft. in size, which connects with the top of the stope above tunnel No. 1. The raise has a length of 65 ft. At Sta. 2 a 5x7 ft. drift runs S.47°05'E., 63 ft. to Sta. 3; thence S.30°30'E., 30 ft. to Sta. 4; thence S.40°E., 46 ft. to Sta. 5. At Sta. 4 a crosscut, 5x7 ft. in size, runs S.69°W., 48 ft. to breast. At Sta. 5 a cross, 5x7 ft. in size, runs N.38°45'E., 116 ft. to breast; another 5x7 ft. crosscut runs N.83°55'E., 31 ft. to breast, and a drift, 5x7 ft. in size, runs S.4°W., 16 ft. to breast.

Value of tunnels, drifts, raises, crosscuts and stopes \$63,500.

The major portion of this improvement was made when the claimant had only ten of the lodes of this survey, as follows: J. W. Merritt, Peter Applegate, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, and Della McKinnon. The remainder of the improvement has been made by the claimant since all of the lodes of this survey have been located, with the exception of the Ram.

Value of improvement for the benefit of 10 lodes \$55,000.

Value of one-tenth interest \$5,500.

Value of improvement for the benefit of 23 lodes \$8,500.

Value of one-twenty third interest \$369.

No. 4 A shaft, the center of which bears N.65°45'E., 742 ft. from Cor. No. 3 Sulphide lode; 6x9 ft., 7 ft. deep.

Value \$75.

No. 5 A shaft, the center of which bears S.22°W., 724 ft. from Cor. No. 4 Sulphide lode; 4x8 ft., 3 ft. deep, partly caved.

Value \$35.

No. 6 A shaft, the center of which bears N.0°32'W., 287.51 ft. from Cor. No. 2 Sulphide lode; 5x10 ft., 10 ft. deep.

Value \$125.

No. 7 A cut, the face of which bears S.18°05'W., 780 ft. from Cor. No. 4 Sulphide lode; 4 ft. wide, 5 ft. face, running N.5°E., 20 ft. to face.

Value \$60.

No. 8 A cut, the face of which bears S.18°15'W., 847 ft. from Cor. No. 4 Sulphide lode; 5 ft. wide, 6 ft. face, running North 16 ft. to face.

Value \$60.

No. 9 A cut, the face of which bears S. 20° E., 73 ft. from Cor. No. 4, Sulphide lode; 5 ft. wide, 10 ft. face, running S. 83° 30' E., 7 ft. to face, partly caved.

Value \$50.

No. 1 Discovery cut of the Staples lode, the face of which being the discovery point, is on the lode line 1,150 ft. from the center of line 1-2; 6 ft. wide, 10 ft. face, running N. 64° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which bears S. 61° W., 718 ft. from Cor. No. 2, Staples lode; 6 ft. wide, 5 ft. face, running N. 45° E., 12 ft. to face, partly caved.

Value \$75.

No. 3 A cut, the face of which bears S. 55° E., 75 ft. from Cor. No. 4, Staples lode; 12 ft. wide, 10 ft. face, running S. 72° E., 7 ft. to face.

Value \$100.

No. 1 Discovery cut of the Manganese lode, the face of which being the discovery point, is on the lode line 1,070.98 ft. from the center of line 4-1; 5 ft. wide, 9 ft. face, running North 7 ft. to face.

Value \$60.

No. 2 A cut, the face of which is on the lode line 1,010 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 4 ft. face, running N. 88° W., 8 ft. to face.

Value \$40.

No. 3 A cut, the face of which is on the lode line 818 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 7 ft. face, running N. 5° W., 12 ft. to face.

Value \$75.

No. 4 A cut, the face of which bears S. 61° 30' W., 800 ft. from Cor. No. 1, Manganese lode; 5 ft. wide, 2 ft. face, running N. 34° W., 15 ft. to face.

Value \$35.

No. 1 Discovery cut of the La Jolla lode, the face of which being the discovery point, is on the lode line 1,330 ft. from the center of line 1-2; 8 ft. wide, 6 ft. face, running N. 46° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which is on the lode line 90 ft. from the center of line 3-4, La Jolla lode; 12 ft. wide, 5 ft. face, running N. 46° E., 6 ft. to face.

Value \$65.

No. 3 A shaft, the center of which bears S. 31° 30' E., 82 ft. from Cor. No. 3, La Jolla lode; 5 x 6 ft., 8 ft. deep.

Value \$75.

No. 1 Discovery cut of the Arroyo Verde lode, the center of which being the discovery point, is on the lode line 780 ft. from the center of line 1-2; 8 ft. wide, 10 ft. face, running S. 5° W., 8 ft. to mouth and N. 5° E., 8 ft. to face.

Value \$150.

A common improvement described as follows:

No. 1 A tunnel, 6x7 ft. in size, known as No. 2, the portal of which bears N. 53°39' W., 772.12 ft. from Cor. No. 1 A. W. Dahlberg lode, running N. 51°17' W., 28 ft. to Sta. A1; thence N. 33°32' W., 24 ft. to pt. AX and 40.44 ft. to Sta. A2 and North 25 ft. to pt. X. At pt. X a drift, 5x7 ft. in size, runs N. 40° W., 30 ft. to breast. At pt. AX a crosscut, 5x7 ft. in size, runs West 20 ft. to breast. At Sta. A2 a tunnel, 6x7 ft. in size, runs N. 30°35' W., 66.26 ft. to Sta. A3; thence N. 59°49' W., 38.82 ft. to Sta. A4; thence N. 60°37' W., 121.45 ft. to Sta. A5; thence N. 78°38' W., 170.33 ft. to Sta. A6; thence N. 41°45' W., 179.05 ft. to Sta. A7; thence N. 39°04' W., 71.22 ft. to Sta. A8; thence N. 33°40' W., 62.05 ft. to Sta. A9; thence N. 44°52' W., 129.74 ft. to Sta. A10; thence N. 44°52' W., 141.06

ft. to pt. X1 and 215.56 ft. to Sta. A15. At Sta. A10 a crosscut, 10x7 ft. in size, runs N. 42° 00' E., 9.73 ft. to Sta. A16 and a crosscut, 6x7 ft. in size, runs S. 38° W., 13 ft. to Sta. A11, thence S. 72° W., 25 ft. to Sta. A12; thence S. 00° W., 105 ft. to Sta. A13, thence S. 48° W., 61 ft. to breast. At Sta. A16 a drift, 6x7 ft. in size, runs N. 30° 51' W., 10 ft. to pt. D and 140 ft. to Sta. Y. This drift also runs S. 54° 45' E., 23 ft. to breast. A crosscut, 6x7 ft. in size, beginning at Sta. A16 runs N. 52° 00' E., 30 ft. to breast. Pt. D is at the beginning of No. 1 stope which averages 38 ft. long, 5 ft. wide and 125 ft. high. At pt. X1 a crosscut, 8x7 ft. in size, runs N. 40° E., 25 ft. and connects with the drift at Sta. Y. At Sta. A15 a drift, 7x7 ft. in size, runs N. 50° 30' W., 21.92 ft. to Sta. A18, and a crosscut, 10x7 ft. in size, runs N. 27° 27' E., 15 ft. to Sta. A17. At Sta. A17 a drift, 8x7 ft. in size, runs N. 45° W., 15 ft. to breast; a crosscut, 6x7 ft. in size, runs N. 41° E., 24 ft. to a caved breast, and a drift, 6x7 ft. in size, runs S. 38° E., 15 ft. to breast. Sta. A17 is below a two-compartment raise 5x10 ft. in size, running up 30 ft. to stope No. 4, which averages 30 ft. long, 5 ft. wide and 30 ft. high. Sta. Y is in the center of stope 2-3 which averages 55 ft. long, 5 ft. wide and 150 ft. high. At Sta. Y a drift, 7x7 ft. in size, runs N. 40° W., 44 ft. to Sta. Z, thence N. 70° W., 30 ft. to Sta. A17. At Sta. A18 a drift, 6x7 ft. in size, runs N. 25° 41' W., 36.29 ft. to Sta. A19, thence N. 38° W., 22.34 ft. to Sta. A20, and N. 16° 45' E., 40 ft. to the breast of a crosscut, 5x7 ft. in size. Sta. A19 is the beginning of stope No. 5, which averages 35 ft. long, 5 ft. wide, and 50 ft. high. At Sta. A20 a drift, 6x7 ft. in size, runs N. 40° 11' W., 62.85 ft. to Sta. A21, thence N. 30° 30' W., 90.25 ft. to Sta. A22. A crosscut, 5x7 ft. in size, which begins at Sta. A21 runs S. 57° W., 50 ft. to breast, partly filled. Sta. A21 is at the beginning of stope 6-7 which averages 30 ft. long, 5 ft. wide and 110 ft. high. Sta. A22 is below the center of stope No. 8, which averages 40 ft. long, 5 ft. wide, and 55 ft. high. At Sta. A22 a drift, 6x7 ft. in size, runs N. 25° 15' W., 38.92 ft. to Sta. A23, thence N. 32° W., 80.82 ft. to Sta. A24, thence N. 36° 25' W., 116 ft. to breast. Sta. A23 is at the beginning of stope No. 9 which averages 22 ft. long, 5 ft. wide, and 55 ft. high.

No. 2. A tunnel, 6x7 ft. in size, known as No. 1, the portal of which bears S. 29° 03' W., 521.02 ft. from Cor. No. 2 Peter Applegate hole, running S. 74° 48' E., 176 ft. to Sta. B3; thence S. 73° 57' E., 112.73 ft. to Sta. B4; thence N. 75° 13' E., 525.43 ft. to Sta. B5, thence N. 77° 37' E., 53.5 ft. to breast. At Sta. B5 a drift, 7x7 ft. in size, runs N. 67° 16' W., 20 ft. to pt. A and 87.5 ft. to Sta. B9. Pt. A is at the top of a raise, 5x8 ft. in size, which comes up from stope No. 4 and connects with No. 2 tunnel at Sta. A17. The raise has a length of 200 ft. and partly timbered. At Sta. B9 a drift, 7x7 ft. in size, runs N. 31° 07' W., 20.91 ft. to Sta. B7; thence N. 46° 00' W., 27.0 ft. to Sta. B8; thence N. 28° 19' W., 10 ft. to breast. At Sta. B5 a drift, 7x7 ft. in size, runs S. 37° 17' E., 45 ft. to pt. B and 100 ft. to breast. A stope, the center of which is above pt. B, averages 80 ft. long, 5 ft. wide and 90 ft. high. Pt. B is also the center of a stope, below the level, which averages 43 ft. long, 5 ft. wide, 50 ft. deep and connects with the raise between tunnels No. 1 and No. 2.

No. 3. A tunnel, 5x7 ft. in size, known as No. 6, the portal of which bears N. 49° 41' E., 9.47 ft. from Cor. No. 4, H. McKenzie hole, running S. 06° 20' E., 52 ft. to pt. 1 and 107 ft. to Sta. 2. At pt. 1 a crosscut, 5x7 ft. in size, runs S. 25° E., 22 ft. to breast. At Sta. 2 a crosscut, 5x7 ft. in size, runs N. 33° E., 11 ft. to the top of a raise, 5x7 ft. in size, which connects with the top of the stope above tunnel No. 1. The raise has a length of 65 ft. At Sta. 2 a 5x7 ft. drift runs S. 47° 06' E., 63 ft. to Sta. 3; thence S. 30° 30' E., 30 ft. to Sta. 4; thence S. 40° E., 46 ft. to Sta. 5. At Sta. 4 a crosscut, 5x7 ft. in size, runs S. 62° W., 48 ft. to breast. At Sta. 5 a cross, 5x7 ft. in size, runs N. 38° 45' E., 116 ft. to breast; another 5x7 ft. crosscut runs N. 83° 55' E., 31 ft. to breast, and a drift, 5x7 ft. in size, runs S. 4° W., 16 ft. to breast.

Value of tunnels, drifts, raises, crosscuts and stopes \$63,500.

The major portion of this improvement was made when the claimant had only ten of the holes of this survey, as follows: J. W. Merritt, Peter Applegate, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, and Della McKinnon. The remainder of the improvement has been made by the claimant since all of the holes of this survey have been located, with the exception of the Ram.

Value of improvement for the benefit of 10 lodes \$55,000.

Value of one-tenth interest \$5,500.

Value of improvement for the benefit of 23 lodes \$8,500.

Value of one-twenty third interest \$369.



The rock formation covered by the lode claims of this survey is intensely sheared and has a widespread mineralization. The drifts, crosscuts and slopes described in this common development were constructed to further develop the whole area. In order to determine the quantity of the contained minerals the rock extracted in this development was milled on the ground in the flotation plant of the claimant.

Five hundred dollars or over has been expended in this improvement in such a manner as tends to the development of each lode of this survey, except the Ram lode, subsequent to its location and to the time since which common ownership and contiguity have prevailed; therefore an undivided one-twenty third interest in its value is hereby credited to each of the said lodges.

The Ram lode now has a deficiency of \$300 in the required development. Except as above stated, no portion of or interest in this improvement has been credited heretofore as patent expenditure to any lode claim.

#### OTHER IMPROVEMENTS

A frame assay office, the east corner of which bears N.43°02'W., 511.08 ft. from Cor. No. 1, A. W. Dahlberg lode; 14x17 ft. in size, the long side bears S.31°30'W. Claimant herein.

A frame tank shed, the east corner of which bears N.47°08'W., 478.8 ft. from Cor. No. 1, A. W. Dahlberg lode; 10x38 ft. in size, the long side bears N.58°30'W. Claimant herein.

A frame building which houses a flotation mill and a diesel power plant. The east corner of the building bears N.49°14'W., 523.42 ft. from Cor. No. 1, A. W. Dahlberg lode; 56x80 ft. in size, the long side bears N.58°30'W. Claimant herein.

A frame concentrate drying shed, the south corner of which bears N.52°28'W., 497.36 ft. from Cor. No. 1, A. W. Dahlberg lode; 12x16 ft. in size, the long side bears N.31°30'W.

Claimant herein.

A frame shop and timber shed, the south corner of which bears N.55°24'W., 726.02 ft. from Cor. No. 1, A. W. Dahlberg lode; 80x42 ft. in size, the long side bears N.37°30'E.

Claimant herein.

A frame and log office and storehouse, the NE. corner of which bears N.57°40'W., 187 ft. from Cor. No. 1, A. W. Dahlberg lode; 18x52 ft. in size; the long side bears S.25°15'W.

Claimant herein.

A frame boarding house, the NE. corner of which bears N.83°30'W., 192 ft. from Cor. No. 1, A. W. Dahlberg lode; 18x38 ft. in size; the long side bears S.25°W.

Claimant herein.

A frame bunk house, the NE. corner of which bears S.85°W., 210 ft. from Cor. No. 1, A. W. Dahlberg lode; 17x32 ft. in size; the long side bears S.25°W.

Claimant herein.

A frame bunk house, the NE. corner of which bears S.63°50'W., 212 ft. from Cor. No. 1, A. W. Dahlberg lode; 14x20 ft. in size; the long side bears S.20°W.

Claimant herein.

A frame bunk house, the NE. corner of which bears S.56°W., 265 ft. from Cor. No. 1, A. W. Dahlberg lode; 14x16 ft. in size; the long side bears S.38°W.

Claimant herein.

#### UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

#### FINAL OATHS FOR SURVEYS

#### LIST OF NAMES

A list of names of the individuals employed by G. Cleveland Taylor, mineral surveyor, to assist in running, measuring, and marking the lines, corners, and boundaries described in the foregoing field notes of the survey of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg,

Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde, and showing the respective capacities in which they acted.

-----, *Chainman.*  
 -----, *Chainman.*  
 J. G. MILLER, *Arman.*  
 -----, *Flagman.*

## FINAL OATHS OF ASSISTANTS

I, J. G. Miller, do solemnly swear that I assisted G. Cleveland Taylor, mineral surveyor, in marking the corners and surveying the boundaries of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes, represented in the foregoing field notes as having been surveyed by said mineral surveyor and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, faithfully and correctly executed, and the corner and boundary monuments established according to law and the instructions furnished by the regional cadastral engineer at Portland, Oreg.

-----, *Chainman.*  
 -----, *Chainman.*  
 J. G. MILLER, *Arman.*  
 -----, *Flagman.*

Subscribed and sworn to by the above-named persons before me this 10th day of February 1948.

[SEAL]

JOSEPH J. HALL,

*Notary Public for Oregon, County of Jackson.*

My commission expires October 10, 1948.

## UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

## FINAL OATHS FOR SURVEYS

## LIST OF NAMES

A list of the names of the individuals employed by G. Cleveland Taylor, mineral surveyor, to assist in running, measuring, and marking the lines, corners, and boundaries described in the foregoing field notes of the survey of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes and showing the respective capacities in which they acted.

DALE LEE PRATT, *Chainman.*  
 -----, *Chainman.*  
 -----, *Arman.*  
 -----, *Flagman.*

## FINAL OATHS OF ASSISTANTS

I, Dale L. Pratt, do solemnly swear that we assisted G. Cleveland Taylor, mineral surveyor, in marking the corners and surveying the boundaries of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes represented in the foregoing field notes as having been surveyed by said mineral surveyor and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, faithfully and correctly executed, and the corner and

boundary monuments established according to law and the instructions furnished by the regional cadastral engineer at Portland, Oreg.

DALE L. PRATT, *Chairman.*

-----, *Chairman.*

J. G. MILLER, *Arman.*

-----, *Flagman.*

Subscribed and sworn to by the above-named persons before me this 10th day of February 1948.

[SEAL]

ELMER HERRIED,

*Notary Public for Oregon.*

My commission expires March 18, 1949.

## DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE

### FINAL OATH OF MINERAL SURVEYOR

I, G. Cleveland Taylor, mineral surveyor, do solemnly swear that, in pursuance of instructions received from the regional cadastral engineer, at Portland Oreg., dated October 15, 1946, I have, in strict conformity to the laws of the United States, the official regulations and instructions thereunder, and the instructions of said regional cadastral engineer, faithfully and correctly executed the survey of the mining claim of Al Sarena Mines, Inc., known as the Al Sarena group, situate in Elk Creek (unorganized) Mining District, Jackson County, Oreg., in sections 19, 20, 21, 28, 29, 30, T. 31 S., R. 2 E., Willamette meridian and designated as survey No. 879, as represented in the foregoing field notes, which accurately show the boundaries of said mining claim as distinctly marked by monuments on the ground, and described in the attached copy of the location certificate, which was received by me from the regional cadastral engineer with said instructions, and that all corners of said survey have been established and perpetuated in strict accordance with the law, official regulations and instructions thereunder; and I do further solemnly swear that the foregoing are the true and original field notes of said survey and my report therein, and that the labor expended and improvements made upon said mining claim by claimant or its grantors are as therein fully stated, and that the character, extent, location, and itemized value thereof are specified therein with particularity and full detail, and that no portion of said labor or improvements so credited to this claim has been included in the estimate of expenditures upon any other claim.

G. CLEVELAND TAYLOR,

*Mineral Surveyor*

Subscribed and sworn to by the said G. Cleveland Taylor, mineral surveyor before me, a notary public, this 4th day of March 1948.

[SEAL]

I. G. PICKENS,

*Notary Public for Oregon.*

My commission expires December 9, 1951.

## CERTIFICATE OF APPROVAL OF FIELD NOTES AND SURVEY OF MINING CLAIM

UNITED STATES DEPARTMENT OF THE INTERIOR,

BUREAU OF LAND MANAGEMENT,

PUBLIC SURVEY OFFICE,

Portland, Oreg., September 7, 1948

I, regional cadastral engineer at Portland, Oreg., do hereby certify that the foregoing and hereto attached field notes and return of the survey of the mining claim of Al Sarena Mines, Inc., known as the Al Sarena group, situate in Elk Creek (unorganized) mining district in sections 19, 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., Willamette meridian, designated as survey No. 879, executed by G. Cleveland Taylor, mineral surveyor, May 12 to August 6, 1948, under my instructions dated October 15, 1946, have been critically examined and the necessary corrections and explanations made, and the said field notes and return and the survey they describe, are hereby approved. The certified copy of the

location certificate filed by the applicant for survey is on file in this office and a true copy of said certified copy of said location certificate is included and made a part of the transcript of the field notes.

JOSEPH A. GANONG,  
*Regional Cadastral Engineer.*

# REGIONAL CADASTRAL ENGINEER'S FINAL CERTIFICATE ON FIELD NOTES

DEPARTMENT OF THE INTERIOR,  
PUBLIC SURVEY OFFICE,  
*Portland, Oreg., September 27, 1948.*

I, regional cadastral engineer at Portland, Oreg., do hereby certify that the foregoing transcript of the field notes, return and approval of the survey of the mining claim of Al Sarena Mines, Inc., known as the Al Sarena Group, situate in Elk Creek (unorganized) Mining District Jackson County, Oreg., in sections 19, 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., Willamette meridian, and designated as survey No. 879, has been correctly copied from the originals on file in this office; that said field notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

I further certify that \$500 worth of labor has been expended or improvements made upon, or for the benefit of, each location embraced in said mining claim by claimant or its grantors.

I further certify that the plat thereof, filed in the Oregon District Land Office at Portland, Oreg., is correct and in conformity with the foregoing field notes.

JOSEPH A. GANONG,  
*Regional Cadastral Engineer.*

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
*Washington 25, D. C., February 15, 1956*

U adjustments, Rogue River Mining Claims, Al Sarena.

Hon. CLARE E. HOFFMAN,  
*House of Representatives.*

DEAR CONGRESSMAN HOFFMAN: This will acknowledge receipt of your request of February 14 for certain correspondence in connection with the Al Sarena mining claims.

I am glad to enclose copies of the memoranda you requested of June 3 and July 14, 1955. The information from Mr. Hattan referred to in the memo of June 3 was not obtained in writing, but insofar as we have been able to learn was given verbally by Mr. Hattan to Mr. Folsom.

Sincerely yours,

RICHARD E. MCARDLE, *Chief.*

JUNE 3, 1955.

Division of Timber Management.  
Recreation and lands, Frank B. Folsom.

U adjustments—Rogue River mining claims, Al Sarena.

Mr. Hattan of BLM advised that a recent visit to the Al Sarena mine indicated a possible timber trespass.

They observed that about 5 acres of the Rhyolite claim (one which was not included in the group of 23 claims for which patent was issued) was logged over and logging roads crossed on other parts of the claim. The boundaries of this claim are common to the surrounding claims which have been patented. These common boundaries have been established by mineral surveys which are prerequisite to application for patent. This information has been passed on to the supervisor who is making a check of the situation to determine the facts.

FRANK B. FOLSOM.

JULY 14, 1955.

Forest Supervisor.

District ranger, Union Creek.

U adjustments, Al Sarena Mines.

Reference is made to your memorandum of June 27, 1955.

The unpatented claim named Riolite lying within the general area covered in Mineral Survey No. 879, Oregon, was checked on July 13, 1955 by George W. Kansky.

The  $\frac{1}{4}$  Sec. Cor. for Sections 20 and 29 T. 31 S., R. 2 E was located on the ground, and the surveyed boundary lines for the claims adjoining Riolite were located and examined.

There is no timber trespass on the unpatented claim as of this date. It is apparent that the cutover land which is seen looking eastward from the Bitterlick road is on patented claims.

GEORGE W. KANSKY.

# TWO TIMBER SALES ADJACENT TO AL SARENA MINES—MAP SHOWING LOCATION AND TOPOGRAPHICAL MAP OF AREA

## SUNSHINE CREEK SALE

### Facts:

This sale was made the same week of the Al Sarena patent grant.

The sale as in sections adjoining the Al Sarena mine.

The timber species are essentially the same as those on the mine property.

The weighted average price, including Sugar Pine was only \$10.79 per thousand board feet.

Excluding the Sugar Pine, the weighted average was \$8.24 MBF.

Leavengood of Forest Service testified in Portland hearings, page 87, that the net merchantable timber stand on the Al Sarena claims was 25 MBF per acre.

The 15 contested Al Sarena claims contained 292 acres.

Timber volume on contested claims— $292 \times 25 \times \$10.79 = \$78,659$ —not \$635,000.

Sunshine Creek Sale—Steve O. Wilson—February 9, 1954: Twp. 31 S., R. 2 E. Secs. 2, 3, 4, 9, 10, 11, 12, 14, 16. T. 30 S., R. 2 E., Sec. 34:

Species	Volume, MBF	Appraised price per MBF	Bid price per MBF
DF.....	15,900	\$10.35	\$10.35
IC.....	600	5.90	5.90
WF & O.....	11,200	4.40	4.40
SP & O.....	3,900	29.10	29.10
Total.....	31,600	329.875	329.875

Weighted average  $\frac{329,875}{31,600} = \$10.79$  per MBF.

## JIM CREEK SALE

### Facts:

This sale was made  $3\frac{1}{2}$  years after Al Sarena Mines filed application for patent.

The sale was in sections adjoining the Al Sarena Mine.

The timber species were essentially the same as those on the Al Sarena contested claims.

The weighted average price, including Sugar Pine, was \$11.59 per thousand board feet.



No. 2 A shaft, the center of which bears S. 11°06' E., 291.68 ft. from Cor. No. 2, Mark Applegate lode; 4 x 6 ft., 10 ft. deep.

Value \$100.

No. 1 Discovery shaft of the H. McKenzie lode, the center of which being the discovery point is on the lode line 1,481.59 ft. from center of line 1-2; 4 x 6 ft., 6 ft. deep.

Value \$75.

No. 2 A shaft, the center of which bears S. 62°30' E., 280 ft. from Cor. No. 4, H. McKenzie lode; 4 x 10 ft., 8 ft. deep.

Value \$100.

No. 3 A tunnel, 5 x 7 ft. in size, known as No. 3, the portal of which bears N. 9°16' E., 321.81 ft. from Cor. No. 3 H. McKenzie lode; running N. 43° W., 12 ft. to Sta. A; thence S. 44° W., 9 ft. to breast, and N. 44° E., 10 ft. to breast. At Sta. A a winze with an inclination of 35° runs N. 40° W., 23 ft. to bottom.

Value of tunnel and winze \$700.

No. 1 Discovery cut of the J. L. Grubb lode, the center of which being the discovery point is on the lode line, 388 ft. from the center of line 4-1; 5 ft. wide, 10 ft. face, running S. 10 ft. to the mouth and N. 10 ft. to face.

Value \$200.

No. 2 A shaft, the center of which bears S. 84° W., 450 ft. from Cor. No. 1, J. L. Grubb lode; 5 x 8 ft., 6 ft. deep.

Value \$75.

No. 3 A cut, the mouth of which bears S. 65°20' W., 587 ft. from Cor. No. 1, J. L. Grubb lode; 5 ft. wide, 6 ft. face, running S. 65° W., 20 ft. to face.

Value \$150.

No. 4 A shaft, the center of which bears S. 63°50' W., 550 ft. from Cor. No. 1, J. L. Grubb lode; 4 x 10 ft., 6 ft. deep.

Value \$75.

No. 5 A cut, the mouth of which bears N. 4°10' W., 265 ft. from Cor. No. 2, J. L. Grubb lode; 16 ft. wide, 12 ft. face, running N. 6 ft. to face.

Value \$125.

No. 1 Discovery shaft of the J. D. McKinnon lode, the center of which being the discovery point is on the lode line 233 ft. from the center of line 1-2; 4 x 6 ft., 8 ft. deep.

Value \$75.

No. 2 A cut, the face of which bears N. 3°10' W., 363 ft. from Cor. No. 1, J. D. McKinnon lode; 5 ft. wide, 10 ft. face, running N. 80° W., 24 ft. to face.

Value \$175.

No. 3 A cut, the mouth of which bears N. 30°15' W., 242 ft. from Cor. No. 1, J. D. McKinnon lode; 4 ft. wide, 4 ft. face, running N. 21° W., 16 ft. to face.

Value \$50.

No. 1 Discovery shaft of the Henry Applegate lode, the center of which being the discovery point is on the lode line, 1,495 ft. from the center of line 4-1; 4 x 6 ft., 7 ft. deep.

Value \$75.

No. 2 A cut, the face of which bears N. 79° E., 372 ft. from Cor. No. 1, Henry Applegate lode; 5 ft. wide, 8 ft. face, running N. 24° E., 27 ft. to face.

Value \$100.

No. 3 A cut, the mouth of which bears N. 73°45' E., 140 ft. from Cor. No. 1, Henry Applegate lode; 4 ft. wide, 5 ft. face, running N. 77° E., 38 ft. to face.

Value \$200.

No. 1 Discovery cut of the A. W. Dahlberg lode, the face of which being the discovery point is on the lode line 260 ft. from the center of line 1-2; 6 ft. wide, 6 ft. face, running N. 19 ft. to face.

Value \$125.

No. 2 A cut, the face of which bears S. 16°05' E., 365 ft. from Cor. No. 4, A. W. Dahlberg lode; 5 ft. wide, 8 ft. face, running N. 61°30' W., 22 ft. to face. At the face of cut is the portal of a tunnel, 5x7 ft. in size, running N. 9° W., 15 ft. to breast.

Value of cut and tunnel \$300.

No. 3 A cut, the face of which bears N. 83° W., 90 ft. from Cor. No. 1, A. W. Dahlberg lode; 6 ft. wide, 5 ft. face, running N. 31° E., 12 ft. to face.

Value \$75.

No. 1 Discovery cut of the Telluride lode, the face of which being the discovery point is on the lode line 1,360.93 ft. from the center of line 1-2; 4 ft. wide, 10 ft. face, running N. 14° W., 10 ft. to face.

Value \$100.

No. 2. A tunnel, 5x7 ft. in size, known as No. 4, the portal of which bears S. 54° E., 118.97 ft. from Cor. No. 4 Telluride lode, running north 12 ft. to Sta. 1, thence N. 30° 15' E., 15 ft. to Sta. 2, thence S. 3° E., 20 ft. to Sta. 3, thence S. 5° W., 5 ft. to breast, and S. 85° E. 15 ft. to breast.

Value \$8.90

No. 3. A cut, the face of which bears S. 33° 30' E., 228 ft. from Cor. No. 1 Telluride lode; 6 ft. wide, 5 ft. face, running N. 75° 15' W., 12 ft. to face.

Value \$70

No. 4. A cut, the face of which bears S. 52° 10' W., 415 ft. from Cor. No. 2 Telluride lode; 5 ft. wide, 10 ft. face, running N. 50° W., 12 ft. to face.

Value \$60

No. 1. Discovery cut of the Alabama lode, the center of which being the discovery point is on the lode line 1.4 1/2 ft. from the center of line 1-2; 4 ft. wide, 5 ft. face, running N. 15° W., 5 ft. to face and S. 15° E., 5 ft. to mouth.

Value \$75

No. 2. A cut, the face of which bears S. 31° 25' W., 930 ft. from Cor. No. 1 Alabama lode; 5 ft. wide, 7 ft. face, running N. 51° 15' W., 16 ft. to face.

Value \$100

No. 1. Discovery cut of the Rainbow lode, the face of which being the discovery point, is on the lode line 320 ft. from center of line 1-2; 8 ft. wide, 8 ft. face, running N. 63° 30' W., 15 ft. to face.

Value \$100

No. 2. A shaft, the center of which bears N. 7° W., 455 ft. from Cor. No. 2 Rainbow lode; 4x6 ft., 3 ft. deep.

Value \$35

No. 3. A shaft, the center of which bears N. 15° 30' W., 462 ft. from Cor. No. 2 Rainbow lode; 8x8 ft., 4 ft. deep.

Value \$70

No. 4. A shaft, the center of which bears S. 80° W., 320 ft. from Cor. No. 1 Rainbow lode; 4x6 ft., 5 ft. deep, partly caved.

Value \$60

No. 5. A cut, the mouth of which bears N. 49° 15' W., 574 ft. from Cor. No. 1 Rainbow lode; 5 ft. wide, 10 ft. face, running N. 44° W., 20 ft. to face.

Value \$125

No. 6. A shaft, the center of which bears N. 51° 20' W., 624 ft. from Cor. No. 1 Rainbow lode; 10x8 ft., 6 ft. deep, partly caved.

Value \$100

No. 1. Discovery cut of the Della McKinnon lode, the center of which being discovery point, is on the lode line 380 ft. from the center of line 1-2; 5 ft. wide, 10 ft. face, running S. 71° E., 12 ft. to mouth and N. 71° W., 12 ft. to face.

Value \$165

No. 2. A shaft, the center of which bears N. 84° W., 450 ft. from Cor. No. 1 Della McKinnon lode; 6x6 ft., 5 ft. deep.

Value \$60

No. 3. A cut, the face of which bears S. 80° W., 310 ft. from Cor. No. 1 Della McKinnon lode; 4 ft. wide, 4 ft. face, running N. 5° W., 20 ft. to face, partly caved.

Value \$75

No. 4. A shaft, the center of which is on the lode line 134 ft. from the center of line 1-2 Della McKinnon lode; 4x8 ft., 4 ft. deep.

Value \$50

No. 5. A cut, the face of which bears N. 48° 15' W., 410 ft. from Cor. No. 1 Della McKinnon lode; 8 ft. wide, 10 ft. face, running N. 76° 30' W., 15 ft. to face.

Value \$75

No. 6. A cut, the mouth of which bears N. 56° W., 582 ft. from Cor. No. 1 Della McKinnon lode; 5 ft. wide, 10 ft. face, running N. 74° W., 22 ft. to face.

Value \$100

No. 1. Discovery shaft of the Sulphide lode, the center of which being the discovery point, is on the lode line 643 ft. from the center of line 4-1; 4x11 ft., 10 ft. deep.

Value \$50

No. 2. A shaft, the center of which bears N. 16° 10' E., 526 ft. from Cor. No. 2 Sulphide lode; 5x8 ft., 10 ft. deep.

Value \$100

No. 3. A shaft, the center of which bears N. 67° E., 700 ft. from Cor. No. 3 Sulphide lode; 4x10 ft., 6 ft. deep.

Value \$75



No. 4 A shaft, the center of which bears N.65°45'E., 742 ft. from Cor. No. 3 Sulphide lode; 6x9 ft., 7 ft. deep.

Value \$75.

No. 5 A shaft, the center of which bears S.22°W., 724 ft. from Cor. No. 4 Sulphide lode; 4x8 ft., 3 ft. deep, partly caved.

Value \$35.

No. 6 A shaft, the center of which bears N.0°32'W., 287.51 ft. from Cor. No. 2 Sulphide lode; 5x10 ft., 10 ft. deep.

Value \$125.

No. 7 A cut, the face of which bears S.18°05'W., 780 ft. from Cor. No. 4 Sulphide lode; 4 ft. wide, 5 ft. face, running N.5°E., 20 ft. to face.

Value \$60.

No. 8 A cut, the face of which bears S.18°15'W., 847 ft. from Cor. No. 4 Sulphide lode; 5 ft. wide, 6 ft. face, running North 16 ft. to face.

Value \$60.

No. 9 A cut, the face of which bears S. 20° E., 73 ft. from Cor. No. 4, Sulphide lode; 5 ft. wide, 10 ft. face, running S. 83° 30' E., 7 ft. to face, partly caved.

Value \$50.

No. 1 Discovery cut of the Staples lode, the face of which being the discovery point, is on the lode line 1,150 ft. from the center of line 1-2; 6 ft. wide, 10 ft. face, running N. 64° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which bears S. 61° W., 718 ft. from Cor. No. 2, Staples lode; 6 ft. wide, 5 ft. face, running N. 45° E., 12 ft. to face, partly caved.

Value \$75.

No. 3 A cut, the face of which bears S. 55° E., 75 ft. from Cor. No. 4, Staples lode; 12 ft. wide, 10 ft. face, running S. 72° E., 7 ft. to face.

Value \$100.

No. 1 Discovery cut of the Manganese lode, the face of which being the discovery point, is on the lode line 1,070.98 ft. from the center of line 4-1; 5 ft. wide, 9 ft. face, running North 7 ft. to face.

Value \$60.

No. 2 A cut, the face of which is on the lode line 1,010 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 4 ft. face, running N. 88° W., 8 ft. to face.

Value \$40.

No. 3 A cut, the face of which is on the lode line 818 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 7 ft. face, running N. 5° W., 12 ft. to face.

Value \$75.

No. 4 A cut, the face of which bears S. 61° 30' W., 860 ft. from Cor. No. 1, Manganese lode; 5 ft. wide, 2 ft. face, running N. 34° W., 15 ft. to face.

Value \$35.

No. 1 Discovery cut of the La Jolla lode, the face of which being the discovery point, is on the lode line 1,330 ft. from the center of line 1-2; 8 ft. wide, 6 ft. face, running N. 46° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which is on the lode line 90 ft. from the center of line 3-4, La Jolla lode; 12 ft. wide, 5 ft. face, running N. 46° E., 6 ft. to face.

Value \$65.

No. 3 A shaft, the center of which bears S. 31° 30' E., 82 ft. from Cor. No. 2, La Jolla lode; 5 x 6 ft., 8 ft. deep.

Value \$75.

No. 1 Discovery cut of the Arroyo Verde lode, the center of which being the discovery point, is on the lode line 780 ft. from the center of line 1-2; 8 ft. wide, 10 ft. face, running S. 5° W., 8 ft. to mouth and N. 5° E., 8 ft. to face.

Value \$150.

A common improvement described as follows:

No. 1 A tunnel, 6x7 ft. in size, known as No. 2, the portal of which bears N. 53°39' W., 772.12 ft. from Cor. No. 1 A. W. Dahlberg lode, running N. 51°17' W., 28 ft. to Sta. A1; thence N. 33°32' W., 24 ft. to pt. AX and 40.44 ft. to Sta. A2 and North 25 ft. to pt. X. At pt. X a drift, 5x7 ft. in size, runs N. 40° W., 30 ft. to breast. At pt. AX a crosscut, 5x7 ft. in size, runs West 20 ft. to breast. At Sta. A2 a tunnel, 6x7 ft. in size, runs N. 39°35' W., 66.26 ft. to Sta. A3; thence N. 59°49' W., 38.82 ft. to Sta. A4; thence N. 60°37' W., 121.45 ft. to Sta. A5; thence N. 78°38' W., 170.33 ft. to Sta. A6; thence N. 41°45' W., 179.05 ft. to Sta. A7; thence N. 39°04' W., 71.22 ft. to Sta. A8; thence N. 33°40' W., 62.05 ft. to Sta. A9; thence N. 44°52' W., 129.74 ft. to Sta. A10; thence N. 44°52' W., 141 ft.

to pt. X1 and 215.56 ft. to Sta. A15. At Sta. A10 a crosscut, 10x7 ft. in size, runs S 42° 00' E, 9.73 ft. to Sta. A16 and a crosscut, 6x7 ft. in size, runs S 38° W, 1 ft. to Sta. A11, thence S 72° W, 25 ft. to Sta. A12, thence S 90° W, 105 ft. to Sta. A13, thence S 48° W, 61 ft. to breast. At Sta. A16 a drift, 6x7 ft. in size, runs N 30° 51' W, 10 ft. to pt. D and 140 ft. to Sta. Y. This drift also runs S 45° E, 23 ft. to breast. A crosscut, 6x7 ft. in size, beginning at Sta. A16 runs N 52° 30' E, 30 ft. to breast. Pt. D is at the beginning of No. 1 slope which averages 38 ft. long, 5 ft. wide and 125 ft. high. At pt. X1 a crosscut, 8x7 ft. in size, runs N 40° E, 25 ft. and connects with the drift at Sta. Y. At Sta. A15 a drift, 7x7 ft. in size, runs N 50° 30' W, 21.92 ft. to Sta. A18, and a crosscut, 7 ft. in size, runs N 27° 27' E, 15 ft. to Sta. A17. At Sta. A17 a drift, 8x7 ft. in size, runs N 45° W, 15 ft. to breast, a crosscut, 6x7 ft. in size, runs N 41° E, 2 ft. to a curved breast, and a drift, 6x7 ft. in size, runs S 38° E, 15 ft. to breast. A17 is below a two-compartment raise 5x10 ft. in size, running up 30 ft. to No. 4, which averages 30 ft. long, 5 ft. wide and 30 ft. high. Sta. Y is in center of slope 2-3 which averages 35 ft. long, 5 ft. wide and 170 ft. high. Sta. Y a drift, 7x7 ft. in size, runs N 40° W, 44 ft. to Sta. Z, thence N 70° W, 7 ft. to Sta. A17. At Sta. A18 a drift, 6x7 ft. in size, runs N 25° 41' W, 36.29 ft. to Sta. A19, thence N 38° W, 22.34 ft. to Sta. A20, and N 16° 45' E, 40 ft. to breast of a crosscut, 5x7 ft. in size. Sta. A19 is the beginning of slope No. 5, which averages 35 ft. long, 5 ft. wide, and 30 ft. high. At Sta. A20 a drift, 6x7 ft. in size, runs N 40° 11' W, 92.85 ft. to Sta. A21, thence N 30° 30' W, 60.29 ft. to Sta. A22. A crosscut, 5x7 ft. in size, which begins at Sta. A21 runs S 57° W, 9 ft. to breast, partly filled. Sta. A21 is at the beginning of slope 6-7 which averages 30 ft. long, 5 ft. wide and 110 ft. high. Sta. A22 is below the center of No. 8, which averages 40 ft. long, 5 ft. wide, and 35 ft. high. At Sta. A22 a drift, 6x7 ft. in size, runs N 25° 15' W, 48.92 ft. to Sta. A23, thence N 32° W, 2 ft. to Sta. A24, thence N 30° 25' W, 33.6 ft. to breast. Sta. A23 is at the beginning of slope No. 9 which averages 22 ft. long, 5 ft. wide, and 35 ft. high. No. 2. A tunnel, 6x7 ft. in size, known as No. 1, the portal of which bears S 63° W, 521.92 ft. from Cor. No. 2 Peter Applegate lode, running S 74° 48' E, 103 ft. to Sta. 130, thence S 73° 57' E, 112.73 ft. to Sta. 131, thence N 75° 13' E, 43 ft. to Sta. 135, thence N 77° 37' E, 33.5 ft. to breast. At Sta. 135 a drift, 6 ft. in size, runs N 47° 16' W, 20 ft. to pt. A and 87.5 ft. to Sta. 139. Pt. A is the top of a raise, 5x8 ft. in size, which comes up from slope No. 4 and meets with No. 2 tunnel at Sta. A17. The raise has a length of 280 ft. and is timbered. At Sta. 139 a drift, 7x7 ft. in size, runs N 33° 07' W, 29.91 ft. to Sta. 137, thence N 46° 00' W, 27.6 ft. to Sta. 138, thence N 28° 19' W, 19 ft. to breast. At Sta. 135 a drift, 7x7 ft. in size, runs S 37° 17' E, 45 ft. to pt. B and 2 ft. to breast. A slope, the center of which is above pt. B, averages 80 ft. long, 5 ft. wide and 90 ft. high. Pt. B is also the center of a slope, below the 1, which averages 43 ft. long, 5 ft. wide, 50 ft. deep and connects with the 2 between tunnels No. 1 and No. 2. No. 3. A tunnel, 5x7 ft. in size, known as No. 6, the portal of which bears S 74° E, 9.37 ft. from Cor. No. 4, H. McKenzie lode, running S 90° 20' E, 52 ft. to pt. 1 and 105 ft. to Sta. 2. At pt. 1 a crosscut, 5x7 ft. in size, runs S 25° E, 1 ft. to breast. At Sta. 2 a crosscut, 5x7 ft. in size, runs N 33° E, 11 ft. to the top of a raise, 5x7 ft. in size, which connects with the top of the slope above No. 1. The raise has a length of 95 ft. At Sta. 2 a 5x7 ft. drift runs S 66° E, 93 ft. to Sta. 3; thence S 30° 30' E, 30 ft. to Sta. 4; thence S 40° E, 7 ft. to Sta. 5. At Sta. 4 a crosscut, 5x7 ft. in size, runs S 60° W, 48 ft. to breast. Sta. 5 a crosscut, 5x7 ft. in size, runs N 38° 45' E, 116 ft. to breast; another 5x7 crosscut runs N 81° 55' E, 31 ft. to breast, and a drift, 5x7 ft. in size, runs N 16° W, 16 ft. to breast.

Value of tunnels, drifts, raises, crosscuts and slopes \$93,500.

The major portion of this improvement was made when the claimant had only the lodes of this survey, as follows: J. W. Merritt, Peter Applegate, W. C. Ver, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Legate, A. W. Dahlberg, and Della McKinnon. The remainder of the improvement has been made by the claimant since all of the lodes of this survey have been located, with the exception of the Ram.

Value of improvement for the benefit of 10 lodes \$55,000.

Value of one-tenth interest \$5,500.

Value of improvement for the benefit of 23 lodes \$8,500.

Value of one-twenty-third interest \$339.

*Feet*

	A madrone, 8 ins. diam., bears N. 80° W., 13.0 ft. dist., mkd. OA-4-879 BT.
	A red fir, 10 ins. diam., bears S. 12° E., 5.5 ft. dist., mkd. OA-4-879-BT.
	Thence N. 44° 31' W.
30. 00	Bitterlick road, bears northeast and southwest.
358. 00	Bitterlick road, bears N. 25° W. and S. 25° E.
565. 00	West Fork of Swanson Creek, 3.5 feet wide, course south.
585. 00	Bitterlick road, bears northeast and southwest.
1, 435. 10	Cor. No. 1, and place of beginning.

## ORO RICO LODE

	Beginning at Cor. No. 1 of the Oro Rico Lode, which is identical with Cor. No. 1 of the Ram lode and Cor. No. 2 of the Oro Alto lode, of this survey.
	Thence N. 45° 50' E.
300. 00	Intersect lode line.
490. 00	West Fork of Swanson Creek, 3 feet wide, course S. 5° E.
600. 00	Cor. No. 2, which is identical with Cor. No. 4 of the Ram lode of this survey.
	Thence S. 44° 31' E.
710. 00	Bitterlick road, bears north and south.
1, 190. 00	Swanson Creek, 5 feet wide, course S. 5° E.
1, 240. 00	Trail, bears N. 5° W. and S. 5° E.
1, 435. 10	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. O Ri-3-879; from which
	A red fir, 10 ins. diam., bears S. 68° W., 13.0 ft. dist., mkd. O Ri-3-879-B T.
	A red fir, 5 ins. diam., bears N. 42° E., 5.0 ft. dist., mkd. O Ri-3-879-B T.
	Thence S. 45° 50' W.
300. 00	Intersect lode line.
335. 00	Trail, bears N. 20° E. and S. 20° W.
425. 00	Swanson Creek, 5 feet wide, course south.
600. 00	Cor. No. 4, which is identical with Cor. No. 3 of the Oro Alto lode of this survey.
	Thence N. 44° 31' W.
225. 10	Bitterlick road, bears N. 5° E. and S. 5° W.
885. 10	West Fork of Swanson Creek, 3 feet wide, course south.
1, 435. 10	Cor. No. 1 and place of beginning.

## COUGAR LODE

	Beginning at Cor. No. 1 of the Cougar Lode, where I—
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked C-1-879; from which
	The $\frac{1}{4}$ sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., W. 1/4 Mer., bears S. 49° 01' W., 659.90 ft. dist.; a gray stone 8x10x14 ins., firmly set, marked and witnessed as described in the official record.
	A white fir, 10 ins. diam., bears N. 45° W., 23.0 ft. dist., mkd. C-1-879-B T.
	A cedar, 5 ins. diam., bears N. 60° E., 10.0 ft. dist., mkd. C-1-879-B T.
	Thence N. 45° 50' E.
200. 00	Bitterlick road, bears N. 8° W. and S. 10° E.
490. 00	West Fork of Swanson Creek, 4 feet wide, course S. 10° E.
900. 00	Corner No. 4 of the Oro Alto lode of this survey.
1, 500. 00	Cor. No. 2, which is identical with Cor. No. 3 of the Oro Alto lode, and Cor. No. 4 of the Oro Rico lode, of this survey.
	Thence S. 45° 25' E.
280. 36	Intersect lode line.
350. 00	Swanson Creek, 5 feet wide, course S. 26° W.
390. 00	Trail, bears N. 25° E. and S. 25° W.

Feet

- 580.36 Cor. No. 3.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. C-3 O Re 3 P A 2 S79; from which  
A hemlock, 12 ins. diam., bears S. 82° W., 14.0 ft. dist., mkd. C-3 O Re 3 P A 2 S79 B T.  
A white flr., 9 ins. diam., bears N. 35° E., 17.5 ft. dist., mkd. C-3 O Re 3 P A 2 S79 B T.  
Thence S. 45° 50' W.
- 510.00 Swanson Creek, 5 feet wide, course S.; West Portal Road, bears N. 23° E. and S. 23° W.
- 1,220.00 West Fork Swanson Creek, 4 feet wide, course S. 30° E.
- 1,300.00 Butterlick road, bears north and south.
- 1,500.00 Cor. No. 4.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. C-4 JWM-1 P A 1 S79; from which  
A white flr., 8 ins. diam., bears N. 32° E., 44.0 ft. dist., mkd. C-4 JWM-1 P A 1 S79 B T.  
A cedar, 18 ins. diam., bears E., 32.0 ft. dist., mkd. C-4 JWM-1 P A 1 S79 B T.  
Thence N. 45° 25' W.
- 300.00 Interest lode line.
- 580.36 Cor. No. 1 and place of beginning.

## ORO RIAL LODE

Beginning at Cor. No. 1 of the Oro Real Lode, where I —

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked O Re 1 S79; from which

The  $\frac{1}{4}$  sec. cor. between sec. 20 and 20, T. 31 S., R. 2 E., W. 1 Mer., bears S. 10° 20' E., 67.10 ft. dist.; a dark stone, 10 x 12 x 16 ins., firmly set, marked and witnessed as described in the official record.

A white flr., 11 ins. diam., bears N. 30° W., 6.0 ft. dist., mkd. O Re 1 S79 B T.

A white flr., 9 ins. diam., bears N. 65° E., 7.0 ft. dist., mkd. O Re 1 S79 B T.

Thence S. 45° 25' E.

280.36 Interest lode line.

570.00 Summit of ridge, bears N. and S.

580.36 Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. O Re 2 O E 1 S79; from which

A red flr., 40 ins. diam., bears S. 45° W., 9.5 ft. dist., mkd. O Re 2 O E 1 S79 B T.

A red flr., 48 ins. diam., bears N. 20° E., 24.0 ft. dist., mkd. O Re 2 O E 1 S79 B T.

Thence S. 45° 50' W.

35.00 Summit of ridge, bears north and south.

1,486.59 Cor. No. 3, which is identical with Cor. No. 3 of the Cougar lode of this survey.

Thence N. 45° 25' W.

190.36 Trail, bears N. 25° E. and S. 25° W.

230.36 Swanson Creek, 5 feet wide, course S. 20° W.

300.00 Interest lode line.

580.36 Cor. No. 4, which is identical with Cor. No. 3 of the Oro Alto lode, Cor. No. 4 of the Oro Rico lode, and Cor. No. 2 of the Cougar lode, of this survey.

Thence N. 45° 50' E.

175.00 Swanson Creek, 5 feet wide, course S.

265.00 Trail, bears N. 20° E. and S. 20° W.

600.00 Cor. No. 3 of the Oro Rico lode of this survey.

1,486.59 Cor. No. 1 and place of beginning.

## J. W. MERRITT LODGE

## Feet

	Beginning at Cor. No. 1 of the J. W. Merritt Lode, which is identical with Cor. No. 4 of the Cougar lode, of this survey, from which
	The $\frac{1}{4}$ sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., Wil Mer., bears S. 88°24' W., 911.85 ft. dist., previously described.
	Thence S. 46°38' E.
120.00	Bitterlick road, bears N. 9° E. and S. 14° W.
203.02	Intersect lode line.
390.00	West Portal road, bears N. 25° E. and S. 24° W.
450.00	Swanson Creek, 5 feet wide, course S. 25° W.
593.02	Cor. No. 2.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. JWM-2-PA-4-MA-1-879; from which
	A hemlock, 9 ins. diam., bears S. 58° W., 27.0 ft. dist., mkd. JWM-2-PA-4-MA-1-879-BT.
	A hemlock, 12 ins. diam., bears N. 49° W., 32.0 ft. dist., mkd. JWM-2-PA-4-MA-1-879-BT.
	Thence S. 45°50' W.
290.00	Swanson Creek, 5.5 ft. wide, course S. 18° W.
395.00	West Portal road, bears N. 16° E. and S. 16° W.
1,500.00	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. JWM-3-879; from which
	A white fir, 10 ins. diam., bears N. 17° W., 34.0 ft. dist., mkd. JWM-3-879-BT.
	A red fir, 30 ins. diam., bears S. 20°30' W.; 7.0 ft. dist., mkd. JWM-3-879-BT.
	Then N. 46°38' W.
260.00	Bitterlick road, bears northeast and southwest.
300.00	Intersect lode line.
593.02	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground, and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. JWM-4-879; from which
	A chinquapin, 7 ins. diam., bears N. 3° E., 35.0 ft. dist., mkd. JWM-4-879-BT.
	A red fir, 10 ins. diam., bears S. 84° E., 17.5 ft. dist., mkd. JWM-4-879-BT.
	Thence N. 45°50' E.
1,500.00	Cor. No. 1 and place of beginning.

## PETER APPLGATE LODGE

	Begining at Cor. No. 1 of the Peter Applegate Lode, which is identical with Cor. No. 4 of the Cougar lode and Cor. No. 1 of the J. W. Merritt lode, of this survey.
	Then No. 45°50' E.
140.00	Bitterlick road, bears north and south.
380.00	West Fork of Swanson Creek, 4 feet wide, course S. 30° E.
990.00	Swanson Creek, 5 feet wide, course N. and S.; West Portal road bears N. 23° E., and S. 23° W.
1,500.00	Cor. No. 2, which is identical with Cor. No. 3 of the Cougar lode and Cor. No. 3 of the Oro Real lode, of this survey.
	Thence S. 46°38' E.
293.02	Intersect lode line.
593.02	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. PA-3-MA-2-HMcK-4-879; from which
	A red fir, 36 ins. diam., bears S. 17°30' W., 22.0 ft. dist., mkd. PA-3-MA-2-HMcK-4-879-BT.
	A hemlock, 8 ins. diam., bears S. 88° W., 32.0 ft. dist., mkd. PA-3-MA-2-HMcK-4-879-BT.
	Thence S. 45°50' W.

**Feet**

- 1,500.00 Cor. No. 4, which is identical with corner No. 2 of the J. W. Merritt lode, of this survey.  
Thence N. 46° 38' W.  
143.02 Swanson Creek 5 feet wide, course S. 25° W.  
203.02 West Portal road, bears N. 25° E. and S. 25° W.  
300.00 Intersect lode line.  
473.02 Lutterick road, bears N. 9° E. and S. 14° W.  
503.02 Cor. No. 1 and place of beginning.

**ORO ESCONDIDO LODGE**

Beginning at Cor. No. 1 of the Oro Escondido Lode, which is identical with Cor. No. 2 of the Oro Real lode, of this survey, from which

The 1<sub>4</sub> sec. cor. between sections 20 and 29, T. 31 S., R. 2 E., Wil. Mer., bears N. 49° 50' W., 520.74 ft. dist., previously described.

Thence N. 45° 50' E.

- 1,448.41 Cor. No. 2.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. OE-2 WCL-2-879, from which  
A madrone, 9 ins. diam., bears N. 41° E., 200 ft. dist., mkd. OE-2 WCL-2-879 B T.  
A cedar, 24 ins. diam., bears S. 60° E., 430 ft. dist., mkd. OE-2 WCL-2-879 B T.  
Thence S. 46° 38' E.  
203.02 Intersect lode line.  
303.02 Cor. No. 3.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. OE-3 WCL-1 JLG-4 JDM-K 2-879, from which  
A madrone, 8 ins. diam., bears S., 190 ft. dist., mkd. OE-3 WCL-1 JLG-4 JDM-K 2-879 B T.  
A madrone, 9 ins. diam., bears S. 80° W., 240 ft. dist., mkd. OE-3 WCL-1 JLG-4 JDM-K 2-879 B T.  
Thence S. 45° 50' W.  
1,448.41 Cor. No. 4.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. OE-4 HMK-1 JLG-3-879, from which  
A red fir, 18 ins. diam., bears N. 45° E., 190 ft. dist., mkd. OE-4 HMK-1 JLG-3-879 B T.  
A red fir, 14 ins. diam., bears S. 17° E., 70 ft. dist., mkd. OE-4 HMK-1 JLG-3-879 B T.  
Thence N. 46° 38' W.  
300.00 Intersect lode line.  
503.02 Cor. No. 1 and place of beginning.

**W. C. LEEVER LODGE**

Beginning at Cor. No. 1 of the W. C. Leever lode, which is identical with Cor. No. 3 of the Oro Escondido lode of this survey, from which

The cor. of sec. 20, 21, 28, and 29, T. 31 S., R. 2 E., Wil. Mer., bears S. 58° 14' E., 890.85 ft. dist.; a gray stone, 8 x 12 x 20 ins., firmly set, marked and witnessed as described in the official record.

Thence S. 46° 38' W.

- 300.00 Intersect lode line.  
503.02 Cor. No. 2, which is identical with Cor. No. 2 of the Oro Escondido lode of this survey.  
Thence N. 45° 50' E.  
1,500.00 Cor. No. 3.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. WCL-3-879; from which  
A hemlock, 12 ins. diam., bears N. 72° W., 17.0 ft. dist., mkd. WCL-3-879-B T.  
A hemlock 12 ins. diam., bears S. 35° E., 22.0 ft. dist., mkd.

<b>Feet</b>	<b>WCL-3-879-B T.</b>
	Thence S. 46° 38' E.
293.02	Interest lode line.
300.00	Elk Creek, 10 feet wide, course S. 24° W.
593.02	Cor. No. 4
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. WCL-4-JDMcK-3-879; from which
	A red fir, 30 ins. diam., bears S. 8° E., 23.0 ft. dist., mkd. WCL-4-JDMcK-3-879-B T.
	A red fir, 30 ins. diam., bears N. 75° W., 21.0 ft. dist., mkd. WCL-4-JDMcK-3-879-B T.
	Thence S. 45° 50' W.
570.00	Elk Creek, 10 feet wide, course S. 10° W.
1,500.00	Cor. No. 1 and place of beginning.

## MARK APPEGATE LODE

	Beginning at Cor. No. 1 of the Mark Applegate Lode, which is identical with Cor. No. 2 of the J. W. Merritt lode and Cor. N. 4 of the Peter Applegate lode of this survey, from which
	The ¼ sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., W. 11 Mer., bears N. 74° 07' 34" W., 1,395.82 ft. dist.; previously described.
	Thence N. 45° 50' E.
1,500.00	Cor. No. 2, which is identical with Cor. No. 3 of the Peter Applegate lode of this survey.
	Thence S. 44° 10' E.
300.00	Intersect lode line; summit of ridge, bears N. 30° E. and S. 30° W.
600.00	Cor. No. 3.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Co. No. 3, mkd. MA-3-HMcK-3-879; from which
	A red fir, 8 ins. diam., bears N. 76° E., 20.0 ft. dist., mkd. MA-3-HMcK-3-879-B T.
	A white fir, 12 in. diam., bears N. 65° W., 11.0 ft. dist., mkd. MA-3-HMcK-3-879-B T.
	Thence S. 45° 50' W.
1,500.00	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. MA-4-879; from which
	A red fir, 36 ins. diam., bears N. 43° 40' W., 24.0 ft. dist., mkd. MA-4-879-B T.
	A chinquapin, 6 ins. diam., bears N. 67° 30' E., 2.0 ft. dist., mkd. MA-4-879-B T.
	Thence N. 44° 10' W.
60.00	Summit of ridge, bears northeast and southwest.
300.00	Intersect lode line.
600.00	Cor. No. 1 and place of beginning.

## H. M'KENZIE LODE

	Beginning at Cor. No. 1 of the H. McKenzie lode, which is identical with Cor. No. 4 of the Oro Escondido lode of this survey, from which
	The ¼ sec. cor. between secs. 20 and 29, T. 31 S., R. 2 E., W. 11 Mer., bears N. 48° 02' W., 1,119.47 ft. dist.; previously described.
	Thence S. 44° 10' E.
300.00	Intersect lode line.
600.00	Cor. No. 2.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. HMcK-2-JLG-2-879; from which
	A red fir, 14 ins. diam., bears S. 20° W., 33.0 ft. dist., mkd. HMcK-2-JLG-2-879-B T.
	A red fir, 12 ins. diam., bears N. 5° W., 10.0 ft. dist., mkd.

<i>Foot</i>	HMcK 2 JLG 2 879 B T.
	Thence S. 45° 50' W.
1,496.59	Cor. No. 3, which is identical with Cor. No. 3 of the Mark Applegate lode of this survey.
	Thence N. 44° 10' W.
300.00	Intersect lode line; summit of ridge, bears N. 30° E. and S. 30° W.
600.00	Cor. No. 4, which is identical with Cor. No. 3 of the Peter Applegate lode and Cor. No. 2 of the Mark Applegate lode of this survey.
	Thence N. 45° 50' E.
900.00	Summit of ridge, bears N. 12° E. and S. 12° W.
1,496.59	Cor. No. 1 and place of beginning.

## J. L. GRUBB LODGE

Beginning at Cor. No. 1 of the J. L. Grubb Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked JLG-1-JDMcK-1-879; from which

	The cor. of sec. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. 11 Mer., bears S. 83° 30' E., 341.51 ft. dist.; previously described.
	A white fir, 32 ins. diam., bears S. 78° E., 12.0 ft. dist., mkd. JLG 1 JDMcK 1 879 B T.
	A hemlock, 18 ins. diam., bears N. 80° W., 31.0 ft. dist., mkd. JLG-1-JDMcK-1-879 B T.
	Thence S. 45° 50' W.
1,448.41	Cor. No. 2, which is identical with Cor. No. 2 of the H. McKenzie lode of this survey.
	Thence N. 44° 10' W.
300.00	Intersect lode line.
600.00	Cor. No. 3, which is identical with Cor. No. 4 of the Oro Escondido lode and Cor. No. 1 of the H. McKenzie lode of this survey.
	Thence N. 45° 50' E.
1,448.41	Cor. No. 4, which is identical with Cor. No. 3 of the Oro Escondido lode and Cor. No. 1 of the W. C. Leever lode of this survey.
	Thence S. 44° 10' E.
300.00	Intersect lode line.
600.00	Cor. No. 1 and place of beginning.

## J. D. MCKINNON LODGE

Beginning at Cor. No. 1 of the J. D. McKinnon Lode, which is identical with Cor. No. 1 of the J. L. Grubb lode of this survey.

	Thence N. 44° 10' W.
300.00	Intersect lode line.
600.00	Cor. No. 2, which is identical with Cor. No. 3 of the Oro Escondido lode Cor. No. 1 of the W. C. Leever lode, and Cor. No. 4 of the J. L. Grubb lode of this survey.
	Thence N. 45° 50' E.
930.00	Elk Creek, 10 feet wide, course S. 10° W.
1,500.00	Cor. No. 3, which is identical with Cor. No. 4 of the W. C. Leever lode of this survey.
	Thence S. 44° 10' E.
300.00	Intersect lode line.
600.00	Cor. No. 4.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. JDMcK-4-879; from which
	A white fir, 15 ins. diam., bears N. 52° W., 9.0 ft. dist., mkd. JDMcK-4-879-B T.
	A white fir, 15 ins. diam., bears N. 52° W., 9.0 ft. dist., mkd. JDMcK-4-879-B T.
	Thence S. 45° 50' W.
1,080.00	Elk Creek road, bears north and south.
1,280.07	Elk Creek, 10 feet wide, course S. 10° W.
1,450.00	Elk Creek road, bears north and south.
1,500.00	Cor. No. 1 and place of beginning.



## HENRY APPLEGATE LODGE

Feet

- Beginning at Cor. No. 1 of the Henry Applegate Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked HA-1-879; from which
- The  $\frac{1}{4}$  sec. cor. between secs. 29 and 30, T. 31 S., R. 2 E., W. Mer., bears N.  $56^{\circ}32'36''$  W., 1,852.36 ft. dist.; previously described.  
A red fir, 24 ins. diam., bears N.  $85^{\circ}$  W., 90 ft. dist., mkd. HA-1-879-B T.  
A cedar, 10 ins. diam., bears S.  $55^{\circ}$  E., 8.0 ft. dist., mkd., HA-i-879-B T.  
Thence N.  $45^{\circ}50'$  E.
- 300.00 Cor. No. 4, of the Mark Applegate lode of this survey.  
1,500.00 Cor. No. 2, on line 3-4 Mark Applegate lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. HA-2-AWD-3-879; from which  
A madrone, 9 ins. diam., bears S.  $18^{\circ}$  W., 8.5 ft. dist., mkd. HA-2-AWD-3-879-BT.  
A hemlock, 10 ins. diam., bears N.  $56^{\circ}$  W., 14.5 ft. dist., mkd. HA-2-AWD-3-879-BT.  
Thence S.  $44^{\circ}10'$  E.
- 300.00 Intersect lode line.  
600.00 Cor. No. 3.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. HA-3-DMcK-4-879; from which  
A cedar, 24 ins. diam., bears S.  $80^{\circ}$  E., 20.4 ft. dist., mkd. HA-3-DMcK-4-879-BT.  
A madrone, 10 ins. diam., bears N.  $19^{\circ}$  W., 24.0 ft. dist., mkd. HA-3-DMcK-4-879-BT.  
Thence S.  $45^{\circ}50'$  W.
- 1,500.00 Cor. No. 4.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. HA-4-879; from which  
A chinquapin, 12 ins. diam., bears N.  $15^{\circ}$  E., 13.0 ft. dist., mkd. HA-4-879-BT.  
A hemlock, 12 ins. diam., bears S.  $20^{\circ}$  E., 16.0 ft. dist., mkd. HA-4-879-BT.  
Thence N.  $44^{\circ}10'$  W.
- 300.00 Intersect lode line.  
600.00 Cor. No. 1 and place of beginning.

## A. W. DAHLBERG LODGE

- Beginning at Cor. No. 1 of the A. W. Dahlberg Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked AWD-1-879; from which
- The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., W. Mer., bears N.  $78^{\circ}37'45''$  E., 1,194.31 ft. dist.; a stone, 8 x 10 x 1 ins., firmly set, marked and witnessed as described in the official record.  
A white fir, 8 ins. diam., bears N.  $21^{\circ}$  W., 9.0 ft. dist., mkd. AWD-1-879-BT.  
A white fir, 24 ins. diam., bears N.  $55^{\circ}30'$  E., 30.5 ft. dist., mkd. AWD-1-879-BT.  
Thence S.  $45^{\circ}50'$  W.
- 220.00 Elk Creek road, bears N.  $10^{\circ}$  W. and S.  $10^{\circ}$  E.  
300.00 Intersect lode line.  
600.00 Cor. No. 2.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, marked AWD 2-879; from which  
A red fir, 11 ins. diam., bears S.  $81^{\circ}40'$  W., 11.0 ft. dist., mkd.

	AWD 2 879 B T.
	A red fir, 20 ins. diam., bears S. 55° 15' E., 22.0 ft. dist., mkd.
	AWD 2 879 B T.
	Thence N. 44° 10' W.
900.00	Cor. No. 3 of the Henry Applegate lode of this survey.
1,500.00	Cor. No. 2, which is identical with Cor. No. 2 of the Henry Applegate lode of this survey.
	Thence N. 45° 50' E.
300.00	Intersect lode line; Cor. Nos. 3 of the Mark Applegate and H. McKenzle lodes of this survey.
900.00	Cor. No. 4 on line 2 3 H. McKenzle lode of this survey.
	Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. AWD 4 T 4 879; from which
	A red fir, 10 ins. diam., bears S. 5° W., 9.5 ft. dist., mkd. AWD-4 T 4 879 B T.
	A cedar, 36 ins. diam., bears N. 55° W., 23.0 ft. dist., mkd. AWD-4 T 4 879 B T.
	Thence S. 44° 10' E.
1,320.00	Road, bears northeast and southwest.
1,370.00	Elk Creek road, bears N. 16° E. and S. 16° W.
1,500.00	Cor. No. 1 and place of beginning.

## TELLURIDE LODGE

Beginning at Cor. No. 1 of the Telluride Lode, on line 1 2 J. L. Grubb lode of this survey, where 1

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked T 1 A 4 879; from which

The cor. of sec. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. 11 Mer., bears N. 56° 22' E., 1,414.83 ft. dist.; previously described.

A sugar pine, 11 ins. diam., bears E., 17.0 ft. dist., mkd. T 1-A-4 879 B T.

A red fir, 11 ins. diam., bears N., 17.0 ft. dist., mkd. T-1-A-4 879 B T.

Thence S. 44° 10' E.

300.00 Intersect lode line.

380.00 Elk Creek road, bears N. 30° E. and S. 30° W.

585.00 Elk Creek, 10 feet wide, course S. 15° W.

600.00 Cor. No. 2.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. T-2-A-3-Su-4-St 4 879; from which

A red fir, 14 ins. diam., bears S. 27° E., 34.0 ft. dist., mkd. T-2-A-3-Su-4-St 4 879 B T.

A hemlock, 16 ins. diam., bears N. 3° W., 18.0 ft. dist., mkd. T 2 A 3-Su 4 St 4 879-B T.

Thence S. 45° 50' W.

40.00 Elk Creek, 8 ft. wide, course south.

425.00 Elk Creek road, bears N. and S.

1,430.93 Cor. No. 3, on line 4-1 A. W. Dahlberg lode of this survey.

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. T-3-Su-3-879; from which

A white fir, 10 ins. diam., bears N. 37° E., 7.5 ft. dist., mkd. T-3 Su-3 879-B T.

A madrone, 9 ins. diam., bears S. 5° E., 8.5 ft. dist., mkd. T 3 Su 3 879 B T.

Thence N. 44° 10' W.

300.00 Intersect lode line.

600.00 Cor. No. 4, which is identical with Cor. No. 4 of the A. W. Dahlberg lode of this survey.

Thence N. 45° 50' E.

1,186.59 Cor. Nos. 2 of the H. McKenzle and J. L. Grubb lodes of this survey.

1,430.93 Cor. No. 1 and place of beginning.

## ALABAMA LODGE

Feet

- Beginning at Cor. No. 1 of the Alabama Lode, on line 4-1, J. D. McKinnon lode of this survey, where I—  
 Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked A-1-879; from which
- The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. Mer., bears S. 35°40' E., 267.09 ft. dist.; previously described.
- A white fir, 11 ins. diam., bears S. 71° E., 20.0 ft. dist., mkd. A-1-879-B T.
- A red fir, 36 ins. diam., bears S. 45° W., 27.0 ft. dist., mkd. A-1-879-B T.
- Thence S. 44°10' E.
- 180.00 Elk Creek road, bears north and south.
- 300.00 Intersect lode line.
- 480.00 Elk Creek road, bears N. 70° E. and S. 70° W.
- 600.00 Cor. No. 2.
- Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in mound of stone 18 ins. high, for Cor. No. 2, mkd. A-2-St-1-879; from which
- A white fir, 26 ins. diam., bears S. 65° E., 46.0 ft. dist., mkd. A-2-St-1-879-B T.
- A white fir, 12 ins. diam., bears S. 49° W., 22.0 ft. dist., mkd. A-2-St-1-879-B T.
- Thence S. 45°50' W.
- 1,460.00 Cor. No. 3, which is identical with Cor. No. 2 of the Telluride lode of this survey.
- Thence N. 44°10' W.
- 15.00 Elk Creek, 10 ft. wide, course S. 15° W.
- 220.00 Elk Creek road, bears N. 30° E. and S. 30° W.
- 300.00 Intersect lode line.
- 600.00 Cor. No. 4, which is identical with Cor. No. 1 of the Telluride lode of this survey.
- Thence N. 45°50' E.
- 1,204.07 Cor. No. 1 of the J. L. Grubb and the J. D. McKinnon lodes of this survey.
- 1,254.07 Elk Creek road, bears N. S.
- 1,444.00 Elk Creek, 10 ft. wide, course S. 10° W.
- 1,460.00 Cor. No. 1 and place beginning.

## RAINBOE LODGE

- Beginning at Cor. No. 1 of the Rainboe Lode, where I—  
 Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked Ra-1-DMcK-2-879; from which
- The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T. 31 S., R. 2 E., W. Mer., bears N. 47°03'07" E., 2,204.43 ft. dist.; previously described. This is the most accessible corner that could be found after diligent search.
- A sugar pine, 6 ins. diam., bears N. 6°30' W., 18.0 ft. dist., mkd. Ra-1-DMcK-2-879-B T.
- A red fir, 9 ins. diam., bears S. 8°30' S., 3.5 ft. dist., mkd. Ra-1-DMcK-2-879-B T.
- Thence S. 45°50' W.
- 150.00 Elk Creek road, bears N. 43° E. and S. 28° W.
- 300.00 Intersect lode line.
- 600.00 Cor. No. 2.
- Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. Ra-2-879; from which
- A white fir, 10 ins. diam., bears S. 78° W., 11.0 ft. dist., mkd. Ra-2-879-B T.
- A madrone, 15 ins., diam., bears N. 1°10' W., 11.0 ft. dist., mkd. Ra-2-879-B T.
- Thence N. 44°10' W.

*Feet*

- 1,500.00 Cor. No. 3, on line 3-4 Henry Applegate lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 3, mkd. Ra-3-879; from which  
A cedar, 10 ins. diam., bears N. 20° E., 47.0 ft. dist., mkd. Ra 3-879-B T.  
A madrone, 8 ins. diam., bears S. 28° 30' E., 27.0 ft. dist., mkd. Ra 3-879-B T.  
Thence N. 45° 50' E.  
300.00 Intersect lode line.  
600.00 Cor. No. 4, on line 3-4 Henry Applegate lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. Ra-4-DMcK-3-879; from which  
A madrone, 11 ins. diam., bears N. 55° E., 18.0 ft. dist., mkd. Ra 4-DMcK 3-879-B T.  
A red fir, 30 ins. diam., bears S. 2° E., 19.0 ft. dist., mkd. Ra-4-DMcK-3-879-B T.  
Thence C. 44° 10' E.  
1,480.00 Elk Creek road, bears N. 33° E. and S. 33° W.  
1,500.00 Cor. No. 1 and place of beginning.

## DELIA M'KINNON LODGE

- Beginning at Cor. No. 1 of the Delia McKinnon Lode, where I—  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked DMcK-1-879; from which  
The ¼ sec. cor. between secs. 28 and 20, T. 31 S., R. 2 E., W. 11 Mer., bears N. 47° 30' 27" E., 1,004.61 ft. dist.; previously described.  
A maple, 8 ins. diam., bears N. 43° W., 9.5 ft. dist., mkd. DMcK-1-879-B T.  
A white fir, 6 ins. diam., bears S. 56° 30' E., 19.0 ft. dist., mkd. DMcK-1-879-B T.  
Thence S. 45° 50' W.  
300.00 Intersect lode line.  
600.00 Cor. No. 2, which is identical with Cor. No. 1 of the Rainbow lode of this survey.  
Thence N. 44° 10' W.  
20.00 Elk Creek road, bears N. 33° E. and S. 33° W.  
1,500.00 Cor. No. 3, which is identical with Cor. No. 4 of the Rainbow lode of this survey.  
Thence N. 45° 50' E.  
300.00 Intersect lode line.  
600.00 Cor. No. 4, which is identical with Cor. No. 3 of the Henry Applegate lode of this survey.  
Thence S. 44° 10' E.  
900.00 Corner No. 2 of A. W. Dahlberg lode of this survey.  
1,105.00 Elk Creek road, bears N. 16° E. and S. 7° E.  
1,500.00 Corner No. 1 and place of beginning.

## SULPHIDE LODGE

- Beginning at Cor. No. 1 of the Sulphide Lode, which falls in the East Ford of Elk Creek where a monument could not be established. From this point—  
The ¼ sec. cor. between secs. 28 and 20, T. 31 S., R. 2 E., W. 11 Mer., bears S. 19° 53' 36" E., 1,038.70 ft. dist.; previously described.  
Thence S. 45° 50' W.  
510.00 East Fork of Elk Creek, 5 ft. wide, course S. 75° W.  
1,005.00 Elk Creek, 10 ft. wide, course south.  
1,240.00 Elk Creek road, bears N. 7° E. and S. 7° W.

## Feet

- 1, 430. 93 Cor. No. 2, on line 4-1 A. W. Dahlberg lode of this survey.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. Su-2-M-3-879; from which  
A cedar, 11 ins. diam., bears S. 77° 30' E., 9.0 ft. dist., mkd. Su-2-M-3-879-B T.  
A madrone, 8 ins. diam., bears S. 22° 30' W., 32.0 ft. dist., mkd. Su-2-M-3-879-B T.  
Thence N. 44° 10' W.  
300. 00 Intersect lode line.  
600. 00 Cor. No. 3, which is identical with Cor. No. 3 of the Telluride lode of this survey.  
Thence N. 45° 50' E.  
1, 005. 93 Elk Creek road, bears N. and S.  
1, 390. 93 Elk Creek, 8 feet wide, course south.  
1, 430. 93 Cor. No. 4, which is identical with Cor. No. 2 of the Telluride lode and Cor. No. 3 of the Alabama lode of this survey.  
Thence S. 44° 10' E.  
300. 00 Intersect lode line.  
583. 12 Witness Cor. No. 1.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for witness Cor. No. 1, mkd. WC-SU-1-St-3-M-4-LJ-2-879; from which  
An alder, 16 ins. diam., bears N. 75° W., 40.0 ft. dist., mkd. Su-1-St-3-M-4-LJ-2-879-B T.  
A cedar, 32 ins. diam., bears N. 14° E., 5.0 ft. dist., mkd. Su-1-St-3-M-4-LJ-2-879-B T.  
600. 00 Cor. No. 1 and place of beginning.

## STAPLES LODE

- Beginning at Cor. No. 1 of the Staples Lode, which is identical with Cor. No. 2 of the Alabama lode of this survey, from which  
The cor. of secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. 1/2 Mer., bears N. 50° 52' W., 338.14 ft. dist.; previously described.  
Thence S. 44° 10' E.  
210. 00 East Fork of Elk Creek 3 feet wide, course S. 15° W.  
300. 00 Intersect lode line.  
600. 00 Cor. No. 2.  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. St-2-LJ-3-879; from which  
A cedar, 32 ins., diam., bears N. 4° E., 53.0 ft. dist., mkd. St-2-LJ-3-879-B T.  
A red fir, 20 ins., diam., bears S. 86° W., 12.5 ft. dist., mkd. St-2-LJ-3-879-B T.  
Thence, S. 45° 50' W.  
1, 460. 00 Cor. No. 3, which is identical with Cor. No. 1 of the Sulphide lode of this survey, and falls in the East Fork of Elk Creek where a monument could not be established.  
Thence N. 44° 10' W.  
16. 88 Witness Cor. No. 3, which is identical with Witness Cor. No. 1 of the Sulphide lode of this survey.  
300. 00 Intersect lode line.  
600. 00 Cor. No. 4, which is identical with Cor. No. 2 of the Telluride lode, Cor. No. 3 of the Alabama lode, and Cor. No. 4 of the Sulphide lode of this survey.  
Thence N. 45° 50' E.  
1, 460. 00 Cor. No. 1 and place of beginning.

## MANGANESE LODE

Beginning at Cor. No. 1 of the Manganese Lode, where I-  
Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked M-1-879; from which

- Feet*
- The  $\frac{1}{4}$  sec. cor. between sec. 28 and 29, T. 31 S., R. 2 E., W. Mer., bears S. 6°44' W., 550.13 ft. dist.; previously described.  
 A sugar pine, 38 ins. diam., bears S. 78° E., 25.0 ft. dist., mkd. M 1-879-B T.  
 A madrone, 9 ins. diam., bears N. 44° W., 23.0 ft. dist., mkd. M 1-879-B T.  
 Thence S. 45°50' W.  
 1,430.00 Cor. No. 2.  
 Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 2, mkd. M 2-879; from which  
 A sugar pine, 10 ins. diam., bears N 65° W., 12.0 ft. dist., mkd. M 2-879-B T.  
 A madrone, 10 ins. diam., bears N.15° E., 25.0 ft. dist., mkd. M 2-879-B T.  
 Thence N 44°10' W.  
 110.00 Elk Creek, 10 feet wide, course S.  
 200.00 Intersect lode line, Cor. No. 1 of the A. W. Dahlberg lode of this survey.  
 430.00 Elk Creek road, bears N 16° E. and S 16° W.  
 480.00 Road, bears northeast and southwest.  
 600.00 Cor. No. 3, on line 4-1 A. W. Dahlberg lode and identical with Cor. No. 2 of the Sulphide lode of this survey.  
 Thence N 45°50' E.  
 190.03 Elk Creek road, bears N 7° E. and S 7° W.  
 425.03 Elk Creek, 10 feet wide, course S.  
 620.03 East Fork of Elk Creek, 5 feet wide, course S.75° W.  
 1,430.03 Cor. No. 4, which is identical with Cor. No. 1 of the Sulphide lode and Cor. No. 3 of the Staples lode of this survey, and falls in the East Fork of Elk Creek, previously described, where a monument could not be established.  
 Thence S 44°10' E.  
 300.00 Intersect lode line.  
 600.00 Cor. No. 1 and place of beginning.

## LA JOLLA LODE

Beginning at Cor. No. 1 of the La Jolla lode, on line 4-1 of the Manganese lode of this survey, where I—

Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 1, marked LJ-1-AV-2-879; from which

The  $\frac{1}{4}$  sec. cor. between sec. 28 and 29, T. 31 S., R. 2 E., W. Mer., bears S 10°44' E., 775.10 ft. dist.; previously described.

A chinquapin, 8 ins. diam., bears N.62° E., 16.0 ft. dist., mkd. LJ-1-AV-2-879-B T.

A madrone, 12 ins. diam., bears S.15° E., 17.5 ft. dist., mkd.

LJ-1-AV-2-879-B T.

Thence N.44°10' W.

150.00 Intersect lode line.

300.00 Cor. No. 2, which is identical with Cor. No. 1 of the Sulphide lode, Cor. No. 3 of the Staples lode and Cor. No. 4 of the Manganese lode of this survey, and falls in a creek, previously described, where a monument could not be established.

Thence N 45°50' E.

1,400.00 Cor. No. 3, which is identical with Cor. No. 2 of the Staples lode of this survey.

Thence S 44°10' E.

150.00 Intersect lode line.

300.00 Cor. No. 4.

Set a cedar post, 48 ins. long 4 ins. sq., 18 ins. in the ground and in a mound of stone 18 ins. high, for Cor. No. 4, mkd. LJ-4-AV-3-879; from which

A white fir, 18 ins. diam., bears S.70° E., 33.0 ft. dist., mkd.

LJ-4-AV-3-879-B T.

- Feet*            A hemlock, 13 ins. diam., bears S.53°W., 6.5 ft. dist., mkd.  
                  LJ-4-AV-3-879-B T.  
                  Thence S.45°50'W.  
 1,460.00       Cor. No. 1 and place of beginning.

## ARROYO VERDE LODE

- Beginning at Cor. No. 1 of the Arroyo Verde Lode, where I—  
 Squared a cedar stump, 20 ins. diam., 18 ins. high, to 6x12 in.,  
 marked AV-1-879; from which  
 The  $\frac{1}{4}$  sec. cor. between secs. 28 and 29, T 31 S., R. 2 E., W. 11  
 Mer., bears S.39°34'W., 429.55 ft. dist., previously described.  
 A red fir, 30 ins. diam., bears N.3°W., 28.0 ft. dist., mkd  
 AV-1-879-B T.  
 A cedar, 14 ins. diam., bears S.13°W., 44.0 ft. dist., mkd  
 AV-1-879-B T.  
 Thence N.44°10'W.  
 300.00       Intersect lode line; Cor. No. 1 of the Manganese lode of this survey.  
 600.00       Cor. No. 2, on line 4-1 of the Manganese lode and identical with  
              Cor. No. 1 of the La Jolla lode of this survey.  
              Thence N. 45°50'E.  
 1,460.00       Cor. No. 3, which is identical with Cor. No. 4 of the La Jolla lode  
              of this survey.  
              Thence S.44°10'E.  
 300.00       Intersect lode line.  
 600.00       Cor. No. 4.  
              Set a cedar post, 48 ins. long, 4 ins. sq., 18 ins. in the ground and in  
              a mound of stone 18 ins. high, for Cor. No. 4, mkd. AV-4-879; from  
              which  
              A red fir, 40 ins. diam., bears N.40°W., 20.0 ft. dist., mkd  
              AV-4-879-B T.  
              A hemlock, 18 ins. diam., bears S.53°E., 16.0 ft. dist., mkd  
              AV-4-879-B T.  
              Thence S.45°50'W.  
 1,460.00       Cor. No. 1 and place of beginning.

## LODE LINES

The presumed course of the vein of each of the several lode locations embraced in this survey, counted from the respective points of discovery, is as follows:

Ram lode, S.42°34'E., 20 ft.; and N.42°34'W., 1,431.84 ft.  
 Oro Alto lode, S.44°31'E., 304 ft.; and N.44°31'W., 1,131.10 ft.  
 Oro Rico lode, S.44°31'E., 170 ft.; and N.44°31'W., 1,265.10 ft.  
 Cougar lode, S.45°50'W., 900 ft.; and N.45°50'E., 600 ft.  
 Oro Real lode, S.45°50'W., 510 ft.; and N.45°50'E., 976.59 ft.  
 J. W. Merritt lode, S.45°50'W., 1,240 ft.; and N.45°50'S., 260 ft.  
 Peter Applegate lode, S.45°50'W., 22 ft.; and N.45°50'E., 1,478.00 ft.  
 Oro Escondido lode, S.45°50'W., 1,258.41 ft.; and N.45°50'E., 190.00 ft.  
 W. C. Leever lode, S.45°50'W., 83 ft.; and N.45°50'E., 1,417.00 ft.  
 Mark Applegate lode, S.45°50'W., 1,499.00 ft.; and N.45°50'E., 1.00 ft.  
 H. McKenzie lode, S.45°50'W., 5.00 ft.; and N.45°50'E., 1,481.59 ft.  
 J. L. Grubb lode, S.45°50'W., 1,060.41 ft.; and N.45°50'E., 388 ft.  
 J. D. McKinnon lode, S.45°50'W., 233 ft.; and N.45°50'E., 1,267.00 ft.  
 Henry Applegate lode, S.45°50'W., 1,495.00 ft.; and N.45°50'E., 5.00 ft.  
 A. W. Dahlberg lode, S.44°10'E., 260.00 ft.; and N.44°10'W., 1,240.00 ft.  
 Telluride lode, S.45°50'W., 70 ft.; and N.45°50'E., 1,360.93 ft.  
 Alabama lode, S.45°50'W., 8 ft.; and N.45°50'E., 1,452 ft.  
 Rainboe lode, S.44°10'E., 320 ft.; and N.44°10'W., 1,180 ft.  
 Delia McKinnon lode, S.44°10'E., 390.00 ft.; and N.44°10'W., 1,110.00 ft.  
 Sulphide lode, S.45°50'W., 787.93 ft.; and N.45°50'E., 643.00 ft.  
 Staples lode, S.45°50'W., 310.00 ft.; and N.45°50'E., 1,150.00 ft.  
 Manganese lode, S.45°50'W., 360 ft.; and N.45°50'E., 1,070.93 ft.  
 La Jolla lode, S.45°50'W., 1,330.00 ft.; and N.45°50'E., 130.00 ft.  
 Arroyo Verde lode, S.45°50'W., 780 ft.; and N.45°50'E., 680.00 ft.

## AREAS

	Acres
Total area, Ram lode.....	19.660
Total area, Oro Alto lode.....	19.767
Total area, Oro Rico lode.....	19.767
Total area, Cougar lode.....	19.680
Total area, Oro Real lode.....	19.861
Total area, J. W. Merritt lode.....	20.462
Total area, Peter Applegate lode.....	20.462
Total area, Oro Escondido lode.....	19.760
Total area, W. C. Leever lode.....	20.462
Total area, Mark Applegate lode.....	20.661
Total area, H. McKenzie lode.....	20.476
Total area, J. L. Grubb lode.....	19.951
Total area, J. D. McKinnon lode.....	20.661
Total area, Henry Applegate lode.....	20.661
Total area, A. W. Dahlberg lode.....	20.661
Total area, Telluride lode.....	19.710
Total area, Alabama lode.....	20.110
Total area, Rainbow lode.....	20.661
Total area, Delta McKinnon lode.....	20.661
Total area, Sulphide lode.....	19.710
Total area, Staples lode.....	20.110
Total area, Manganese lode.....	19.710
Total area, La Jolla lode.....	10.055
Total area, Arroyo Verde lode.....	20.110

## LOCATION

This survey is located in the SE¼ sec. 19, SE¼ and SW¼ sec. 20, SW¼ sec. 21, NW¼ sec. 28, NE¼, NW¼, SE¼ and SW¼ sec. 29, and SE¼ sec. 30, of T. 31 S., R. 2 E., of the Willamette Meridian.

The survey of the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainbow, Delta McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes is identical with the respective location or amended location as marked on the ground.

## EXPENDITURE OF \$500.00

I certify that the value of the labor and improvements made upon or for the benefit of each of the lode locations embraced in said mining claim by the claimant or its grantors is not less than \$500.00, with the exception of the Ram lode, and that said improvements consist of:

No. 1 The discovery cut of the Ram lode, the face of which being the discovery point, is on the lode line 20.00 ft. from the center of line 4-1; 4 ft. wide, 8 ft. face, running N. 42° W., 10 ft. to face.

Value \$100.00

No. 2 A shaft, the center of which bears S. 75°15' E., 305.00 ft. from Cor. No. 2 Ram lode; 4 x 8 ft., 4 ft. deep.

Value \$50.00

No. 3 A cut, the east end of which bears S. 5°30' E., 100.00 ft. from Cor. No. 3 Ram lode; 3 ft. wide, 4 ft. face, running West 18 ft., partly caved.

Value \$50.00

No. 1 The discovery shaft of the Oro Alto lode, the center of which being the discovery point, is on the lode line 1,131.10 ft. from center of line 1-2; 6 x 11 ft., 6 ft. deep, partly caved.

Value \$100.00

No. 2 A cut, the mouth of which bears S. 60° W., 120 ft. from Cor. No. 3 Oro Alto lode; 4 ft. wide, 5 ft. face, running N. 65° W., 13 ft. to face.

Value \$50.00

No. 3 A cut, the mouth of which bears S. 56° W., 100 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 10 ft. face, running N. 64° W., 20 ft. to face, partly caved.



**Value \$100.00**

No. 4 A cut, the mouth of which bears S. 70° W., 35 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 6 ft. face, running N. 10° W., 20 ft. to face, partly caved.

**Value \$75.00**

No. 1 Discovery shaft of the Oro Rico lode, the center of which being the discovery point, is on the lode line 1,265.10 ft. from center of line 1-2; 6 x 8 ft., 10 ft. deep, partly caved.

**Value \$125.00**

No. 2 A tunnel, 6 x 7 ft. in size, the portal of which bears N. 33°21' E. 321.08 ft. from Cor. No. 4 Oro Rico lode; running N. 81° W., 30 ft. to pt. A, and 50 ft. to breast. At pt. A is a drift 5 x 7 ft. in size, running N. 60° W., 31 ft. to pt. B; thence N. 30° W., 6 ft. to breast.

**Value of tunnel and drift \$1,200.00**

No. 3 A shaft, the center of which bears N. 23°30' E., 310 ft. from Cor. No. 4 Oro Rico lode; 6 x 20 ft., 10 ft. deep.

**Value \$150.00**

No. 4 A cut, the mouth of which bears N. 9°30' W., 322 ft. from Cor. No. 4 Oro Rico lode; 8 ft. wide, 7 ft. face, running S. 82° W., 17 ft. to face.

**Value \$100.00**

No. 5 A cut, the mouth of which bears N. 50°40' E., 260 ft. from Cor. No. 1 Oro Rico lode; 6 ft. wide, 6 ft. face, running N. 5° E., 25 ft. to face, partly caved.

**Value \$100.00**

No. 1 Discovery shaft of the Cougar lode, the center of which being the discovery point, is on the lode line 900 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 4 x 7 ft., 9 ft. deep, partly caved.

**Value \$100.00**

No. 2 A cut, the mouth of which is on the lode line of the Cougar lode 835 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 5 ft. wide, 4 ft. face, running west 14 ft. to face.

**Value \$50.00**

No. 3 A cut, the mouth of which bears N. 63°50' E., 835 ft. from Cor. No. 1 Cougar lode; 5 ft. wide, 4 ft. face, running N. 80° E., 10 ft. to face, partly caved.

**Value \$35.00**

No. 4 A cut, the mouth of which bears N. 60°40' E., 922 ft. from Cor. No. 1 Cougar lode; 4 ft. wide, 4 ft. face, running N. 60° E., 10 ft. to face, partly caved.

**Value \$35.00**

No. 5 A cut, the mouth of which bears S. 32°50' E., 295 ft. from Cor. No. 2 Cougar lode; 5 ft. wide, 6 ft. face, running N. 70° W., 13 ft. to face, partly caved.

**Value \$40.00**

No. 6 A cut, the mouth of which bears S. 35°15' E., 275 ft. from Cor. No. 2 Cougar lode; 4 ft. wide, 6 ft. face, running N. 77° W., 10 ft. to face.

**Value \$35.00**

No. 7 A cut, the face of which is on the lode line of the Cougar lode 110 ft. from a point on line 2-3, 280.36 ft. from Cor. No. 2; 6 ft. wide, 6 ft. face, running N. 45° W., 16 ft. to face.

**Value \$100.00**

No. 8 A cut, the mouth of which bears N. 50°15' W., 280 ft. from Cor. No. 3 Cougar lode; 5 ft. wide, 10 ft. face, running N. 65° W., 14 ft. to face, partly caved.

**Value \$75.00**

No. 9 A tunnel, 5x7 ft. in size, the portal of which bears N. 46° E., 400 ft. from Cor. No. 4 Cougar lode; running S. 80° W., 40 ft. to breast, partly caved.

**Value \$350.00**

No. 1 Discovery shaft of the Oro Real lode, the center of which being the discovery point, is on the lode line 976.59 ft. from a point on line 1-2, 280.36 ft. from Cor. No. 1; 6x12 ft., 8 ft. deep.

**Value \$100.00**

No. 2 A cut, the mouth of which bears N. 76° E., 500 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 8 ft. face, running N. 45° E., 20 ft. to face, partly caved.

**Value \$100.00**

No. 3 A tunnel, 6x7 ft. in size, and known as No. 8, the portal of which bears N. 17°59' W.; 209.35 ft. from Cor. No. 3 Oro Real lode; running N. 52° E., 135 ft. to breast, partly caved.

**Value \$2,000.**

No. 4 A cut, the mouth of which bears S. 57°30' E., 255 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 10 ft. face, running S. 46° W., 10 ft. to face.  
Value \$125.

No. 5 A cut, the mouth of which bears S. 30°30' E., 110 ft. from Cor. No. 1 Oro Real lode; 6 ft. wide, 4 ft. face, running S. 5° W., 20 ft. to face.  
Value \$50.

No. 1 Discovery cut of the J. W. Merritt lode, the face of which being the discovery point, is on the lode line 200 ft. from a point on line 1-2, 253.02 ft. from Cor. No. 1; 4 ft. wide, 8 ft. face, running N. 45° W., 12 ft. to face.  
Value \$100.

No. 2 A cut, the mouth of which is on the lode line of the J. W. Merritt lode 185 ft. from a point on line 1-2, 253.02 ft. from Cor. No. 1; 4 ft. wide, 7 ft. face, running S. 40° W., 14 ft. to face.  
Value \$75.

No. 3 A shaft, the center of which bears S. 27°15' E., 250 ft. from Cor. No. 1 J. W. Merritt lode; 4x5 ft., 4 ft. deep, partly caved.  
Value \$45.

No. 4 A shaft, the center of which is on the lode line of the J. W. Merritt lode 80 ft. from a point on line 1-2, 253.02 ft. from Cor. No. 1; 4x6 ft. 5 ft. deep.  
Value \$70.

No. 1 Discovery shaft of the Peter Applegate lode, the south side of which being the discovery point, is on the lode line 22 ft. from a point on line 4-1, 253.02 ft. from Cor. No. 1; 4x6 ft., 4 ft. deep.  
Value \$40.

No. 2 A shaft, the center of which bears S. 86°10' E., 390 ft. from Cor. No. 1 Peter Applegate lode; 4x6 ft., 4 ft. deep.  
Value \$70.

No. 3 A shaft, the center of which bears S. 51°30' E., 270 ft. from Cor. No. 1 Peter Applegate lode; 4x5 ft., 4 ft. deep.  
Value \$45.

No. 4 A shaft, the center of which bears N. 54°25' E., 1380 ft. from Cor. No. 1 Peter Applegate lode; 4x8 ft., 6 ft. deep.  
Value \$100.

No. 5 A cut, the face of which bears N. 85° E., 200 ft. from Cor. No. 1 Peter Applegate lode; 5 ft. wide, 6 ft. face, running N. 83° W., 15 ft. to face.  
Value \$70.

No. 6 A cut, the mouth of which bears N. 6°10' W., 350 ft. from Cor. No. 4 Peter Applegate lode; 5 ft. wide, 4 ft. face, running N. 5° E., 16 ft. to face, partly caved.  
Value \$60.

No. 1 Discovery cut of the Oro Escondido lode, the center of which being the discovery point, is on the lode line, 1,258.41 ft., from a point on line 4-1, 253.02 ft. from Cor. No. 1; 12 ft. wide, 8 ft. face, running S. 70° E., 7 ft. to mouth and N. 70° W., 7 ft. to face.  
Value \$150.

No. 2 A cut, the mouth of which bears N. 38° E., 45 ft. from Cor. No. 4 Oro Escondido lode; 8 ft. wide, 5 ft. face, running N. 65° W., 12 ft. to face.  
Value \$100.

No. 1 Discovery cut of the W. C. Leever lode, the face of which being the discovery point, is on the lode line, 83 ft. from a point on line 1-2, 300 ft. from Cor. No. 1; 5 ft. wide, 6 ft. face, running W., 15 ft. to face.  
Value \$85.

No. 2 A cut, the mouth of which bears N. 42° W., 182 ft. from Cor. No. 1 W. C. Leever lode; 4 ft. wide, 6 ft. face, running N. 55°30' E., 10 ft. to face.  
Value \$60.

No. 3 A cut, the face of which bears N. 28° W., 360 ft. from Cor. No. 1 W. C. Leever lode; 12 ft. wide, 8 ft. face, running S. 53° W., 15 ft. to face.  
Value \$200.

No. 1 Discovery tunnel of the Mark Applegate lode, the center of which being the discovery point is on the lode line, 1,466 ft. from the center of line 4-1; 6 x 7 ft. in size and known as No. 5, the portal of which bears N. 46°36' W., 175.46 ft. from Cor. No. 3, Mark Applegate lode, running N. 41°35' W., 51.25 ft. to Sta. 2; thence N. 40°05' W., 49.7 ft. to Sta. 3, and N. 61°39' E., 70.4 ft. to breast. At Sta. 3 a tunnel, 5 x 7 ft. in size, runs N. 41°04' W., 49.15 ft. to Sta. 4 and S. 43°32' W., 53.15 ft. to breast. At Sta. 4 the tunnel runs N. 3°41' E., 21.45 ft. to breast, partly caved.  
Value \$3,500.

Value \$100.00

No. 4 A cut, the mouth of which bears S. 70° W., 35 ft. from Cor. No. 3 Oro Alto lode; 8 ft. wide, 6 ft. face, running N. 10° W., 20 ft. to face, partly caved.

Value \$75.00

No. 1 Discovery shaft of the Oro Rico lode, the center of which being the discovery point, is on the lode line 1,265.10 ft. from center of line 1-2; 6 x 8 ft., 10 ft. deep, partly caved.

Value \$125.00

No. 2 A tunnel, 6 x 7 ft. in size, the portal of which bears N. 33°21' E. 321.08 ft. from Cor. No. 4 Oro Rico lode; running N. 81° W., 30 ft. to pt. A, and 50 ft. to breast. At pt. A is a drift 5 x 7 ft. in size, running N. 60° W., 31 ft. to pt. B; thence N. 30° W., 6 ft. to breast.

Value of tunnel and drift \$1,200.00

No. 3 A shaft, the center of which bears N. 23°30' E., 310 ft. from Cor. No. 4 Oro Rico lode; 6 x 20 ft., 10 ft. deep.

Value \$150.00

No. 4 A cut, the mouth of which bears N. 9°30' W., 322 ft. from Cor. No. 4 Oro Rico lode; 8 ft. wide, 7 ft. face, running S. 82° W., 17 ft. to face.

Value \$100.00

No. 5 A cut, the mouth of which bears N. 50°40' E., 260 ft. from Cor. No. 1 Oro Rico lode; 6 ft. wide, 6 ft. face, running N. 5° E., 25 ft. to face, partly caved.

Value \$100.00

No. 1 Discovery shaft of the Cougar lode, the center of which being the discovery point, is on the lode line 900 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 4 x 7 ft., 9 ft. deep, partly caved.

Value \$100.00

No. 2 A cut, the mouth of which is on the lode line of the Cougar lode 835 ft. from a point on line 4-1, 280.36 ft. from Cor. No. 1; 5 ft. wide, 4 ft. face, running west 14 ft. to face.

Value \$50.00

No. 3 A cut, the mouth of which bears N. 63°50' E., 835 ft. from Cor. No. 1 Cougar lode; 5 ft. wide, 4 ft. face, running N. 80° E., 10 ft. to face, partly caved.

Value \$35.00

No. 4 A cut, the mouth of which bears N. 60°40' E., 922 ft. from Cor. No. 1. Cougar lode; 4 ft. wide, 4 ft. face, running N. 60° E., 10 ft. to face, partly caved.

Value \$35.00

No. 5 A cut, the mouth of which bears S. 32°50' E., 295 ft. from Cor. No. 2 Cougar lode; 5 ft. wide, 6 ft. face, running N. 70° W., 13 ft. to face, partly caved.

Value \$40.00

No. 6 A cut, the mouth of which bears S. 35°15' E., 275 ft. from Cor. No. 2 Cougar lode; 4 ft. wide, 6 ft. face, running N. 77° W., 10 ft. to face.

Value \$35.00

No. 7 A cut, the face of which is on the lode line of the Cougar lode 110 ft. from a point on line 2-3, 280.36 ft. from Cor. No. 2; 6 ft. wide, 6 ft. face, running N. 45° W., 16 ft. to face.

Value \$100.00

No. 8 A cut, the mouth of which bears N. 50°15' W., 280 ft. from Cor. No. 3 Cougar lode; 5 ft. wide, 10 ft. face, running N. 65° W., 14 ft. to face, partly caved.

Value \$75.00

No. 9 A tunnel, 5x7 ft. in size, the portal of which bears N. 46° E., 400 ft. from Cor. No. 4 Cougar lode; running S. 80° W., 40 ft. to breast, partly caved.

Value \$350.00

No. 1 Discovery shaft of the Oro Real lode, the center of which being the discovery point, is on the lode line 976.59 ft. from a point on line 1-2, 280.36 ft. from Cor. No. 1; 6x12 ft., 8 ft. deep.

Value \$100.00

No. 2 A cut, the mouth of which bears N. 76° E., 500 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 8 ft. face, running N. 45° E., 20 ft. to face, partly caved.

Value \$100.00

No. 3 A tunnel, 6x7 ft. in size, and known as No. 8, the portal of which bears N. 17°59' W.; 209.35 ft. from Cor. No. 3 Oro Real lode; running N. 52° E., 135 ft. to breast, partly caved.

Value \$2,000.

No. 4 A cut, the mouth of which bears S. 57°30' E., 253 ft. from Cor. No. 4 Oro Real lode; 6 ft. wide, 10 ft. face, running S. 46° W., 10 ft. to face.

Value \$125.

No. 5 A cut, the mouth of which bears S. 30°30' E., 110 ft. from Cor. No. 1 Oro Real lode; 6 ft. wide, 4 ft. face, running S. 5° W., 20 ft. to face.

Value \$50.

No. 1 Discovery cut of the J. W. Merritt lode, the face of which being the discovery point, is on the lode line 200 ft. from a point on line 1-2, 253.02 ft. from Cor. No. 1; 4 ft. wide, 8 ft. face, running N. 45° W., 12 ft. to face.

Value \$100.

No. 2 A cut, the mouth of which is on the lode line of the J. W. Merritt lode 185 ft. from a point on line 1-2, 253.02 ft. from Cor. No. 1; 4 ft. wide, 7 ft. face, running N. 40° W., 14 ft. to face.

Value \$75.

No. 3 A shaft, the center of which bears S. 27°15' E., 250 ft. from Cor. No. 1 J. W. Merritt lode; 4x5 ft., 4 ft. deep, partly caved.

Value \$45.

No. 4 A shaft, the center of which is on the lode line of the J. W. Merritt lode 80 ft. from a point on line 1-2, 253.02 ft. from Cor. No. 1; 4x6 ft. 6 ft. deep.

Value \$50.

No. 1 Discovery shaft of the Peter Applegate lode, the south side of which being the discovery point, is on the lode line 22 ft. from a point on line 4-1, 253.02 ft. from Cor. No. 1; 4x6 ft., 4 ft. deep.

Value \$40.

No. 2 A shaft, the center of which bears S. 86°10' E., 350 ft. from Cor. No. 1 Peter Applegate lode; 4x6 ft., 4 ft. deep.

Value \$50.

No. 3 A shaft, the center of which bears S. 51°30' E., 270 ft. from Cor. No. 1 Peter Applegate lode; 4x5 ft., 4 ft. deep.

Value \$35.

No. 4 A shaft, the center of which bears N. 54°25' E., 1350 ft. from Cor. No. 1 Peter Applegate lode; 4x5 ft., 6 ft. deep.

Value \$100.

No. 5 A cut, the face of which bears N. 85° E., 200 ft. from Cor. No. 1 Peter Applegate lode; 5 ft. wide, 6 ft. face, running N. 83° W., 15 ft. to face.

Value \$70.

No. 6 A cut, the mouth of which bears N. 6°10' W., 350 ft. from Cor. No. 4 Peter Applegate lode; 5 ft. wide, 4 ft. face, running N. 5° E., 16 ft. to face, partly caved.

Value \$60.

No. 1 Discovery cut of the Oro Escondido lode, the center of which being the discovery point, is on the lode line, 1,258.41 ft., from a point on line 4-1, 253.02 ft. from Cor. No. 1; 12 ft. wide, 8 ft. face, running S. 70° E., 7 ft. to mouth and N. 70° W., 7 ft. to face.

Value \$150.

No. 2 A cut, the mouth of which bears N. 38° E., 45 ft. from Cor. No. 4 Oro Escondido lode; 8 ft. wide, 5 ft. face, running N. 65° W., 12 ft. to face.

Value \$100.

No. 1 Discovery cut of the W. C. Loever lode, the face of which being the discovery point, is on the lode line, 83 ft. from a point on line 1-2, 300 ft. from Cor. No. 1; 5 ft. wide, 6 ft. face, running W., 15 ft. to face.

Value \$85.

No. 2 A cut, the mouth of which bears N. 42° W., 182 ft. from Cor. No. 1 W. C. Loever lode; 4 ft. wide, 6 ft. face, running N. 55°30' E., 10 ft. to face.

Value \$60.

No. 3 A cut, the face of which bears N. 28° W., 300 ft. from Cor. No. 1 W. C. Loever lode; 12 ft. wide, 8 ft. face, running S. 53° W., 15 ft. to face.

Value \$200.

No. 1 Discovery tunnel of the Mark Applegate lode, the center of which being the discovery point is on the lode line, 1,439 ft. from the center of line 4-1; 6 x 7 ft. in size and known as No. 5, the portal of which bears N. 46°36' W., 175.46 ft. from Cor. No. 3, Mark Applegate lode, running N. 41°35' W., 51.25 ft. to Sta. 2; thence N. 40°05' W., 49.7 ft. to Sta. 3, and N. 61°30' E., 70.4 ft. to breast. At Sta. 3 a tunnel, 5 x 7 ft. in size, runs N. 41°04' W., 49.15 ft. to Sta. 4 and S. 43°32' W., 53.15 ft. to breast. At Sta. 4 the tunnel runs N. 3°41' E., 21.45 ft. to breast, partly caved.

Value \$3,500.

No. 2 A shaft, the center of which bears S. 11°06' E., 291.68 ft. from Cor. No. 2, Mark Applegate lode; 4 x 6 ft., 10 ft. deep.

Value \$100.

No. 1 Discovery shaft of the H. McKenzie lode, the center of which being the discovery point is on the lode line 1,481.59 ft. from center of line 1-2; 4 x 6 ft., 6 ft. deep.

Value \$75.

No. 2 A shaft, the center of which bears S. 62°30' E., 280 ft. from Cor. No. 4, H. McKenzie lode; 4 x 10 ft., 8 ft. deep.

Value \$100.

No. 3 A tunnel, 5 x 7 ft. in size, known as No. 3, the portal of which bears N. 9°16' E., 321.81 ft. from Cor. No. 3 H. McKenzie lode; running N. 43° W., 12 ft. to Sta. A; thence S. 44° W., 9 ft. to breast, and N. 44° E., 10 ft. to breast. At Sta. A a winze with an inclination of 35° runs N. 40° W., 23 ft. to bottom.

Value of tunnel and winze \$700.

No. 1 Discovery cut of the J. L. Grubb lode, the center of which being the discovery point is on the lode line, 388 ft. from the center of line 4-1; 5 ft. wide, 10 ft. face, running S. 10 ft. to the mouth and N. 10 ft. to face.

Value \$200.

No. 2 A shaft, the center of which bears S. 84° W., 450 ft. from Cor. No. 1, J. L. Grubb lode; 5 x 8 ft., 6 ft. deep.

Value \$75.

No. 3 A cut, the mouth of which bears S. 65°20' W., 587 ft. from Cor. No. 1, J. L. Grubb lode; 5 ft. wide, 6 ft. face, running S. 65° W., 20 ft. to face.

Value \$150.

No. 4 A shaft, the center of which bears S. 63°50' W., 550 ft. from Cor. No. 1, J. L. Grubb lode; 4 x 10 ft., 6 ft. deep.

Value \$75.

No. 5 A cut, the mouth of which bears N. 4°10' W., 265 ft. from Cor. No. 2, J. L. Grubb lode; 16 ft. wide, 12 ft. face, running N. 6 ft. to face.

Value \$125.

No. 1 Discovery shaft of the J. D. McKinnon lode, the center of which being the discovery point is on the lode line 233 ft. from the center of line 1-2; 4 x 6 ft., 8 ft. deep.

Value \$75.

No. 2 A cut, the face of which bears N. 3°10' W., 363 ft. from Cor. No. 1, J. D. McKinnon lode; 5 ft. wide, 10 ft. face, running N. 80° W., 24 ft. to face.

Value \$175.

No. 3 A cut, the mouth of which bears N. 30°15' W., 242 ft. from Cor. No. 1, J. D. McKinnon lode; 4 ft. wide, 4 ft. face, running N. 21° W., 16 ft. to face.

Value \$50.

No. 1 Discovery shaft of the Henry Applegate lode, the center of which being the discovery point is on the lode line, 1,495 ft. from the center of line 4-1; 4 x 6 ft., 7 ft. deep.

Value \$75.

No. 2 A cut, the face of which bears N. 79° E., 372 ft. from Cor. No. 1, Henry Applegate lode; 5 ft. wide, 8 ft. face, running N. 24° E., 27 ft. to face.

Value \$100.

No. 3 A cut, the mouth of which bears N. 73°45' E., 140 ft. from Cor. No. 1, Henry Applegate lode; 4 ft. wide, 5 ft. face, running N. 77° E., 38 ft. to face.

Value \$200.

No. 1 Discovery cut of the A. W. Dahlberg lode, the face of which being the discovery point is on the lode line 260 ft. from the center of line 1-2; 6 ft. wide, 6 ft. face, running N. 19 ft. to face.

Value \$125.

No. 2 A cut, the face of which bears S. 16°05' E., 365 ft. from Cor. No. 4, A. W. Dahlberg lode; 5 ft. wide, 8 ft. face, running N. 61°30' W., 22 ft. to face. At the face of cut is the portal of a tunnel, 5x7 ft. in size, running N. 9° W., 15 ft. to breast.

Value of cut and tunnel \$300.

No. 3 A cut, the face of which bears N. 83° W., 90 ft. from Cor. No. 1, A. W. Dahlberg lode; 6 ft. wide, 5 ft. face, running N. 31° E., 12 ft. to face.

Value \$75.

No. 1 Discovery cut of the Telluride lode, the face of which being the discovery point is on the lode line 1,360.93 ft. from the center of line 1-2; 4 ft. wide, 10 ft. face, running N. 14° W., 10 ft. to face.

Value \$100.

No. 2 A tunnel, 5x7 ft. in size, known as No. 4, the portal of which bears N. 68° 54' E., 118.97 ft. from Cor. No. 4 Telluride lode, running north 12 ft. to Sta. 1; thence N. 30° 15' E., 15 ft. to Sta. 2; thence N. 3° E., 20 ft. to Sta. 3; thence N. 85° W., 5 ft. to breast, and S. 85° E., 15 ft. to breast.

Value \$850

No. 3 A cut, the face of which bears S. 33° 30' E., 278 ft. from Cor. No. 1 Telluride lode; 6 ft. wide, 5 ft. face, running N. 75° 15' W., 12 ft. to face.

Value \$50

No. 4 A cut, the face of which bears S. 52° 10' W., 415 ft. from Cor. No. 2 Telluride lode; 5 ft. wide, 10 ft. face, running N. 50° W., 12 ft. to face.

Value \$90

No. 1 Discovery cut of the Alabama lode, the center of which being the discovery point is on the lode line 1,452 ft. from the center of line 1-2; 4 ft. wide, 6 ft. face, running N. 15° W., 5 ft. to face and S. 15° E., 5 ft. to mouth.

Value \$75

No. 2 A cut, the face of which bears S. 31° 25' W., 930 ft. from Cor. No. 1 Alabama lode; 5 ft. wide, 7 ft. face, running N. 51° 15' W., 16 ft. to face.

Value \$100

No. 1 Discovery cut of the Rainbow lode, the face of which being the discovery point, is on the lode line 320 ft. from center of line 1-2; 8 ft. wide, 8 ft. face, running N. 63° 30' W., 15 ft. to face.

Value \$100

No. 2 A shaft, the center of which bears S. 7° W., 455 ft. from Cor. No. 2 Rainbow lode; 4x6 ft., 3 ft. deep.

Value \$35

No. 3 A shaft, the center of which bears N. 15° 30' W., 462 ft. from Cor. No. 2 Rainbow lode; 8x8 ft., 4 ft. deep.

Value \$70

No. 4 A shaft, the center of which bears S. 80° W., 320 ft. from Cor. No. 1 Rainbow lode; 4x6 ft., 5 ft. deep, partly caved.

Value \$20

No. 5 A cut, the mouth of which bears N. 49° 15' W., 574 ft. from Cor. No. 1 Rainbow lode; 5 ft. wide, 10 ft. face, running N. 44° W., 20 ft. to face.

Value \$125

No. 6 A shaft, the center of which bears N. 51° 20' W., 624 ft. from Cor. No. 1 Rainbow lode; 10x8 ft., 6 ft. deep, partly caved.

Value \$100

No. 1 Discovery cut of the Della McKinnon lode, the center of which being the discovery point, is on the lode line 300 ft. from the center of line 1-2; 5 ft. wide, 10 ft. face, running S. 71° E., 12 ft. to mouth and N. 71° W., 12 ft. to face.

Value \$165

No. 2 A shaft, the center of which bears N. 84° W., 450 ft. from Cor. No. 1 Della McKinnon lode; 6x6 ft., 5 ft. deep.

Value \$60

No. 3 A cut, the face of which bears S. 80° W., 310 ft. from Cor. No. 1 Della McKinnon lode; 4 ft. wide, 4 ft. face, running N. 5° W., 20 ft. to face, partly caved.

Value \$75

No. 4 A shaft, the center of which is on the lode line 134 ft. from the center of line 1-2 Della McKinnon lode; 4x8 ft., 4 ft. deep.

Value \$50

No. 5 A cut, the face of which bears N. 48° 15' W., 410 ft. from Cor. No. 1 Della McKinnon lode; 8 ft. wide, 10 ft. face, running N. 76° 30' W., 15 ft. to face.

Value \$75

No. 6 A cut, the mouth of which bears N. 56° W., 582 ft. from Cor. No. 1 Della McKinnon lode; 5 ft. wide, 10 ft. face, running N. 74° W., 22 ft. to face.

Value \$100

No. 1 Discovery shaft of the Sulphide lode, the center of which being the discovery point, is on the lode line 643 ft. from the center of line 4-1; 4x11 ft., 4 ft. deep.

Value \$50

No. 2 A shaft, the center of which bears N. 16° 10' E., 528 ft. from Cor. No. 2 Sulphide lode; 5x8 ft., 10 ft. deep.

Value \$100

No. 3 A shaft, the center of which bears N. 67° E., 700 ft. from Cor. No. 3 Sulphide lode; 4x10 ft., 6 ft. deep.

Value \$75

No. 4 A shaft, the center of which bears N.65°45'E., 742 ft. from Cor. No. 3 Sulphide lode; 6x9 ft., 7 ft. deep.

Value \$75.

No. 5 A shaft, the center of which bears S.22°W., 724 ft. from Cor. No. 4 Sulphide lode; 4x8 ft., 3 ft. deep, partly caved.

Value \$35.

No. 6 A shaft, the center of which bears N.0°32'W., 287.51 ft. from Cor. No. 2 Sulphide lode; 5x10 ft., 10 ft. deep.

Value \$125.

No. 7 A cut, the face of which bears S.18°05'W., 780 ft. from Cor. No. 4 Sulphide lode; 4 ft. wide, 5 ft. face, running N.5°E., 20 ft. to face.

Value \$60.

No. 8 A cut, the face of which bears S.18°15'W., 847 ft. from Cor. No. 4 Sulphide lode; 5 ft. wide, 6 ft. face, running North 16 ft. to face.

Value \$60.

No. 9 A cut, the face of which bears S. 20° E., 73 ft. from Cor. No. 4, Sulphide lode; 5 ft. wide, 10 ft. face, running S. 83° 30' E., 7 ft. to face, partly caved.

Value \$50.

No. 1 Discovery cut of the Staples lode, the face of which being the discovery point, is on the lode line 1,150 ft. from the center of line 1-2; 6 ft. wide, 10 ft. face, running N. 64° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which bears S. 61° W., 718 ft. from Cor. No. 2, Staples lode; 6 ft. wide, 5 ft. face, running N. 45° E., 12 ft. to face, partly caved.

Value \$75.

No. 3 A cut, the face of which bears S. 55° E., 75 ft. from Cor. No. 4, Staples lode; 12 ft. wide, 10 ft. face, running S. 72° E., 7 ft. to face.

Value \$100.

No. 1 Discovery cut of the Manganese lode, the face of which being the discovery point, is on the lode line 1,070.93 ft. from the center of line 4-1; 5 ft. wide, 9 ft. face, running North 7 ft. to face.

Value \$80.

No. 2 A cut, the face of which is on the lode line 1,010 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 4 ft. face, running N. 88° W., 8 ft. to face.

Value \$40.

No. 3 A cut, the face of which is on the lode line 818 ft. from the center of line 4-1, Manganese lode; 5 ft. wide, 7 ft. face, running N. 5° W., 12 ft. to face.

Value \$75.

No. 4 A cut, the face of which bears S. 61° 30' W., 800 ft. from Cor. No. 1, Manganese lode; 5 ft. wide, 2 ft. face, running N. 34° W., 15 ft. to face.

Value \$35.

No. 1 Discovery cut of the La Jolla lode, the face of which being the discovery point, is on the lode line 1,330 ft. from the center of line 1-2; 8 ft. wide, 6 ft. face, running N. 46° E., 12 ft. to face.

Value \$100.

No. 2 A cut, the face of which is on the lode line 90 ft. from the center of line 3-4, La Jolla lode; 12 ft. wide, 5 ft. face, running N. 46° E., 6 ft. to face.

Value \$65.

No. 3 A shaft, the center of which bears S. 31° 30' E., 82 ft. from Cor. No. 3, La Jolla lode; 5 x 6 ft., 8 ft. deep.

Value \$75.

No. 1 Discovery cut of the Arroyo Verde lode, the center of which being the discovery point, is on the lode line 780 ft. from the center of line 1-2; 8 ft. wide, 10 ft. face, running S. 5° W., 8 ft. to mouth and N. 5° E., 8 ft. to face.

Value \$150.

A common improvement described as follows:

No. 1 A tunnel, 6x7 ft. in size, known as No. 2, the portal of which bears N. 53°39' W., 772.12 ft. from Cor. No. 1 A. W. Dahlberg lode, running N. 51°17' W., 28 ft. to Sta. A1; thence N. 33°32' W., 24 ft. to pt. AX and 40.44 ft. to Sta. A2, and North 25 ft. to pt. X. At pt. X a drift, 5x7 ft. in size, runs N. 40° W., 30 ft. to breast. At pt. AX a crosscut, 5x7 ft. in size, runs West 20 ft. to breast. At Sta. A2 a tunnel, 6x7 ft. in size, runs N. 39°35' W., 66.26 ft. to Sta. A3; thence N. 59°49' W., 38.82 ft. to Sta. A4; thence N. 60°37' W., 121.45 ft. to Sta. A5; thence N. 78°38' W., 170.33 ft. to Sta. A6; thence N. 41°45' W., 179.05 ft. to Sta. A7; thence N. 39°04' W., 71.22 ft. to Sta. A8; thence N. 33°40' W., 62.05 ft. to Sta. A9; thence N. 44°52' W., 129.74 ft. to Sta. A10; thence N. 44°52' W., 141.06

ft. to pt. X1 and 215.56 ft. to Sta. A15. At Sta. A10 a crosscut, 10x7 ft. in size, runs S. 42° 00' E., 9.73 ft. to Sta. A16 and a crosscut, 6x7 ft. in size, runs S. 38° W., 13 ft. to Sta. A11; thence S. 72° W., 25 ft. to Sta. A12; thence S. 00° W., 105 ft. to Sta. A13; thence S. 48° W., 61 ft. to breast. At Sta. A10 a drift, 6x7 ft. in size, runs N. 39° 51' W., 10 ft. to pt. D and 140 ft. to Sta. Y. This drift also runs S. 54° 45' E., 23 ft. to breast. A crosscut, 6x7 ft. in size, beginning at Sta. A16 runs N. 52° 30' E., 30 ft. to breast. Pt. D is at the beginning of No. 1 slope which averages 38 ft. long, 5 ft. wide and 125 ft. high. At pt. X1 a crosscut, 8x7 ft. in size, runs N. 40° E., 25 ft. and connects with the drift at Sta. Y. At Sta. A15 a drift, 7x7 ft. in size, runs N. 50° 30' W., 21.92 ft. to Sta. A18, and a crosscut, 10x7 ft. in size, runs N. 27° 27' E., 15 ft. to Sta. A17. At Sta. A17 a drift, 8x7 ft. in size, runs N. 45° W., 15 ft. to breast; a crosscut, 6x7 ft. in size, runs N. 41° E., 24 ft. to a caved breast, and a drift, 6x7 ft. in size, runs S. 38° E., 15 ft. to breast. Sta. A17 is below a two compartment raise 5x10 ft. in size, running up 30 ft. to slope No. 4, which averages 30 ft. long, 5 ft. wide and 30 ft. high. Sta. Y is in the center of slope 2-3 which averages 55 ft. long, 5 ft. wide and 150 ft. high. At Sta. Y a drift, 7x7 ft. in size, runs N. 40° W., 44 ft. to Sta. Z; thence N. 70° W., 30 ft. to Sta. A17. At Sta. A18 a drift, 6x7 ft. in size, runs N. 25° 31' W., 36.29 ft. to Sta. A19; thence N. 38° W., 22.34 ft. to Sta. A20, and N. 16° 35' E., 40 ft. to the breast of a crosscut, 5x7 ft. in size. Sta. A19 is the beginning of slope No. 5, which averages 35 ft. long, 5 ft. wide, and 50 ft. high. At Sta. A20 a drift, 6x7 ft. in size, runs N. 40° 11' W., 62.85 ft. to Sta. A21; thence N. 30° 30' W., 60.20 ft. to Sta. A22. A crosscut, 5x7 ft. in size, which begins at Sta. A21 runs S. 57° W., 50 ft. to breast, partly filled. Sta. A21 is at the beginning of slope 6-7 which averages 30 ft. long, 5 ft. wide and 110 ft. high. Sta. A22 is below the center of slope No. 8, which averages 40 ft. long, 5 ft. wide, and 55 ft. high. At Sta. A22 a drift, 6x7 ft. in size, runs N. 25° 15' W., 38.92 ft. to Sta. A23; thence N. 32° W., 80.82 ft. to Sta. A24; thence N. 36° 25' W., 53.6 ft. to breast. Sta. A23 is at the beginning of slope No. 9 which averages 22 ft. long, 5 ft. wide, and 55 ft. high.

No. 2. A tunnel, 6x7 ft. in size, known as No. 1, the portal of which bears S. 20° 03' W., 521.92 ft. from Cor. No. 2 Peter Applegate lode, running S. 74° 48' E., 176 ft. to Sta. B3; thence S. 73° 57' E., 112.73 ft. to Sta. B4; thence N. 55° 13' E., 527.43 ft. to Sta. B5; thence N. 77° 37' E., 53.5 ft. to breast. At Sta. B5 a drift, 7x7 ft. in size, runs N. 47° 16' W., 20 ft. to pt. A and 87.5 ft. to Sta. B0. Pt. A is at the top of a raise, 5x8 ft. in size, which comes up from slope No. 4 and connects with No. 2 tunnel at Sta. A17. The raise has a length of 280 ft. and partly timbered. At Sta. B6 a drift, 7x7 ft. in size, runs N. 33° 07' W., 25.91 ft. to Sta. B7; thence N. 40° 06' W., 27.6 ft. to Sta. B8; thence N. 28° 19' W., 19 ft. to breast. At Sta. B5 a drift, 7x7 ft. in size, runs S. 37° 17' E., 45 ft. to pt. B and 100 ft. to breast. A slope, the center of which is above pt. B, averages 80 ft. long, 5 ft. wide and 60 ft. high. Pt. B is also the center of a slope, below the level, which averages 43 ft. long, 5 ft. wide, 50 ft. deep and connects with the raise between tunnels No. 1 and No. 2.

No. 3. A tunnel, 5x7 ft. in size, known as No. 6, the portal of which bears N. 49° 41' E., 9.37 ft. from Cor. No. 4, H. McKenzie lode, running S. 06° 20' E., 52 ft. to pt. 1 and 107 ft. to Sta. 2. At pt. 1 a crosscut, 5x7 ft. in size, runs S. 25° E., 22 ft. to breast. At Sta. 2 a crosscut, 5x7 ft. in size, runs N. 33° E., 11 ft. to the top of a raise, 5x7 ft. in size, which connects with the top of the slope above tunnel No. 1. The raise has a length of 65 ft. At Sta. 2 a 5x7 ft. drift runs S. 47° 05' E., 63 ft. to Sta. 3; thence S. 30° 30' E., 30 ft. to Sta. 4; thence S. 40° E., 46 ft. to Sta. 5. At Sta. 4 a crosscut, 5x7 ft. in size, runs S. 80° W., 48 ft. to breast. At Sta. 5 a crosscut, 5x7 ft. in size, runs N. 38° 45' E., 116 ft. to breast; another 5x7 ft. crosscut runs N. 83° 55' E., 31 ft. to breast, and a drift, 5x7 ft. in size, runs S. 4° W., 16 ft. to breast.

Value of tunnels, drifts, raises, crosscuts and slopes \$63,500.

The major portion of this improvement was made when the claimant had only ten of the lodes of this survey, as follows: J. W. Merritt, Peter Applegate, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, and Delia McKinnon. The remainder of the improvement has been made by the claimant since all of the lodes of this survey have been located, with the exception of the Ram.

Value of improvement for the benefit of 10 lodes \$55,000.

Value of one-tenth interest \$5,500.

Value of improvement for the benefit of 23 lodes \$8,500.

Value of one-twenty third interest \$339.



The rock formation covered by the lode claims of this survey is intensely sheared and has a widespread mineralization. The drifts, crosscuts and stopes described in this common development were constructed to further develop the whole area. In order to determine the quantity of the contained minerals the rock extracted in this development was milled on the ground in the flotation plant of the claimant.

Five hundred dollars or over has been expended in this improvement in such a manner as tends to the development of each lode of this survey, except the Ram lode, subsequent to its location and to the time since which common ownership and contiguity have prevailed; therefore an undivided one-twenty third interest in its value is hereby credited to each of the said lodges.

The Ram lode now has a deficiency of \$300 in the required development.

Except as above stated, no portion of or interest in this improvement has been credited heretofore as patent expenditure to any lode claim.

#### OTHER IMPROVEMENTS

A frame assay office, the east corner of which bears N.43°02'W., 511.06 ft. from Cor. No. 1, A. W. Dahlberg lode; 14x17 ft. in size, the long side bears S.31°30'W. Claimant herein.

A frame tank shed, the east corner of which bears N.47°08'W., 478.8 ft. from Cor. No. 1, A. W. Dahlberg lode; 10x38 ft. in size, the long side bears N.58°30'W. Claimant herein.

A frame building which houses a flotation mill and a diesel power plant. The east corner of the building bears N.49°14'W., 523.42 ft. from Cor. No. 1, A. W. Dahlberg lode; 56x80 ft. in size, the long side bears N.58°30'W. Claimant herein.

A frame concentrate drying shed, the south corner of which bears N.52°28'W., 497.36 ft. from Cor. No. 1, A. W. Dahlberg lode; 12x16 ft. in size, the long side bears N.31°30'W. Claimant herein.

A frame shop and timber shed, the south corner of which bears N.55°24'W., 726.02 ft. from Cor. No. 1, A. W. Dahlberg lode; 80x42 ft. in size, the long side bears N.37°30'E. Claimant herein.

A frame and log office and storehouse, the NE. corner of which bears N.57°40'W., 187 ft. from Cor. No. 1, A. W. Dahlberg lode; 18x52 ft. in size; the long side bears S.25°15'W. Claimant herein.

A frame boarding house, the NE. corner of which bears N.83°30'W., 192 ft. from Cor. No. 1, A. W. Dahlberg lode; 18x38 ft. in size; the long side bears S.25°W. Claimant herein.

A frame bunk house, the NE. corner of which bears S.85°W., 210 ft. from Cor. No. 1, A. W. Dahlberg lode; 17x32 ft. in size; the long side bears S.25°W. Claimant herein.

A frame bunk house, the NE. corner of which bears S.63°50'W., 212 ft. from Cor. No. 1, A. W. Dahlberg lode; 14x20 ft. in size; the long side bears S.20°W. Claimant herein.

A frame bunk house, the NE. corner of which bears S.56°W., 265 ft. from Cor. No. 1, A. W. Dahlberg lode; 14x16 ft. in size; the long side bears S.35°W. Claimant herein.

#### UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

#### FINAL OATHS FOR SURVEYS

#### LIST OF NAMES

A list of names of the individuals employed by G. Cleveland Taylor, mineral surveyor, to assist in running, measuring, and marking the lines, corners, and boundaries described in the foregoing field notes of the survey of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg.

Telluride, Alabama, Rainboe, Della McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde, and showing the respective capacities in which they acted.

-----, *Chainman.*  
 -----, *Chainman.*  
 J. G. MILLER, *Arman.*  
 -----, *Flagman.*

## FINAL OATHS OF ASSISTANTS

I, J. G. Miller, do solemnly swear that I assisted G. Cleveland Taylor, mineral surveyor, in marking the corners and surveying the boundaries of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Loeffer, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Della McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes, represented in the foregoing field notes as having been surveyed by said mineral surveyor and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, faithfully and correctly executed, and the corner and boundary monuments established according to law and the instructions furnished by the regional cadastral engineer at Portland, Oreg.

-----, *Chainman.*  
 -----, *Chainman.*  
 J. G. MILLER, *Arman.*  
 -----, *Flagman.*

Subscribed and sworn to by the above-named persons before me this 10th day of February 1948.

[SEAL]

JOSEPH J. HALL,

*Notary Public for Oregon, County of Jackson.*

My commission expires October 10, 1948.

# UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

## FINAL OATHS FOR SURVEYS

## LIST OF NAMES

A list of the names of the individuals employed by G. Cleveland Taylor, mineral surveyor, to assist in running, measuring, and marking the lines, corners, and boundaries described in the foregoing field notes of the survey of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Loeffer, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Della McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes and showing the respective capacities in which they acted.

DALE LEE PRATT, *Chainman.*  
 -----, *Chainman.*  
 -----, *Arman.*  
 -----, *Flagman.*

## FINAL OATHS OF ASSISTANTS

I, Dale L. Pratt, do solemnly swear that we assisted G. Cleveland Taylor, mineral surveyor, in marking the corners and surveying the boundaries of the mining claim of Al Sarena Mines, Inc., known as the Ram, Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Loeffer, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Della McKinnon, Sulphide, Staples, Manganese, La Jolla, and Arroyo Verde lodes represented in the foregoing field notes as having been surveyed by said mineral surveyor and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, faithfully and correctly executed, and the corner and

boundary monuments established according to law and the instructions furnished by the regional cadastral engineer at Portland, Oreg.

DALE L. PRATT, *Chairman.*

-----, *Chairman.*

J. G. MILLER, *Arman.*

-----, *Flagman.*

Subscribed and sworn to by the above-named persons before me this 10th day of February 1948.

[SEAL]

ELMER HERRIED,

*Notary Public for Oregon.*

My commission expires March 18, 1949.

## DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE

### FINAL OATH OF MINERAL SURVEYOR

I, G. Cleveland Taylor, mineral surveyor, do solemnly swear that, in pursuance of instructions received from the regional cadastral engineer, at Portland Oreg., dated October 15, 1946, I have, in strict conformity to the laws of the United States, the official regulations and instructions thereunder, and the instructions of said regional cadastral engineer, faithfully and correctly executed the survey of the mining claim of Al Sarena Mines, Inc., known as the Al Sarena group, situate in Elk Creek (unorganized) Mining District, Jackson County, Oreg., in sections 19, 20, 21, 28, 29, 30, T. 31 S., R. 2 E., Willamette meridian and designated as survey No. 879, as represented in the foregoing field notes, which accurately show the boundaries of said mining claim as distinctly marked by monuments on the ground, and described in the attached copy of the location certificate, which was received by me from the regional cadastral engineer with said instructions, and that all corners of said survey have been established and perpetuated in strict accordance with the law, official regulations and instructions thereunder; and I do further solemnly swear that the foregoing are the true and original field notes of said survey and my report therein, and that the labor expended and improvements made upon said mining claim by claimant or its grantors are as therein fully stated, and that the character, extent, location, itemized value thereof are specified therein with particularity and full detail, and that no portion of said labor or improvements so credited to this claim has been included in the estimate of expenditures upon any other claim.

G. CLEVELAND TAYLOR,

*Mineral Surveyor*

Subscribed and sworn to by the said G. Cleveland Taylor, mineral surveyor, before me, a notary public, this 4th day of March 1948.

[SEAL]

I. G. PICKENS,

*Notary Public for Oregon*

My commission expires December 9, 1951.

## CERTIFICATE OF APPROVAL OF FIELD NOTES AND SURVEY OF MINING CLAIM

UNITED STATES DEPARTMENT OF THE INTERIOR,

BUREAU OF LAND MANAGEMENT,

PUBLIC SURVEY OFFICE,

Portland, Oreg., September 7, 1948

I, regional cadastral engineer at Portland, Oreg., do hereby certify that the foregoing and hereto attached field notes and return of the survey of the mining claim of Al Sarena Mines, Inc., known as the Al Sarena group, situate in Elk Creek (unorganized) mining district in sections 19, 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., Willamette meridian, designated as survey No. 879, executed by G. Cleveland Taylor, mineral surveyor, May 12 to August 6, 1948, under my instructions dated October 15, 1946, have been critically examined and the necessary corrections and explanations made, and the said field notes and return and the survey they describe, are hereby approved. The certified copy of the

location certificate filed by the applicant for survey is on file in this office and a true copy of said certified copy of said location certificate is included and made a part of the transcript of the field notes.

JOSEPH A. GARONO,  
*Regional Cadastral Engineer.*

### REGIONAL CADASTRAL ENGINEER'S FINAL CERTIFICATE ON FIELD NOTES

DEPARTMENT OF THE INTERIOR,  
PUBLIC SURVEY OFFICE,  
Portland, Oreg., September 27, 1958.

I, regional cadastral engineer at Portland, Oreg., do hereby certify that the foregoing transcript of the field notes, return and approval of the survey of the mining claim of Al Sarena Mines, Inc., known as the Al Sarena Group, situate in Elk Creek (unorganized) Mining District Jackson County, Oreg., in sections 19, 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., Willamette meridian, and designated as survey No. 879, has been correctly copied from the originals on file in this office; that said field notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

I further certify that \$500 worth of labor has been expended or improvements made upon, or for the benefit of, each location embraced in said mining claim by claimant or its grantors.

I further certify that the plat thereof, filed in the Oregon District Land Office at Portland, Oreg., is correct and in conformity with the foregoing field notes.

JOSEPH A. GARONO,  
*Regional Cadastral Engineer.*

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
Washington 25, D. C., February 15, 1956

U adjustments, Rogue River Mining Claims, Al Sarena.

Hon. CLARE E. HOFFMAN,  
*House of Representatives.*

DEAR CONGRESSMAN HOFFMAN: This will acknowledge receipt of your request of February 14 for certain correspondence in connection with the Al Sarena mining claims.

I am glad to enclose copies of the memoranda you requested of June 3 and July 14, 1955. The information from Mr. Hattan referred to in the memo of June 3 was not obtained in writing, but insofar as we have been able to learn was given verbally by Mr. Hattan to Mr. Folsom.

Sincerely yours,

RICHARD E. McARDIE, *Chief.*

JUNE 3, 1955.

Division of Timber Management,  
Recreation and lands, Frank B. Folsom.

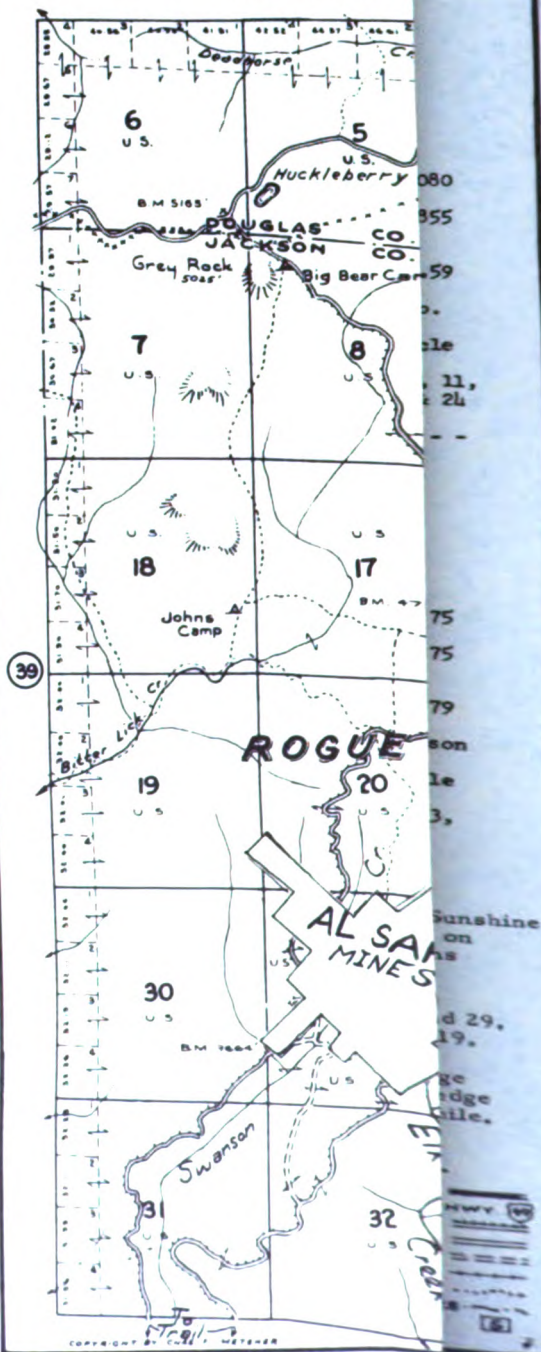
U adjustments—Rogue River mining claims, Al Sarena.

Mr. Hattan of BLM advised that a recent visit to the Al Sarena mine indicated a possible timber trespass.

They observed that about 5 acres of the Rhvolute claim (one which was not included in the group of 23 claims for which patent was issued) was logged over and logging roads crossed on other parts of the claim. The boundaries of this claim are common to the surrounding claims which have been patented. These common boundaries have been established by mineral surveys which are prerequisite to application for patent. This information has been passed on to the supervisor who is making a check of the situation to determine the facts.

FRANK B. FOLSOM.

SCALE 2 IN. = 1 MI  
JACKSON JUNE 1955  
DOUGLAS OCT. 1954



Jim Creek Sale—Ross Lumber Company—July 7, 1952: Twp. 31 S., R. 2 E., Secs. 10, 11, 13, 14, 15, 16, 22, 23, 24:

Species	Volume, MBF	Appraised price per MBF	Bid price per MBF
DF.....	14,500	\$10.05	\$10.05
WRC.....	670	3.55	3.65
WH.....	630	3.55	3.65
S&F, WF.....	2,900	3.55	3.65
WWP.....	420	33.00	33.00
SP.....	2,092	33.00	33.00
PP.....	88	33.00	33.00
Total.....	21,300	246,080	246,855

Weighted average per MBF  $\frac{246,855}{21,300} = \$11.59$ .

## TWIN CHERIA SALE

(This is the sale discussed at the Portland hearing where the quotation of a bid of \$80.60 was mentioned as paid for sugar pine.)

## Facts:

Sugar pine was only 11 percent of timber stand.

The weighted average price was \$25.83 per MBF.

Excluding the sugar pine, the weighted average was \$18.56 per MBF.

Twin Cheria Sale—Steve O. Wilson—July 11, 1955; Tps. 34 S. and 35 S., R. 4 E:

Species	Volume, MBF	Appraised price per MBF	Bid price per MBF
DF.....	15,500	\$16.40	\$22.80
IC.....	1,900	5.40	5.40
WF & O.....	4,900	4.80	6.80
SP.....	3,200	40.95	80.60
PP.....	3,000	23.30	27.10
Total.....	28,500	488,920.00	726,200.00

Weighted average per M  $\frac{\$726,000}{28,500 \text{ M}} = \$25.49$  per MBF.

Average price exclusive of sugar pine  $\frac{468,280}{25,300} = \$18.56$  MBF.

STATEMENT OF PHILLIP GABRIEL FILED WITH THE JOINT SENATE-HOUSE SUBCOMMITTEE HEARINGS OF THE AL SARENA MINING CLAIMS CASE, WASHINGTON, D. C., BEGINNING ON JANUARY 10, 1956

Legislative Oversight Subcommittee, Senate Interior and Insular Affairs Committee, Public Works and Resources Subcommittee, House Government Operations Committee

STATE OF ALABAMA,

County of Mobile, ss:

I, Phillip Gabriel, being first duly sworn, on oath, depose and say:

1. That on or about December 24, 1955, I received a letter from W. Kerr Scott, acting chairman, Legislative Oversight Subcommittee, Senate Interior and Insular Affairs Committee, dated December 22, 1955, notifying me that:

"On January 10, 1956, at 9 a. m., in room 224 of the Senate Office Building, Washington, D. C., this subcommittee will resume hearings in connection with the inquiry into the matter of Minerals Application Oregon 0665, Oregon Mineral Survey No. 879, Al Sarena Mines, Inc. \* \* \*

2. That the aforementioned letter specifically requested my appearance before the subcommittee at the time and place hereinabove cited in the following language:

"You are hereby requested to appear at such hearings for the purpose of answering such questions as the committee may wish to propound."

3. That, pursuant to the foregoing request, I appeared at the subject hearing, and after adjournment of the entire week's session I asked Mr. Redwine when I would be heard; that Mr. Redwine declined to state when, if ever, I would be heard.

4. That had I in fact testified, I would have testified in substance as follows:

A. That during the summer of 1955 I was questioned at Mobile, Ala., by one Robert W. Redwine, who presented credentials identifying him as the accredited agent of the committee.

B. That Mr. Redwine admitted that it was his duty as a paid committee employee to uncover or create material for political purposes.

C. That Mr. Redwine stated that the patent theretofore issued to Al Sarena Mines, Inc. could not be legally revoked or placed in jeopardy; that Al Sarena Mines, Inc., as such could not be injured; that his mission was political, and that the corporation had no cause for worry.

D. That the only other possible reason for these hearings was to "get even with the McDonalds" for having brought one W. O. (Otis) MacMahon to represent them at a hearing at Portland, Oreg. in September 1950, according to Mr. Redwine, who added that such action had caused departmental employees a great deal of trouble.

E. That apparently this last statement of Mr. Redwine arose from numerous averments made by Leonard B. Netzorg in a communication to James A. Lanigan dated September 28, 1950, apparently made to prejudice the agency against the McDonalds and MacMahon and repeatedly used against them throughout the contest, despite their protests, denials, and counteracting evidence offered. (See communication reprinted, pp. 1446-1447, Congressional Record, January 31, 1951).

F. That Mr. Redwine advised me that he was leaving town at about 3 p. m. on the day of our conference, would proceed to Atlanta, Ga., and would not be in Washington, D. C. until the following Tuesday—that he would not have any opportunity to discuss this with anyone, even in his own Department, until Tuesday; that no leak concerning our conversation could happen through his Department until after the following Tuesday.

G. That Mr. Redwine further suggested to me that, in the meantime, if I could, by using influence or information obtained as a director in Al Sarena Mines, Inc. or in any other way, get control of the company, I would have a very valuable mining property; that everyone would be happy if the McDonalds got "skinned" and the politicians involved in the Oregon elections were given some material with which to work for the next election.

H. That the statements made to me by Mr. Redwine are not repeated herein verbatim but are accurate in substance.

I. That I was informed by Mr. Morris Miller, of the A. W. Williams Inspection Co., Mobile, Ala., that Mr. Redwine advised Mr. Miller that the A. W. Williams Inspection Co. would be crucified for political purposes but that Mr. Redwine was gathering information to try to protect the Williams firm.

NOTE.—The record shows that Mr. Redwine himself read into the record a memorandum apparently constituting a charge of incompetence against the Williams firm. The record also shows that Mr. Redwine took this action when the firm's chief metallurgist appeared before the committee to testify that the samples and laboratory work were regular in all respects and that the samples bore no evidence, either contents or containers, of tampering, contamination, or other wrongdoing on the part of persons handling the samples prior to their receipt for assaying.

J. That the committee has not reimbursed or offered to reimburse me for any of the expenses incurred in complying with its request to appear at the hearings, as hereinbefore related.

PHILLIP GABRIEL.

Subscribed and sworn to before me this 9th day of February 1956:

MARGUERITE WALKER,

*Notary Public in and for Mobile County, Ala.*

My commission expires January 18, 1958.

A. W. WILLIAMS INSPECTION CO.,  
Mobile, Ala., February 7, 1956.

CONGRESSMAN CLARE HOFFMAN of Michigan,  
House Office Building, Washington, D. C.

DEAR MR. HOFFMAN: I WAS informed by long distance telephone that Mr. Redwine had been contacted and that he had stated that I would not be permitted to testify before the Legislative Oversight Subcommittee.

I am therefore taking the liberty of sending you a copy of significant papers I have in connection with the Al Sarena case, with the request that you make every effort to have them included in the hearing records. I realize now that we will not be given an opportunity to answer the charges made against us, but am most anxious for our prepared statements and other documents to be included in the record, if at all possible.

In order to accomplish this, I ask that you submit the papers to the committee.

Very briefly, my testimony is designed for the following manner of presentation:

(a) The A. W. Williams Inspection Co. is a well established, reputable, internationally recognized, and qualified laboratory, as is evidenced by our recognition and acceptance for membership in many of the technical societies in the United States, by our long list of satisfied clients with whom we have been dealing for many years, and by the quality of our facilities, the experience and education of our personnel, and the scope of our organization.

(b) Not a shred of evidence has been found of anything irregular, incompetent, or inaccurate in our dealings with the Al Sarena Mines, Inc., or with anyone connected with that company.

(c) The highly irrelevant GSA letter does not state that our services were unsatisfactory, but that "many of the assay reports on imported bauxite by the Williams Co. were questioned by the contractor supplying the bauxite \* \* \*." This, from the contractor against whom we were protecting the Government under our sampler-analyst contract. Furthermore, this particular contractor has a reputation for failing to agree with any sampling or analysis data other than his own, as is evidenced by a letter from Reynolds Metals Co. to us, copy of which is enclosed.

I have also enclosed one copy of a letter from Reynolds Metals Co. asking for an umpire sample to be mailed to another laboratory for umpire purposes. Note that the Reynolds Co. takes exception to the quality of the bauxite as specified by the contractor—we have 24 such letters in our files covering approximately 2 years, with approximately 1 shipment per month. As you can see, the umpiring of bauxite shipped through Mobile has been a common occurrence, whether we were involved in the assaying or not.

As to whether we were incorrect, divergent, or erratic, this statement is presumptuous. Because our results did not agree with those obtained from other laboratories is not sufficient grounds to call our results incorrect. The whole idea behind umpire samples is based on the fact that two laboratories will not agree, and a third is then called in to act as umpire, the latter being accepted as correct on a prearranged agreement basis. As a matter of fact, our chemists checked their results many times with the Reynolds Metals Co. chemists, with regularly acceptable accuracy. All GSA bauxite assays were performed by qualified experienced chemists, in accordance with methods as furnished by the Government.

The paragraph on chrome ore in the letter is answered in our statement titled "Chromite," copy of which is attached.

(d) We are attaching copies of letters from GSA personnel dated subsequent to the expiration of our final bauxite contract with GSA, which definitely show that there has been no dissatisfaction toward our services, by the GSA.

If it is possible to submit the above without introducing the names of the bauxite supplier or the Reynolds Metals Co., please do so. Enough reputations have been dragged through the mud already and we would prefer not to involve any others.

Note that page 4 of my statement in part II was made on a different machine. In the event this may be questioned, the answer is that I, without any coaching, advice, counsel, or even knowledge, on the part of any Government agency or official, decided to add to my statement after arriving in Washington, and I had the one page redone by an advertising agency at the National Press Building in Washington.



"You are hereby requested to appear at such hearings for the purpose of answering such questions as the committee may wish to propound."

3. That, pursuant to the foregoing request, I appeared at the subject hearings and after adjournment of the entire week's session I asked Mr. Redwine when I would be heard; that Mr. Redwine declined to state when, if ever, I would be heard.

4. That had I in fact testified, I would have testified in substance as follows:

A. That during the summer of 1955 I was questioned at Mobile, Ala., by one Robert W. Redwine, who presented credentials identifying him as the accredited agent of the committee.

B. That Mr. Redwine admitted that it was his duty as a paid committee employee to uncover or create material for political purposes.

C. That Mr. Redwine stated that the patent theretofore issued to Al Sarena Mines, Inc. could not be legally revoked or placed in jeopardy; that Al Sarena Mines, Inc., as such could not be injured; that his mission was political, and that the corporation had no cause for worry.

D. That the only other possible reason for these hearings was to "get even with the McDonalds" for having brought one W. O. (Otis) MacMahon to represent them at a hearing at Portland, Oreg. in September 1950, according to Mr. Redwine, who added that such action had caused departmental employees a great deal of trouble.

E. That apparently this last statement of Mr. Redwine arose from numerous averments made by Leonard B. Netzorg in a communication to James A. Lanigan dated September 28, 1950, apparently made to prejudice the agency against the McDonalds and MacMahon and repeatedly used against them throughout the contest, despite their protests, denials, and counteracting evidence offered. (See communication reprinted, pp. 1446-1447, Congressional Record, January 31, 1956).

F. That Mr. Redwine advised me that he was leaving town at about 3 p. m. on the day of our conference, would proceed to Atlanta, Ga., and would not be in Washington, D. C. until the following Tuesday—that he would not have any opportunity to discuss this with anyone, even in his own Department, until Tuesday; that no leak concerning our conversation could happen through his Department until after the following Tuesday.

G. That Mr. Redwine further suggested to me that, in the meantime, if I could, by using influence or information obtained as a director in Al Sarena Mines, Inc. or in any other way, get control of the company, I would have a very valuable mining property; that everyone would be happy if the McDonalds got "skinned" and the politicians involved in the Oregon elections were given some material with which to work for the next election.

H. That the statements made to me by Mr. Redwine are not repeated herein verbatim but are accurate in substance.

I. That I was informed by Mr. Morris Miller, of the A. W. Williams Inspection Co., Mobile, Ala., that Mr. Redwine advised Mr. Miller that the A. W. Williams Inspection Co. would be crucified for political purposes but that Mr. Redwine was gathering information to try to protect the Williams firm.

NOTE.—The record shows that Mr. Redwine himself read into the record a memorandum apparently constituting a charge of incompetence against the Williams firm. The record also shows that Mr. Redwine took this action when the firm's chief metallurgist appeared before the committee to testify that the samples and laboratory work were regular in all respects and that the samples bore no evidence, either contents or containers, of tampering, contamination, or other wrongdoing on the part of persons handling the samples prior to their receipt for assaying.

J. That the committee has not reimbursed or offered to reimburse me for any of the expenses incurred in complying with its request to appear at the hearings, as hereinbefore related.

PHILLIP GARKIN.

Subscribed and sworn to before me this 9th day of February 1956

MARGUERITE WALKER.

Notary Public in and for Mobile County, Ala

My commission expires January 18, 1958.

to anyone other than the regularly employed personnel of the A. W. Williams Inspection Co.

We have made a complete check of our records and ascertained that there was never any samples from the Al Sarena Mines, Inc., in our laboratory at the same time as any other gold and/or silver ore samples, for assaying. There was no possibility of the Al Sarena Mines, Inc., samples being confused, mixed up, contaminated by, or in any way intermingled with any material of any nature which might have led to erroneous results in the assaying procedure.

We are not aware of any factor or condition which might have influenced the samples to yield other than accurate mineral contents as actually contained in the samples, as received in this office.

The assayed results as determined by Mr. J. A. McDaniel were reported according to instructions as we received them. In some cases, the reports were mailed to the Trail, Oreg., address, while in other cases, they were mailed to the Mobile, Ala., address. Copies of some reports were mailed to Mr. Phil Gabriel, 24 N. Royal Street, Mobile, Ala. Instructions as to distribution of the reports were usually contained in letters from the Al Sarena Mines, Inc. or were received by telephone or personal visits from a local representative of the company.

We sincerely believe that our facilities are equal in quality to any general testing laboratory in the United States. While some laboratories may be larger, and others may be more highly specialized in one particular field of testing, we feel that the education, experience, competence, and integrity of our personnel and the quality of our laboratory facilities will compare favorably with any laboratory in the United States. We have graduate chemists, chemical engineers, civil engineers and foresters on our staff, along with other personnel who have had many years experience in testing materials. As of December 1955, we have 13 people actively engaged in the Mobile laboratory, 16 supervisors and clerical assistants on our office staff, 51 full-time field representatives stationed throughout the United States, and branch offices in New York, N. Y., and St. Louis, Mo.

The A. W. Williams Inspection Co. was established in 1921, and is an active member in the American Council of Independent Laboratories, and holds membership in such technical societies as American Society for Testing Materials, American Oil Chemists' Society, American Wood Preservers' Association, American Concrete Institute, Forest Products Research Society, Railway Tie Association, American Chemical Society, American Welding Society, American Society of Mechanical Engineers, and others.

We, therefore, honestly and sincerely believe, and are prepared to swear and affirm, that every action taken by the A. W. Williams Inspection Co. and its employees, in its dealings with the Al Sarena Mines, Inc., was ethical, legal, accurate, and in every way conforming to the best accepted and recognized business and professional practices.

MORRIS MILLER, *Laboratory Manager.*

Subscribed and sworn to before me, this 6th day of January, 1956.

My commission expires October 22, 1957.

[SEAL]

GERTRUDE A. BRINCOAT, *Notary Public.*

## PART II

I would like to state at this point that every action that Mr. McDaniel or I have taken in the Al Sarena Mines, Inc., case has been open and aboveboard, honest, ethical, and in my opinion, competent.

For example, on both Mr. Robert Redwine's trips to Mobile, Ala., to question us, we furnished him with all information he asked for, of which we were capable of supplying. We made no effort whatsoever to hold back or conceal any detail. Furthermore, since we have had nothing to hide from anyone, and since we became aware of the Government's interest in this case, we have not hesitated to offer this information to any interested governmental official. Not only that, but if Mr. Redwine were to visit our organization again with the same legal powers, whether on this case or any other, we would again make our files available to him for his investigation.

There have been a number of insinuations made against the competence of the A. W. Williams Inspection Co., and against Mr. J. A. McDaniel. A letter from the General Services Administration, addressed to Hon. James E. Murray, chairman, Committee on Interior and Insular Affairs, United States Senate, Washington 25, D. C., dated September 26, 1955, and signed by A. J. Walsh, Commissioner,

was read into the record. This letter was read in such a manner as to convey the meaning that the General Services Administration had questioned many of our assay reports. A careful reading of this letter reveals that the significant sentence in this letter reads as follows: Quote "Many of the assay reports on imported bauxite by the Williams Laboratory were questioned by the contractor supplying the bauxite and, as a result, such reports had to be umpired for settlement purposes." Unquote. Nothing in the letter is a direct allegation by the General Services Administration that our services were unsatisfactory.

As to the shipment of umpire samples to other laboratories this is commonly accepted procedure in the sampling and testing of bulk ores. As a matter of fact, we had another contract with the Reynolds Metals Co. to sample bauxite ore from the same supplier as was involved in the General Services Administration contract. In the Reynolds Metals case, we sampled only, and shipped the samples to their own laboratory for testing. We have on file many letters from the Reynolds Metals Co. stating that their chemical tests did not agree with those of the contractor-supplier, and requesting that we ship the retained umpire sample to another laboratory for umpire purposes. In fact this became so common, that it was quite unusual for a shipment not to be umpired.

Prior to my becoming involved in the Al Sarena Mines, Inc. case, I had never seen or heard of any statement of any dissatisfaction on the part of General Services Administration with the Williams Inspection Co., nor do I honestly believe that there is any such dissatisfaction. I have a number of letters from various officials in the General Services Administration expressing the fact that ours is a qualified and competent laboratory. (Quote letters from GSA. Dated August 16, 1950; May 11, 1951 and February 10, 1954.)

For further information of this committee, I have another file of letters from the General Services Administration. All of the letters in this file are marked "Restricted," and being classified information, I have no authority to make them available before a public hearing. However, if the committee will subpoena this file, or take such steps as are necessary to declassify this material, I believe that the committee will be convinced that the General Services Administration has been satisfied with our services.

I would now like to read a statement concerning our chromite contracts, which, I believe, will show that the A. W. Williams Inspection Co. took every possible step to do a competent job, in spite of most unfavorable circumstances and conditions. (Read chromite statement, which is attached.)

Furthermore, I would like to know the answers to the following: (a) If there was any dissatisfaction on the part of the General Services Administration, why was our bauxite contract renewed?

(b) If our services were unsatisfactory on bauxite, why were we awarded the chromite contract subsequently?

(c) If both the above contracts were handled unsatisfactorily, why was the A. W. Williams Inspection Co. subsequently retained by the General Services Administration to test paint samples?

I believe that the only possible answer to these questions is that the General Services Administration is not dissatisfied with our services, but that any dissatisfaction on record was expressed by the service contractors, against whom we were protecting the Government under our contracts.

To get back to the Al Sarena Mines, Inc. case, it was brought out in the testimony presented before this hearing, on Tuesday, January 10, 1956, that Mr. McDaniel is not a licensed assayer. Such is the truth, inasmuch as the State of Alabama does not license chemists, in the sense inferred. Any graduate of an accredited American college or university is allowed to practice the science of chemistry in the State of Alabama without any obligation on his part to become licensed.

Insofar as the laboratory equipment at the A. W. Williams Inspection Co. is concerned, it is, and it has been adequate to perform gold and silver assays, since before the first sample was received from the Al Sarena Mines, Inc. I offer the attached photographs of equipment, used by this company in the assaying of the subject samples, as evidence of their adequacy.

I would like to repeat once more that neither Mr. J. A. McDaniel nor myself (nor anyone else in our company) was aware, at the time, that the 28 samples of ore were to be used as the basis for the pending mineral patents, that the samples were handled, assayed, and reported on a routine basis just as we have handled hundreds of other samples, and that we attached no unusual significance to these samples.

All of our actions in this case have been in accordance with generally accepted practices in the testing and inspection business. If our chief chemist and metallurgist, J. A. McDaniel, is to be censured for performing his duties in the Al Sarena case competently, honestly, and ethically, then every scientist and technician in this country stands to be equally censured in the eyes of our Government.

**MORRIS MILLER,**  
*Laboratory Manager.*

STATE OF ALABAMA,

*County of Mobile, City of Mobile:*

Subscribed and sworn to before me, this 13th day of January 1956.

**GERTRUDE A. BRINCAT,**  
*Notary Public.*

My commission expires October 22, 1957.

**PARTIAL LIST OF CLIENTS OF THE A. W. WILLIAMS INSPECTION CO., MOBILE, ALA.  
JANUARY 5, 1956**

Spencer J. Buchanan & Associates, Inc.  
International Paper Co.  
Hollingsworth & Whitney Division, Scott Paper Co.  
Pan-Am Southern Corp.  
Mississippi State Highway Department  
City of Mobile, Mobile, Ala.  
Tennessee Coal & Iron Division of United States Steel  
Gulf Refining Co.  
City of Pensacola, Pensacola, Fla.  
Alabama State Docks, Mobile, Ala.  
Yonge, Look & Morrison, Pensacola, Fla.  
Nicholas DuPont & Associates, Wilmington, Del.  
J. B. Converse & Co., Inc., Engineers  
Board of Revenue and Road Commissioners, Mobile County, Mobile, Ala.  
Mobile County School Board, Mobile, Ala.  
Mobile Press Register  
United States Air Force, Brookley Field, Mobile, Ala.  
Warren Petroleum Corp.  
Alabama Power Co.  
Alabama State Highway Department  
American Gas & Electric Service Corp.  
Apalachicola Northern Railroad Co.  
Arkansas Power & Light Co.  
Blackstone Valley Gas & Electric Co.  
Board of Commissioners of the Port of New Orleans, New Orleans, La.  
Boston Edison Co., Boston, Mass.  
Carolina Power & Light Co.  
Cia Impulsora De Empresas, S. A. Mexico, D. F.  
City of Jacksonville, Jacksonville, Fla.  
Commonwealth of Kentucky, Department of Highways  
Concord Electric Co., Boston, Mass.  
Connecticut Power Co.  
Connecticut State Highway Department  
Consolidated Edison Company of New York, Inc.  
Consumers Power Co., Jackson, Mich.  
Dayton Power & Light Co.  
The Detroit Edison Co.  
Delaware & Hudson Railroad Corp.  
Department of State Docks and Terminals, Mobile, Ala.  
Ebasco Services, Inc., New York, N. Y.  
Esso Research & Engineering Co.  
Florida Power Corp.  
Florida Power & Light Co.  
Florida State Road Department  
Georgia Power & Light Co.  
Gulf Power Co.  
The Hartford Electric Light Co.  
Illinois State Highway Department  
Iowa State Highway Commission

Kansas City Southern Railway Co.  
 Kansas Power & Light Co.  
 Kentucky Highway Department  
 Kentucky Utilities Co.  
 Knoxville Utilities Board  
 Louisville Gas & Electric Co.  
 Louisiana Power & Light Co.  
 Minnesota Department of Highways  
 Mississippi Power & Light Co.  
 Mississippi Power Co.  
 Missouri State Highway Commission  
 Monongahela Power Co.  
 Nebraska State Highway Department  
 North Carolina State Highway and Public Works Commission  
 Northern States Power Co.  
 Potomac Edison Co.  
 Philadelphia Suburban Transportation Co.  
 Philadelphia Electric Co.  
 Potomac Electric Power Co.  
 Raymond Concrete Pile Co.  
 Rural Electrification Administration  
 South Carolina Electric & Gas Co.  
 State Highway Commission of Kansas  
 State Highway Commission of Wisconsin  
 Tennessee Valley Authority  
 Union Electric Company of Missouri  
 United States Coast Guard, Miami, Fla.  
 Western Union Telegraph Co.  
 Philadelphia Rapid Transit Co.  
 Ebasco International Corp.  
 International Standard Electric Co.  
 Central of Georgia Railway Co.  
 Atlantic Coast Line Railway Co.  
 Chicago, North Shore & Milwaukee Railway Co.  
 Chicago & North Western Railway Co.  
 Chicago & Illinois Midland Railway Co.  
 The Cuban-American Mercantile Corp.  
 United States Corps of Engineers, South Atlantic Division, Atlanta, Ga.  
 The Cleveland Electric Illuminating Co.  
 The Swiss Federal Railways  
 Mozambique National Railways  
 The South African Railways, Union of South Africa  
 The Austria Railways  
 The German Railways  
 American Farm Bureau Federation  
 Arkell & Smiths, Inc.  
 Walter Bledsoe & Co.  
 Brock & Blevins, Inc.  
 City of Citronelle, Ala.  
 N. D. Cunningham & Co.  
 Dixie Paint & Varnish Co.  
 E. I. du Pont De Nemours  
 Monsanto Chemical Co.  
 Mobile Ship Repair Co.  
 Mobile Rosin Oil Co.  
 Mobile Pulley & Machine Works, Inc.  
 National Butane Co.  
 Pure Oil Co.  
 Reliance Chemical Co.  
 Reynolds Metals Co.  
 Rust Engineering Co.  
 Shilstone Testing Laboratories  
 Superintendence Co. Inc.  
 United States Steel Corp.  
 Waterman Steamship Corp.  
 Davis Clinchfield Export Coal Corp.

Eagle Chemical Co.  
 Ewin Engineering Corp.  
 Federal Barge Lines  
 General Services Administration  
 Gulf, Mobile & Ohio Railroad Co.  
 Godwin Shipping Co.  
 Goodhousekeeping Appliance Co.  
 Hawley Fuel Corp.  
 Hearin Tank Lines, Inc.  
 Hempstead Oil & Storage Co.  
 Hercules Powder Co.  
 Ingalls Shipbuilding Corp.  
 Louisiana State Highway Department  
 Lykes Bros. Steamship Co.  
 Maryland Casualty Co.  
 Adace & Case Engineers  
 S. M. Adams, Inc., Plateau, Ala.  
 Admiral Semmes Hotel, Mobile, Ala.  
 Air Conditioning Engineers, Mobile, Ala.  
 Alabama Drydock & Shipbuilding Corp., Mobile, Ala.  
 State of Alabama Highway Department, Montgomery, Ala.  
 Albumina Supply Co., Inc.  
 Alcoa Steamship Co., Inc.  
 Aluminum Company of America, East St. Louis, Ill.  
 American Bitumuls & Asphalt Co.  
 American Bureau of Shipping  
 American Cyanamid & Chemicals Corp.  
 American Forest Products, Inc.  
 American Mutual Liability Insurance Co.  
 Armour & Co.  
 Association Technique De L'Importation Charbonniere  
 Atlanta & St. Andrews Bay Railway Co.  
 Atlantic Coast Line Railroad Co.  
 Barrow-Agee Laboratories  
 Battle House Hotel  
 Bauxite & Northern Railway Co.  
 Bay City Fuel Co.  
 Bay Dredging & Construction Co.  
 Bemis Bros. Bag Co.  
 Bernard & Byrd, Inc.  
 Bethlehem Cornwall Corp.  
 Blount Bros. & Kansas City Bridge Co.  
 Board of County Commissioners, Escambia County, Fla.  
 Board of County Commissioners, Santa Rosa County, Fla.  
 Board of Revenue and Road Commissioners, Mobile County, Ala.  
 Board of Water and Sewer Commissioners, Mobile County, Ala.  
 Paul A. Boulo  
 Brewton Engineering Co.  
 Brown Bagging & Paper Co.  
 Burford-Toothaker Tractor Co.  
 California Co.  
 Calvert Fire Insurance Co.  
 Caribbean Steamship Co.  
 Central of Georgia Railroad Co.  
 Charleston & West Carolina Railway Co.  
 Chattahoochee Valley Railway Co.  
 Chemical Construction Corp.  
 Chemical Service Corp.  
 Chicago & Illinois Midland Railway Co.  
 Chicago & North Western Railway Co.  
 Chicago & North Shores & Milwaukee Railway Co.  
 Chicago, St. Paul, Minneapolis & Omaha Railway Co.  
 Chicago Wood Piling Co.  
 Chilean Nitrate Sales Corp.  
 City of Concord, N. C.  
 City of Dothan, Dothan, Ala.

**Kansas City Southern Railway Co.**  
**Kansas Power & Light Co.**  
**Kentucky Highway Department**  
**Kentucky Utilities Co.**  
**Knoxville Utilities Board**  
**Louisville Gas & Electric Co.**  
**Louisiana Power & Light Co.**  
**Minnesota Department of Highways**  
**Mississippi Power & Light Co.**  
**Mississippi Power Co.**  
**Missouri State Highway Commission**  
**Monongahela Power Co.**  
**Nebraska State Highway Department**  
**North Carolina State Highway and Public Works Commission**  
**Northern States Power Co.**  
**Potomac Edison Co.**  
**Philadelphia Suburban Transportation Co.**  
**Philadelphia Electric Co.**  
**Potomac Electric Power Co.**  
**Raymond Concrete Pile Co.**  
**Rural Electrification Administration**  
**South Carolina Electric & Gas Co.**  
**State Highway Commission of Kansas**  
**State Highway Commission of Wisconsin**  
**Tennessee Valley Authority**  
**Union Electric Company of Missouri**  
**United States Coast Guard, Miami, Fla.**  
**Western Union Telegraph Co.**  
**Philadelphia Rapid Transit Co.**  
**Ebasco International Corp.**  
**International Standard Electric Co.**  
**Central of Georgia Railway Co.**  
**Atlantic Coast Line Railway Co.**  
**Chicago, North Shore & Milwaukee Railway Co.**  
**Chicago & North Western Railway Co.**  
**Chicago & Illinois Midland Railway Co.**  
**The Cuban-American Mercantile Corp.**  
**United States Corps of Engineers, South Atlantic Division, Atlanta, Ga.**  
**The Cleveland Electric Illuminating Co.**  
**The Swiss Federal Railways**  
**Mozambique National Railways**  
**The South African Railways, Union of South Africa**  
**The Austria Railways**  
**The German Railways**  
**American Farm Bureau Federation**  
**Arkell & Smiths, Inc.**  
**Walter Bledsoe & Co.**  
**Brock & Blevins, Inc.**  
**City of Citronelle, Ala.**  
**N. D. Cunningham & Co.**  
**Dixie Paint & Varnish Co.**  
**E. I. du Pont De Nemours**  
**Monsanto Chemical Co.**  
**Mobile Ship Repair Co.**  
**Mobile Rosin Oil Co.**  
**Mobile Pulley & Machine Works, Inc.**  
**National Butane Co.**  
**Pure Oil Co.**  
**Reliance Chemical Co.**  
**Reynolds Metals Co.**  
**Rust Engineering Co.**  
**Shilstone Testing Laboratories**  
**Superintendence Co. Inc.**  
**United States Steel Corp.**  
**Waterman Steamship Corp.**  
**Davis Clinchfield Export Coal Corp.**

## CHROMITE

On May 15, 1953, I relieved Mr. G. F. Bailey as laboratory manager for A. W. Williams Inspection Co. Prior to that time from February 1952 when Mr. J. A. McDaniel left A. W. Williams Inspection Co., I was the chief chemist and participated to some extent in the bauxite sampling program. My duties consisted of supervising all analytical work performed in the chemistry laboratory and, when called on by Mr. Bailey, supervising the bauxite sampling for Reynolds Metal Co.

On May 15, 1953, Mr. G. F. Bailey's resignation became effective, and I was appointed laboratory manager in his place. It was not until May 19, 1953, when I received notice from the General Services Administration that the Steamship *Reuben Tipton* was scheduled to arrive in Gulfport, Miss., on May 23, 1953, that I first learned of the chromite contract which had been awarded by the General Services Administration. I immediately began preparation for handling the sampling and analysis of the chromite cargo.

Two of our most experienced samplers were dispatched to Gulfport to sample the ore. On arrival of the Steamship *Reuben Tipton* in Gulfport, our samplers began the operation under the observation of a representative from the contractor-supplier. It had been our intention to perform the sample preparation at our Mobile, Ala., laboratory on completion of the sampling of the vessel. However, we quickly determined that it would be in the best interest of the Government to prepare the sample in Gulfport.

We immediately placed an order with W. H. Curtin Co., in New Orleans, La., for a jaw crusher and we purchased an electric motor locally in Mobile. The electric motor was dispatched to Gulfport by one of our trucks and the W. H. Curtin Co. was requested by telephone during the placement of the order to deliver the jaw crusher to Gulfport with all possible speed. In the meantime sampling of the steamship *Reuben Tipton* proceeded as stated above under the observation of the supplier's representative.

The jaw crusher was a number of days in arriving in Gulfport. During this interval, we were in constant communication by telephone with the W. H. Curtin Co., requesting that delivery of the jaw crusher be facilitated since the bulk samples were beginning to pile up at our warehouse in Gulfport. I do not recall exactly the reason for the excessive delay, but as I recall, there had been a hurricane on the gulf coast a short time prior to the arrival of the steamship *Reuben Tipton* at Gulfport, Miss., and all direct roads and railroad connections between New Orleans and Gulfport were closed. As I recall, it was due to the rerouting of all freight along the gulf coast that accounted for the delay in delivery of the jaw crusher to Gulfport. Immediately upon arrival of the jaw crusher in Gulfport, it was set up and sample preparation operations began.

Meanwhile, without prior release either from us or the supplier, the railroad, contrary to its previous instructions not to move any cars from the city without prior release, moved nine unsampled cars of the chromite ore to Paducah, Ky. On learning of this we immediately made arrangements to fly samplers along with the supplier's representative to Paducah to sample these nine cars. The cars were sampled in Kentucky, and the bulk samples were shipped to Gulfport to be processed along with the other bulk samples from the steamship *Reuben Tipton*.

Due to the fact that the unloading of the steamship *Reuben Tipton* proceeded on a 24-hour-per-day basis, and that there were no facilities whatsoever for sampling the cars after daylight hours, we found that we were falling behind in our sampling. Also, due to the fact that there was considerable switching around of the cars in the Gulfport yards by the railroads, we found it increasingly difficult to keep up with our sampling. As a result we dispatched two additional samplers to Gulfport so as to facilitate the job.

Reference the screen size of the lot from the steamship *Reuben Tipton*, we decided that it was to the best interest of the Government to actually screen a portion of the cargo to determine the screen analysis, rather than to make a visual estimate as we would have been permitted under our contract, and in accordance with commercial practice.

After approximately one-half of the material had been unloaded from the vessel, a 2-ton bucket on a dragline was dropped into the hold of the ship and a sample accounting to 2,924 pounds were scooped up, set on the docks and immediately screened, with results as shown in our report. We sincerely believe that the results of this screening, as shown in our report, was more accurate than any estimate could have been. Our company went to a great deal of



extra expense to screen the 2,924 pounds of ore, since we felt that the best interests of the Government would be served by reporting the screen sizes as determined by an actual test instead of by an estimate based purely on observation.

While all of the above was going on, I determined that the pulverizing machine in our Mobile laboratories was designed to handle bauxite and coal, and that the steel plates in the machine were not hard enough to handle chromite or satisfactorily. We located a company in New Orleans by telephone who had a satisfactory chromite pulverizer and, as soon as the bulk samples had been crushed, riffled, and quartered, the samples were sent by messenger to New Orleans for pulverizing. The messenger waited in New Orleans for this operation to be completed after which he delivered the pulverized samples to the Mobile laboratory for analysis.

In the meantime in order to avoid such an occurrence in the future, we placed an order by long-distance telephone with a company in California, whose name I do not recall, for special plates of the proper hardness to be shipped at express immediately, for installation in our own pulverizer. This was done because we felt that the best interest of the Government was served by eliminating the excessive time required to pulverize the samples in New Orleans.

Upon receipt of the analytical sample at our Mobile laboratory, our chemists immediately proceeded with the analytical tests. This, too, was done largely under the observation of the supplier's representative. The procedure used for making these tests was obtained from the Treadwell-Hall Analytical Chemistry. The chemists reported to me that the chromite material was not going into solution properly by the recommended methods of procedure in the above volume and I, along with the supplier's representative and our chemists, worked out after a number of attempts, a satisfactory method for dissolving the ore sample. The testing was then completed in accordance with the methods specified in Treadwell-Hall's Analytical Chemistry.

It is my very definite recollection that the supplier's representative expressed his satisfaction and approval of the methods used in the analytical procedure. The results of sampling and testing of the chromite ore from the steamship *Reuben Tipton* were subsequently reported to the General Services Administration.

The above and the subsequent chromite cargoes were sampled and analyzed in accordance with the methods as previously agreed upon by the Government, the contractor-supplier, and ourselves, including telegraphed amendments.

On June 16, 1953, we were advised by the General Services Administration that the Steamship *James McKay* was due in Gulfport, Miss., on June 17, 1953, and advised to make all preparations necessary to handle the sampling and analysis of this cargo. The steamship *James McKay* was handled in largely the same manner as the steamship *Reuben Tipton*, except that none of the difficulties described above were encountered.

As far as we knew both the sampling and the analysis of the material was performed in a satisfactory manner, and it was not until December 1955 that I learned that there may have been any dissatisfaction or complaint about the handling of this vessel.

Subsequently, both of the above cargo umpire samples were called for by General Services Administration, to be delivered to another laboratory. We were never informed as to the results of the umpire analysis.

MORRIS MILLER,

*Laboratory Manager, A. W. Williams Inspection Co., Mobile, Ala.*

STATE OF ALABAMA,

*County Mobile, City of Mobile:*

Subscribed and sworn to before me this 13th day of January 1956.

GERTRUDE A. BRINCAT, *Notary Public*

My commission expires October 22, 1957.

GENERAL SERVICES ADMINISTRATION,

FEDERAL SUPPLY SERVICE,

*Washington, D. C., August 16, 1959.*

HON. FRANK W. BOYKIN,

*House of Representatives, Washington, D. C.*

DEAR MR. BOYKIN: The current service contract for sampling and analyzing Government bauxite shipments entering the gulf ports was made in accordance

with established regulations to the lowest responsible bidder, as stated in your letter of August 12, 1950.

The policy of this Service, all other considerations being equal, is to award contracts to the bidder or bidders offering to perform the services required at the lowest cost to the Government, whether at one port or at all ports mentioned in the invitation to bid.

The current bauxite sampler-analyst service contract expires on March 31, 1951, with a provision for extension to June 30, 1951, at the option of the Government. The supply contracts under which bauxite is being delivered will have expired prior to the termination date of the sampler-analyst contracts, and additional purchase of bauxite is not contemplated at this time.

Your interest in this matter is appreciated, and the A. W. Williams Inspection Co. will be included in any future solicitation for bids on commercial sampler-analyst work required by this Service in the gulf port area.

Sincerely yours,

CLIFTON E. MACK, *Commissioner.*

August 22, 1950, original to Mr. A. W. Williams.

GENERAL SERVICES ADMINISTRATION,  
FEDERAL SUPPLY SERVICE,  
Washington, D. C., May 11, 1951.

Subject: Sampler-analyst services.

A. W. WILLIAMS INSPECTION Co.,  
*Mobile, Ala.*

GENTLEMEN: We acknowledge your letter of May 3, 1951, concerning the inspection and analysis of materials when and if such services are needed by the General Services Administration.

We are pleased to advise that the A. W. Williams Inspection Co. is on our approved list of contractors covering commercial sampler-analyst services when required on materials delivered under supply contracts. Your company will, therefore, be solicited for bids covering such required services in you field in the usual manner.

We appreciate your offer of additional information regarding your services and will place in our reference files any catalog or brochures describing your facilities or available services which you wish to submit as more specific information on inspection, sampling, or analyzing with respect to the areas covered, your specialized commodities, and laboratory locations. Such information would supplement your past performance record under service contracts with us and the general information contained in the current directories of sampler-analyst service contractors, as published by the American Council of Commercial Laboratories and the United States Department of Commerce, respectively.

Very truly yours,

O. W. TECKEMEYER,  
*Chief, Inspection Branch.*

GENERAL SERVICES ADMINISTRATION,  
FEDERAL SUPPLY SERVICE,  
Washington, D. C., February 10, 1954.

Mr. A. W. WILLIAMS,  
A. W. Williams Inspection Co.,  
*Mobile, Ala.*

DEAR MR. WILLIAMS: Your letter of February 5, 1954, addressed to the Emergency Procurement Service concerning the inspection and testing of materials under the Korean relief and rehabilitation program, has been referred to this office for reply.

At the present time it is anticipated that inspection required in connection with any materials purchased by the General Services Administration for the United Nations Korean Rehabilitation Administration will be performed by Government personnel in accordance with the practice customary under other programs. However, if it becomes necessary to utilize the services of commercial inspecting or testing facilities consideration will be given to your company.

Your interest in this matter is appreciated.

Yours very truly,

H. M. NEALE, *Assistant Chief, Inspection Branch.*

extra expense to screen the 2,924 pounds of ore, since we felt that the best interests of the Government would be served by reporting the screen sizes as determined by an actual test instead of by an estimate based purely on observation.

While all of the above was going on, I determined that the pulverizing machine in our Mobile laboratories was designed to handle bauxite and coal, and that the steel plates in the machine were not hard enough to handle chromite ore satisfactorily. We located a company in New Orleans by telephone who had a satisfactory chromite pulverizer and, as soon as the bulk samples had been crushed, riffled, and quartered, the samples were sent by messenger to New Orleans for pulverizing. The messenger waited in New Orleans for this operation to be completed after which he delivered the pulverized samples to the Mobile laboratory for analysis.

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Subsequently, both of the above cargo umpire samples were called for by General Services Administration, to be delivered to another laboratory. We were never informed as to the results of the umpire analysis.

MORRIS MILLER,

*Laboratory Manager, A. W. Williams Inspection Co., Mobile, Ala.*

STATE OF ALABAMA,

*County Mobile, City of Mobile:*

Subscribed and sworn to before me this 13th day of January 1956.

GERTRUDE A. BRINCAT, *Notary Public*

My commission expires October 22, 1957.

GENERAL SERVICES ADMINISTRATION,  
FEDERAL SUPPLY SERVICE,  
*Washington, D. C., August 16, 1959.*

HON. FRANK W. BOYKIN,  
*House of Representatives, Washington, D. C.*

DEAR MR. BOYKIN: The current service contract for sampling and analyzing of Government bauxite shipments entering the gulf ports was made in accordance

obtained by Mr. Hattan, did not affect his apparent determination to file charges against these claims, which he proceeded to do in spite of notice of a material difference and with no effort on his part to reconcile those differences.

In addition, all of the certificates of the assay laboratories reporting upon the supplemental samples authorized by Hattan, from three separate laboratories, were suppressed from the record. Also suppressed from the record was all correspondence relating to these important material facts of the case.

CHARLES R. McDONALD.

Subscribed and sworn to before me this 14th day of February 1956.

[SEAL]

MARGUERITE WALKER,

*Notary Public, Mobile County, Ala.*

My commission expires February 18, 1958.

The foregoing information is submitted in relation to the statement made by Mr. Hattan in his testimony before the Joint Senate-House Subcommittee at Portland, Oreg., on November 25, 1955.

Mr. Hattan, in the testimony just mentioned, stated that he first met the McDonald brothers, to wit, Charles R. McDonald and Herbert P. McDonald, Jr., on his visit to the Al Sarena property during July 1949.

Contrary to Mr. Hattan's statement in the aforementioned testimony, Mr. Hattan had at least two prior conferences with Charles R. McDonald at the Swan Island offices of the Bureau of Land Management prior to that time. I am further advised that Mr. Hattan had additional conferences with Herbert P. McDonald, Jr., earlier than the conferences just mentioned, in which Charles McDonald did not participate.

I, Charles R. McDonald, first met Mr. Hattan about the middle of September 1948 at his office on the second floor of the old Swan Island Administration Building. In that conference Mr. Hattan stated that assays were not required in the applicant's mineral statement, but recommended that the applicant include at least one such assay from each claim, since one good assay within the lines of each claim would be sufficient to "clear list" the claims.

My second conference with Mr. Hattan occurred on the afternoon of October 1, 1948, at which time Mr. Hattan examined the patent application, and especially exhibit I, which had been included at his suggestion, made to us in the mid-September conference. During this second conference Mr. Hattan made in substance the following statement:

"I am satisfied. Unless the Forest Service requests a field examination within the next 60 days, I will not be down."

CHARLES R. McDONALD,

HERBERT P. McDONALD, Jr.

Subscribed and sworn to before me this 14th day of February 1956.

[SEAL]

MARGUERITE WALKER,

*Notary Public, Mobile County, Ala.*

My commission expires February 18, 1958.

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., June 6, 1950.

Hon. OSCAR L. CHAPMAN,  
*Secretary of Interior,*  
*Department of the Interior,*  
*Washington 25, D. C.*

DEAR OSCAR: The enclosed file, concerning mineral patent application, M. A. No. 0665, Oregon, is self-explanatory.

Dr. H. P. McDonald, president, Al Sarena Mines, Inc., is a close friend of mine and my constituent.

I shall appreciate your having a prompt investigation made into this matter and letting me have a report at your earliest opportunity.

Warm regards.

Sincerely,

FRANK W. BOYKIN, *Member of Congress.*

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C., March 14, 1950.

In reply refer to: Oregon 0665 "AD: RLW" M. S. No. 879

Memorandum to: Manager, Land Office, Portland, Oreg.

From: Director.

Subject: Adverse proceedings vacated.

By memorandum of February 10, 1950, adverse proceedings were ordered against certain of the mining claims embraced in mineral entry Oregon 0665 of Al Sarena Mines, Inc.

This action is wrong procedure as the land is within a national forest reservation, and adverse proceedings, if any against the claims, will be brought by the Forest Service. Accordingly the memorandum of February 10, 1950, is revoked.

ROSCOE BELL, Associate Director.

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington 25, D. C., November 24, 1950.

In reply refer to: Oregon 0665.

Memorandum to: Manager, Land Office, Portland, Oreg.

From: Director, Bureau of Land Management.

Subject: Returning record for the rendering of a decision.

On April 6, 1949, final certificate issued on mineral application Oregon 0665 filed October 4, 1948, by the Al Sarena Mines, Inc., for a patent to the Oro Alto Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama Rainboe, Delia McKinnon, Sulphide, Manganese, La Jolla, Staples, and Arroyo Verde lode claims situated in sections 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., Willamette Meridian, Oregon within the Rogue River National Forest.

On April 11, 1950, the Forest Service filed a protest against the entry charges that certain claims are invalid. Notice issued under contest No. 38. On May 22, 1950, an answer and certain motions and demurrers were filed. A hearing was set for September 13, 1950, at which you overruled the motions and demurrers made by the attorney for the defendant and directed that the hearing proceed. The attorney for the defendant appealed from your action and declined to take part in the hearing. The Forest Service submitted testimony in support of the charges and you, by memorandum dated October 2, transmitted the papers in the case and recommended that the entry be canceled as to the 15 claims involved in the protest.

Under the Rules of Practice (43 CFR 221.40 (c) and 221.41) you should have rendered your decision subject to the right of appeal. The entire record is returned herewith and you are directed to quickly render a decision instead of a recommendation and allow the party 30 days from notice to appeal or file an application for reopening the hearing. The decision should cover both the procedural matters and the merits of the case so far as presented.

C. R. BRADSHAW, Acting Director

STATE OF ALABAMA,  
County of Mobile, ss:

I, H. P. McDonald, Jr., being first duly sworn, depose and say that I am Secretary-Treasurer of Al Sarena Mines, Inc., an Oregon corporation; that said Al Sarena Mines, Inc., has made application for Mineral Patent to that property embraced in M. A. No. 0665, Oregon District Land Office; that the Notice of Publication as transmitted by the Oregon District Land Office was published in the Medford News, a weekly publication, for nine consecutive issues beginning November 12, 1948, and terminating January 7, 1949; that the Plat and Notice received from the Regional Cadastral Engineer for posting on the claims to remain posted in a conspicuous place continuously from September 22, 1948 to and including the date of this affidavit, said notice having been displayed on the southwest exterior wall of the mill building located on the A. W. Dahlberg Claim; that no adverse claim has been filed with any officer of said Al Sarena

Mines, Inc., during the time provided by law for that purpose; that no litigation of any description has been instituted by or against said Al Sarena Mines, Inc., since the filing of the Application for Patent; and that all fees and charges in connection with the patent proceedings have been paid, to wit:

Office Work (Reg. Cadastral Eng.)	\$416. 00
Patent Survey	3, 600. 00
Legal Services	50. 00
Proof of Citizenship (Corp. Dept.)	13. 50
Certified Copies (County Clerk) (& Rec.)	83. 70
Publication of Notice in newspaper	58. 00
Posts for claim corners	25. 50
Assaying	30. 00
Traveling Expense	1, 050. 70
Repairs	105. 96
Miscellaneous (Tel. & Tel., etc.)	121. 54
Filing Fee (Dist. Land Office)	10. 00
Total	5, 564. 90

H. P. McDONALD, Jr.

Subscribed and sworn to before me this 13th day of January 1949.

MARQUERITE WALKER,

Notary Public, Mobile County, Ala.

My Commission expires Dec. 1950.

#### EXHIBIT A

DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
OREGON DISTRICT LAND OFFICE,  
Portland, Oreg., February 8, 1949.

H. P. McDONALD, Jr.,  
Secretary, Al Sarena Mines, Inc.,  
Mobile, Ala.

DEAR MR. McDONALD: We have your two letters of January 13 and January 27, and enclose an application to purchase for your execution, which paper is required in connection with the final proceedings in patenting a mining claim. The amount of purchase money due is \$2,375. The total acreage is 474.119 acres, which, at the rate of \$5 per acre or fraction thereof amounts to the above sum.

Upon receipt of the application to purchase properly executed and the required amount of money, the papers will be examined with the idea of issuing final certificate.

Very truly yours,

SPAULDING,  
Assistant Manager.

#### EXHIBIT P

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C., November 2, 1950.

In reply refer to Oregon 0665.

HON. FRANK R. BOYKIN,  
House of Representatives, Washington, D. C.

MY DEAR MR. BOYKIN: Reference is made to your telephone conversation of October 24, with Mr. Mastin G. White, Solicitor of the Department of the Interior, relative to Contest No. 98 against mineral entry Oregon 0665 made by the Al Sarena Mines, Inc.

Solicitor White has requested that the decision in the case be expedited. The matter is under immediate consideration and it is hoped that the decision will be out in a very short time. I shall be glad to furnish you a copy of the decision when it is rendered.

Sincerely yours,

WILLIAM ZIMMERMAN, JR.,  
Assistant Director.

AL SARENA MINES, INC., TRAIL, OREG.,  
Mobile, Ala., June 23, 1951.

Mr. MASTIN G. WHITE,

*Acting Assistant Secretary of the Interior,  
Department of the Interior, Washington, D. C.*

DEAR MR. WHITE: We are advised that your letter to Hon. Frank W. Boykin, Member of Congress, replying to his letter of June 13, 1951, to you, contains a statement to the effect that oral argument of our case was had during the conference at your office by representatives of Al Sarena Mines, Inc., on June 15, 1951, and that all of the facts and circumstances would be given due consideration in the final adjudication by the Department of the Interior. We appreciate this consideration very much and wish, in addition, to clarify the record by adding that the conference had on June 15, 1951, was not the oral argument moved for in the brief of the appeal now before your office, there having been no counsel present, there having been no understanding at that time that this was the official oral argument, and there having been no introduction of the contents of the impartial tape recording made at the hearing, as such.

If, however, from the preponderance of facts before you by virtue of our conference and discussion on June 15, and otherwise, you find that a decision should be rendered in our favor, we shall be glad to waive our motion for oral argument on that basis, and it may be considered as waived on that condition.

The material presented to you was for the purpose of throwing light on the record. Thereafter, having perused the record briefly in the docket room, we discovered numerous fatal defects therein, too numerous to list. Among these fatal defects, which we promised to report to you, are the following:

1. The record recites that the hearing was formally opened by the manager. Subsequent to this formal opening, contestee read into the record a wealth of legal prima-facie evidence, which evidence was received therefor without objection, but which evidence could not be found in the record by an inspection thereof. This material evidence appears to have been withheld from the record in order to support an allegation by the manager that the contestee failed to participate in the hearing and its withholding has the effect of deceiving you and the other appellate authorities into whose hands the record might pass. From the context of the record and from letters in our files from various officials of your department, it is an admitted fact that Mr. Rice sent the record to Washington on the contestee's appeal from his rulings on demurrers and motions only, without decision, which rulings were in fact made during the hearing. Had contestee not participated therein, such action on Mr. Rice's part would have been impossible.

2. The first seven pages of the record, which pages deal with an appeal taken under the technical rules of pleading, appear deliberately erroneous to the extent that the stenographer has failed or refused to certify to any part of their correctness, as required.

3. The record states that Al Sarena Mines, Inc., requested the hearing, held September 13, 1950. The fact that Al Sarena Mines, Inc., had no desire for a hearing but was compelled to appear at a hearing ordered by the Government, making request only for an early date after having been advised that it must appear at such a hearing.

4. Al Sarena Mines, Inc., submitted a state of facts rending the charges immaterial, as provided by the regulations, constituting a set of charges preferred by Al Sarena Mines, Inc., under oath, against the validity of the proceeding. These charges, preferred by Al Sarena Mines, Inc., should have been taken as confessed (see brief), and the action so taken by Al Sarena Mines, Inc., obviated the necessity of any hearing.

5. The Forest Service witnesses were excused by their own counsel from the customary duty of subscribing their testimony as it appears in the record, to the facts. Such excuse from duty was apparently performed without right or authority under a false premise hereinabove recited in No. 1.

6. The record contains a statement to the effect that the demurrers were abolished and specifically ruled upon as motions. Be it remembered, from recitation in the original answer of Al Sarena Mines, Inc., that what was filed by said Al Sarena Mines, Inc., was and is "a state of facts" filed and submitted in the form of demurrers. So far as is known, it is not customary in any proceedings to rule upon a state of facts (which is subject to argument and proof) as though said state of facts were a motion (which is largely a discretionary matter). Furthermore, no representation was made at the hearing, either by the manager

or by opposing counsel, that the demurrers or state of facts would be treated as motions, which can easily be proven. It is also noted that even rule 40 of the Interior Department Rules of Practice provides for the use of demurrers, and that the manager defaulted under that rule.

7. The grounds given in the record for the rulings made by the manager are not the same grounds given for the record at the hearing, and do not correspond to the grounds actually given, as they appear in the record of the contestee.

8. Full, illegal, unprecedented, confiscatory jeopardy was imposed upon contestee during the hearing, it having been withdrawn at the close thereof. Therefore, all rulings of the manager, and the grounds therefor were made and given in the light of full, illegal, unprecedented, confiscatory jeopardy, specifically prohibited by the ruling handed down by the Supreme Court in the case of *El Paso Brick Co. v. McKnight* (233 U. S. 250, 257). The invalidity of the actual grounds given should receive special attention in adjudication for that they were given in the light of full, illegal, confiscatory jeopardy, but said grounds allege that the interests of the contestee are not adversely affected, which is impossible, as has been shown previously.

9. The record shows that a motion was illegally entertained and allowed, without knowledge of or notice to contestee, to change the name of the contestee in the illegal protest after the matter had been brought to trial. This practice violates legal and customary practice and procedure in judicial and administrative proceedings. Any such change must be made legally and properly before bringing the matter to trial. Al Sarena Mines, Inc. was first placed in jeopardy on charges brought against a nonexistent mining company. Subsequently, charges were again preferred by such action, on the same alleged cause, against Al Sarena Mines, Inc., constituting a second jeopardy on the same alleged cause of action. Said charges against Al Sarena Mines, Inc. were further preferred without the knowledge of Al Sarena Mines, Inc. and without any notice or notice thereof to said corporation whatsoever.

10. The testimony was not confined to the evidence upon which the charges were preferred. Assays submitted by Al Sarena Mines, Inc., apparently sufficiently valid to cause the official vacation of the adverse or contest proceedings on February 10, 1950, which notation, duly initialed "Jab" and followed by a notation dated March 14, 1950, directing that the matter be held until the Forest Service brings proceedings and has hearings, initialed "R. L. W.," appear conclusively to have established the matter as res adjudicata and it further appears that the present proceeding was deliberately brought upon a matter which was already res adjudicata, injuriously and knowingly depriving Al Sarena Mines, Inc. of material facts with which to defend itself. These entries in the official record of action taken further confirm the previous contention that the Interior Department, purportedly an impartial judge, was apparently aiding and abetting a third party, the Forest Service, illegally to intervene in a completed transaction between the Interior Department and Al Sarena Mines, Inc. and to strike down arbitrarily a title already conferred, with a further apparent attempt to enforce previous threats of summary confiscation, involving both real and personal property. The aforesaid vacation of the proceeding should in all good conscience have been allowed to stand for that it established the matter once and for all as res adjudicata, as aforesaid. The bringing of an action in April 1950, on a matter known to be res adjudicata and the subsequent setting of a hearing without adverse evidence, or with only the same evidence which was of record at the time the matter became res adjudicata as aforesaid was an arbitrary, capricious, illegal, and ultra-vires act. There is no getting away from this, and a court would hold it so. In addition, Mr. Hattan was allowed to use hearsay in his testimony, which would not be tolerated from a private citizen. The documentary evidence later submitted in support of the hearsay was prepared by the Department of the Interior, which has been shown to be at least a quasi accuser while purporting to be an impartial judge between the Forest Service and Al Sarena Mines, Inc., and which department apparently obtained its alleged original, and consequently all other, jurisdiction as said allegedly impartial judge by fraudulent misrepresentation, deceit, and improper use of the United States mails. Mr. Hattan is assumed to have had an assay report upon which to base statements made previous to the hearing alleging certain specific values from samples which he had obtained from the Annes Engineering Co., of Grants Pass, Oreg. The assay report of that firm, contained in the documentary evidence appears not to be the same assay report from which he was quoting previously, as it contains no such values as those previously recited by Mr. Hattan.



11. The testimony of Messrs. Hattan and Sanborn contradict each other in regard to the whereabouts of their samples after said samples left their dominion and custody. The testimony of these two men, which in part admits poor memory in this regard, also contradicts the statement of fact by Mr. Sanborn to representatives of Al Sarena Mines, Inc. at San Francisco, Calif., on or about April 11, 1949, while the matter was still current in his mind. This shows that the samples were in effect, as previously stated, lost and were apparently not in the hands of a common carrier, as was hesitatingly alleged in the testimony, and further shows the previously averred possibility or probability of substitution.

12. Contestant's motion to have its charges taken as confessed was entertained and the contestant was allowed to submit a "showing in support" thereof some 2 weeks later. Although contestant's motion was ultimately denied, it was entertained for an unreasonable time in the absence of any showing in support. Contestee's motion to dismiss, though backed by a showing in support thereof, was summarily denied on the alleged ground that no showing in support had been submitted prior to the hearing. In addition to the utter discrimination and prejudice just shown, the fact that the false grounds given for contestant's motion were that the contestee did not answer the charges, did not appear at the hearing, and did not participate in the hearing, or appear and offer evidence proves also the contention of Al Sarena Mines, Inc., hereinabove set out in No. 1. It further evidences, as has been stated in the brief, that counsel for contestant inserted such grounds for his motion in an apparent attempt to protect Mr. Rice from the consequences of his own acts, deliberately doing so to the prejudicial detriment of citizens, whose rights should be protected in any proceeding alleged to conform to the requirements of due process.

It is regretted that there was no opportunity during our conference to go fully into the multitude of other factors which would cast light on the record, such as the newly discovered evidence in the matter of iron pyrite, a strategic mineral contained in very large quantities. The presence of this strategic mineral is admitted and confirmed again and again even in the adverse testimony of Mr. Hattan, and the commercial and strategic significance of this important mineral has increased greatly since his examination. According to the official figures furnished you by Congressman Boykin in his letter of June 13, which figures are of record in projects originating within the Government and which figures were correctly prepared by a duly licensed registered professional engineer, the lowest figure given you by Mr. Boykin corresponds to more than \$50,000 per month in dollar value production. This figure, compared with the alleged total value of \$77,000 in timber shows conclusively that such production in sulfuric acid qualifies without doubt, even under the criterion in *U. S. v. Dawson* (35 I. D. 670), the validity of which criterion we still do not recognize. There can be no question as to the mineral value, when the official figures for such production reveal at least 63 years of such production, with considerably larger possibilities, and there can be no doubt that iron pyrite, with the increasingly acute shortage of native sulfur, is in fact a very valuable mineral. The averment that this property is patentable for iron pyrite alone, made by the Secretary-treasurer of Al Sarena Mines, Inc., at your office June 15, is therefore correct beyond reasonable doubt.

Your attention is again very respectfully invited to the fact that the original jurisdiction, and consequently all appellate jurisdiction arising therefrom, to dispute the title already conferred upon Al Sarena Mines, Inc., was apparently obtained and made possible only by fraudulent misrepresentation, deceit, and therefore improper use of the United States mails by the acting regional administrator of the Bureau of Land Management in his letter of April 14, 1949. In addition, the entire matter has otherwise been shown to be res adjudicata in our favor. Therefore, any question as to proper rules of practice and procedure, etc., is irrelevant, immaterial, and incompetent for that there was no legal jurisdiction and there should consequently have been no trial at all.

We feel sure that if you had been aware of the true facts at the time, you would have exercised your sense of fairness and justice and would have prevented the deplorable mishandling of affairs and abuse of citizens by subordinates in your department. We feel confident that you will do all within your power to right the wrongs which have been done and to correct the gross miscarriages and travesties of justice to which we have been subjected, which have herein and heretofore been specifically pointed out to you.

We wish once more to express appreciation for the courteous and thoughtful manner in which we were received and to express our regrets that it was not possible to report and discuss our findings in the record before leaving.

With kindest regards, we are

Sincerely yours,

AL SARENA MINES, INC.,  
H. P. McDONALD, Jr.,  
*Secretary-Treasurer.*

REPORT ON GEOPHYSICAL EXAMINATION OF PROPERTY OF AL SARENA MINES, INC.,  
TRAHL, OREG.

During the month of July 1949, prior to the visit of Messrs. Hattan and Sanborn, representatives of the United States Departments of the Interior and Agriculture, respectively, I personally supervised a geophysical examination of the property of Al Sarena Mines, Inc., for the purpose of obtaining further conclusive evidence of its mineral character. The examination employed the use of a Fisher M-Scope, which instrument is recognized generally for the determination of the presence of minerals and the intensity, or relative intensity, of mineralization. Such devices are being widely used by the major mining companies and by governmental departments for that purpose. The instrument was inspected by me personally before, during, and after the examination, having been found in each instance to be in good working order.

In terrain containing no underground piping, etc., as was the case in this examination, only mineral will produce a deflection of the needle, or the audible signal emitted by the instrument.

The aforesaid instrument was first used for testing ground known to be non-mineral in character, thereby establishing a zero position (for nonmineral ground) at actual zero, accompanied by no audible signal. Said instrument was then brought to the ground now in question without altering any of its adjustments. At no point on the ground now alleged by the Forest Service to be nonmineral in character, and at no other point visited on the property, did the instrument show the known zero or nonmineral reading. The needle instead assumed a new "normal" position, showing significant mineralization, accompanied by a pronounced audible signal throughout the examination. This new "normal" position, below which the needle never descended, was used as a basis for determining the number of points of rise of the needle, indicating corresponding increases in the intensity of mineralization in the various localities visited in the course of the examination. A deflection of the needle over the already productive enriched area showed a rise of 90 points, over ore having a minimum value estimated at 6 to 7 times the value necessary to render it commercial in this large-scale type of orebody. On this basis, it would appear that a rise of 13 to 15 points should constitute a satisfactory showing of commercial ore. Smaller rises would indicate the advisability of spending at least a limited amount of time and capital with the reasonable expectation of developing large quantities of commercial low-grade ore, especially in view of the definite, known, showing of mineralization even where no rise above the established norm is present.

Examples of the rises of the needle observed on claims later brought into question are as follows:

Name of claim	Reading No.	Number of points rise	Name of claim	Reading No.	Number of points rise
Cougar.....	1	20	Arroyo Verde.....	4	10
Do.....	2	10	Alabama.....	1	10
J. W. Merritt.....	1	80	Do.....	2	30
Do.....	2	70	Do.....	3	60
Do.....	3	70	Do.....	4	90
Staples.....	1	10	Do.....	5	30
Do.....	2	40	Do.....	6	70
Do.....	3	70	Do.....	7	90
Do.....	4	70	Do.....	8	70
La Jolla.....	1	10	J. D. McKinnon.....	1	80
Do.....	2	30	Do.....	2	20
Do.....	3	5	Do.....	3	20
Do.....	4	20	Delia McKinnon.....	1	30
Arroyo Verde.....	1	5	Do.....	1	30
Do.....	2	40	Rainboe.....	1	20
Do.....	3	20			

In addition to the foregoing findings, a group of samples was taken and assayed from these claims, later contested, at the direction of Mr. Hattan. Specific procedure and requirements were outlined for this sampling and assaying and were fully complied with. All samples were assayed and reported upon by reputable commercial laboratories who are recognized and patronized by the United States Government. Mr. Hattan directed that this sampling and assaying be done at the expense of Al Sarena Mines, Inc., and that the results thereof be reported to him in his own specified form, admitting at that time the inconclusive nature of his own examination. He further agreed that the results reported to him would be used as evidence in determining the outcome of the patent application filed by Al Sarena Mines, Inc. Results reported to Mr. Hattan, omitting results reported on uncontested claims, are as follows:

Sample No.	Description	Au, ounces	Ag, ounces	Au, value	Ag, value	Total value
AWW2.....	Manganese, Spot check on Hattan and Sanborn.	0.025	0.025	0.875	0.023	0.4
AWW4.....	J. D. McKinnon, E. side of outcrop N. 65° W. from disc. 120'.	.025	.05	.875	.045	.2
AWW5.....	J. D. McKinnon, center outcrop N. 65° W. from disc. 130'.	.05	.125	1.75	.11	1.9
AWW7.....	W. C. Leever 820° E. from Corner No. 3, 700 Ft. Dist.	.05	.10	1.75	.09	1.94
AWW9.....	J. L. Grubb 75° W. of S. E. corner on S. line of claim.	.025	.125	.875	.113	.9
AWW10.....	Arroyo Verde, from discovery.	.050	.550	1.75	.45	2.3
AWW16.....	Cougar, W. bank Swanson Creek at intersection of N. claim line.	.025	.050	.875	.045	.2
AWW17.....	Cougar S. 21° E. of S. E. Cor. Oro Alto, 388' Dist.	.025	.025	.875	.023	.2
AWW18.....	Henry Applegate, Along E. line 19' S. W. of sta. 16'.	.025	.075	.875	.068	.24
AWW19.....	Henry Applegate, Approx. 60' W. of E. line & Sta. 16.	.050	.100	1.75	.09	1.94
AWW22.....	La Jolla (at falls).	.050	.100	1.75	.09	1.94
AWW23.....	Manganese N. 47° E. from Corner No. 3, 247' dist.	.025	.075	.875	.068	.24
AWW24.....	Cougar, Large cut on trail to Tunnel No. 8. (Cut spotted in by Mr. Hattan.)	.025	.075	.875	.068	.24
AWW26.....	J. W. Merritt, 20' S. W. of discovery.	.025	.075	.875	.068	.24
AAH9843.....	Rainbow, about 175' S. of most northerly corner.	.07	.13	2.45	.11	2.56
AAH9844.....	Rainbow, Approx. 75' South of most northerly claim corner.	.02	Trace	.70	.....	.70
AAH9845.....	Sulphide, N. 65° E. of most westerly corner, 30' dist.	.30	Trace	1.05	.....	1.05
AAH9846.....	Della McKinnon, Discovery.	.12	Trace	4.20	.....	4.20
SE312362.....	Alabama II (Spot check, Hattan)	.06	.....	2.10	.....	2.10

The mineral content of this property is composed largely of galena, sphalerite, and iron pyrite, all of which are associated chemically with gold and silver. There are enormous quantities of iron pyrite present, carrying in most cases smaller amounts of gold and silver than in such minerals as galena. This iron pyrite, of which it is certain Mr. Hattan must have been aware, has a distinct value as a strategic mineral, it being a prime source of sulfuric acid, a basic chemical, and of sulfurous acid, from which sulfites are derived, chiefly for the paper industry. The ore is easy and inexpensive to mine and to treat and will show a profit on minimum values.

#### CONCLUSION AND RECOMMENDATIONS

Because of the known values and because of the essential uniformity of the geological formation and mineralization within clearly defined boundaries, this property may be designated properly as a broad lode or zone within the meaning of the decision in the *Eureka* case (103 U. S. 839) and others. It is recommended that the entire property be further developed by the systematic placing of significant numbers of diamond core drill holes throughout the entire Al Sarena group of 24 claims, using standard engineering procedure for the weighted sampling of the entire ore body. The data so obtained should be utilized for the purpose of furnishing mill heads of essentially constant value to a proposed ore dressing plant of very large capacity and low treatment cost per ton. The exact size of such mill should be determined on the basis of an economy study derived from the results of the core drilling program. The vast supply of iron pyrite should be exploited commercially, it having assumed far greater significance commercially and strategically since Mr. Hattan's examination.

The writer hereby concurs in and confirms the findings previously made by Messrs. D. Ford McCormick, George P. Sopp, and many other qualified and successful engineers, all of whom agree from their knowledge of the property that the nature and extent of mineralization, together with all known factors, definitely warrants the expenditure of time and capital by prudent persons in further development, especially along the lines hereinbefore outlined. It is the opinion of the writer that the vast mineralized deposit, confined within these claims by the clearly defined boundaries of the mineralized area near the exterior boundaries of the group of claims, constitutes a possibility of development of the largest low-grade, mass-production property on the North American continent. It is further the opinion of the writer that the systematic, miner-like development program outlined above should be prosecuted vigorously toward such a goal, even though considerable expenditure is involved in such program. With the preponderance of evidence of significant and valuable mineralization, such a program should not be abandoned or diminished unless, by some unforeseen and improbable chance, coredrill weighted sampling over the entire area for significant depths should then show the ore body to be not feasible even on large-scale operation. Under no circumstances should the officials of this corporation be influenced to abandon its plans for large-scale development and operation because of any allegations arising from alleged results from small, scattered samples, not weighted, and in all probability not assayed with the accuracy necessary when dealing with low-grade ore. Moreover, no reputable professional engineer can conscientiously, nor will he, condemn a property, as Mr. Hattan has done, without complete and comprehensive data, obtainable only by weighted sampling as outlined above. It is a fundamental principle of professional ethics to recommend neither heavy investment for commercial operation nor abandonment of such large-scale plans in the absence of data upon which to proceed intelligently. In the opinion of the writer, it is the duty of a member of the profession to recommend further expenditures for gathering such data and a distinct breach of professional ethics to attempt to prevent the necessary steps by management, such as patenting of the claims, for such scientific investigation and commercial development of an essential industry.

Respectfully submitted,

CHARLES R. McDONALD,  
Registered Professional Engineer,  
Alabama Certificate No. 1693.

MOBILE, ALA., June 21, 1951.

MARCH 19, 1951.

W. O. MACMAHON,  
Mobile, Ala.:

Talked at length to our friend, Mastin White, after my talk with you this morning. He had already asked Mr. Clawson to rush his decision all he could. He does not know how soon this will be, but will keep us fully posted. Warm regards.

FRANK W. BOYKIN,  
Member of Congress.

AL SARENA MINES, INC.

TRAIL, OREG.

MOBILE, ALA., March 10, 1951.

Re Letter this date to Director of Bureau of Land Management, notice of default and legal demand for award of patent

MASTIN G. WHITE,  
Solicitor, Department of the Interior,  
Washington, D. C.

DEAR MR. WHITE: We hand you herewith for your information a copy of the subject notification of default and legal demand made this date upon Mr. Marion Clawson, Director of the Bureau of Land Management.

With kindest regards, we are

Sincerely yours,

W. O. MACMAHON,  
Special Counsel.

Re Oregon 0665, contest 39, notice of default and legal demand for award of patent

MARION CLAWSON,

*Director, Bureau of Land Management,  
Department of the Interior, Washington, D. C.*

DEAR MR. CLAWSON: The Bureau of Land Management, United States Department of the Interior, by and through the Oregon District Land Office, offered early in 1949 to sell, convey, transfer, and patent to Al Sarena Mines, Inc., a group of 23 claims in Jackson County, Oreg., after said Al Sarena Mines, Inc. had established, to the satisfaction of the Bureau of Land Management, its right to patent said claims in accordance with the applicable statutes. Said Bureau of Land Management consummated the sale by demanding the legal consideration therefor, which it had stipulated, and acknowledging the receipt thereof. The issuance of the final certificate, as evidence of transfer, even though it may have been encumbered with illegal addenda, was an admission of the completed transaction by the Bureau of Land Management, and vests title to the land in the purchaser (*Brummet v. Pearle*, 36 Ark. 471; *Broussard v. Broussard*, 43 La. Ann. 221).

On May 1, 1950, the Oregon District Land Office of said Bureau of Land Management served by registered mail on said Al Sarena Mines, Inc. an illegal and improper contest citation, based upon an adverse claim of the Forest Service, which claim was not sworn to, was not dated, was not made within the time prescribed for the filing of such claims, and was made not against the named contestee, but was made against a wholly nonexistent mining company. Said citation stipulated therein a 30-day procedure for responding to or answering said judicial proceeding held before the manager of the Oregon District Land Office, thereby establishing a 30-day procedure in this cause. Therefore, in accordance with established procedure binding the contestee, both the Interior Department and the Agriculture Department are likewise bound to the established 30-day procedure.

A state of facts, including countercharges, was set forth in demurrers and motions, as provided by your own regulations, in the answer that was submitted by the named contestee rendering the original charges immaterial, authority for which is also provided in your own regulations. Such countercharges, evidenced by and in the aforesaid demurrers and motions, require an answer within the 30-day period, and an adjudication "forthwith" by your manager in accordance with and as set out in your own rules.

Therefore: Predicated upon the rules made and prescribed as set forth in your own regulations furnished by your Department (and in no wise waiving any or all rights accruing to contestee under and by virtue of the rules of evidence and the rules of practice as obtain in Federal and State courts, as agreed upon with the Honorable Mastin G. White, Acting Assistant Secretary of the Interior), it appears that not having adjudicated the demurrers and motions "forthwith" or within the 30-day period which you yourselves set up as a time limit in this cause, your Department at the expiration of said 30 days was in default and is still in default and that the contestee is entitled to have taken as confessed against the Forest Service and the Interior Department the aforesaid demurrers and motions and all of the allegations otherwise officially made by contestee, and to have the proceedings brought under the aforesaid contest citation dismissed and the patent issued as prayed for.

Without apparent regard for its own default or for that of the Forest Service and without regard for right, equity, or justice, the Bureau of Land Management coerced Al Sarena Mines, Inc., into an apparently illegally and improperly conducted "hearing," by means of which it was attempted to violate the constitutional rights of the named contestee in an obviously discriminatory and prejudicial proceeding designed to confiscate from the rightful owners for the benefit of a third party seeking a preference right to the land for timber raising purposes.

This is evidenced by the illegally taken testimony, allegedly taken only for the convenience of the Government but without the right of cross-examination after the hearing had been legally closed. Having appealed on demurrers and motions under the rules of evidence and the rules of practice hereinbefore described, contestee was barred from introducing further testimony until the demurrers and motions, as appealed, had been adjudicated by the appellate authorities. The Forest Service and the Bureau of Land Management of the Interior Department were likewise barred from the introduction of further testimony until the demurrers and motions, as appealed, had been adjudicated by the appellate au-

thorities. Simply because the Forest Service and the Interior Department saw fit to proceed irregularly and to violate the rules, it was not incumbent upon the contestee to be a party to such violations.

Moreover, the aforementioned defaults were sufficient to have prevented the hearing altogether. In any event, the appeal on demurrers and motions, taken in open hearings and accepted by the manager of the land office acted as an immediate and automatic stay of all proceedings until adjudicated by the appellate authorities, and any testimony or evidence introduced thereafter is totally worthless and inadmissible.

After a series of further illegal and ultra-vires acts on the part of the Bureau of Land Management, among which was the absurdity of returning the "record" to the court of original jurisdiction while still on appeal and without rendering appellate adjudication, an adverse and apparently prejudicial "decision" was handed down by the manager of the Oregon District Land Office by the illegal means heretofore described, from which "decision" contestee again appealed, filing a supplemental appeal on January 4, 1951. A secondary answer was filed on February 8, 1951, in reply to comments made by the Forest Service relative to the supplemental appeal.

It should be remembered here that the Forest Service did not officially answer the charges made in contestee's original answer or in the official appeal, already taken, nor did said agency answer the questions raised or the charges made in the memorandum brief and argument, thereby defaulting any rights it might have had to answer said charges or questions. The only action taken was an attempt to have taken as confessed the charges made by the Forest Service against the contestee, such attempt being made in the form of a motion, which was denied, and which denial was never appealed from. The Forest Service, then, as well as the Bureau of Land Management, was and is also already in default.

Wherefore, the premises considered, including all answers, demurrers, motions, briefs, arguments, agreements, etc., heretofore filed by contestee in this cause, contestee herewith makes formal legal demand upon you as Director of the Bureau of Land Management to forthwith declare the proceedings brought under the contest citation in default, void all findings against contestee by the manager of the Oregon District Land Office, dismiss the proceedings, and authorize the issuance of the patent as prayed for.

Respectfully submitted.

AL SARENA MINES, INC.,  
W. O. MACMAHON,  
*Special Counsel.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., October 25, 1950.

Note to Director CLAWSON,

*Bureau of Land Management:*

C. October 24 I received a long-distance telephone call from Representative Boykin at Mobile, Ala. The purpose of his call was to request that the decision on the appeal of Al Sarena Mines, Inc., be expedited. I explained that the appeal is presently pending before you for a determination. Mr. Boykin thereupon asked that I pass his request on to you.

MASTIN G. WHITE, *Solicitor.*

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, LAND OFFICE,  
Portland, Oreg., October 2, 1950.

Mineral Entry Oregon 0665.

Contest No. 38.

*U. S. Forest Service v. Al Sarena Mines, Inc.*

Memorandum

To: Director, Bureau of Land Management, Washington, D. C.

From: Manager, Land Office, Portland, Oreg.

Subject: Mineral contest.

On April 13, 1950, the United States Forest Service filed notice of protest against the issuance of patent to 15 mining claims embraced in mineral entry Oregon 0665, made by the Al Sarena Mines, Inc., affecting lands within the Rogue River National Forest, Oreg. The protest was based on the charges

that the claims are nonmineral in character, and that minerals have not been found in sufficient quantity to constitute a valid discovery. It was further charged that the patent expenditures have not been made on or for the benefit of 5 of the 15 claims protested.

On April 25, 1950, notice of the charges was addressed to the Al Sarena Mines, Inc., and on May 22, 1950, the contestee filed an answer. The answer contains "demurrer" and motions for dismissal of the protest for the reasons therein stated. On April 26, 1950, these documents were forwarded to the Director, Bureau of Land Management. Thereafter, the Director of the Bureau of Land Management returned the record to the Land Office with instructions that the manager set an early date for a hearing as requested by the Al Sarena Mines, Inc. The hearing was arranged immediately and set for 10 a. m., September 13, 1950, before the manager of the Land Office, Portland, Oreg., and the parties were duly notified. The contestant and the contestee appeared at the hearing and each was represented by counsel.

Before the hearing was opened, Mr. W. O. MacMahon, counsel for contestee, proceeded to argue the motions contained in the answer, and demanded an immediate ruling thereon. Subsequently, the hearing was opened and the "demurrer" was considered along with other motions and they were held to be without merit. The motions were accordingly overruled, at the conclusion of which counsel for contestee charged the manager with insubordination and prejudice and demanded that the record be transmitted to the Solicitor of the Department of the Interior, pursuant to an alleged agreement or understanding between the counsel for the contestee and the Solicitor. The manager stated he had not been advised officially of any such an agreement and that the hearing having been requested by the contestee and ordered pursuant to instructions of the Director of the Bureau of Land Management and in strict conformity with established rules of practice, would proceed for the purpose of determining validity of the claims contested, and that any ruling or decision by the manager would be subject to review by the Director of the Bureau of Land Management and the Secretary of the Interior. The counsel for contestee announced that he would appeal to the Solicitor. At 11 a. m. counsel and representatives of contestee departed, taking with them what appeared to be various exhibits. On the following morning, September 14, 1950, counsel for contestee filed notice of appeal from decision on the motions.

Attention is invited to the fact that it was impossible for the stenographer in the hearing to take accurate notes of the preliminary proceedings because of the boisterous conduct and the rapid and incoherent manner in which counsel for contestee proceeded. The contestee installed a tape-recording machine prior to the hearing and a record was made of the preliminary proceedings. I requested counsel for contestee to furnish a copy of such recording for the record. However, up to this time a copy has not been furnished. It has therefore been necessary to prepare a summary of the preliminary proceedings from the stenographer's notes.

A copy of the transcript of the testimony, prepared at the sole expense of the United States, has not been furnished the contestee as requested because of its refusal to be liable for the payment of contestee's proportionate cost of the proceedings.

In view of the refusal of the counsel for contestee to attend the hearing and participate in the proceedings and his deliberate attempt to stall and prevent an orderly hearing to determine the validity of the mining claims on their merits as previously requested by contestee, and his absurd and unwarranted charge of prejudice, I am submitting this case with a recommendation only.

The hearing was resumed at 11 a. m., and the regional attorney for the United States Forest Service called Mr. Robert G. Leavengood, timber management assistant, as the first witness for the contestant. The witness, after being duly sworn, identified the contested claims and testified that he spent parts of 3 days,

September 6, 7, and 8, on the claims; that he examined the lands as to their timber values and for national-forest purposes. He stated that the lands contain 2 stands of timber— that 1 stand of timber is mature and averages 25,000 net merchantable board-feet per acre, and that an understory is about 50 years and very thrifty and fast growing. He estimated that the present merchantable timber to have a value of approximately \$77,000, and if cut there would remain a 25 percent stand of 8- to 14-inch growing stock.

Counsel for contestant introduced Mr. Elton M. Hattan, mineral examiner for the Bureau of Land Management, as the next witness for contestant. After being duly sworn, this witness identified the contested claims and stated that he visited each claim during the months of May and July 1949 and September 1950. He testified as to general topography and mineralization of the area and stated specifically that he went to all of the places on the claims designated as places of discovery and other places as indicated by representatives of the contestee; that samples of ore were taken by him from each claim and that these samples were marked and assayed for their mineral content and value. These samples were assayed by the United States Bureau of Mines and other responsible concerns, and reports issued. It appears from these reports that the mineral content of such samples, when considered on the basis of current standard of values, would not warrant the necessary expenditures of capital, time, and labor in their extraction and marketing, with a reasonable expectation of profit. It appears that the minerals found on the contested claims are therefore insufficient in quantity and value as to constitute valid discovery within the meaning of the United States mining laws.

Mineral Examiner Hattan was accompanied on some of his visits to the mining claims by Mineral Examiner William C. Sanborn of the United States Forest Service. The regional counsel for the Forest Service called Mr. Sanborn as his next witness to testify for the contestant. The testimony given by this witness corroborates the testimony given by Mineral Examiner Hattan. The mineral examiners also testified as to expenditures made on the 5 claims contested on the additional charge that patent expenditures in the sum of \$500 had not been made on or for the benefit of each claim. It appears from the testimony that these examinations were made by the witnesses after the date of mineral survey and subsequent to the expiration of the period of the publication of the notice of the application. The testimony based on these examinations indicates that expenditures and improvements made on or for the benefit of these claims do not in value amount to \$500 for each claim, nor does it appear that the improvements found bear a direct relation to the practical mineral development and facilitate the extraction of minerals.

It appears that the showing submitted in support of the charges contained in the contest consists of testimony based on personal knowledge of the witnesses who, in company with each other and representatives of the contestee, went upon and examined each claim contested. The findings of these mineral examiners as to mineral discoveries as verified by reliable reports show clearly that valid mineral discoveries have not been made on any of the 15 mining claims contested. Furthermore, it appears from such testimony that the character and the value of expenditures required for patent purposes have not been made on or for the benefit of the five mining claims contested on this charge. It is, therefore, respectfully recommended that the contest be sustained, and that the entry be cancelled as to the 15 claims protested.

On September 28, 1950, the regional attorney for the United States Forest Service filed in the land office a showing in support of the motion made by contestant in which it requests that the charges specified in the contest be taken as confessed because of the contestee's failure to appear and participate in the hearing as required by the rules of practice. In this connection it is my view that since contestant elected to proceed by the taking of testimony at the hearing, action on the motion should be held in abeyance pending a decision on the merits of the case.

PIERCE M. RICE, *Manager.*



UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
LAND OFFICE,  
Portland, Oreg., December 14, 1950.

DECISION

Mineral Entry Oregon 0065—Contest No. 38

UNITED STATES OF AMERICA V. AL SARENA MINES, INC.

PROTEST SUSTAINED—MINERAL ENTRY CANCELED IN PART

On April 6, 1949, final mineral certificate was issued on application Oregon 0065, filed by the Al Sarena Mines, Inc., for the

Oro Alto	Mark Applegate	Rainboe
Oro Rico	H. McKenzie	Delia McKinnon
Cougar	J. L. Grubb	Sulphide
Oro Real	J. D. McKinnon	Staples
J. W. Merritt	Henry Applegate	Manganese
Peter Applegate	A. W. Dahlberg	La Jolla
Oro Escondido	Telluride	Arroyo Verde
W. C. Leever	Alabama	

lode mining claims situated in secs. 20, 21, 28, 29, 30, T. 31 S., R. 2 E., W. M. Oregon, within the Rogue River National Forest.

On April 13, 1950, the Forest Service filed protest against the entry as to the following claims:

Claim	Located	Claim	Located
Henry Applegate-----	May 12, 1897	J. L. Grubb-----	May 12, 1897
J. W. Merritt-----	May 14, 1897	J. D. McKinnon-----	May 12, 1897
Rainboe-----	Dec. 9, 1933	Manganese claim-----	Oct. 20, 1897
Sulphide-----	Sept. 21, 1934	Staples-----	June 25, 1934
Delia McKinnon-----	June 6, 1897	Arroyo Verde-----	Aug. 27, 1897
Cougar-----	Nov. 20, 1936	Alabama-----	May 25, 1897
Oro Escondido-----	Aug. 29, 1936	La Jolla-----	Aug. 27, 1897
W. C. Leever-----	May 12, 1897		

The protest was assigned contest No. 38, and it charges that the 15 mineral claims protested are invalid because the land is nonmineral in character and that minerals have not been found in sufficient quantities to constitute a valid discovery. The protest contains the further charge that the requisite expenditure of \$500 in improvements and developments has not been made on or for the benefit of the Manganese, Staples, Arroyo Verde, Alabama, and La Jolla claims.

On April 25, 1950, notice of the charges was addressed to the Al Sarena Mines, Inc., and on May 22, 1950, the Al Sarena Mines, Inc., as contestee, filed an answer. The answer sets forth demurrer and motions to dismiss the protest. Thereafter, pursuant to the request of the contestee, the Director of the Bureau of Land Management instructed the manager of the land office to set an early date for a hearing. A hearing was set for 10 a. m. September 13, 1950, before the manager of the land office, Portland, Oreg. The contestant and the contestee were so notified by registered mail. The contestant and the contestee appeared at the hearing, and each was represented by counsel.

The hearing was opened and counsel for contestee demanded an immediate ruling on the demurrer and the motions contained in the answer. The demurrer and the various motions are based on the grounds that—

1. The claims were located and filed prior to the inclusion of the lands in the Rogue River National Forest, and that the act of Congress is *ex post facto* as to the mining claims, and the Forest Service is without authority to protest them;

2. (a) That the notice by the Forest Service was not properly dated;

(b) That the notice, which is entitled *United States of America, Contestant, v. Al Sarena Mining Company, Contestee*, is no notice to the contestee as there is no such company; and

3. That the contest recites requirements that all answers of contestee shall be under oath, but that neither the contest citation nor the protest were under oath.

The foregoing motions were considered and ruled on as follows:

1. That the President of the United States had statutory authority to withdraw and reserve public lands for a public purpose; that the mining claims contested were all located subsequent to September 28, 1893, when the President by Executive order withdrew the lands in the national forest pursuant to act of March 3, 1891 (26 Stat. 103); and that the contention that the act is *ex post facto* is without merit for the reason that the constitutional provision relating to *ex post facto* laws has reference to penal statutes and does not apply in this case;

2. (a) That the United States may initiate a protest at any time before the issuance of patent and that failure to date the notice was immaterial;

(b) That the fact that the protest was entitled *United States of America v. Al Sarena Mining Company* is without merit since it appears that notice of the protest was addressed to and served on the Al Sarena Mines, Inc., the contestee, by registered mail, and the Al Sarena Mines, Inc., responded to the notice; and

3. The fact that neither the contest citation nor the protest were under oath is likewise without merit, since this requirement applies to private contests and does not apply to contest proceedings initiated on behalf of the United States, which are not required to be sworn to, as contended by contestee.

Accordingly, the demurrer and various motions appearing to be without merit, they were overruled. Whereupon counsel for contestee demanded that the record be transmitted to the Solicitor of the Department of the Interior pursuant to an alleged agreement or understanding between counsel for contestee and the Solicitor, to the effect that the Federal Code of Regulations and Departmental Rules of Practice would not be applicable in this case, and that, instead, the rules of civil procedure as obtains in local district courts would govern. The manager, not having been advised officially of any such agreement, refused the demand. At the request of counsel for contestant, the hearing was ordered to proceed with the taking of testimony to determine the validity or invalidity of the claims protested. Counsel for the contestee served notice of an appeal to the Solicitor of the Department of the Interior and stated that he would not attend the hearings, offer any evidence, interrogate any of the witnesses, nor would the contestee be bound by the proceedings. (The contestee has appealed the above ruling.) Counsel and representatives of the contestee departed, and counsel for the Forest Service requested permission to proceed to offer its testimony. The hearing was resumed and the Forest Service proceeded to offer testimony in order that the true character of the lands might be determined and the case decided on the merits.

The Forest Service introduced its witnesses and the testimony given by them was recorded verbatim, transcribed, certified, and is a part of the hearing record. Counsel for the Forest Service called as its first witness Mr. Robert G. Leavengood, timber management assistant, who, after being duly sworn, identified the contested claims and testified that he spent parts of 3 days, September 6, 7, and 8, 1950, on the claims; that he examined the lands as to their timber values and for national-forest purposes. He stated that the lands contain 2 stands of timber—that 1 stand of timber is mature and averages 25 thousand net merchantable board feet per acre, and that the understory is about 50 years and very thrifty and fast growing. He estimated the present merchantable timber to have a present value of approximately \$77,000, and if cut there would remain a 25-percent stand of 8- to 14-inch growing stock.

Mr. Elton M. Hattan, mineral examiner for the Bureau of Land Management, and Mr. William C. Sanborn, mining engineer for the United States Forest Service, were called to the stand by the contestant and, after being duly sworn, these witnesses identified the contested claims and stated that they, in company with each other and with representatives of the contestee, visited each claim during the month of July 1949. Mr. Hattan also visited the contested claims in company with the contestee's representative during the month of May 1949 and some of the claims during September 1950. These witnesses referred to the contents of various publications and testified from personal examinations and observations made by them as to the general topography and mineralization of the area covered by all the claims in the application. Specifically, they testified that they went to all of the places on the contested claims designated by contestee as places of discovery and other places on the claims as indicated by representatives of the contestee; that samples of rock were taken by them from such places on each claim and the samples were marked for identification; that these samples were personally taken or sent by them to the United States Bureau of Mines and to other responsible concerns mentioned, for assay and reports as

to the mineral content and value of such samples, and that assay reports were issued. These reports were marked for identification and submitted in evidence. Mineral Examiners Hattan and Sanborn testified that they did not find any evidence of mineral-bearing rock or other evidence of mineral on any of the claims contested which would justify a reasonably prudent man in the expenditure of time and capital with a reasonable expectation of developing a paying mine. The assay reports submitted show traces of gold and silver, or less, which is interpreted to mean 21 cents or under in gold value and 7 cents or under in silver, based on gold at \$35 per ounce and silver at 90 cents per ounce. Some of the assays made of the same samples show lead and zinc minerals in amounts less than 0.05 percent, which represents a value of less than 20 cents per ton, present prices, in either lead or zinc. The assay reports confirm the findings of the mineral examiners.

It appears from the testimony of Robert G. Leavengood, timber management assistant, that the lands covered by the contested claims contain a substantial amount of merchantable timber and that the lands are more valuable for the production of timber than they are for any other purpose. In this connection, reference is had to the case of *United States v. Dawson*, decided April 12, 1944, wherein the Department held in part that "A discovery of mineral which will validate a location under the mining laws must show that the land is more valuable for the removal and marketing of the mineral than for any other purpose; that the removal and marketing will yield a profit or that the mineral exists in such quantity as to justify a prudent man in expending labor and capital to obtain it." (58 L. D. 670.)

Mineral Examiners Hattan and Sanborn further testified as to expenditures found on the Manganese, Staples, Arroyo Verde, Alabama, and La Jolla mining claims contested on the additional charge that patent expenditures in the sum of \$500 had not been made on or for the benefit of each claim. They testified as to the location, character, and value of improvements found on these claims and stated that such improvements do not amount to \$500 for each of the claims, nor do the common improvements found bear a direct relation to the practical mineral development of the claims.

On September 28, 1950, counsel for contestant submitted a showing in support of a motion to consider the charges specified in the contest as confessed because of the contestee's failure to appear and participate in the hearing as required. The contestant having elected to make out a prima facie case by offering testimony at the hearing in support of the charges, the contestant's motion is denied, subject to the right of appeal within 30 days of receipt of notice hereof.

The record shows clearly that the contestee was afforded every opportunity to be heard and submit evidence at the hearing, and that its failure to do so is due to its refusal to comply with the rules of practice or to its deliberate disregard of their requirements.

In view of all the testimony and documentary evidence submitted in this case, it appears that the lands affected by the 15 claims contested are all more valuable for timber production than for any other purpose, and that valid mineral discoveries have not been made on any one of the 15 claims contested, that the lands are nonmineral in character, and that patent expenditures required by law have not been made on or for the benefit of the 5 mining claims contested on this charge. Accordingly, the charges set forth as the basis for the protest having been established, the protest is sustained, and the entry is canceled to the extent of the 15 claims protested.

The contestee is hereby allowed 30 days from receipt of notice hereof within which to file a motion to reopen the hearing, or appeal this decision to the Director of the Bureau of Land Management.

Any action taken by the contestant or contestee in response to this decision must bear evidence of service of notice of such action on opposing party.

**PIERCE M. RICE, Manager.**

UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D. C., April 27, 1951.

## DECISION

## Mineral Contest No. 38—Rogue River National Forest

## UNITED STATES

v.

## AL SARENA MINES, INC.

## MINERAL ENTRY HELD FOR CANCELLATION IN PART

On April 6, 1949, final certificate issued on mineral application, Oregon 0665, filed October 4, 1948, by the Al Sarena Mines, Inc., for a patent to the Oro Alto, Oro Rico, Cougar, Oro Real, J. W. Merritt, Peter Applegate, Oro Escondido, W. C. Leever, Mark Applegate, H. McKenzie, J. L. Grubb, J. D. McKinnon, Henry Applegate, A. W. Dahlberg, Telluride, Alabama, Rainboe, Delia McKinnon, Sulphide, Manganese, La Jolla, Staples, and Arroyo Verde lode claims situated in secs. 20, 21, 28, 29, and 30, T. 31 S., R. 2 E., W. M., Oregon, within the Rogue River National Forest.

On April 25, 1950, the manager of the Portland Land Office issued a notice under contest No. 38 entitled, *United States v. Al Sarena Mines, Inc.*, wherein the defendant was notified that by authority of a letter dated April 11, 1950, from the Forest Service, the following charges have been filed by a representative of the United States Government against the validity of the mining claims embraced in the entry, to wit: That the land in the Henry Applegate claim, J. W. Merritt claim, Rainboe claim, Sulphide claim, Delia McKinnon claim, Cougar claim, Oro Escondido claim, W. C. Leever claim, J. L. Grubb claim, J. D. McKinnon claim, Manganese claim, Staples claim, Arroyo Verde claim, Alabama claim, and La Jolla claim, is nonmineral in character and that minerals have not been found within the claims in sufficient quantities to constitute a valid discovery; and that the requisite expenditure of \$500 in improvements and development has not been made on the Manganese claim, Staples claim, Arroyo Verde claim, Alabama claim, and La Jolla claim.

A copy of the protest of the Forest Service which was dated: "April —, 1950" and stamped on its face: "Received April 13, 1950, Land Office, Bur. Land Mgm't., Portland, Oregon," was attached to and made a part of the notice. It was stated in the protest that the "land embraced in mineral application No. 0665 is known as the Al Sarena Mine, and is situated in secs. 20, 21, 28, and 29, T. 31 S., R. 2 E., W. M., within the Rogue River National Forest." It appears that although this copy of the protest was styled *United States v. Al Sarena Mining Company*, the notice issued thereon was addressed to the defendant under its proper name.

On May 22, 1950, an answer was filed alleging that "all claims are mineral in character" and that the requisite expenditure of \$500 in improvements has been made on each of the claims. It is further stated in the answer:

"We herewith submit a state of facts rendering such charges worthless and immaterial. The state of facts rendering such charges immaterial is based upon the following data, submitted in this answer in the form of demurrers:

"Comes now Al Sarena Mines, Inc., of Trail, Ore., by and through its president, H. P. McDonald, and demurs to the complaint on the following separate and several grounds, to wit:

1. Inasmuch as many claims herein involved, to wit: Henry Applegate, J. W. Merritt, Delia McKinnon, W. C. Leever, J. L. Grubb, J. D. McKinnon, were filed and were of record before the land included in such claims was ever designated by act of Congress within the confines of a national forest, and since the Constitution of the United States forbids ex-post-facto laws, etc., the Forest Service is without right to file any contest under the circumstances against any claim made and filed prior to its acquiring any jurisdiction over this land.

2. Contestee demurs to the form and the manner and the lack of notice of the protest signed by H. J. Andrews, regional forester, allegedly in support of the allegations of the complaint upon the following separate and several grounds, to wit:

(a) First, the protest (contest No. 38) stamped "Received April 13, 1950," is not properly dated by Mr. Andrews and appears but the conclusion of the pleader.

(b) The protest recites *United States of America, Contestant, v. Al Sarena Mining Company, Contestee*. There is no such company as the Al Sarena Mining Co. Your complaint cites Al Sarena Mines, Inc., as contestee. Since the protest is made against a nonexistent company and not against Al Sarena Mines, Inc., cited in your complaint as contestee, your complaint is based upon a protest predicated upon a false premise against a nonexistent company, and should be dismissed as having no basis, because there is no protest of record against Al Sarena Mines, Inc.

3. Inasmuch as your contest recites requirement that all answers of contestee be under oath, it appears irregular that neither the contest citation nor the protest upon which it is based is under oath.

"Wherefore, the above premises considered, the contestee moves the court, commission, or other representative of Government acting as a court or sitting in judgment of this cause, that the contest be dismissed and the patent certificate issue forthwith as in all truth and verity it should.

"Contestee further demurs to any complaint of any nature being allegedly filed in opposition to the issuance of the patent prayed for, for that all requirements of the law and the land office having been met, including publication as is required, which publication was made from November 12, 1948, to January 7, 1949, inclusive during which time there was no protest filed, and contestee so advised by representative, Mr. Carl F. Spaulding, of the Bureau of Land Management, by long-distance telephone, to which conversation there were and are witnesses. Further contestee advised the Bureau of Land Management on January 13, 1949, therewith transmitting final proceedings in this matter, and again on January 27, 1949, contestee wrote to ascertain why your delay in reply; and on February 8, 1949, a communication was signed by Mr. Carl F. Spaulding, addressed to contestee, advising that the purchase money due is \$2,375 and further advising that upon receipt of the application to purchase accompanied by the required amount of purchase money, the papers would be examined with the idea of issuing final certificates. You will note that request was made for the money by the Bureau of Land Management and the papers would be examined by them with the idea of issuing final certificate. There is no mention in this letter of any protest, oral or written, made by the Forest Service or anyone else, which is quite conclusive that there was none, for had there been a protest or official question as to bona fides, such a letter as was received from Mr. Spaulding would have been contrary to the law and procedure in such cases.

"Pursuant to the above, the money, to-wit: \$2,375 was sent to the district land office and was accepted by them as evidenced by official receipt (bill No. 324 dated February 17, 1949) and on April 6, 1949, final certificate of mineral entry issued, signed by Charles D. Lee, who in addition to issuing the certificate inserted some several lines, which practically nullified the issuance of the certificate. This, contestee claims, was an utterly illegal and ultra-vires action on his part and contestee further charges in this connection that there is nothing of record of which contestee has been advised to evidence the allegation that any protest was ever legally made by the Forest Service or anyone else according to and within the time required by law.

"It appears, therefore, from the foregoing that the matter has been handled in an irregular manner, prejudicial to the interests of the contestee, without proper basis or probable cause. Wherefore, the premises considered, the contestee moves the commission or other representative of Government acting as a court or sitting in judgment of this cause, that this contest be dismissed forthwith, the contestee so advised, and the patent certificate issue immediately, as in all truth and verity it should."

A hearing was set for 10 a. m. September 13, 1950, before the manager of the land office at Portland, Oreg., and the interested parties notified thereof. On the date set for the hearing both parties appeared and were represented by counsel. At the beginning of the hearing there was presented a letter dated September 8, 1950, signed by the president of the Al Sarena Mines, Inc., authorizing W. O. MacMahon to represent it at the hearing. Counsel for the defendant insisted that action be had on the demurrers and motions set forth in the answer before proceeding with the hearing, whereupon the manager overruled the demurrers and motions set forth in the answer and ordered the hearing to proceed. Counsel for the defendant stated that he would appeal from the ruling and demanded that action be had on the appeal before proceeding with the hearing. Counsel for the Forest Service objected to the delay, stating that the Government had been put to considerable expense in preparing for the hearing and that under the rules of practice they should proceed with the hearing without additional

expense and delay. The manager directed that the hearing proceed and that testimony be submitted to establish the validity or invalidity of the mining claims. It was also ordered that each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses and that the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made. Counsel for the Forest Service explained that it was not the intention of the Forest Service to secure the cancellation of the mining claims but only that the application for patent for the claims be denied. Counsel for the defendant stated that he had no objection to the amendment but stated that the contestee would not be responsible for the cost of taking any of the testimony and withdrew from the hearing whereupon the Forest Service proceeded to submit testimony in support of the charges. On September 14, 1950, a notice of appeal from the action of the manager, overruling the demurrers and motions to dismiss the proceedings, was filed in the manager's office.

By memorandum dated October 2 the manager transmitted the papers in the case, stating that at the opening of the hearing he held the demurrers and motions to dismiss the proceedings were without merit, overruled them and directed that the hearing proceed, whereupon counsel for the defendant stated that he would appeal and withdrew from the hearing.

On November 24, 1950, the record was returned to the manager with instructions that he render a decision as provided for under the rules of practices (43 C. F. R. 221.40 and 221.41). On December 14, 1950, the manager rendered his decision wherein it is stated that: " \* \* \* the demurrer and various motions appearing to be without merit, they were overruled. Whereupon, counsel for contestee demanded that the record be transmitted to the Solicitor of the Department of the Interior pursuant to an alleged agreement or understanding between counsel for contestee and the Solicitor, to the effect that the Federal Code of Regulations and Departmental Rules of Practice would not be applicable in this case, and that, instead, the rules of civil procedure as obtains in local district courts would govern. The manager, not having been advised officially of any such agreement, refused the demand. At the request of counsel for contestant, the hearing was ordered to proceed with the taking of testimony to determine the validity or invalidity of the claims protested. Counsel for the contestee served notice of an appeal to the Solicitor of the Department of the Interior and stated that he would not attend the hearing, offer any evidence, interrogate any of the witnesses, nor would the contestee be bound by the proceedings. \* \* \* counsel and representatives of the contestee departed, and counsel for the Forest Service requested permission to proceed to offer its testimony. The hearing was resumed and the Forest Service proceeded to offer testimony in order that the true character of the lands might be determined and the case decided on the merits."

After reviewing the testimony submitted by the Forest Service the manager found that: "In view of all the testimony and documentary evidence submitted in this case, it appears that the lands affected by the 15 claims contested are all more valuable for timber production than for any other purpose, and that valid mineral discoveries have not been made on any 1 of the 15 claims contested, that the lands are nonmineral in character, and that patent expenditures required by law have not been made on or for the benefit of the 5 mining claims contested on this charge. Accordingly, the charges set forth as the basis for the protest having been established, the protest is sustained and the entry is canceled to the extent of the 15 claims protested." The right to file a motion to reopen the hearing or to appeal was allowed.

In due time a "supplemental appeal" was filed, reiterating the objections set forth in the original appeal and insisting that the hearing should have been conducted under the rules of civil procedure as obtains in the local district courts and not under the Code of Federal Regulations and the Departmental Rules of Practice. It is also contended that this office was without jurisdiction to return the record to the manager's office for the rendering of a decision while an appeal from the denial of the motions to dismiss was pending.

Defendant having refused to pay its share of the cost of transcribing the testimony submitted at the hearing at the expense of the Government, the manager properly declined to furnish defendant's counsel a copy thereof without cost. Defendant's counsel was advised that a copy of the hearing record, consisting of 55 pages, would cost him \$55.

The act of June 4, 1897 (30 Stat. 36), provides that: "Any mineral lands in any forest reservation which have been or which may be shown to be such, and

subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto shall continue to be subject to such location and entry," notwithstanding the reservation. The fact that there were mining locations on some of the land before it was included in the national forest would not relieve the Forest Service of its right and duty to file a protest with this Department against patenting of such mining claims if on investigation they were believed to be invalid.

The act of February 1, 1905 (16 U. S. C. 472), authorizes the Secretary of the Department of Agriculture to execute all laws affecting public lands reserved for national forests excepting such laws as affect the prospecting, locating, entering, and patenting of any such lands. Hence, this Department has the jurisdiction and authority necessary to determine whether mining claims have been perfected by valid discoveries and whether the owner thereof has complied with the provisions of the United States mining laws and the regulations thereunder and therefore is entitled to a patent. As it is fundamental that under the United States mining laws no mining claim can be patented without a valid discovery, it is the duty of this Department to determine whether such a discovery has been made and to order a hearing where an examination of the claim discloses that it may lack such a discovery or that \$500 may not have been expended for its benefit.

Pursuant to the joint regulations of the Department of the Interior and the Department of Agriculture, dated August 5, 1915 (43 CFR 205), the manager is required to notify the regional forester of the filing of an application for mineral patent for lands within a national forest and upon receipt of notice of the filing of such an application it is the duty of the Forest Service to make an investigation as to the validity of such a mining claim regardless of whether the location was made prior to or after the creation of the national forest and if it is believed that the mining claim is invalid to file a protest not under oath or corroborated against the entry or application for patent, plainly and briefly stating the grounds upon which the protest is based. It is also provided that upon receipt of such a protest the manager is required to issue notice of the charges and serve the same together with a copy of the protest upon the defendant; that upon an answer being filed the manager is required to set a date for a hearing and proceed as provided by the rules of practice; that a protest may be filed by the Forest Service against any application for mineral patent for mining claims located within a national forest at any time prior to the issuance of the patent; and that when a mineral application for patent is filed the proof shall be considered on its merits, and, if found regular, issue the final certificate, "but the claimant should be advised in such case that the patent will be withheld" pending the determination of the protest.

On March 18, 1949, the regional forester filed in the manager's office a request that action be withheld in accordance with the provisions of the joint regulations above referred to, until the Forest Service had an opportunity of having an investigation made as to the validity of the mining claims and a report submitted as to the apparent validity or invalidity of the claims. Accordingly, final certificate issued April 6, 1949, containing a notation on its face that patent would be withheld by the Bureau of Land Management pending a report upon the bona fides of the claims. The certificate contains a printed statement that a patent shall issue upon presentation of the certificate to the Director "if all then be found regular," meaning, of course, that patent will be issued if the applicant has met all of the requirements of the United States mining laws and regulations necessary to obtain a patent. After a field examination of the claims the Forest Service filed the protest.

The contest proceedings were conducted under rules of practice (43 CFR, pts. 221 and 222), and under authority of sections 453 and 2478, Revised Statutes (43 U. S. C. 2, 1201). Part 221 is devoted mostly to contests between private parties claiming the same land; while part 222 is confined to contests initiated by the Government, although section 222.14 states that proceedings under part 222 will be governed by the rules of practice under part 221, neither part 221 nor part 222 requires that Forest Service protests be under oath and regulations (43 CFR 205.3; 205.4) specifically state that such protests shall not be under oath. This office has not been advised that the established procedure governing hearings held for the purpose of establishing the validity of mining claims on the public domain has been modified as contended in the appeal. In a letter of November 16, 1950, appearing in the record, to the attorney for the appellant, Solicitor Mastin G. White, refuted the allegation that any agreement was made with respect to the procedure to be followed. Therefore the

appeal from the action of the manager overruling the demurrers and motions to dismiss the proceedings did not act as a stay of the proceedings instituted by this Department pending action on the appeal by the Secretary and this office acted within its jurisdiction when it returned the record to the manager for the rendering of a decision by him (43 CFR 221.40).

It was clearly set forth in the protest that the protest was against mineral application Oregon 0665, survey No. 879, and that the mining claims named in the protest were known as the Al Sarena Mine. The notice issued under the protests was addressed to the Al Sarena Mines, Inc., and notified it that the charges set forth in the protest were "filed by a representative of the United States Government against the validity of your entry."

The fact that there was a misnomer of the contestee in the heading of the protest or that the protest was incorrectly dated is immaterial, as the proper party received the notice issued on the protest and responded thereto. Section 221.8, title 43, Code of Federal Regulations, provides that if the defendant makes answer without questioning the service or proof of service the contest will proceed without further requirement in those particulars.

The requirement of section 2325, Revised Statutes (30 U. S. C. 29), that adverse claims be filed during the period of publication has no relation to contests initiated by the Government. It relates only to mining locations held by an owner other than the patent applicant and conflicting with the claims covered by the patent application. At any time before issuance of the patent, which would divest the Government of jurisdiction, the Government may contest a mineral entry on charges that the claims lack valid discovery or that an expenditure of \$500 has not been made for each location. Such a valid discovery and expenditure of \$500, on each claim, are each a prerequisite to obtaining a patent under the United States mining laws.

The contestee's refusal at the hearing to place its witnesses on the stand and to otherwise participate in the hearing apparently was for the purpose of obtaining a final ruling on its motion, which, if favorable, would make the charges immaterial within the meaning of section 222.5, title 43, Code of Federal Regulations, thus, in the opinion of the contestee, dispense with the necessity of this office further considering the question of whether each of the locations involved in the contest has a valid discovery and whether \$500 has been expended for the benefit of each of certain of those locations. However, any defect in the contest proceedings would not remove the lands from the jurisdiction of this Department or relieve it of the duty of determining whether each location has been perfected by a valid discovery and the requisite expenditures made. If necessary, because of irregularities in the contest proceedings a new contest could be initiated if the patent had not been issued but in the present case the motion and appeal contain nothing that would warrant sending out new notices and commencing anew.

For reasons set forth above, the action of the manager, overruling the demurrers and motions to dismiss the proceedings and directing that the hearing proceed is affirmed, and the testimony submitted in behalf of the Government in support of the charges will be considered. Although the defendant was afforded an opportunity to submit testimony to refute the showing made by the Government and to make whatever showing he wished in support of the alleged validity of the claims, he refused to do so, and withdrew from the hearing without submitting any testimony in support of the claims in question.

Mr. Elton M. Hattan, a mineral examiner for the Bureau of Land Management, testified that, with the assistance of a representative of the defendant, he examined the claims in May and July 1949 and again in September 1950; that in July 1949 he was also accompanied by Mr. William C. Sanborn, a mining engineer for the Forest Service; that they took samples of the rock they found exposed in the discovery cuts and various excavations on each claim and had them assayed for their mineral content, the assayer's certificate showing merely traces of gold and silver and, in some instances, lead and zinc, in amounts less than 0.05 percent; and that they did not find mineral-bearing rock on any of the claims which would justify a reasonably prudent man in the expenditure of time and money, with the reasonable expectation of developing a paying mine. Witness testified that in his opinion \$500 has not been expended in improvements on or for the benefit of the La Jolla, Alabama, Staples, Arroyo Verde, or the Manganese lode claims.

Mr. William C. Sanborn, mining engineer for the Forest Service, testified that in July 1949 he assisted Mr. Hattan, when a large number of samples were taken from the claims. He corroborated Mr. Hattan's testimony as to the



mineral character of the claims and the value of the improvements placed thereon.

Mr. G. Robert Leavengood, timber management assistant, for the Forest Service, testified that the value of the timber on the claims which could be cut, using Forest Service methods and leaving perhaps 25 percent of the growth standing as growing stock, would be approximately \$77,000.

In the case of the *United States v. Dawson* (58 I. D. 670) it was held, syllabus:

"A discovery of mineral which will validate a location under the mining laws must show that the land is more valuable for the removal and marketing of the mineral than for any other purpose; that the removal and marketing will yield a profit or that the mineral exists in such quantity as to justify a prudent man in expending labor and capital to obtain it."

The Department stated in unreported decision in the case of *United States v. Cathrine Ryan* (A. 23326), decided September 18, 1942:

"To constitute a valid discovery upon a lode mining claim for which patent is sought, there must actually and physically be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place possessing in and of itself a present or prospective value for mining purposes. The exposure of substantially worthless deposits on the surface of a lode mining claim; the finding of mere surface indications of mineral within its limits; the discovery of valuable mineral deposits outside the claim; or deductions from established geological facts relating to it; one or all of which matters may reasonably give rise to the hope or belief, however strong it may be, that a valuable deposit exists within the claim, will neither suffice for a discovery thereon, nor be entitled to be accepted as to the equivalent thereof (*East Tintic Consolidated Mining Claim*, 40 L. D. 271. See also *Oregon Basin Oil and Gas Company*, 50 L. D. 253)."

As to the quantum of evidence to establish discovery in support of a patent application when contested, the Department stated in *United States v. Joseph Frederick Thompson* (A. 23511), decided January 19, 1943, unreported, that—

"A higher degree of proof of discovery is required by an applicant for patent than would be required simply to sustain a location in a controversy between rival mining claimants (*Brophy v. O'Hare*, 34 L. D. 596; *Clipper M. Co. v. Eli M. & L. Co.*, 33 L. D. 660). The Department must be satisfied that the land contains mineral in quantity and quality sufficient to render the land valuable for mining purposes (*Cataract Gold Mining Co. et. al.*, 43 L. D. 248). See also *Roy C. Kaufman* (A. 19232), decided November 7, 1935; *United States v. Louis des Cognets, Jr.* (A. 22884), decided December 22, 1941; *United States v. Grace Spence Callahan, Heir of George S. Spence* (A. 23337), decided September 18, 1942, all unreported."

The demurrers and motions to dismiss proceedings having been overruled by the manager, and the Government having submitted testimony which unrefuted clearly shows that a discovery has not been made on any of the claims contested and that the requisite expenditure of \$500 in improvements has not been made on or for the benefit of the La Jolla, Alabama, Staples, Arroyo Verde or the Manganese lode claims, it was incumbent upon the defendant to submit testimony overcoming that showing and establish that the applicant is entitled to a patent for the claims which he has not done.

The decision of the manager is affirmed and mineral entry Oregon 0665 is held for cancellation as to the Henry Applegate, J. W. Merritt, Rainbow, Sulphide, Delia McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb, J. D. McKinnon, La Jolla, Alabama, Staples, Arroyo Verde, and Manganese claims. This ruling does not invalidate the mining claims and the mineral claimants may retain possession thereof and continue prospecting work looking to the discovery of valuable mineral which will warrant the filing of an application for patent for the claims. This decision will become final 30 days from receipt of notice hereof. If an appeal to the Secretary of the Interior is filed within the time allowed it should be filed in this office and reference made therein to the serial number given above. Should no action be taken within the time allowed, the entry will be canceled as to the claims contested and the case closed without further notice from this office. A copy of this decision is being sent by registered mail to W. O. McMahon, attorney for the entryman.

WILLIAM ZIMMERMAN,  
Assistant Director.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT OPERATIONS,  
1501 HOUSE OFFICE BUILDING,  
Washington, D. C., February 17, 1956.

HON. JAMES E. MURRAY,  
*Chairman, Joint Committee on Federal Timber,*  
*Senate Office Building, Washington, D. C.*

MY DEAR SENATOR MURRAY: Supplementing my letter of today, listing the documents which the minority requested be included in the record of the Al Sarena hearings, herewith please find one additional document which we ask be also included, viz:

"Letter dated February 17, 1956, from Mr. James D. Parriott, Associated Solicitor, Department of the Interior, to me, giving certain information as to the number of patents which have been granted in the State of Oregon since the year 1933 to date."

Thanking you, I am,  
Sincerely yours,

CLARE E. HOFFMAN.

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., February 17, 1956.

HON. CLARE HOFFMAN,  
*House of Representatives,*  
*Washington, D. C.*

MY DEAR MR. HOFFMAN: Pursuant to your oral request I have averaged the time between the date of location and the date of the issuance of patent of mining claims in Oregon since 1933. There were 37 claims, plus 4 cases which could not be located.

The Patent numbers of the cases averaged are as follows:

1134335, 1138469, 1139881, 1140120, 1146486, 1147217, 1147218, 1147219, 1147592, 1152924, 1147399, 1147398, 1147221, 1147220, 1134336, 1150084, 1148318, 1148319, 1154357, 1153701, 1153602, 1147782, 1147871, 1155456, 1155342, 1130355, 1123419, 1106842, 1110732, 1123923, 1106841, 1082333, 1100540, 1105948, 1130508, 1133311, 1092803

The time ranges from 1 year, 9 months, and 6 days to 60 years and 26 days, and averages 20.78 years.

Very truly yours,

JAMES D. PARRIOTT, JR.,  
*Associate Solicitor for Public Lands.*

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INFORMATION SUBMITTED BY DEPARTMENT OF INTERIOR

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C. February 17, 1956.

HON. JAMES E. MURRAY,  
*United States Senate,*  
*Washington, D. C.*

MY DEAR SENATOR MURRAY: Under Secretary Davis is absent from the city and has asked me to submit to your committee certain information requested of him during his recent testimony in the Al Sarena Mines, Inc., case.

Attached hereto is a list of the cases which were pending in the Office of the Solicitor when Mr. Davis took office. You will note that the Al Sarena Mines case is the first listed under our chronological docketing system. The number of the Al Sarena case is A-26248. The closest case to it and the next case in line is A-26279. The third case is A-26440. As you can see, 191 cases were decided between the docketing of the Al Sarena case, which was the oldest case when Mr. Davis took office, and the docketing of the third oldest case at that time.

From the third case to the end of the list the numbers progress in a fairly even fashion.

mineral character of the claims and the value of the improvements placed thereon.

Mr. G. Robert Leavengood, timber management assistant, for the Forest Service, testified that the value of the timber on the claims which could be cut, using Forest Service methods and leaving perhaps 25 percent of the growth standing as growing stock, would be approximately \$77,000.

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The demurrers and motions to dismiss proceedings having been overruled by the manager, and the Government having submitted testimony which unrefuted clearly shows that a discovery has not been made on any of the claims contested and that the requisite expenditure of \$500 in improvements has not been made on or for the benefit of the La Jolla, Alabama, Staples, Arroyo Verde or the Manganese lode claims, it was incumbent upon the defendant to submit testimony overcoming that showing and establish that the applicant is entitled to a patent for the claims which he has not done.

The decision of the manager is affirmed and mineral entry Oregon 0625 is held for cancellation as to the Henry Applegate, J. W. Merritt, Rainboe, Sulphide, Della McKinnon, Cougar, Oro Escondido, W. C. Leever, J. L. Grubb, J. D. McKinnon, La Jolla, Alabama, Staples, Arroyo Verde, and Manganese claims. This ruling does not invalidate the mining claims and the mineral claimants may retain possession thereof and continue prospecting work looking to the discovery of valuable mineral which will warrant the filing of an application for patent for the claims. This decision will become final 30 days from receipt of notice hereof. If an appeal to the Secretary of the Interior is filed within the time allowed it should be filed in this office and reference made therein to the serial number given above. Should no action be taken within the time allowed, the entry will be canceled as to the claims contested and the case closed without further notice from this office. A copy of this decision is being sent by registered mail to W. O. McMahon, attorney for the entryman.

WILLIAM ZIMMERMAN,  
Assistant Director

- A-26623 W. Nelson Shell
- A-26624 Cecil H. Phillips et al.
- A-26625 Ben E. Nunn
- A-26626 Ben E. Nunn
- A-26627 William E. Butler
- A-26628 Fred W. Cavanaugh
- A-26629 Joseph E. Cavanaugh
- A-26630 Allen O. Gossett
- A-26631 Earl E. Madden
- A-26632 Allen L. Bowden, et al.
- A-26633 Harriett L. Barsley
- A-26634 Clarence D. Reynolds, Glen Henry Conrad
- A-26635 George R. Crandall
- A-26636 James P. McCoy
- A-26637 Cecil J. Beebe
- A-26638 Lester C. Hotchkiss, Alpha L. Hotchkiss.
- A-26639 Fred M. Crandall
- A-26640 L. E. Bohnett
- A-26641 Ernest Walker Sawyer, Jr.
- A-26642 Elmer F. Durr
- A-26643 Thomas Connell
- A-26644 Josephine F. Armstrong
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- A-26650 Lester B. Sheets
- A-26651 Wilbur E. McCann, Elsie G. McCann
- A-26652 Robert L. Wiggs, Alice M. Wiggs
- A-26653 Frank L. Shaw
- A-26654 Frank J. Sunseri
- A-26655 Lisette and Paul Baumgartner
- A-26656 R. C. Glines, S. Seeberg
- A-26657 Julianne Vaasa Robinson
- A-26658 Clifford S. Giebner
- A-26659 Chester A. Chenoweth
- A-26660 Cecil H. Phillips
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- A-26662 William Stanton Phillips
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- A-26664 Harold B. Green, William E. Crow
- A-26665 Walter S. Atkinson, William J. Atkinson
- A-26666 Nelson Kavanagh and 148 others
- A-26667 Albert J. Castagno
- A-26668 Usibelli Coal Mines, Inc.
- A-26669 Kenneth A. Arans
- A-26670 A. Ben Shallit, Usibelli Coal Mine, Inc.
- A-26671 Auzy M. Hill
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- A-26676 Roy Lee Boyer
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- A-26678 George W. Hill
- A-26679 John Photos, Charles Comack
- A-26680 Keith V. O'Leary and Donald K. Moore
- A-26681 Curtis Ferguson
- A-26682 Marvin Brewer
- A-26683 Bernie Aquilla Brewer
- A-26684 Earl Randolph
- A-26685 Stanley J. Brewer
- A-26686 James G. Lowe
- A-26687 Melville Orville Brewer
- A-26688 Donald E. Ellis

A-26692	Pacific Gas & Electric Co.
A-26693	Joe B. and Opal B. Forehand
A-26694	Robert A. and Fanny R. Land
A-26695	Horace H. and Aubrey L. Low
A-26696	John D. Riley
A-26697	Fritz Springer
A-26698	Robert D. Packers
A-26699	Robert O. Sewell
A-26700	Calvin Roof
A-26701	Carl A. Barratt, Jr.
A-26702	Fred J. Barrett

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- A-26699 Robert O. Sewell
- A-26700 Calvin Roof
- A-26701 Carl A. Barratt, Jr.
- A-26702 Fred J. Barrett

**FOREST RESEARCH AND  
FIRE SUPPRESSION TAX RETURN**

1. The first group of products is the most important one, and it is the one that is most likely to be affected by the new regulations. It includes the following products:

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**Deleuze, James**

**Keywords:** child sexual abuse; disclosure; social support

**The rate is for gas for students**

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September 20 1957

**Keywords:**

**Marvyn D.**

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• • • • • LAWS IN

1. The following information was obtained from the records of the Central Intelligence Agency regarding the activities of the above named individuals:

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The fee shall be paid by the contractor at the rate of \$10 per month as an advance payment.

Page 11 of 11

PLEASE PRINT OR TYPE: NAME, ADDRESS AND PHONE NO. OF PERSONS OR ORGANIZATION ON BASIS OF THIS FORM

WHICH IS 1 SAWLOG, and costs per thousand b. f.

UNITED STATES DEPARTMENT OF THE ARMY				OFFICE OF THE CHIEF OF ARMY SUPPLY		WASHINGTON, D. C.	
ORDER				DATE		FILE NO.	
TO				FROM		REMARKS	
1. <b>TO: THE CHIEF OF ARMY SUPPLY</b>				2. <b>DATE: 10-10-44</b>		3. <b>FILE NO: 100-100000</b>	
4. <b>FROM: THE CHIEF OF ARMY SUPPLY</b>				5. <b>DATE: 10-10-44</b>		6. <b>FILE NO: 100-100000</b>	
7. <b>REMARKS: 1. 100-100000</b>				8. <b>100-100000</b>		9. <b>100-100000</b>	
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MASS CHECKS PAYABLE TO STATE TAX COMMISSION

October 26, 1954

**Notice!** MAIL LETTER WITH ACCOMPANYING REMITTANCE TO OREGON STATE TAX COMMISSION Salem, Oregon.

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# **FOREST RESEARCH AND FIRE SUPPRESSION TAX RETURN**

Tax to be paid on all merchantable timber or other forest products cut, removed, or otherwise removed from any class B forest land.

<b>TAXPAYER</b> <u>Al Sarena &amp; Co., Inc.</u> (Name on 1946) <u>P.O. Box 122</u> (Postoffice Name) <u>Prineville, Oregon</u> (Address)	Tax return for quarter ended— (Name on 1946) September 30 ( ) December 31 ( ) March 31 ( ) <b>12</b> June 30 ( )
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## **CLASS B FOREST LAND IS:**

- ALL FOREST LAND is situated west of the summit of the Cascades, including Mand River County, except:  
 1. Forest land not paying the fire patrol assessment within rural fire districts.  
 2. Forest lands within federal protection districts.

**TAX RETURN AND PAYMENTS ARE DUE ON OR BEFORE THE 10th OF THE MONTH** following the end of each quarter and must be paid on the total merchantable quantity of timber or other forest products harvested during the quarter, with the first 2,000 board feet harvested each fiscal year being exempt from tax. Tax quarters end on the following dates: September 30, December 31, March 31 and June 30.  
 The tax requires payment of \$1.00 plus penalty of 6% and interest at the rate of 1/2 of 1 percent per month on all delinquent tax, plus a deficiency assessment.  
 County or counties in which woods operation is being conducted: \_\_\_\_\_

Form Number \_\_\_\_\_

**REFER TO THE INSTRUCTIONS AND ANSWER THE QUESTIONS ON BACK OF THIS FORM**

## **SCHEDULE I—SAWLOGS—8 cents per thousand b. f.**

ALL TIMBER PRODUCTS HARVESTED (LARGE QUANTITIES OF LOGS FROM WHICH SAWLOGS DERIVED AND TOTAL QUANTITY DERIVED BY BOARD FEET)					Do Not Write in This Space
No.	Acres Produced	Timber Subdivided	Quantity Harvested M & S	Quantity Harvested S & S	
1					<b>A.</b> S. tax _____ M. tax _____ Total _____ P & I _____ Total _____  <b>B.</b> S. tax _____ M. tax _____ Total _____ P & I _____ Total _____
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12	Enter on this line total merchantable volume of harvested timber (Items 1 through 11)				
13	Less allowed exemption of 25,000 board feet if not claimed previously during fiscal year				
14	Enter total merchantable quantity subject to tax				
15	Tax rate is (.08) eight cents per thousand board feet. Enter total tax due on saw logs here				0

## **SCHEDULE II—POLES, PILING, CORDWOOD, ETC.**

TAX ON TIMBER PRODUCTS OTHER THAN THOSE DESCRIBED IN SCHEDULE I (Enter cents a bush on average size of the volume)					Do Not Write in This Space
No.	Acres Produced	Volume Subdivided	Volume Harvested M & S	Volume Harvested S & S	
16					Check _____ M. G. _____ Cash _____  0 0
17					
18					
19					
20					
21					
22					
23	Enter gross amount of tax from table on reverse side of return				
24	Less allowed exemption (\$1.00) if not claimed under Schedule I above, or previously during fiscal year				
25	Enter total due on forest products other than those described in Schedule I (Items 16 through 24)				
26	Enter tax due on savings and on other forest products—This is total of Items 16 and 25				

## **MAKE CHECKS PAYABLE TO STATE TAX COMMISSION**

I declare that this return including the accompanying schedules and statements has been examined by me and, to the best of my knowledge and belief, is a true and complete return made in good faith for the tax period stated.

Al Sarena  
 (Signature)

E. H. Nelson  
 (Signature of taxpayer or authorized agent)

**Notice**

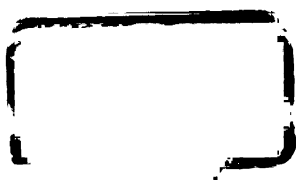
MAIL RETURN WITH ACCOMPANYING SCHEDULES TO  
 OREGON STATE TAX COMMISSION, Salem, Oregon

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UNIVERSITY OF MICHIGAN

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